

CIRCULAR

20th December 2020

To the Members

It should be noted that the following amendments to Rules will be effective from the 20th February 2021

GENERAL RULES

1) Rule 33(d) to be amended as follows:

d. to the extent that any claim or potential claim against the Association has been or may be paid by the Association or may be pursued against the Association by the former Member all the obligations of the Member to the Association shall continue to apply to the former member as though he remained a Member.

All other parts of Rule 33 to remain unchanged.

2) Rule 34.5 to be amended as follows:

5. This General Rule shall apply mutatis mutandis to a person who was, but is no longer, a Member.

All other parts of Rule 34 to remain unchanged.

3) Rule 40.1 to be amended as follows:

Subject to General Rule 43, a notice or other document required under these Rules to be served on the Association may be served by sending it through the post in a prepaid letter or by sending it by telegraph, cable, radio telegraph, facsimile, telex or email addressed to the Managers at their address for the time being.

All other parts of Rule 40 to remain unchanged.

4). Rule 44 to be amended as follows:

(a) First paragraph:

Subject to General Rule 42, if any difference or dispute shall arise between a Member and the Association out of or in connection with the Rules or any contract between them or as to the rights and obligations of the Association or the Member thereunder or in connection therewith, such difference or dispute shall in the first instance be referred to and adjudicated upon by the Directors. Such reference and adjudication shall be on written submissions only.

(b) Final paragraph:

Notwithstanding any other matter set out in this Rule 44 any difference or dispute arising between a

Member and the Association out of or in connection with a claim arising under Rule 4.1 (v) and (vi) of Class 1 Protection and Indemnity and Rule 4.1 (v) and (vi) of Class 6 Charterers' Liability shall be determined by a single arbitrator acting as an expert appointed in default of agreement by the President for the time being of the Medical Council of New Zealand whose decision shall be final and binding on all parties.

All other parts of Rule 44 to remain unchanged.

CLASS 1 PROTECTION & INDEMNITY

- 1) Rule 4.17 to be replaced by the following:-

Contractual liabilities and indemnities

Liabilities, costs and expenses, including liability for loss of life or personal injury but excluding liability for any cargo intended to be or being or having been carried in an entered ship, or the payment of compensation or wages, arising:

- (a) under the terms of a contract to which the Member is a party; or
- (b) under the terms of an indemnity granted by the Member;

PROVIDED ALWAYS that:

- (i) the Managers shall have previously approved the terms of the contract or indemnity and agreed the terms of any additional cover in writing; and
- (ii) the Member has paid or agreed to pay such additional call or premium as may be required by the Association.

- 2) Rule 4.23 (d) to be amended as follows:

(d) The accidental escape or discharge of oil or other substance or the threat thereof provided that the Member is insured for pollution liability by the Association under sub-rule 24 of Rule 4, subject to the applicable limit of liability in respect of oil pollution.

All other parts of Rule 4.23 to remain unchanged.

- 3) Rule 8.2 – Other Risks Excluded – to be replaced by the following:-

- 1. Unless special cover shall have been agreed in writing between a Member and the Managers, the Association shall be under no liability for any claim relating to liability, loss or expense in respect of:
 - a. an entered ship which is a salvage tug, fire-fighting ship or other ship used or designed or intended to be used for salvage operations, when the claim arises as a result of or during any

salvage operations or attempted salvage operations other than salvage operations conducted by the ship solely for the purpose of saving or attempting to save life at sea;

- b. an entered ship being a drilling ship or barge or any other ship or barge employed to carry out drilling or production operations in connection with oil or gas exploration or production, to the extent that such liabilities and expenses arise out of or during drilling or production operations. An entered ship shall be deemed to be carrying out production operations if (inter alia) it is a storage tanker or other ship engaged in the storage of oil, and either:
 - i. the oil is transferred directly from a producing well to the storage ship; or
 - ii. the storage ship has oil and gas separation equipment on board and gas is being separated from oil whilst on board the storage ship other than by natural venting.
- c. The performance of specialist operations including, but not limited to, dredging, blasting, pile driving, well-intervention, cable or pipe laying, construction, installation or maintenance work, core sampling, depositing of spoil, to the extent that such liabilities and expenses arise as a consequence of:
 - i. claims brought by any party for whose benefit the work has been performed, or by any third party (whether connected with any party for whose benefit the work has been performed or not), in respect of the specialist nature of the operations and / or arising in the course of performing such specialist operations; or
 - ii. the failure to perform such specialist operations by the Member or the fitness for purpose and quality of the Member's work, products or services, including any defect in the Member's work, products or services; or
 - iii. any loss of or damage to the contract works; or
 - iv. any loss of or damage to other property, not being part of the contract works.

