

TEXT OF CHANGES – CLASS 1 RULES

1. RULE 1 – INTRODUCTORY

It is proposed to add a provision to Rule 1 which allows the Managers – after adequate notice to the membership and only with the Board's agreement - to take appropriate action to amend the Rules where required during a policy year in the face of circumstances or legislative changes which are not foreseeable at the start of the year.

The proposed change reads as follows:

1 Introductory

- (1) All contracts of insurance effected by the Association incorporate all the provisions of these Rules, save insofar as those provisions are varied by any special terms which may have been agreed pursuant to the powers of the Association as set out in the Constitution.
- (2) The risks insured by the Association are set out in Rule 2; but risks other than those set out in Rule 2 may be insured by virtue of Rules 3 and 4. The provisions of these Rules govern a contract of insurance between the relevant Member (or Joint Member) and the Association alone: for the avoidance of any doubt membership of the Association does not create any contractual or other legal relationship between any one Member and any other.
- (3) The risks specified in Rule 2 are always subject to the provisos, warranties, conditions, exceptions, limitations and other terms set out in these Rules.
- (4) A person by whom or on whose behalf an application is made for the insurance or reinsurance by the Association of any vessel shall be deemed to have agreed not only on his own behalf but also on behalf of himself, any and all Co-Assureds and his or their successors and each of them that both he and they will in every respect be subject to and bound by any contract of insurance with the Association, including the provisions of these Rules incorporated as aforesaid.
- (5) These Rules and all contracts between a Member and the Association relating to the insurance afforded by the Association or otherwise shall be subject to the Constitution.
- (6) These Rules and all contracts between a Member and the Association relating to the insurance afforded by the Association or otherwise shall be governed by English law, and, subject to the arbitration provisions set out in Rule 57 hereof, shall constitute an irrevocable submission by the Association and its Members and Co-Assureds to the jurisdiction of the English courts.
- (7) In the event of any conflict between the English text of these Rules and any text thereof written in any other language the English text shall prevail.
- (8) If any provision of these Rules is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall, nevertheless, continue in full force without being impaired or invalidated in any way.
- (9) These Rules shall apply generally for entire Policy Year periods.

PROVIDED THAT:-

The Committee may amend these Rules during a Policy Year by not less than one calendar month's notice to Members whenever necessary or expedient to deal with matters of interpretation and of law (whether conventional, statutory or Court made),

which were not incorporated into these Rules at the beginning of the Policy Year in question.

2. RULE 2 SECTION 11 – POLLUTION

The STOPIA and TOPIA pollution agreements became effective in 2006 but have recently been revised. To avoid the need for repeated Rule changes whenever such changes are made it is proposed that the references to STOPIA and TOPIA in the provisos to Rule 2 Section 11 are made generic to reflect any amendments.

The proposed change is as follows:

(NB the other provisions of Rule 11 – which remain unaltered – are not reproduced here for the sake of brevity)

11 Pollution

PROVIDED THAT:-

(d) A Member insured in respect of a vessel which is a relevant ship as defined in the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) as amended shall, unless the Association otherwise agrees in writing, be a party to STOPIA 2006 for the period of entry of that vessel in the Association. Unless the Managers have agreed in writing or unless the Committee otherwise determines there is no cover under this Rule 2 Section 11 in respect of such vessel so long as that Member is not a party to STOPIA 2006.

(e) A Member insured in respect of a vessel which is a relevant ship as defined in the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA 2006) as amended shall, unless the Association otherwise agrees in writing, be a party to TOPIA 2006 for the period of entry of that vessel in the Association. Unless the Managers have agreed in writing or unless the Committee otherwise determines there is no cover under this Rule 2 Section 11 in respect of such vessel so long as that Member is not a party to TOPIA 2006.

3. RULE 2 SECTION 17 & 18 PLUS FOURTH SCHEDULE – GENERAL AVERAGE

In view of the IG Clubs' support for the adoption of the York/Antwerp Rules 2016 (YAR16), an amendment to proviso (b) of Rule 2 Section 17 (and to which the proviso of Rule 2 Section 18 refers) is proposed to include YAR16 in the list of YAR regimes under which the general average must have been adjusted.

Likewise, it is proposed that the reference to general average in the Fourth Schedule be amended to recommend that general average clauses in charter parties refer to the York/Antwerp Rules 2016 rather than 1994.

The proposed change to Rule 2 Section 17 is as follows:

17 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:-

(a) All the provisos to Section 16 (Cargo) shall also apply to claims under this Section; in the case of proviso (h) (value declared on Bill of Lading), the limit of US\$2,500 shall apply to the aggregate of claims under Section 16 and this Section.

(b) General average shall be adjusted according to the York/Antwerp Rules 1974, ~~or 1994~~ or 2016. If it is not, then the liability of the Association shall be limited to what would be recoverable if general average were adjusted according to the law of England and the York/Antwerp Rules 1974; but a Member may be covered beyond this limit by special agreement with the Managers in writing.

The proposed change to the Fourth Schedule is as follows:

General Average

In all charter parties containing a General Average Clause any reference to the York/Antwerp Rules should be followed by "~~1994~~2016".

4. RULE 3 – SPECIAL COVER AND CHARTERERS RISKS

It is proposed that the provisions of the current MLC Extension Clause - which sets out the terms on which the Association will discharge and pay on the Member's behalf certain liabilities under the 2006 Maritime Labour Convention as amended (MLC 2006) and against which the Regulation 4.2 and 2.5.2 Certificates are then issued – are incorporated into the Rules by way of a new Rule 3(D). Doing so will have no effect on how this cover operates and Members seeking MLC certificated will still be required to sign an application form.

The proposed change is as follows:

(NB: the provisions of Sections (A), (B) and (C) of Rule 3 will remain unaltered and are not reproduced here for the sake of brevity)

3 Special Cover and Charterers Risks

(D) Maritime Labour Convention Extension Clause 2016

1. Subject only to the other provisions of this MLC Extension ("the Extension"), the Association shall discharge and pay on the Member's behalf under the 2006 Maritime Labour Convention as amended (MLC 2006) or domestic legislation by a State Party implementing MLC 2006:

(a) Liabilities in respect of outstanding wages and repatriation of a seafarer together with costs and expenses incidental thereto in accordance with Regulation 2.5, Standard A2.5 and Guideline B2.5 of MLC 2006; and

(b) Liabilities in respect of compensating a seafarer for death or long-term disability in accordance with Regulation 4.2, Standard A4.2.1 and Guideline B4.2 of MLC 2006.

2. The Member shall reimburse the Association in full:

(a) any claim paid under paragraph 1(a) save to the extent that such claim is in respect of liabilities, costs or expenses recoverable under Rule 2 Section 3 (Repatriation); and

(b) any claim paid under paragraph 1(b) save to the extent that such claim is in respect of liabilities, costs or expenses recoverable under Rule 2 Section 1 (Injury, illness and death – seamen).

3. There shall be no payment under paragraph 1(a) or paragraph 1(b) if and to the extent that the liability, cost or expense is recoverable under any social security scheme or fund, separate insurance or any other similar arrangement.
4. The Association shall not discharge or pay any liabilities, costs or expenses under paragraph 1(a) or paragraph 1(b), irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or the Member's servants or agents, where such liabilities, costs or expenses were directly or indirectly caused by or contributed to by or arise from:
- (a) Any chemical, biological, bio-chemical or electromagnetic weapon
- (b) The use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.
- 5.
- (a) The Extension may be cancelled in respect of War Risks by the Association on 30 days' notice to the Member (such cancellation becoming effective on the expiry of 30 days from midnight of the day on which notice of cancellation is issued).
- (b) Whether or not such notice of cancellation has been given the Extension hereunder shall terminate automatically in respect of the War Risks:
- (i) Upon the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;
- (ii) In respect of any ship, in connection with which cover is granted hereunder, in the event of such ship being requisitioned either for title or use.
- (c) The Extension excludes loss, damage, liability or expense arising from:
- (i) The outbreak of war (whether there be a declaration of war or not) between any of the following: the UK, the USA, France, The Russian Federation, the People's Republic of China;
- (ii) Requisition for title or use.
6. The Extension shall be subject to Rules 15 (Liability Excluded for Nuclear Risks, etc) and 19 (Exclusion in respect of Sanctions, etc).
7. Without prejudice to paragraph 5, cover under the Extension shall cease 30 days after notice of termination in accordance with either Regulation 2.5, Standard A2.5.2.11 or Regulation 4.2, Standard A4.2.1.12.
8. Any dispute arising out of or in connection with the Extension shall be resolved in accordance with Rule 57 (Jurisdiction).

For the purpose of the Extension:

"Member" means any insured party who is liable for the payment of calls, contributions, premium or other sums due under the terms of entry;

"Seafarer" shall have the same meaning as in MLC 2006; and

"War Risks" means the risks set out in Rule 14 (Liability Excluded for War Risks).

5. RULE 14 – LIABILITY EXCLUDED FOR WAR RISKS AND OTHER RISKS, EXCEPT IN RESPECT OF CERTAIN GUARANTEES AND UNDERTAKINGS GIVEN BY THE ASSOCIATION

Two changes are proposed for Rule 14. Firstly, there is a legacy reference to discretionary cover of up to US\$65 million being available for biochemical and cyber risks, which are otherwise excluded. This is no longer available and it is therefore proposed that the reference be deleted.

Secondly, the list of certificates under which the Club will respond notwithstanding the provisions of Rule 14 should be amended to reflect the name changes for STOPIA and TOPIA described above.

The proposed changes to the relevant parts of the Rule are as follows:

14 Liability Excluded for War Risks and Other Risks, Except in Respect of Certain Guarantees and Undertakings Given by the Association

(1) Except as provided in paragraphs (2), (3) and (4) of this Rule 14, unless either (a) the Committee otherwise determines or (b) it is otherwise agreed in writing between any Member and the Association, there is no cover in respect of any liabilities, costs or expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or on the part of the Member's servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or cost or expense is incurred, was caused by:-

(i) War, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power, or any act of terrorism.

(ii) Capture, seizure, arrest, restraint or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat.

(iii) Mines, torpedoes, bombs, rockets, shells, explosives or similar weapons of war (save for those liabilities, costs or expenses which arise solely by reason of the transport of any such weapons whether on board the insured vessel or not).

PROVIDED ALWAYS THAT:-

(a) This exclusion shall not apply to the use of such weapons, either as a result of government order or through compliance with a written direction given by the Managers or the Committee, where the reason for such use is the avoidance or mitigation of liabilities, costs or expenses which would otherwise fall within the cover given by the Association.

(b) In the event of any dispute as to whether or not any act constitutes an act of terrorism, the decision of the Committee shall be final.

(2) A Member shall be covered in respect of the risks set out in Rule 2 which would otherwise not be covered by reason of paragraph 1 of this Rule in the following terms:

(a) Such cover shall be subject to an excess of the greater of either:

(i) The fully insured value of the entered vessel as defined in Rule 12, which for the purposes only of this Rule 14 shall be deemed to be not less than US\$50,000 and not more than US\$100 million; or

(ii) The amounts recoverable under any War Risk Protection and Indemnity insurance (other than provided under the Member's terms of entry or under these Rules other than under Rule 3(B) (6)) including but not limited to Hull and Machinery and Crew War Risk insurance and including any Protection and Indemnity inclusive

clauses attached thereto, which for the purpose of this Rule 14 shall be deemed both to exist and to have provided the Member with a full recovery.

(b) Such cover shall be subject to a limit of US\$500 million each vessel, any one accident or such limit as may be applicable to the claim under the Member's terms of entry with the Association.

(c) The limit under sub paragraph (b) of this paragraph 2 shall not in any case exceed US\$500 million in respect of all the Member's entries (whether as an owner or a charterer or otherwise) in the Association or any other party to the Pooling Agreement.

(d) Where the Association reinsures in whole or in part any risk covered under this paragraph 2, the Member shall be entitled to recover from the Association only the net amount recovered under any reinsurance together with that proportion (if any) of the cover retained by the Association.

(e) Save as provided ~~in sub-paragraph (f) of paragraph 2 and~~ in paragraph 3 of this Rule 14 but otherwise notwithstanding anything to the contrary in this or any other of the Association's Rules there is no cover for any liability, loss, damage, cost or expense directly or indirectly caused by or contributed to by or arising from:

- (i) any chemical, biological, biochemical or electromagnetic weapon; or
- (ii) the use or operation, as a means of inflicting harm, of any computer virus.

~~(f) The Committee may determine to pay one or more Members up to US\$65 million in the aggregate in respect of any liability, loss, damage, cost or expense which is not covered by reason of sub-paragraph (e) of this paragraph 2.~~

~~(g)~~ The Committee may at any time whatsoever determine that any port, place, countries, zones or areas (whether of land or sea) be excluded from the cover provided under this Rule 14.

Such cover shall cease in respect of such ports, places, countries, zones or areas at midnight on the seventh day following the date of issue by the Association to the Members of Notice of such determination.

Unless the Committee otherwise determines there shall be no cover in respect of any claim howsoever arising out of any event, accident or occurrence within such ports, places, countries, zones or areas after such time and date.

~~(g)~~ Whether or not Notice has been given under sub-paragraph ~~(g)~~ of this proviso, cover provided under this Rule 14 shall cease immediately:-

(i) in respect of any vessel, in connection with the cover provided under this paragraph 2 of Rule 14, in the event of such vessel being requisitioned either for title or use.

(ii) upon the outbreak of war (whether declared or not) between any of the following countries:

the United Kingdom, The United States of America, France, the Russian Federation, the Peoples Republic of China;

and there is no cover for any liability, loss, damage, cost or expense arising from such outbreak of war.

~~(h)~~ Notwithstanding any other term or condition of cover provided under this paragraph 2 the Committee may determine to cancel such cover upon giving 7 days notice to Members such notice becoming effective on the expiry of 7 days from midnight of the day on which it was given; and the Committee may at any time after

such notice is given resolve to reinstate such cover on such terms and conditions and with such limits as it may determine

[Paragraph (3) of this Rule, concerning the Biochemical Supplementary Pool and which will remain unchanged, is omitted here for the sake of brevity]

- (4) In respect of liabilities, costs and expenses otherwise excluded from cover by this Rule 14 or by Rule 15 sub paragraphs (a),(b),(c) and (d), the Association will discharge on behalf of the Member such liabilities, costs and or expenses where they arise under a demand made pursuant to the issue by the Association on behalf of the Member of
- (a) a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777, or
 - (b) a certificate issued by the Association in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereof, or
 - (c) an undertaking given by the Association to the International Oil Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) as amended, or
 - (d) a certificate issued by an Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, or
 - (e) a certificate issued by the Association in compliance with Article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007.

PROVIDED ALWAYS THAT:-

- (i) The Member shall indemnify the Association to the extent that any payment under any such guarantee, undertaking or certificate in discharge of the said liabilities, costs and expenses is or would have been recoverable in whole or in part under a standard P&I war risk policy had the Member complied with the terms and conditions thereof, and
- (ii) The Member agrees that:
 - (a) any payment by the Association under any such guarantee, undertaking or certificate in discharge of the said liabilities, costs and expenses shall, to the extent of any amount recovered under any policy of insurance or extension to the cover provided by the Association, be by way of loan; and
 - (b) there shall be assigned to the Association to the extent and on the terms that it determines in its discretion to be practicable all the rights of the Member under any other insurance and against any third party.

TOPIA

There is no cover under Rule 14 in respect of any liabilities, costs and expenses which may arise under or in connection to the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA 2006) as amended.

6. RULE 21 - RULES SUBJECT TO MARINE INSURANCE ACT

Wording was adopted for the 2016 Rules to reflect the UK Insurance Act 2015 coming into force during the 2016 policy year. This wording was of necessity something of a hybrid because of the need to maintain the pre-existing regime based around the Marine Insurance Act 1906 until the Insurance Act 2015 entered into force midway through the policy year.

Some limited changes are consequently required to reflect the Insurance Act 2015 now being fully in force.

The proposed change is as follows:

21 Rules Subject to Marine Insurance Act 1906 and Insurance Act 2015

- (1) Subject to Rules 21(2) and 21(3), these Rules and all contracts of insurance made by the Association shall be subject to and incorporate the provisions of the Marine Insurance Act, 1906, and the Insurance Act 2015 of the United Kingdom and any statutory modifications thereof, except insofar as such Act or modification may have been excluded by these Rules or by any term of such contracts. ~~Without prejudice to the generality of the foregoing:-~~
 - ~~(i) The sections of the said Act relating to disclosure and representations (Sections 17 to 20) and those relating to warranties (Sections 33 to 41) shall apply to every contract of insurance between a Member and the Association.~~
 - ~~(ii) The Association shall not be liable for any loss, damage, liabilities, costs or expenses caused by the wilful misconduct of the Member or his manager.~~
- (2) ~~Upon the entry into force~~ The following provisions of the Insurance Act 2015 (“the Act”), ~~the following provisions of the Act~~ shall be excluded from the Rules and any contract of insurance made by the Association as follows:
 - (a) Section 8 of the Act shall be excluded. As a result any breach of the duty of fair presentation shall entitle the Association to avoid the policy, regardless of whether the breach of the duty of fair presentation be innocent, deliberate or reckless.
 - (b) Section 10 of the Act shall be excluded. As a result all warranties in these Rules or any contract of insurance must be strictly complied with and if the Member or any insured fails to comply with any warranty the Association shall be discharged from liability from the date of the breach, regardless of whether the breach is subsequently remedied.
 - (c) Section 11 of the Act shall be excluded. As a result the rules and all terms of any contract of insurance made by the Association, including terms which tend to reduce the risk of loss of a particular kind, loss at a particular location and/or loss at a particular time, must be strictly complied with and if the Member or any insured fails to comply with any such term, the Association’s liability may be excluded, limited or discharged in accordance with these rules notwithstanding that the breach could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.
 - (d) Section 13 of the Act shall be excluded. As a result the Association shall be entitled to exercise its right to terminate the contract of insurance in respect of the Member and all insureds in the event that a fraudulent claim is submitted by or on behalf of the Member and/or any insured and/or any affiliated or associated company of the Member.
 - ~~(e) Should Section 13A of the Act take effect, then to the extent permissible, and~~ ~~w~~Without prejudice to Rule 53, no contract of insurance made by the Association shall be subject to, nor shall the Association be in breach of, any implied term that the Association shall pay any sums due in respect of a claim within a reasonable time save where the breach is deliberate or reckless and Section 13A of the Act is excluded to this extent.
 - (f) Section 14 of the Act shall be excluded. As a result, all contracts of insurance made by the Association shall be deemed to be contracts of the utmost good faith,

and any breach of the duty of the utmost good faith shall entitle the Association to avoid the contract of insurance.

(g) The provisions of the Marine Insurance Act 1906 which are omitted by the Act shall cease to apply as shall, save to the extent that the Act is excluded by these Rules, any such provisions which are incompatible with the Act.

(3) ~~Upon the entry into force of~~ Further in relation to the Act:

(a) The applicant and any agent shall make to the Managers a fair presentation of the risk by providing the Managers with all material particulars and information together with any additional particulars and information as the Managers may require.

(b) The applicant and any agent shall ensure that every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.

(c) In accordance with sub-Rule 21(2)(a) above, Section 8 of the Insurance Act 2015 is excluded. Any breach of sub-Rule 21(3)(a) or (b) shall entitle the Association to avoid the contract of insurance, regardless of whether the breach is innocent, deliberate or reckless.

(d) The Member shall disclose any change in any material information relating to an entry including, but not limited to, any change of: management, flag, classification society, government authority responsible for ship certification for the trade in question, nationality of crew, trading or operating area or nature of trade or operation. Upon such disclosure, or upon their discovery of a failure to disclose, the Managers may amend the Member's premium rating or terms of entry, or terminate the entry in respect of such ship with effect from the time of disclosure or failure to disclose.

(e) The Association shall not be liable for any loss, damage, liabilities, costs or expenses caused by the wilful misconduct of the Member or his manager.

7. **RULE 28 – BAIL, SECURITY AND CERTIFICATES OF FINANCIAL RESPONSIBILITY**

The list of certificates of financial responsibility which the Club may issue needs to be amended to reflect the name changes for STOPIA and TOPIA described above and to include the Nairobi Convention.

The proposed change is as follows:

28 Bail, Security and Certificates of Financial Responsibility

(1) Without prejudice to the provisions of Rule 14(4), the Association may agree to provide bail or security in connection with its business on such terms as it may consider necessary, including but not limited to:

(a) bail or other security to obtain the release of, or to prevent the arrest or attachment of an insured vessel or any other vessel, property or assets (including freight or monies due) in the same or associated ownership or management as the insured vessel, or to obtain the release of or prevent the arrest of any seaman of such vessels,

(b) a guarantee to the Federal Maritime Commission under Section 2 of US Public Law 89-777,

(c) a certificate in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereof,

(d) an undertaking to the International Oil Pollution Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) as amended and the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA 2006) as amended.

(e) a certificate in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001,

(f) a certificate in respect of non-war risk liabilities in relation to the European Union Passenger Liability Regulation,

(g) a certificate issued by the Association in compliance with Article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007.

(2) If it does so agree, then subject to any variation of any of (a) to (g) below by specific agreement between the Association and the Member:-

(a) the Association shall be entitled to recover from the Member the expenses incurred in connection with providing such bail or security, except insofar as such expenses, if incurred by the Member, would be recoverable from the Association under Section 24 of Rule 2 (sue and labour);

(b) the Association shall be entitled to a commission from the Member of 1% per annum on the amount of the bail or security provided, or such other sum as may be considered appropriate by the Managers;

(c) the Member shall upon the Association agreeing to provide the bail or security, give to the Association on request an undertaking in the form set out in the Second Schedule (form B3). Whether or not the Member has given such undertaking, if the Association does provide bail or security then the provision of such bail or security shall be upon the terms as between the Association and the Member that the terms and conditions contained in that form of undertaking shall be binding on the Member as if such undertaking had been duly given by him to the Association;

(d) the Member shall on such date or dates as the Association determines pay the Association the amount of any deductible which the Association determines may apply to any liability, loss, cost or expense in respect of which the bail or other security has been provided and in respect of which the Member may be insured;

(e) any payment by the Association under any such guarantee, undertaking or certificate shall, to the extent of any amount recoverable under any policy of insurance or extension to the cover provided by the Association, be by way of loan;

(f) there shall be assigned to the Association to the extent and on the terms that it determines in its discretion to be practicable all the rights of the Member under any other insurance and against any third party;

(g) the Association shall in no circumstances provide cash deposits.

8. RULE 45B – RELEASES

Although the current wording allows for a release call to be calculated and paid or a bank guarantee securing payment of further calls when they become due provided instead, these provisions deal with premium only. It is proposed to add a new provision to Rule 45B which permits the Club to seek separate security for collectibles and other sums due or reasonably estimated to become due where a Member's entry terminates.

The proposed change is as follows:

45B Releases

- (1) Without prejudice to Rule 45A (Overspill Claims and Calls) and for the purposes of this Rule 45B 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 at the Member's request shall calculate, and notify such Member of:

(a) 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, and~~

(b) the amount of all other sums due or reasonably determined by the Managers to become due from such Member to the Association.

- (2) In 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 it may determine are relevant for this purpose and shall in any event take account of the factors as are set out, and otherwise comply with, the International Group Agreement 2013.

- (3) The amounts calculated and notified by the Managers under paragraph (1)(a) of this Rule shall be a Release and shall be payable by such Member on such date or dates as the Managers may require, in either case without deduction.

(4) The amounts calculated and notified by the Managers under paragraph (1)(b) of this Rule shall be secured by the Member in a form and on terms acceptable to the Managers. Such security shall be provided within fourteen days of a written request to do so, failing which the Association shall have the right to terminate the entry in accordance with Rule 39 even if a Release has been paid in accordance with paragraph (3) or secured under paragraph (8) of this Rule.

- ~~(45)~~ 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 50(4).

~~(56)~~ 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 ~~(56)~~, credit being given against such recalculated Release for any part or instalments of a Release paid to the Association in respect of such vessel.

~~(67)~~ 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.

~~(78)~~ A Member who may be entitled under the terms of the International Group Agreement 1999 or other subsequent similar agreement to make a request to the Association to pay such further Calls as and when they become due 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.

This paragraph (8) shall be without prejudice to paragraph (4) of this Rule and the provisions set out therein shall operate separately to the requirements of this paragraph (8).

(89) Until a Member has both made a request as required by sub-paragraph 78(a) and provided a bank guarantee and undertaking as required by sub-paragraph 78(b), he shall remain liable to pay any Release or revised Release notified under paragraphs (1) and (56) 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 (89), credit being given for any instalments of a Release received by the Association in respect of such vessel.

(910) 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 57.

9. THIRD SCHEDULE

It is proposed that two Bye Law provisions in the Third Schedule are amended.

Firstly, it is proposed that the reference to New Caledonia be deleted from the Bye Law concerning the carriage of nickel ore in order to ensure alignment with International Group policy that the mandatory survey requirements only apply to Indonesia and the Philippines.

The proposed change is as follows:

Carriage of Nickel Ore from Indonesia, ~~New Caledonia~~ and the Philippines

Members considering carriage of Nickel Ore from Indonesia, ~~New Caledonia~~ or the Philippines are required:

1. To consider SOLAS Ch.VI, Reg.2 and Sections 4, 7 and 8 of the IMSBC Code and
2. To consider the Association's Notice to Members Number 14 2013/2014 and
3. Before agreeing to carry such cargo (a) to contact the Club's Claims and Loss Prevention departments for further advice and (b) to ensure that the terms of the charter party, contract of affreightment or other applicable contract for the carriage of such cargo are approved by the Managers and
4. To inform the Managers of the place of loading and particulars of the intended carriage at the earliest opportunity after having agreed to carry such cargo, so that a surveyor can be appointed to establish the location of the cargo prior to arrival and provide assistance to the Master during loading.

This Bye-Law is made under Rule 2 section 16 provisos (b) and (f) and under Rule 54 and shall operate without prejudice to Rule 19.

Secondly, there are no longer any mandatory notification or survey requirements for the carriage of coal from Kalimantan, as is recorded in Notice to Members No. 16 2013/2014 to which the Bye Law refers. It is consequently proposed that this Bye Law be removed in its entirety since the advice and precautions pertaining to this trade are adequately covered in the Notice to Members.

The proposed change is as follows:

~~**Carriage of Coal from Kalimantan Indonesia**~~

~~Members considering carriage of coal from Kalimantan Indonesia are required:~~

~~1. To consider SOLAS Ch.VI, Reg.2 and Sections 4, 7 and 8 of the IMSBC Code and~~

~~2. To consider the Association's Notice to Members Number 16 2013/2014 and~~

~~3. Before agreeing to carry such cargo (a) to contact the Club's Claims and Loss Prevention departments for further advice and (b) to ensure that the terms of the charter party, contract of affreightment or other applicable contract for the carriage of such cargo are approved by the Managers and~~

~~4. To inform the Managers of the place of loading and particulars of the intended carriage at the earliest opportunity after having agreed to carry such cargo, so that a surveyor may be appointed to establish the location of the cargo prior to arrival and provide assistance to the Master during loading.~~

~~This Bye Law is made under Rule 2 section 16 provisos (b) and (f) and Rule 54 and shall operate without prejudice to Rule 19.~~

TEXT OF CHANGES – CLASS 2 RULES

1. RULE 1 – INTRODUCTORY

For consistency, it is suggested that the Board and the Managers should have the same powers to amend Class 2 Rules as may be required during the policy year as those set out with regard to Rule 1 of Class I above. It is consequently proposed to add the same provision to Rule 1 of Class 2.

The proposed change is as follows:

1 Introductory

- (1) All contracts of insurance effected by the Association incorporate all the provisions of these Rules, save insofar as those provisions are varied by any special terms which may have been agreed pursuant to the powers of the Association as set out in the Constitution.
- (2) A person by whom or on whose behalf an application is made for the insurance or reinsurance by the Association of any vessel shall be deemed to have agreed not only on his own behalf but also on behalf of himself, any and all Co-Assureds and his or their successors and each of them that both he and they will in every respect be subject to and bound by any contract of insurance with the Association, including the provisions of these Rules incorporated as aforesaid.

The provisions of these Rules govern a contract of insurance between the relevant Member (or Joint Member) and the Association alone: for the avoidance of any doubt membership of the Association does not create any contractual or other legal relationship between any one Member and any other.

- (3) These Rules and all contracts between a Member and the Association relating to the insurance afforded by the Association or otherwise shall be subject to the Constitution.
- (4) These Rules and all contracts between a Member and the Association relating to the insurance afforded by the Association or otherwise shall be governed by English law, and, subject to the arbitration provisions set out in Rule 51 thereof, shall constitute an irrevocable submission by the Association and its Members and Co-Assureds to the jurisdiction of the English courts.
- (5) In the event of any conflict between the English text of these Rules and any text thereof written in any other language the English text shall prevail.
- (6) If any provision of these Rules is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall, nevertheless, continue in full force without being impaired or invalidated in any way.
- (7) These Rules shall apply generally for entire Policy Year periods.

PROVIDED THAT:-

The Committee may amend these Rules during a Policy Year by not less than one calendar month's notice to Members whenever necessary or expedient to deal with matters of interpretation and of law (whether conventional, statutory or Court made), which were not incorporated into these Rules at the beginning of the Policy Year in question.

(NOTE: the definitions of "Association", "Member", "Co-Assured", "Managers", "Committee", "Vessel" and other terms used in these Rules are set out in Rule 52).

2. **RULE 21 - RULES SUBJECT TO MARINE INSURANCE ACT**

It is proposed that this Rule is amended to reflect the fact that the Insurance Act 2015 is now in force. The proposed changes match the corresponding Class 1 Rule. These changes will not affect the operation of the cover or the Board's discretion in any way.

The proposed change reads as follows (assuming that the changes to Rule 21 of Class 1 outlined above are adopted):

21 Rules Subject to Marine Insurance Act 1906 and Insurance Act 2015

~~These Rules and all contracts of insurance made by the Association shall be subject to and incorporate the provisions of the Marine Insurance Act, 1906, of the United Kingdom and any statutory modifications thereof except insofar as such Act or modification may have been excluded by these Rules or by any term of such contracts. Without prejudice to the generality of the foregoing:~~

~~(i) The sections of the said Act relating to disclosure and representations (Sections 17 to 20) and those relating to warranties (Sections 33 to 41) shall apply to every contract of insurance between a Member and the Association.~~

~~(ii) The Association shall not be liable for any loss, damage, liabilities, costs or expenses caused by the wilful misconduct of the Member or his Managers.~~

(1) Subject to Rules 21(2) and 21(3), these Rules and all contracts of insurance made by the Association shall be subject to and incorporate the provisions of the Marine Insurance Act 1906 and the Insurance Act 2015 of the United Kingdom, and any statutory modifications thereof, except insofar as such Act or modification may have been excluded by these Rules or by any term of such contracts.

(2) The following provisions of the Insurance Act 2015 (“the Act”) shall be excluded from the Rules and any contract of insurance made by the Association as follows:

(a) Section 8 of the Act shall be excluded. As a result any breach of the duty of fair presentation shall entitle the Association to avoid the policy, regardless of whether the breach of the duty of fair presentation be innocent, deliberate or reckless.

(b) Section 10 of the Act shall be excluded. As a result all warranties in these Rules or any contract of insurance must be strictly complied with and if the Member or any insured fails to comply with any warranty the Association shall be discharged from liability from the date of the breach, regardless of whether the breach is subsequently remedied.

(c) Section 11 of the Act shall be excluded. As a result the rules and all terms of any contract of insurance made by the Association, including terms which tend to reduce the risk of loss of a particular kind, loss at a particular location and/or loss at a particular time, must be strictly complied with and if the Member or any insured fails to comply with any such term, the Association’s liability may be excluded, limited or discharged in accordance with these rules notwithstanding that the breach could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

(d) Section 13 of the Act shall be excluded. As a result the Association shall be entitled to exercise its right to terminate the contract of insurance in respect of the Member and all insureds in the event that a fraudulent claim is submitted by or on behalf of the Member and/or any insured and/or any affiliated or associated company of the Member.

(e) Without prejudice to Rule 47, no contract of insurance made by the Association shall be subject to, nor shall the Association be in breach of, any implied term that the Association shall pay any sums due in respect of a claim within a reasonable time save where the breach is deliberate or reckless and Section 13A of the Act is excluded to this extent.

(f) Section 14 of the Act shall be excluded. As a result, all contracts of insurance made by the Association shall be deemed to be contracts of the utmost good faith, and any breach of the duty of the utmost good faith shall entitle the Association to avoid the contract of insurance.

(g) The provisions of the Marine Insurance Act 1906 which are omitted by the Act shall cease to apply as shall, save to the extent that the Act is excluded by these Rules, any such provisions which are incompatible with the Act.

(3) Further in relation to the Act:

(a) The applicant and any agent shall make to the Managers a fair presentation of the risk by providing the Managers with all material particulars and information together with any additional particulars and information as the Managers may require.

(b) The applicant and any agent shall ensure that every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.

(c) In accordance with sub-Rule 21(2)(a) above, Section 8 of the Insurance Act 2015 is excluded. Any breach of sub-Rule 21(3)(a) or (b) shall entitle the Association to

avoid the contract of insurance, regardless of whether the breach is innocent, deliberate or reckless.

(d) The Member shall disclose any change in any material information relating to an entry including, but not limited to, any change of: management, flag, classification society, government authority responsible for ship certification for the trade in question, nationality of crew, trading or operating area or nature of trade or operation. Upon such disclosure, or upon their discovery of a failure to disclose, the Managers may amend the Member's premium rating or terms of entry, or terminate the entry in respect of such ship with effect from the time of disclosure or failure to disclose.

(e) The Association shall not be liable for any loss, damage, liabilities, costs or expenses caused by the wilful misconduct of the Member or his manager.

3. **RULE 48 – BAIL [CURRENT]**

It is proposed that this rule be amended to remove references to the various certificates of financial responsibility that the Club may give, since all such certificates relate solely to Class 1 liabilities and are properly listed in the corresponding Class1 bail rule (Rule 21).

The proposed change is as follows:

48 Bail

(1) The Association may agree to provide bail or security in connection with its business on such terms as it may consider necessary, including but not limited to:

~~(a) bail or other security to obtain the release of, or to prevent the arrest or attachment of an insured vessel or any other vessel, property or assets (including freight or monies due) in the same or associated ownership or management as the insured vessel, or to obtain the release of or prevent the arrest of any seaman of such vessels,~~

~~(b) a guarantee to the Federal Maritime Commission under Section 2 of US Public Law 89-777,~~

~~(c) a certificate in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereof,~~

~~(d) an undertaking to the International Oil Pollution Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement (STOPIA),~~

~~(e) a certificate in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001,~~

~~(f) a certificate in respect of non-war risk liabilities in relation to the European Union Passenger Liability Regulation.~~

(2) If it does so agree, then subject to any variation of any of (a) to (g) below by specific agreement between the Association and the Member:-

(a) the Association shall be entitled to recover from the Member the expenses incurred in connection with providing such bail or security, except insofar as such expenses, if incurred by the Member, would be recoverable from the Association;

(b) the Association shall be entitled to a commission from the Member of 1% per annum on the amount of the bail or security provided, or such other sum as may be considered appropriate by the Managers;

(c) the Member shall upon the Association agreeing to provide the bail or security, give to the Association on request an undertaking in the form set out in the First Schedule (form B3). Whether or not the Member has given such undertaking, if the Association does provide bail or security then the provision of such bail or security shall be upon the terms as between the Association and the Member that the terms and conditions contained in that form of undertaking shall be binding on the Member as if such undertaking had been duly given by him to the Association;

(d) the Member shall on such date or dates as the Association determines pay the Association the amount of any deductible which the Association determines may apply to any liability, loss, cost or expense in respect of which the bail or other security has been provided and in respect of which the Member may be insured;

(e) any payment by the Association under any such guarantee, undertaking or certificate shall, to the extent of any amount recoverable under any policy of insurance or extension to the cover provided by the Association, be by way of loan;

(f) there shall be assigned to the Association to the extent and on the terms that it determines in its discretion to be practicable all the rights of the Member under any other insurance and against any third party;

(g) the Association shall in no circumstances provide cash deposits.

4. NEW RULE – BYE LAWS

It is proposed that Class 2 also have a rule giving the Board the power to make and amend Bye Laws as may be required. The proposed text is identical to the corresponding Class 1 rule.

This would be inserted as a new Rule 48. Current Rules 48 to 52 would need to be renumbered and any cross-references to rule numbers elsewhere be amended accordingly.

The proposed change is as follows:

48 Bye-Laws

(1) Without prejudice to any power given to the Committee by any of these Rules (other than this Rule 48) to make Bye-Laws the Committee shall have the power under this Rule 54 to make any Bye-Law generally in connection with any matter covered by these Rules provided the object of the Bye-Law is only to clarify and not to alter the Rules.

(2) When the Committee makes a Bye-Law under any power given it by the Rules including this Rule 48, the Association shall give notice thereof to all Members concerned but omission to give notice to or the non-receipt thereof by any Member shall not invalidate any Bye-Law, either generally or in relation to that Member.

(3) The Committee shall have power to approve Bye-Laws before the commencement of any Policy Year so as to enable such Bye-Laws to have immediate effect upon the commencement of the Policy Year provided that all notice requirements are observed and that the Bye-Laws do not purport to come into effect before the commencement of the Policy Year.

(4) A Bye-Law shall come into force at the time specified in the notice (which time may not be earlier than ten days after the date of the notice), and if its effect is to alter the terms and conditions of insurance in respect of any vessel such alteration shall take effect as from that time.

(5) No Bye-Law shall operate to prejudice the accrued rights of any Member. Save as aforesaid, every Bye-Law shall be binding on all Members whether or not they were

Members at the time of notification of such Bye-Law, in the same manner as if it were incorporated in these Rules.

- (6) Wherever a power of making Bye-Laws is given to the Committee by the Rules the Committee may revoke or suspend any such Bye-Law and restrict, extend or otherwise apply the provisions of any Bye-Law (in whole or in part) to insured vessels of any particular class, type or flag.