

Class 2 – Freight, Demurrage and Defence

24. APPLICATION FOR ENTRY.

Any person who desires to enter a vessel for insurance in the Association shall make application for such entry in such form as may from time to time be required by the Managers.

The Managers shall be entitled in their absolute discretion to refuse any application for the entry of a vessel for insurance in the Association, whether or not the applicant is a Member of the Association.

Applications for the entry of a vessel or vessels may be made in respect of vessels which form part of a particular and specified fleet for ~~insurance the purposes of such entry only~~ and if the Association accepts such an application, the Association will treat such entries as belonging to such a fleet notwithstanding that the beneficial ownership of such vessels may be different from one another, and all Members and joint Members within each such fleet shall be jointly and severally liable to perform all the obligations of any one of them towards the Association, including without limitation the liability to pay all Calls and other sums due to the Association in respect of any and all vessels within that fleet entry. Any failure by a Member or joint Member in ~~that the same fleet to pay his Calls or perform any sums obligation whatsoever due from him to~~ towards the Association shall be deemed to be a failure ~~also~~ of all Members and joint Members within such fleet. In the case of a failure to pay such Calls or any other sums whatsoever and shall entitle whatsoever due from such Member to the Association, the Association shall be entitled to give notice to all or any of such Members or joint Members under Rule 41.

34. TERMINATION OF INSURANCE FOR NON-PAYMENT.

- (1) If a Member (whether as a Member of this or any other Class) has failed to pay on the due date for payment any sum due to the Association or to any other person on its behalf, he shall be deemed to have failed to pay all sums (including but not limited to instalments determined under Rule 49(i)) whose date of payment to the Association or to any other person has been notified by the Association and the Association may serve notice on the Member requiring him to pay such sums on or before the date specified in the notice which shall refer to one or more of the consequences of non-payment set out in paragraph (2) of this Rule.
- (2) If a Member fails to pay such sums in full on or before the date so specified in the notice:-
 - (i) that Member shall cease to be insured by the Association and the period of insurance shall terminate in respect of any and all vessels entered by him and
 - (ii) the Association shall cease to be liable and shall not thereafter become liable to that Member for any loss, damage, liabilities, costs or expenses whatsoever in respect of any or all vessels at any time entered by him, irrespective of whether insurance of such vessels terminated by reason of this or any other Rule or at any previous time for any other reason, or whether the events giving rise to such loss, damage, costs, expenses or liabilities occurred before or after termination and whether any claim by the Member against the Association was made before or after service of the notice.

PROVIDED THAT:-

- (a) such notice shall not be invalidated by reason that the sums specified therein as being due to the Association is greater or lesser than the sum actually due;
- (b) in determining what sums is are due to the Association under this or any other Rule or otherwise no account shall be taken of any amount due or alleged to be due by the Association to the Member and no set-off of any kind whatsoever shall be allowed against such sums (even if previously allowed) unless specifically agreed in writing by the Managers on behalf of the Association and referred to in such notice;

- (c) at the written request of the Member the Committee may determine to reinstate the Member and to extend the period of insurance in respect of any and all vessels entered by him on such terms as the Committee thinks fit and the Committee may further determine that the Association shall be liable to the Member for any liabilities, costs or expenses in respect of any and all vessels at any time entered by or for the Member to such extent and upon such terms as the Committee thinks fit.

42. PAYMENT OF CALLS AND OTHER SUMS DUE TO THE ASSOCIATION.

- (1) Calls and other sums due to the Association shall be paid on demand ~~save that Advance, Additional and Overspill Calls and Solvency Margin and Guarantee Fund Contributions shall be due and payable by or in such~~ instalments and on ~~such~~ dates ~~as are~~ determined by the Committee ~~or the Managers~~.
- (2) The Association shall have a lien on ~~the an~~ insured vessel for all Calls and other sums due to it under these Rules ~~in respect of that vessel~~. Such lien shall extend to ~~any and all~~ other insured vessels which are part of ~~a the same~~ fleet ~~as that vessel~~ in accordance with Rule 31 and shall be in addition to, and in no way ~~may be~~ construed as a waiver or amendment ~~to of~~ any other contractual or maritime lien which the Association may expressly or impliedly possess in respect of ~~the said such~~ insured vessel or vessels.
- (3) The Association shall be entitled to set off any Calls or other sums due from a Member to the Association against any amounts for which the Association may be liable to such Member. No claim by a Member against the Association shall ~~constitute~~ ~~afford that Member any right to~~ ~~make~~ any set off against Calls or other sums due to the Association, nor shall it entitle a Member to withhold or delay payment of any such amounts.
- (4) The currency of payment of any amounts due to the Association shall be determined by the Managers.
- (5) If any Call, not being an Overspill Call, or other sum due to the Association from a Member is not paid and is considered to have become irrecoverable, the sums required to make good any resulting shortfall or deficiency in the funds of the Association shall become general expenses of the Association for which Calls may be levied or reserves applied in accordance with these Rules.
- (6) (a) The Committee may at any time by means of Bye Laws determine the rate of interest which shall be payable on any Calls or other sums due to the Association as from the due date of payment or such later date as may be specified.
- (b) The Managers may on behalf of the Association charge interest on Calls and other sums due at the rate specified in the Bye Laws.

43. RELEASES.

- (1) ~~Without prejudice to Rule 47A (Overspill Claims and Calls) and for the purposes of this Rule 47B only, Calls means Calls other than Overspill Calls.~~
- If a Member ceases to be insured in respect of an insured vessel for any reason whatsoever, the Managers may at any time after termination of insurance ~~of that vessel~~ calculate and notify ~~the such~~ Member of the ~~estimated~~ amount of his liability for further Calls ~~which the Association may levy~~ in respect of such vessel, according to the Release formula determined ~~from time to time~~ by the Committee, together with ~~the amount of~~ all other sums due by such Member to the Association.
- (2) In ~~assessing the estimated~~ ~~determining the Release formula to be used for estimating the~~ ~~amount of~~ liability of Members for further Calls the Committee may take into account any contingencies and other special considerations which ~~the Committee~~ ~~it~~ may determine are relevant for this purpose (including ~~but not limited to~~ matters such as inflation and currency fluctuations).

- (3) ~~The amount s calculated and notified by the Managers under paragraph (1) of this Rule shall be a Release and shall be payable by the Member without deduction on demand in full or in such instalments and on such dates as the Managers may require. If the Member pays the Release in full or in the instalments required by the Managers, he shall be under no further liability for any Calls, except for Overspill Calls, which the Association may levy after the date of such notification and have no right to share in the return of any excess payments which the Committee may thereafter determine in accordance with Rule 52(4). such Member immediately or in such instalments and on such dates as the Managers may require, in either case without deduction.~~

~~A Member who may be entitled under the terms of the International Group Agreement 1985 or other similar document to elect to postpone payment of a Release until such time as the final level of all Calls, except for Overspill Calls, has been determined and invoiced shall immediately provide as security for payment a bank guarantee, acceptable to the Managers, of such amount as they deem at the time to be sufficient to cover the current level of Release. The Member shall in addition undertake that such guarantee shall be adjusted to cover any increases to Calls, except for Overspill Calls, and other sums due which thereafter may be determined. If the Member fails to arrange such adjustment within 21 days of written request to do so, the Managers may issue a demand for payment of a Release in accordance with the Rules.~~

- (4) ~~If the Member shall not have paid in full the amount of Release so calculated within 30 days of the service on him of the original notice thereof or shall not have paid on the due date any instalment required by the Managers under paragraph (3) of this Rule then for as long thereafter as he shall not have so paid the Member shall be subject to any subsequent revisions to the Release formula determined by the Committee. The revised amount shall be payable in place of the amount originally calculated within a further 30 days. When a Member has paid his Release in full in accordance with paragraph (3) of this Rule he shall be under no further liability for any further Calls which the Association may levy after the date of such notification and shall have no right to share in any return of an excess or any part thereof which the Committee may thereafter determine in accordance with Rule 52(4).~~

- (5) ~~A Member shall have no right to question any such assessment save that after payment thereof in full to the Association, he shall be entitled to claim repayment thereof in whole or in part by referring such matter to arbitration in accordance with Rule 59. The Managers may, at any time prior to payment of a Release in full in accordance with paragraph (3) of this Rule, recalculate such Release in accordance with the Release formula referred to in paragraph (1) of this Rule and notify the relevant Member thereof, whereupon such Member shall become liable to pay such recalculated Release in accordance with this paragraph (5), credit being given against such recalculated Release for any part or instalments of a Release paid to the Association in respect of such vessel.~~

- ~~(6) Until a Member has paid his Release in full in accordance with paragraph (3) of this Rule, he shall remain liable to pay all Calls levied in respect of such vessel after the date of such notification, credit being given against such further Calls for any part or instalments of a Release paid to the Association in respect of such vessel.~~

- ~~(7) A Member who may be entitled under the terms of the International Group Agreement 1999 or other similar agreement to make a request to the Association to pay such further Calls instead of a Release, shall:~~

~~(a) make such request in writing no later than seven days after the Managers have notified such Release to such Member.~~

~~(b) within 14 days of the Managers' request to do so, provide to the Association as security for such further Calls a bank guarantee on terms and from a bank acceptable to the Managers in the amount of such Release together with such Member's written undertaking on terms acceptable to the Managers to increase, within 14 days of a request by the Managers to do so, the amount of such bank guarantee to cover any increase in the Association's or the Managers' estimate of such further Calls.~~

- (8) Until a Member has both made a request as required by sub-paragraph 7(a) and provided a bank guarantee and undertaking as required by sub-paragraph 7(b), he shall remain liable to pay any Release or revised Release notified under paragraphs (1) and (5) of this Rule, and the Managers may recalculate such Release in accordance with the Release formula referred to in paragraph (1) and notify such Member thereof, whereupon he shall become liable to pay such recalculated Release in accordance with this paragraph (8), credit being given for any instalments of a Release received by the Association in respect of such vessel.
- (9) A Member shall have no right to dispute any Release save that, after payment thereof in full to the Association or after payment of all instalments required by the Managers, the Member shall be entitled to claim repayment thereof in whole or in part using the procedure set out in Rule 59.

54. ARBITRATION JURISDICTION.

- (1) Subject to Rule 47A if any difference or dispute shall arise between a Member and the Association as to the rights or obligations of the Association or the Member or as to any other matter whatsoever, the resolution of such difference or dispute shall be governed by English law and procedure and shall, at the option of the Association, either be determined by the High Court of Justice of England and Wales or be referred to the Arbitration in London of a sole legal Arbitrator. Such Arbitrator shall be a practising Queen's Counsel of practicing at the Commercial Bar and or, if none is available, unavailable any other practicing Queen's Counsel and the submission to Arbitration and all the proceedings therein shall be subject to the provisions of the Arbitration Act 1950 1996 and any Statutory modification or re-enactment thereof. In any such Arbitration any matter decided or stated in any Judgement or Arbitration Award (or in any reasons given by an Arbitrator or Umpire for making any Award) relating to proceedings between the Member and any third party, shall be admissible in evidence.
- (2) No Member may bring or maintain any action, suit or other legal proceedings against the Association in connection with any difference or dispute unless he has first obtained an Arbitration Award in accordance with this Rule.
- (3) For the purpose of this Rule except paragraph (4) hereof the term "Member" shall also include a joint Member, a former Member, a Co-Assured, a trustee, an assignee, a successor to the Member and any other companies in the same or associated ownership or management as the Member or any of the foregoing or the shareholders, managers, agents or employees of any of them or any other person or entity claiming any insurance or re-insurance benefit from or other remedy against the Association, whether under these Rules or under a Bye law, Certificate of Entry, insuring or re-insuring agreement of this Association by contract or otherwise and the term "the Association" shall include any subsidiary or associated company of the Association or their or its Directors, agents or employees.
- (4) The Member warrants its authority to bind to Arbitration the other entities and individuals included within the above definition in paragraph (3) of this Rule. If any claim shall be made by any of them other than in Arbitration the Member shall procure that such claims be referred to Arbitration forthwith, pending which the Member shall not be entitled to proceed with any claim of its own against the Association connected with the same or any related subject matter; and the Association shall be entitled to recover from the Member any amounts agreed or adjudged to be due from the Association, and any costs incurred by it, in connection with any process other than Arbitration.
- (5) In any difference or dispute where the Member or Association as defined in paragraph (3) above includes more than one party they shall be deemed one party for the purposes of appointing an Arbitrator, receiving notices, and otherwise for all purposes in connection with the conduct of the Arbitration proceedings.
- (6) Any dispute or difference over the interpretation, effect or application of this Arbitration Jurisdiction clause shall be decided exclusively by the High Court of Justice of England and Wales in London, in accordance with English law.

(7) Nothing in these Rules shall affect or prejudice the right of the Association to take action in accordance with the law of any country or state to enforce a right in rem or exercise a lien on ships or to obtain security by seizure, attachment or arrest of assets for any amounts payable to the Association.