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

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

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

- d. The activities of professional or commercial divers when the Member is responsible for such activities other than, provided that special cover for such activities shall have been agreed in writing between a Member and the Managers, the following activities:

- i. activities arising out of salvage operations being conducted by an insured ship where the divers form part of the crew of that insured ship (or of diving bells or other similar equipment or craft operating from the insured ship) and where the Member is responsible for the activities of such divers,
 - ii. incidental diving activities carried out in relation to the inspection, repair or maintenance of the insured ship or in relation to damage caused by the insured ship.
- e. Waste incineration or disposal operations carried out by the insured ship (other than any such operations carried out as an incidental part of other commercial activities).
 - f. The operations of submarines, mini-submarines or diving bells.
 - g. An insured ship being a semi-submersible heavy lift ship or other ship designed exclusively for the carriage of heavy lift cargo where the claim arises out of the loss of or damage to or wreck removal of cargo, unless the cargo is being carried under a contract on unamended Heavycon terms or any other contract approved by the Managers in writing.
 - h. Liabilities, costs and expenses incurred by a Member in respect of personnel (other than marine crew) on board an entered accommodation vessel employed otherwise than by the Member where 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 Managers.
 - i. Liabilities, costs and expenses incurred by a Member in respect of hotel and restaurant guests and other visitors and catering crew of the Entered Ship when moored (otherwise than on a temporary basis) and open to the public as a hotel, restaurant, bar or other place of entertainment.

PROVIDED ALWAYS THAT special cover for any of the risks excluded by Rule 8.2 may be agreed between the Member and the Managers in accordance with the Rules.

4) Rule 3 1 (v) to be replaced by the following:

in any case the liability of the Association for any and all liabilities, losses, costs and expenses incurred by all Members, Co-assureds and Affiliates under any one entry and which arise out of any one event or series of events shall be limited to the sum insured in the terms of entry, provided always that to the extent the Association has reinsured any risk insured, the Association shall only be obliged to pay any amount in excess of USD 250,000 per event or series of events as and when such funds are received by the Association from its reinsurer(s) and the Association shall in no circumstances be liable to pay any amount(s) which cannot be recovered from reinsurer(s) regardless of the reason for such non recovery.

CLASS II FREIGHT, DEMURRAGE AND DEFENCE

- 1) The heading of Rule 4 to be amended as follows:

RULE 4 COSTS INSURED

All other parts of Rule 4 to remain unchanged.

- 2). Rule 7(a) to be amended as follows:

- a. fully insured for its proper value under Hull policies on terms not less wide than those of the Lloyd's Marine Policy with Institute Time Clauses – Hulls 1.10.83 with no deductible or franchise or self-insurance applicable to claims under such policies.

All other parts of Rule 7 to remain unchanged.

- 3). The following sub-rule i should be added to Rule 8:

- i. costs or expenses incurred or payments made in relation to ransom demands, extortion, blackmail, bribery or other unlawful demands.

All other parts of Rule 8 to remain unchanged.

CLASS V – SMALL CRAFT HULL & MACHINERY

The first paragraph of Rule 6.2 to be amended as follows:

- 2) On expiry, the insurance shall be renewed for a new policy period of one year commencing with the end of the expiring policy period on the same terms and conditions as those in force for the expiring policy period, unless at the request of the Member other terms shall be agreed or unless

All other parts of Rule 6, including sub-sub-rules (a) and (b) and the proviso to sub-rule 2, to remain unchanged.

CLASS VI – CHARTERERS' LIABILITY

- 1) Rule 3.1(c) to be amended as follows:-

The limit of liability specified in the Certificate of Entry shall be inclusive of legal costs and expenses and, notwithstanding s.78(1) of the New Zealand Marine Insurance Act 1908, inclusive of costs and expenses of suing and labouing.

- 2) Rule 3.4 to be amended as follows:-

Want of Due Diligence

1. If liabilities, losses or expenses are incurred as a result of want of due diligence by the Member, his managers, superintendents or onshore management, then the Directors may, in their discretion,

reject or reduce the liability of the Association to the Member to the extent that such want of due diligence has, in their opinion, caused the liabilities, losses or expenses concerned.

2. In exercising their discretion under paragraph 4.1 of this Rule the Directors may take into account any failure by the Member, his managers, superintendents or onshore management to comply with recommendations in connection with operation of the entered ship which may have been made in any Circular or Risk Bulletin issued by the Association and published on its website.

- 3) Rule 4.9 to be amended as follows:

Compensation that the Member is liable to pay in respect of distressed seamen where such expenses are not recoverable under any other sub-rule of this Rule except those ensuing upon the termination of a contract of employment or contract of service in accordance with the terms thereof or by mutual consent or by breach by the Member or resulting from any other discretionary act of the Member or from sale of the chartered ship.

- 4) Rule 4.14(b) to be amended as follows:

Liability which a Member incurs in respect of the raising, removal, destruction, lighting or marking of the wreck of another ship to the extent that the sinking of that ship is held to be the Member's fault PROVIDED ALWAYS that nothing shall be recoverable from the Association in respect of lighting or marking the wreck of that ship beyond a maximum period of two years beginning with the date of the event giving rise to the wreck.

All other parts of Rule 4.14 to remain unchanged.

- 5) Rule 4.21 to be amended to include the following additional proviso:-

- (iii) unless previously otherwise agreed in writing by the Managers there shall be no recovery under this rule if the chartered ship was at the time of the general average incident more than 10 years old.

- 6) Rule 4.23(a) to be amended as follows:-

- a. short or overlanding or over delivery of cargo or for failure to comply with regulations relating to declaration of goods or documentation of the cargo, or of the chartered ship relating to the cargo, provided that the Member is insured by the Association for cargo liability under Rule 4 sub-rule 19.

- 7) Rule 4.23(b) to be amended as follows:

- b. smuggling or for any infringement of customs laws or regulations other than in relation to cargo carried on the chartered ship.

- 8) Rule 4.23 proviso iv to be amended as follows:

- iv. there shall be no recovery in respect of infringement or violations of or non-compliance with

provisions regarding construction, adaptation, equipment and documentation of ships contained in the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1987 as modified or amended by any subsequent legislation, including any modifications or amendments thereto, of any state giving effect to that Convention.

All other parts of Rule 4.23 to remain unchanged.

9) Rule 4.26 to be amended as follows:-

Liability, loss or expense incidental to the business of chartering ships which, in the discretion of the Directors, comes within the scope of the cover afforded by the Association. Claims under this paragraph shall be recoverable to such extent only as the Directors may in their discretion determine; however the Directors may not, except by unanimous decision, decide that a claim falling within an exception is within the cover.

10) Rule 5.2 to be amended as follows:

The insurance shall be renewed for the next policy period on the same terms and conditions as those in force for the current policy period unless, at the request of the Member, other terms shall be mutually agreed or unless;

- a. notice shall have been given in writing by either the Member to the Managers or the Managers to the Member not later than noon GMT on 20th January in the current policy period that the insurance specified in the notice is not to be renewed or
- b. the Managers shall have given notice not later than noon GMT on 20th January in the current policy period that the terms of the insurance by the Association for the next following policy period are to be changed, in which case the insurance for the next following policy period shall be renewed upon such terms as may be agreed between the Member and the Managers before noon GMT on 20th February immediately following such notice, and if no terms shall then have been agreed the insurance shall not be renewed.

All other parts of Rule 5, commencing with sub-rule 3, shall remain unchanged.

11) The following Rule 3.1(e) shall be added:-

In any case the liability of the Association for any and all liabilities, losses, costs and expenses incurred by all Members, Co-assureds and Affiliates under any one entry and which arise out of any one event shall be limited to the sum insured in the terms of entry, provided always that to the extent the Association has reinsured any risk insured, the Association shall be obliged to pay any amount in excess of USD 250,000 per event or series of events as and when such funds are received by the Association from its reinsurer(s) and the Association shall in no circumstances be liable to pay any amount(s) which cannot be recovered from reinsurer(s) regardless of the reason for such non recovery.

All other parts of Rule 3.1 to remain unchanged.

APPENDIX

To be added to the start of this section:

The additional covers which follow do not form part of any member's insurance unless and to the extent that the Association has approved an application of the member for an MLC certificate.

Yours faithfully

The Board of Directors

Maritime Mutual Insurance Association (NZ) Limited