



DECEMBER 22, 2020

CIRCULAR NO. 46/20

TO MEMBERS OF THE ASSOCIATION

Dear Member:

CHANGES TO THE RULES OF THE ASSOCIATION FOR THE 2021 POLICY YEAR

Please note that your Board of Directors has approved the following changes to the Club's Rules to take effect from February 20, 2021.

They derive from the review and amendment of the International Group's Pooling Agreement in regard to the recoverability of fines for smuggling and the confiscation of vessels in consequence thereof; the continuing review of the language of the existing Rules in light of claims experience and other developments generally; and a desire to maintain good housekeeping in the interests of the clarity and efficacy of the terms on which Members are insured by the Club.

The changes are set out in the order in which current Rules appear in the Rule Book.

Class I: Protection and Indemnity Insurance

Introductory: Interpretation: Membership: General Provisions (Rule 1)

Section 4. General Insurance Provisions

In order to preserve the Club's rights, subject to the exercise of the Directors' discretion in appropriate circumstances, on those occasions where hull and P&I interests intersect in the handling of casualties and the Member has no hull insurance, a new Rule 1, Section 4.14 under the heading of 'Other Insurances', will be added as follows:

Other Insurances

- 14** ***Without prejudice to the provisions of Rule 3, Section 2.5 and Rule 1, Section 4.37, every insured vessel shall be deemed to be fully insured without deductible for risks under the terms of a policy written on the American Institute Hull Clauses (June 2, 1977) Form and a policy written on the American Institute Increased Value and Excess Liabilities Clauses (November 3, 1977) Form, or other equally wide form of insurance, whether or not the insured vessel is fully covered under such policies by insurance and excess insurance sufficient in amount to pay in full and without limit all such loss, damage, sacrifice or expense. Unless and to the extent that the Directors in their sole and absolute discretion otherwise decide, there shall be no recovery for any liabilities, costs and expenses for which the insured vessel is deemed to be insured under this Section 4.14 or which the Member is entitled, or would be entitled, to recover under any other insurance or otherwise howsoever.***

The incorporation of the above new Sub-section to Rule 1, Section 4 will entail the renumbering upward of the current Sub-section 14 et seq.

Risks and Losses Covered (Rule 2)

In consequence of the introduction for 2021 of new language in the Pooling Agreement following consultation among all Group clubs on the recoverability of smuggling fines, a change to the Club's Rule in this respect will be required. In this context, too, the language applying to claims concerning the confiscation of vessels will also be amended to ensure that the recovery of such claims is granted by the Directors as a matter of their sole and exclusive discretion rather than, to any extent or degree, as of right.

Accordingly, Class I, Rule 2, Section 9 will be amended to read as follows for the forthcoming policy year:

Section 9 FINES AND PENALTIES

Liability for fines and penalties imposed by any court, tribunal or authority for:

- 1. short- or over-delivery of cargo, or failure to comply with regulations concerning the declaration of goods, or documentation of cargo (other than fines or penalties arising from the smuggling of goods or cargo or any attempt thereat), provided that the Member is insured by the Association for liability in respect of cargo and subject always to the provisions of these Rules generally and/or the Member's terms of entry in respect of such cargo cover;***
- 2. breach of any immigration law or regulation, provided that such breach is unknown to the Member;***
- 3. the accidental escape or discharge of oil or any other substance from an insured vessel, provided that the Member is insured for pollution liability by the Association, and subject to the applicable limit of liability under the Rules of the Association and/or the terms of entry.***

All other fines and penalties will be recoverable only where the Member has satisfied the Directors that it took such steps as appear to the Directors reasonable to avoid the event giving rise to such fine or penalty, and only to such extent as the Directors in their sole and absolute direction may determine without having to give any reasons for their decision.

Coverage under this Section 9 may also extend to confiscation of an insured vessel by a legally empowered court, tribunal or authority for breach of any customs law or regulation, provided always that:

- recovery shall be limited to the market value of the insured vessel, free of commitment at the time of confiscation;***
- the Member shall have satisfied the Directors that it took such steps as appear to them to be reasonable to avoid the event giving rise to the confiscation;***
- no such claim shall be considered by the Directors until such time as the Member has been finally deprived of its full interest in the insured vessel;***

- ***any amount claimed in regard to the confiscation under this Section 9 shall be recoverable only to such extent as the Directors in their sole and absolute discretion may determine without having to give any reasons for their decision.***

Section 20. 'Omnibus' Rule

In order to clarify the scope and manner of implementation of Directors' discretion in cases appropriate for the exercise of the 'Omnibus' power, the wording of Rule 2, Section 20 will be amended as follows for the forthcoming policy year:

Section 20 'OMNIBUS' CLAUSE

Liability for risks, losses, costs and expenses incidental to the business of owning, operating or managing ships which, and only to such extent as the Directors in their sole and absolute discretion may determine, without having to give any reasons for their decision, fall within the scope of the insurance protection afforded by the Association under these Rules.

PROVIDED ALWAYS that there shall be no recovery under this Section 20 of any risks, losses, costs and expenses expressly excluded elsewhere in these Rules unless a three-quarters majority of Directors, present at a duly-constituted meeting where such recovery is being considered, shall have decided, without having to give any reasons for their decision, that such exclusion should be overridden in the particular circumstances of the case and that recovery in regard to the said risks, losses, costs and expenses, to any extent that the Directors might in their sole and absolute discretion determine, should be allowed.

Association Funding: Premiums and Calls (Rule 4)

(New) Section 12. Premium and Other Taxes

Issues arise from time to time in regard to outgoing insurance premium and other forms of tax which are properly the responsibility of the Member and/or its intermediary. In order to clarify the treatment of such taxation, the following Rule will apply for the forthcoming policy year:

Premium and Other Taxes

- 12 The Member shall on demand pay to the Association or to its order the amount of any premium tax or other tax levied on, or in connection with, the insurance or reinsurance provided by the Association to the Member for which the Managers determine the Association or the Member has, or may, become liable, and the Member shall indemnify and hold harmless the Association and/or the Managers in respect of any loss, damage, liability, cost or expense which the Association and/or the Managers may incur in respect of such premium tax or other tax.***

The incorporation of the above new Section will entail the renumbering upward of the current Rule 4. Section 12 et seq.



Cesser and Termination of Cover (Rule 5)

In circumstances where vessels are covered by the Club under management arrangements where the manager or operator of the vessel is identified as the Member, the relevant owner(s) being unrelated to the manager or operator, the effect on cover of cancellation of the management contract between such an owner and the manager/operator/Member would benefit from further clarification in the Rules, given the approach which has in practice prevailed over recent years, and which is explicitly addressed in the Rules of other Group clubs.

Accordingly, Class I, Rule 5, Section I.a will be amended to read as follows:

Rule 5 CESSER AND TERMINATION

1 Unless otherwise agreed by the Managers in writing, any insurance in respect of a Member's interest in an insured vessel shall cease upon the happening of whichever shall be the earliest of the following events:

a the Member parting with or assigning its interest in the vessel whether by bill of sale or other formal document or in any other way whatsoever including, but not limited to, the termination of a management or other operational agreement between the Member and any other party having an ownership or any other interest in the insured vessel;

Class II: Freight, Demurrage and Defense Insurance

The amendments set out in regard to Class I above will also be formally incorporated into, and form an integral part of, the Rules of Class II to the extent that they are consistent with the subject and context of the said Rules of Class II.

Class III: Insurance For Charterers' Risks

The amendments set out in regard to Classes I and II above will also be formally incorporated into, and form an integral part of, the Rules of Class III to the extent that they are consistent with the subject and context of the said Rules of Class III.

It is hoped that the foregoing changes are clear, but if any Member requires any further explanation or comment, the Managers will be happy to respond.

Yours faithfully,


Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB