



**2007** The Rules of Classes 1 & 2

**The West Of England Ship Owners Mutual  
Insurance Association (Luxembourg)**

Managers **West of England Insurance Services  
(Luxembourg) S.A.**

Further details of offices and their addresses, telephone numbers,  
fax numbers and email addresses are on pages v - xiii.

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# Directors

<b>S A Van Dyck</b> (Chairman)	Florida
<b>G S Coumantaros</b> (Vice-Chairman)	New York
<b>L Criel</b> (Vice-Chairman)	Antwerp
<b>M T Los</b> (Vice-Chairman)	London and Athens
<b>H A Al-Ajlan</b>	Riyadh
<b>S I Al Bassam</b>	Kuwait
<b>M S O Aldhaheri</b>	Abu Dhabi
<b>Chen Hongsheng</b>	Beijing
<b>A R C B Cooke</b>	London
<b>H I Donev</b>	Varna
<b>J A Drakos</b>	Connecticut
<b>M B Ergin</b>	Istanbul
<b>I H Heesom-Green</b>	Antwerp
<b>Huang Shao Jie</b>	Hong Kong
<b>E Kromann</b>	Copenhagen
<b>G Kynigos</b>	London
<b>Li Shao De</b>	Shanghai
<b>P G Livanos</b>	Monaco
<b>P R L Lorenz-Meyer</b>	Hamburg
<b>V A Mednikov</b>	Moscow
<b>T Petalas</b>	Monaco
<b>K S Rajvanshy</b>	Hong Kong
<b>Wang Haiming</b>	Beijing
<b>M E Warren</b>	Miami
<b>G Woodford</b>	London

# Managers

## West of England Insurance Services (Luxembourg) S.A.

<b>Managing Director</b>	P E Spendlove	
<b>Directors</b>	P A Aspden R P Hunter M D Kelleher P J Kirkman C M Kwong	J R Lester FCA R J Macnamara A Paulson M H Pender R J B Searle M W H Williams
<b>Company Secretary</b>	P A Aspden	
<b>Deputy Directors</b>	S G Parrott J H J Salem	C G South G E Sullivan
<b>Senior Associates</b>	J A Atkinson A P Butcher S Byrne (Miss) N E Cox (Mrs) C Q Drew F C Emmerson (Mrs) E Gavrielides (Mrs)	S Hart (Mrs) A A Maxwell P G Read S J Rigby A Surkovic A Ward (Mrs) C G Wheelhouse
<b>Associates</b>	A K Behm (Ms) M Blandford-Newson M L Borkett T J Bowsher N M Burridge F J Campbell (Miss) E Chan (Ms) K Chan C Chau (Ms) I S Clarke D L Comyns M E Cox	G K Diffley M E Dunbar D J Fitz-Gerald J P Kefford P J Newell N T Nikolov K R Reynolds R M Sankey T G Smith M R Stevenson A J C Wood J Yu
<b>Consultants</b>	C A G Havers	J M Stevenson

## Emergency Contact

In case of emergency, Members and Correspondents are encouraged to contact the Claims Group direct whenever possible.

Outside of office hours, a duty officer (by rota) is contactable on mobile phone number **(+44) (0)7795 116602** to deal with any urgent matters if Members or Correspondents are unable to contact the appropriate Claims Group.



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# Class 1 - Protection & Indemnity and Other Risks

The following Rules numbered 1 to 60 inclusive shall apply only to contracts of insurance effected by the Association in this protection and indemnity and other risks Class (Class 1) of the Association.

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## Part I - Introductory and Risks Covered

### **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 59 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.

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- (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.

*(NOTE: The definitions of "Association", "Member", "Co-Assured", "Managers", "Committee", "Vessel" and other terms used in these Rules are set out in Rule 60.)*

## **2 Risks Covered**

Subject to any special terms which may be agreed, a Member is insured by the Association in respect of each vessel entered by him against any liabilities, costs and expenses set out in Sections 1 to 24 below, provided always as follows:

- (a) Such liabilities, costs and expenses arise
- (i) out of events occurring during the period of insurance of that vessel ("the insured vessel"),
- (ii) in respect of the Member's interest in the insured vessel, and
- (iii) in connection with the operation of the insured vessel by or on behalf of the Member.
- (b) They are not excluded by any proviso, warranty, condition, exception, limitation, deductible or other term contained in these Rules or in the terms of entry.
- (c) There is no insurance under these Rules in respect of any liabilities, costs and expenses incurred by a Member in a capacity other than the capacity in which the Member has entered the insured vessel, including (without limitation) any loss incurred by the Member in his capacity as an owner of cargo, save to the extent provided for in proviso (b) to Rule 2 Section 10 and in proviso (j) to Rule 2 Section 16 and Rule 3.

### **Section 1 Injury, illness and death – seamen**

- (A) Liability to pay damages or compensation (excluding hospital, medical and funeral expenses) for personal injury, illness or death of any seaman of the insured vessel whether or not on board that vessel.
- (B) Liability to pay hospital, medical, funeral or other expenses (other than wages and the expenses of repatriation, substitution, or diversion) in relation to such injury, illness or death. In this paragraph funeral expenses shall include the repatriation of dead bodies.
- (C) Expenses incurred in medical examination of seamen prior to engagement.

*PROVIDED THAT:-*

Where the liability arises or the costs or expenses are incurred under the terms of a crew agreement or other contract of service or employment and would not have arisen but for those terms, that liability or those costs or expenses are only covered by the Association if and to the extent that those terms shall have been previously approved by the Managers in writing and, in the case of personal injury to a seaman on leave, only if the insured vessel was the last vessel on which he served prior to such injury.

**Section 2** *Injury, illness and death - persons other than seamen and passengers*

- (A) Liability to pay damages or compensation (excluding hospital, medical and funeral expenses) for personal injury, illness or death of any person (other than the persons specified in Sections 1 and 2A).
- (B) Liability to pay hospital, medical or funeral expenses in relation to such injury, illness or death. In this paragraph funeral expenses shall include the repatriation of dead bodies.

*PROVIDED THAT:-*

- (a) Cover under this Section is limited to liabilities, costs and expenses arising out of any act, neglect or default on board or in relation to the insured vessel or in relation to the handling of her cargo from the time of receipt of that cargo from the shipper or precarrier at the port of shipment until delivery of that cargo to consignee at the port of discharge or, as the case may be, until delivery at the port of discharge for onward carriage to consignee.
- (b) Where the liability arises, or the costs or expenses are incurred, under the terms of any contract or indemnity and would not have arisen but for those terms, that liability or those costs or expenses are not covered under this Section but may be covered under and in accordance with Section 13 of this Rule (indemnities and contracts).
- (c) The Managers may from time to time require as a condition of cover for liability to certain persons (other than persons specified in Sections 1 and 2A or persons connected with the operation of the insured vessel or the handling of its cargo) visiting the insured vessel, that such visits are made upon terms approved in writing by the Managers.

**Section 2A** *Liability to passengers*

Liability to pay damages or compensation:-

- (i) for personal injury, illness or death of any passenger of an insured vessel and hospital, medical or funeral expenses incurred in relation to such injury, illness or death. In this paragraph funeral expenses shall include the repatriation of dead bodies;
- (ii) other than for those risks covered under paragraphs (i) and (iii) of this Section to passengers on board an insured vessel, including the cost of forwarding passengers to destination or return to port of embarkation and of maintenance of passengers ashore, arising as a consequence of a collision, stranding, explosion, fire or any other incident affecting the physical condition of the insured vessel so as to render it incapable of safe navigation to its intended destination or constituting a threat to the life, health or safety of passengers;
- (iii) for loss of or damage to the effects of any passengers on board an insured vessel;

*PROVIDED THAT:-*

- (a) Cover under this Section is limited to liabilities, costs and expenses arising out of any act, neglect or default on board or in relation to the insured vessel.
- (b) The terms of the passage ticket or other contract between the passenger and the Member have been approved by the Managers in writing and cover for the liabilities, costs and expenses set out in this Section has been agreed between the Member and the Managers on such terms as the Managers may require.
- (c) There is no cover under this Section in respect of liabilities, costs and expenses incurred by a Member for personal injury, illness or death or loss or damage to property, delay or any other consequential loss sustained by any passenger on an insured vessel by reason of carriage of that passenger by air, except where such liabilities, costs and expenses occur during repatriation by air of injured or sick passengers following a casualty to the insured vessel, or during excursions from the insured vessel (but subject to proviso (d) below).
- (d) There is no cover under this Section in respect of contractual liabilities, costs and expenses incurred by a Member arising in respect of a passenger on board the insured vessel whilst on an excursion from the insured vessel in circumstances where either:-
  - (i) a separate contract has been entered into by the passenger for the excursion, whether or not with the Member, or
  - (ii) the Member has waived any or all of his rights of recourse against any sub-contractor or other third party in respect of the excursion.
- (e) Unless and to the extent that the Member has obtained appropriate special cover by agreement in writing with the Managers, there is no cover under this Section in respect of claims relating to cash, negotiable instruments, precious or rare metals or stones, valuables or objects of a rare or precious nature.

**Section 3 *Repatriation and substitutes' expenses***

- (A) The expense of repatriating a seaman of the insured vessel:-
  - (a) who is sick or injured; or
  - (b) if, during the course of a voyage, the spouse, child or, in the case of a single seaman, parent of that seaman falls dangerously ill or dies and his or her presence is essential; or
  - (c) if the Member is under statutory obligation to repatriate him; or
  - (d) if the Member is obliged to repatriate him under the terms of a crew agreement or other contract of service or employment approved in writing by the Managers.
- (B) The expense of engaging, sending out and repatriating a substitute for a seaman of the insured vessel who has died, been left ashore (by reason of desertion or otherwise), or been repatriated in the circumstances specified in the preceding paragraph.

- (C) The expense of sending out and repatriating a spouse, child or, in the case of a single seaman, parent of a seaman who has died or is dangerously ill when the presence of such spouse, child or parent is essential.

*PROVIDED THAT:-*

This Section does not cover expenses which arise out of (i) the termination of any agreement, whether the termination is in accordance with the terms of that agreement or by mutual consent of the parties to it, or (ii) breach by the Member of any agreement or other contract of service or employment, or (iii) sale of the vessel, or (iv) any other act of the Member in relation to the insured vessel.

#### **Section 4 Wages and shipwreck unemployment indemnity**

- (A) Liability to pay wages to any seaman of the insured vessel:-
- (i) during Medical or Hospital treatment abroad, or during repatriation arising out of injury or illness; or
  - (ii) (in the case of a seaman engaged abroad as a substitute) while awaiting and during repatriation.
- (B) Liability to compensate any seaman of the insured vessel who is on board or proceeding to or from that vessel for the loss of his employment arising out of the actual or constructive total loss of the vessel.

*PROVIDED THAT:-*

Where the liability arises under the terms of a crew agreement or other contract of service or employment and would not have arisen but for those terms, that liability is only covered by the Association if and to the extent that those terms shall have previously been approved by the Managers in writing.

#### **Section 5 Diversion expenses**

The net cost to the Member (over and above the expenses that would have been incurred but for the diversion or delay) of fuel, insurance, wages, stores, provisions and port charges:-

- (a) during a diversion of the insured vessel reasonably undertaken for the purpose of search and rescue of persons at sea or for the purpose of securing the necessary treatment ashore of sick or injured persons aboard the insured vessel, or of landing stowaways, refugees or persons saved at sea or dead bodies; or
- (b) while awaiting a substitute for a sick or injured seaman who has been landed ashore for treatment, if in the opinion of the Managers it was reasonable to engage such a substitute.

#### **Section 6 Stowaways, deserters and refugees**

Expenses, other than those covered under Section 5 of this Rule, incurred by the Member in discharging his obligations towards or making necessary arrangements for stowaways, deserters, refugees or persons saved at sea, including rescue expenses, but only if and to the extent that:-

- (a) the Member is legally liable for the expenses or they are incurred with the approval and agreement in writing of the Managers; and
- (b) those expenses are not recoverable from any third party; or
- (c) the Committee so determines.

*PROVIDED THAT*

There is no cover under this Rule or Rule 5 for consequential loss of profit or depreciation arising from the rescue of refugees.

**Section 7** *Life salvage*

Sums legally due to third parties by reason of the fact that they have saved or attempted to save the life of any person on or from the insured vessel but only if and to the extent that such payments are not recoverable under the Hull Policies of the insured vessel or from cargo owners or underwriters.

**Section 8** *Loss of and damage to the effects of seamen and others*

Liability to pay damages or compensation for loss of or damage to the effects of:-

- (a) Any seaman on board an insured vessel;
- (b) Any other person on board an insured vessel (other than the persons specified in Section 2A of this Rule 2).

*PROVIDED THAT:-*

- (a) Unless the Member and the Managers have otherwise agreed in writing, there is no cover in respect of claims relating to cash, negotiable instruments, precious or rare metals or stones, valuables or objects of a rare or precious nature.
- (b) Where the liability arises under the terms of a contract and would not have arisen but for those terms, that liability is only covered by the Association if and to the extent that those terms shall have been previously approved by the Managers in writing.
- (c) In the case of loss or damage to the effects of a seaman, there is no cover in respect of any article which in the opinion of the Managers is not reasonably used by a seaman.

**Section 9** *Collision with other vessels*

The liabilities, set out in paragraphs (A), (B) and (C) below, to pay damages to any other person arising out of a collision between the insured vessel and any other vessel, but only if and to the extent that such liabilities are not recoverable under the collision liability clause contained in the Hull Policies of the insured vessel.

- (A) One fourth, or such other proportion as may have been agreed in writing by the Managers, of the liabilities arising out of the collision other than the liabilities listed in paragraphs (B) and (C) of this Section.



- (B) Four fourths of the liabilities arising out of the collision for or relating to:-
- (i) removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever,
  - (ii) any real or personal property or anything whatsoever except other vessels or property on other vessels,
  - (iii) the cargo or other property on the insured vessel, or general average contributions, special charges or salvage paid by the owners of that cargo or property,
  - (iv) loss of life, personal injury or illness,
  - (v) pollution or contamination of any real or personal property or thing whatsoever (except pollution or contamination of other vessels with which the insured vessel is in collision or property on such other vessels).
- (C) That part of the Member's liability, arising out of the collision, which exceeds the sum recoverable under the Hull Policies of the insured vessel solely by reason of the fact that the liability exceeds the valuation of the vessel in those policies.

*PROVIDED THAT:-*

- (a) The Committee may for the purpose of assessing any sum recoverable under paragraph (C) of this Section determine the value at which the insured vessel should have been insured under the Hull Policies in the same manner as described in Rule 12 (exclusion of sums insurable under Hull policies); and the Association shall pay only the excess (if any) of the amount which would have been recoverable under such policies if the insured vessel had been insured thereunder at such value.
- (b) Unless the Committee otherwise determines, a Member is not covered in respect of any franchise or deductible borne by him under the Hull Policies of the insured vessel.
- (c) If the insured vessel shall come into collision with another vessel belonging wholly or in part to the Member, he shall be entitled to recover the same amounts from the Association, and the Association shall have the same rights, as if such other vessel belonged wholly to different owners.
- (d) Unless otherwise agreed in writing between the Member and the Managers as a term of the insured vessel's entry in the Association, if both vessels are to blame, then where the liability of either or both of the vessels in collision becomes limited by law, claims under this Section shall be settled upon the principle of single liability, but in all other cases claims under this Section shall be settled upon the principle of cross liabilities, as if the owner of each vessel had been compelled to pay the owner of the other vessel such proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Member in consequence of the collision.

**Section 10** *Loss or damage in respect of property*

Liability to pay damages or compensation for any loss or damage in respect of any property (including infringement of rights) whether on land or water and whether fixed or movable.

*PROVIDED THAT:-*

- (a) There shall be no cover under this Section in respect of:-
  - (i) Liabilities which arise under the terms of any contract or indemnity to the extent that they would not have arisen but for those terms.
  - (ii) Liabilities against which cover is available under the following Sections of this Rule:-
    - Section 2A: The effects of passengers;
    - Section 8: The effects of seamen and others;
    - Section 9: Collision with other vessels;
    - Section 11: Pollution;
    - Section 12: Liability under towage contracts;
    - Section 14: Wreck liabilities;
    - Section 16: Cargo;
    - Section 19: Property on board the insured vessel.
  - (iii) Liabilities excluded from any of the Sections listed in paragraph (ii) above by reason only of some proviso, warranty, condition, exception, limitation or other like term applying to claims under such Section.
  - (iv) Any franchise or deductible borne by the Member under the Hull Policies of the insured vessel.
- (b) If the insured vessel causes loss or damage in respect of property or infringes rights belonging wholly or in part to the Member, he shall have the same rights of recovery from the Association as if such property or rights belonged wholly to different owners.

**Section 11 Pollution**

Subject to the provisions of Rule 15 the liabilities, loss, damage, costs and expenses set out in paragraphs (A) to (E) below when and to the extent that they arise out of or are incurred in consequence of the discharge or escape from the insured vessel of oil or any hazardous substance, or the threat of such discharge or escape:-

- (A) Liability for loss, damage, contamination, costs and expenses.
- (B) Any loss, damage or expense which the Member incurs, or for which he is liable, as a party to any agreement in respect of pollution approved by the Committee, including the costs and expenses incurred by the Member in performing his obligations under such agreements.
- (C) The costs of any measures reasonably taken for the purpose of avoiding or minimising pollution or any resulting loss or damage together with any liability for loss of or damage to property caused by measures so taken.
- (D) The costs of any measures reasonably taken to prevent an imminent danger of the discharge or escape from the insured vessel of oil or any hazardous substance.

- (E) The costs or liabilities incurred as a result of compliance with any order or direction given by any government or authority for the purpose of preventing or reducing pollution or the risk of pollution, provided always that such costs or liabilities are not recoverable under the Hull Policies of the insured vessel.

*PROVIDED THAT:-*

- (a) If the discharge or escape from the insured vessel causes loss, damage or contamination to property belonging wholly or in part to the Member, he shall have the same rights of recovery from the Association as if such property belonged wholly to different owners.
- (b) Without prejudice to Rule 18 (Double Insurance) in the event that a Member is insured by any other Association or insurer against any or all the liabilities, loss, damage, contamination, costs and expenses set out in this Section or any other Section of this Rule 2, the Association shall not indemnify such Member to any extent whatever against any such liabilities, loss, damage, costs and expenses (or similar risks) up to the limits of such other insurance.

In the event that the limits of such other insurances are less than the Association's limits under the Association's Rules and Bye-Laws, the Association's limit of cover shall be restricted to the amount by which such liabilities, loss, damage, costs and expenses (or similar risks) exceed the limits of such other insurance and then only up to the Association's said limits and no pro-rating, allocation or replacement of cover shall be provided.

Furthermore, there shall be no recovery from the Association in respect of liabilities insured under any other insurance, nor shall the Association provide pro-rated or allocated cover, on the basis of double insurance or otherwise, nor will the Association's cover replace any other insurance where (for whatever reason) that other insurance does not or is not able to respond to a claim thereunder.

- (c) Where any liability for loss, damage, contamination, costs and expenses arises under the terms of any contract or indemnity and would not have arisen but for those terms, that liability is only covered if and to the extent that those terms have previously been approved in writing by the Managers.
- (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) 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 (TOPIA) shall, unless the Association otherwise agrees in writing, be a party to TOPIA 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.

**Section 12** *Towage liabilities*

- (A) Liability under a contract for the towage of the insured vessel for the purpose of entering or leaving port or manoeuvring within the port during the ordinary course of trading for loss, injury or damage arising out of or during the course of such towage.
- (B) Liability under a contract for the towage of the insured vessel other than as described in paragraph (A) of this Section, but only if and to the extent that cover for such liability has been agreed in writing with the Managers upon such terms as the Managers require.
- (C) Liability arising from the towage by the insured vessel of another vessel or other floating structure or the cargo or other property on such tow (together with costs and expenses associated therewith) but only if and to the extent that:-
  - (i) the towage or attempt thereat is made for the purpose of saving or attempting to save, life or property at sea, or
  - (ii) the terms of the towage contract have been approved in writing by the Managers and cover for such liability has been agreed in writing with the Managers upon such terms as they may require, or
  - (iii) the Committee determines that in all the circumstances the Member ought to be reimbursed.

**Section 13** *Liability under certain indemnities and contracts*

Liability for loss of life, personal injury or illness, or for loss of or damage to property, arising under the terms of an indemnity or contract given or made by or on behalf of the Member relating to facilities or services provided or to be provided to or in connection with the insured vessel, but only if and to the extent that:-

- (i) the terms have been approved in writing by the Managers or cover for the liability has been agreed in writing between the Member and the Managers on such terms as the Managers may require, or
- (ii) the Committee determines that the Member should be reimbursed.

**Section 14** *Wreck liabilities*

- (A) Costs or expenses arising out of the raising, removal, destruction, lighting or marking of the wreck of the insured vessel and of any cargo or other property which is or was carried on board such wreck, when such raising, removal, destruction, lighting or marking is compulsory by law or the costs thereof are legally recoverable from the Member.
- (B) Liability incurred by the Member arising out of any such raising, removal or destruction of the wreck of the insured vessel (or of such cargo or other property) as is referred to in paragraph (A) of this Section, or any attempt thereat.
- (C) Liabilities incurred by the Member arising out of the presence or involuntary shifting of the wreck of the insured vessel (or of any cargo or other property which

is or was carried on board such wreck), or arising out of his failure to raise, remove, destroy, light or mark such wreck (or such cargo or other property), including liability arising from the discharge or escape from such wreck (or such cargo or other property) of oil or any other substance.

- (D) Liabilities, costs and expenses arising out of any law compelling the raising, removal, destruction, lighting or marking of any cargo or other property including equipment of the insured vessel which is or was carried on board the insured vessel, or as a result of any failure to raise, remove, destroy, light or mark such cargo or other property.

*PROVIDED THAT:-*

- (a) There is no cover in respect of claims under paragraphs (A), (B) or (C) of this Section unless the insured vessel became a wreck as the result of a casualty or event occurring during the vessel's period of insurance; but in this case the Association shall continue to be liable for the claim notwithstanding that in other respects the liability of the Association shall have terminated pursuant to Rule 40 (2)(i)-(vii) (cesser upon sale, loss etc.).
- (b) In respect of any claim under this Section, the following items (so far as applicable) shall first be deducted from or set off against such costs, expenses and liabilities, and only the balance thereof, if any, shall be recoverable from the Association, namely,
- (i) the value of all vessel's stores and materials saved,
  - (ii) the value of the wreck itself,
  - (iii) the value of all cargo or other property saved which accrues to the Member,
  - (iv) any salvage remuneration received by the Member.
- (c) In respect of a claim under paragraph (D) of this Section, there is no cover for liabilities, loss, damage, costs and expenses set out in Rule 2, Section 11.
- (d) There is no cover under this Section if the Member shall, without the consent of the Managers in writing, have transferred his interest in the wreck (otherwise than by abandonment to his Hull and Machinery Underwriters or in accordance with Rule 29 (recommendation to abandon)) prior to the raising, removal, destruction, lighting or marking of the wreck or prior to the incident giving rise to liability.
- (e) Where the liability arises, or the costs or expenses are incurred, under the terms of any contract or indemnity and would not have arisen but for those terms, that liability or those costs or expenses are only covered if and to the extent that:-
- (i) those terms have previously been approved in writing by the Managers and cover for such liability, costs or expenses has been agreed in writing between the Member and the Managers on such terms as the Managers may require, or
  - (ii) the Committee determines that the Member should be reimbursed.

**Section 15 Quarantine expenses**

Additional expenses incurred by the Member as a direct consequence of an outbreak of infectious disease, including quarantine and disinfection expenses and the net loss to the Member (over and above such expenses as would have been incurred but for the outbreak) in respect of fuel, insurance, wages, stores, provisions and port charges.

**Section 16 Cargo**

The liabilities costs and expenses set out in paragraphs (A) to (C) which arise in respect of cargo intended to be or being or having been carried in the insured vessel:-

**(A) Loss, (including shortage), or damage**

Liability for loss, (including shortage), or damage arising out of any breach by the Member or by any person for whose acts, neglect or default he may be legally liable, of his obligation properly to load, handle, stow, carry, keep, care for, discharge or deliver the cargo or out of unseaworthiness or unfitness of the insured vessel.

**(B) Disposing of cargo**

The additional costs and expenses (over and above those which would have been incurred by him in any event under the contract of carriage or in order to make the vessel fit to receive cargo) incurred by the Member in discharging or disposing of cargo as a result of

- (a) such cargo being damaged or worthless, or
- (b) the owner of such cargo refusing to take delivery, or
- (c) damage to the insured vessel against which the Member is, or would be, insured in accordance with Rule 12;

but only if and to the extent that the Member is unable to recover those costs from any other party and/or by sale of such cargo and/or in general average.

**(C) Through or Transhipment Bills of Lading**

Liability under a Through or Transhipment Bill of Lading or other form of contract approved by the Managers in writing and providing for carriage, partly to be performed by the insured vessel, of any cargo, including liability for loss (including shortage), or damage arising from events occurring while that cargo is being carried by means of transport other than the insured vessel or stored or handled in or outside the dock areas of the ports of loading and discharge of the insured vessel, but only when such carriage, storage or handling is necessary to perform such Through or Transhipment Bill of Lading or other contract.

(NOTE: As to what forms of contract the Managers will generally approve, see the First Schedule)

PROVIDED THAT:-

**(a) *Hague Rules, Hague-Visby Rules and Hamburg Rules***

Unless the Member has previously obtained appropriate special cover by agreement in writing with the Managers or the Committee in its discretion otherwise determines, there is no cover in respect of liabilities which would not have been payable by the Member if the contract of carriage had incorporated the Hague Rules, the Hague-Visby Rules, or similar rights, immunities and limitations in favour of the Carrier. There is no cover in respect of liabilities arising under the Hamburg Rules unless the Hamburg Rules are compulsorily applicable to the contract of carriage by operation of law.

**(b) *Bye-Laws as to terms of carriage***

The Committee shall have power from time to time to make Bye-Laws recommending the use of any particular clause or form of contract of carriage, either generally or in any particular trade. The Committee may reject or reduce a claim on the Association arising out of a contract of carriage which is inconsistent with a clause or form of contract recommended as aforesaid, if it considers that it was unreasonable having regard to all the circumstances of the case to have entered into the particular contract of carriage.

**(c) *Land transport operated by Member***

If any means of transport or other property (except a container) used in connection with carriage, storage or handling of cargo outside the dock area where the insured vessel is to load or has discharged that cargo is wholly or partly owned or operated by the Member, no sum shall be payable by the Association under paragraph (C) of this Section (Through or Transhipment Bills of Lading) which the Member could have recovered from the owners or operators of such means of transport or other property if the same had been wholly owned and operated by a third party.

**(d) *Deviation***

Unless the Committee shall otherwise determine, there is no cover in respect of liabilities, costs and expenses arising from a deviation, in the sense of a departure from the contractually agreed voyage or adventure, or from events occurring during or after a deviation, if as a result of such deviation the Member is not entitled to rely on any defences or rights of limitation which would otherwise have been available to him to eliminate or reduce his liability; provided always that if the Member has notified the Managers in writing of the deviation before it occurs or immediately upon receiving information that it has occurred the Managers may

agree special cover in respect of the deviation on such terms as they may determine.

*(NOTE: If the contract of carriage contains a Voyage Clause approved by the Managers, the necessity of notifying and obtaining agreement for particular deviations may in certain cases be waived in the discretion of the Managers. The Voyage Clause recommended by the Association is printed in the Fourth Schedule).*

**(e) Certain exclusions from cover.**

Unless the Committee shall otherwise determine, there is no cover in respect of any liabilities, costs and expenses arising from:-

- (i) the issue of a Bill of Lading, Waybill or other document containing or evidencing the contract of carriage, with a description of the cargo or its condition which the Member, or the Master of the insured vessel, knew to be incorrect,
- (ii) short delivery of cargo where a Bill of Lading, Waybill or other document containing or evidencing the contract of carriage, is signed for a greater quantity of cargo than is known by the Member, or Master or Chief Officer of the insured vessel to have been shipped or received for shipment,
- (iii) the issue of a Bill of Lading, Waybill or other document containing or evidencing the contract of carriage, which contains any fraudulent misrepresentation,
- (iv) the issue of an ante-dated or post-dated Bill of Lading, Waybill or other document containing or evidencing the contract of carriage, that is to say a Bill of Lading, Waybill or other document recording the loading or shipment or receipt for shipment on a date prior or subsequent to the date on which the cargo was in fact loaded, shipped or received as the case may be,
- (v) delivery of cargo carried under a negotiable Bill of Lading or similar document of title without production of that Bill of Lading or document properly endorsed, except where cargo has been carried on a Member's insured vessel under the terms of a non-negotiable Bill of Lading, Waybill or other non-negotiable document, and has been properly delivered as required by that document, notwithstanding that that Member may be liable under the terms of a negotiable Bill of Lading or other similar document of title issued by or on behalf of a party other than that Member providing for carriage in part on that Member's vessel and in part upon another vessel, or by another mode of transport,
- (vi) delivery of cargo carried under a Waybill or similar non-negotiable document to a party other than the party nominated by the shipper as the person to whom delivery should be made,
- (vii) discharge of cargo at a port or place other than in accordance with the contract of carriage, except where such cargo is so discharged with the consent in writing of the Managers,



- (viii) late arrival or non-arrival of the insured vessel at a port or place of loading, or failure to load any particular cargo, other than liabilities, loss and expense arising under a Bill of Lading already issued, or
- (ix) any deliberate breach of the contract of carriage on the part of the Member or his manager.

**(f) *Bye-Laws as to methods of carriage***

The Committee shall have power from time to time to make Bye-Laws regulating the system and method of carriage, storage, transport, custody and handling of cargo intended to be, being or having been carried in insured vessels.

If a Member fails to observe any such Bye-Law, there is no cover under this Section unless the Committee determines that the liabilities, costs and expenses would have arisen even if the Bye-Law had been observed.

**(g) *Events on land***

There is no cover under paragraphs (A) and (B) of this Section in respect of liabilities, costs and expenses arising out of events occurring before the cargo has been received for shipment, after it has been delivered at the port of discharge, or at any time when it is neither aboard the insured vessel nor in the dock area of the port of loading or the port of discharge. This proviso shall not prevent recovery from the Association under paragraph (C) of this Section (Through and Transhipment Bills of Lading).

**(h) *Value declared on Bill of Lading***

There is no cover in respect of liabilities, costs and expenses in respect of goods carried under an ad valorem Bill of Lading, Waybill or other document containing or evidencing the contract of carriage and where the value per unit, piece or package has been stated to be in excess of US\$2,500 (or the equivalent in any other currency) to the extent that such liabilities, costs and expenses exceed US\$2,500 per unit piece or package.

**(i) *Rare and Valuable Cargo***

There is no cover in respect of claims relating to the carriage of specie, bullion, precious or rare metals or stones, plate, works of art or other objects of a rare or precious nature, bank notes or other forms of currency, bonds, or other negotiable instruments, whether carried as cargo or as passenger's baggage or as seaman's effects, unless the Managers shall have approved in writing the contract of carriage, the spaces in which the valuables are to be carried, the stowage thereof and the instructions given to those on board the insured vessel with regard to the safe custody thereof.

**(j) Property of the Member**

If any cargo lost or damaged on board the insured vessel shall be the property of the Member, he shall be entitled to recover from the Association the same amounts as would have been recoverable from him if the cargo had belonged to a third party and that third party had concluded a contract of carriage of the cargo with the Member on the terms of the Hague Rules or Hague-Visby Rules (or where compulsorily applicable by operation of law, the Hamburg Rules).

**(k) Deck cargo**

There is no cover in respect of claims arising out of the carriage of cargo on deck unless the cargo is suitable for carriage on deck and either:

- (a) the contract of carriage is specially endorsed to the effect that the cargo is carried on deck and provides that:-
  - (i) the carrier is exempted from all liability for loss or damage to such cargo howsoever caused; or
  - (ii) that the Hague Rules or Hague-Visby Rules apply to the on deck carriage notwithstanding Article 1(c) of the said Rules; or
- (b) the contract of carriage contains an appropriate liberty to carry cargo on deck and makes such carriage subject to the Hague Rules, the Hague-Visby Rules or similar rights, immunities and limitations in favour of the Carrier; or
- (c) where the contract of carriage is compulsorily subject to the Hamburg Rules by operation of law, the Member has complied with the provisions of paragraphs 1 and 2 of Article 9 thereof.

**(l) Slot charterers**

A Member who is a slot or space charterer of the insured vessel may recover under this Section in respect of his liabilities to other cargoes carried in the insured vessel, provided that the terms of the charterparty have first been approved in writing by the Managers.

**(m) Through or Transhipment Bills of Lading**

Where a Through or Transhipment Bill of Lading has been issued by the Member in accordance with paragraph (C) above, there is no cover in respect of liabilities, costs or expenses incurred by the Member under or in connection with such a Bill of Lading, unless the Member preserves his rights of recourse against any sub-contractor by sub-contracting only on terms that:

- (a) provide that the sub-contractor shall be liable to the Member to the same or similar extent as the Member's liability under the Member's Bill of Lading, or

- (b) are the standard terms applicable in the particular trade or in the place where the sub-contract is carried out, or
- (c) have been approved in writing by the Managers.

**(n) Paperless Trading**

Unless either (1) the Committee otherwise determines or (2) it is otherwise agreed in writing between the Member and the Association, there shall be no recovery from the Association in respect of any liability, cost or expense whatsoever or howsoever arising, whether directly or indirectly, out of or in consequence of:

- (i) The Member's participation in, or use of, any system or contractual arrangement the predominant purpose of which is to replace paper-based documentation in shipping and/or international trade with electronic messages (any such system or arrangement being referred to in this endorsement as a "paperless system"), or
- (ii) A document, created or transmitted under a paperless system, which contains or evidences a contract of carriage, or
- (iii) The carriage of goods pursuant to such a contract of carriage, save to the extent that the Association may determine that such liability, cost or expense would have arisen and would have been covered by the Association if the Member had not participated in or used a paperless system and any contract of carriage had been contained in or evidenced by a paper document.

For the purpose of this proviso a "document" shall mean anything in which information of any description is recorded, including, but not limited to, computer or other electronically generated information.

**Section 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. 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.

**Section 18 Ship's proportion of general average**

Ship's proportion of General Average, Special charges or Salvage not recoverable under the Hull and Machinery policies solely by reason of the sound value of an insured vessel having been assessed for contribution to General Average, Special Charges or Salvage at a value in excess of the amount for which such vessel should have been insured in accordance with the provisions of Rule 12 (exclusion of sums insurable under Hull Policies).

*PROVIDED THAT:-*

Proviso (b) of Section 17 (unrecoverable general average contributions) shall likewise apply to this Section.

**Section 19 Property on board the insured vessel**

Liability for loss of or damage to any containers, equipment, fuel or other property on board the insured vessel, other than cargo and the effects of any person on board the insured vessel.

*PROVIDED THAT:-*

- (a) there is no cover under this Section for loss of or damage to any property which forms part of the insured vessel or which is owned or leased by the Member or by any company associated with or under the same management as the Member; and
- (b) unless the Member has obtained appropriate special cover by agreement with the Managers in writing, there is no cover under this Section where any liability arises under a contract or indemnity entered into by him and would not have arisen but for such contract or indemnity.

**Section 20 Salvors' expenses under standard forms of salvage agreement**

Liability of the Member to reimburse a salvor of the insured vessel for:

- (i) his "reasonably incurred expenses" (together with any increment awarded thereon) under the exception to the principle of "No cure - No pay" contained in Clause 1(a) of the Lloyd's Standard Form of Salvage Agreement (1980);
- (ii) the "Special Compensation" to which a salvor may be entitled under the exception to the principle of "No cure - No pay" contained in Article 14 of the International Convention on Salvage 1989 or the Special Compensation P. & I. Clauses (SCOPIC) and (SCOPIC 2000) where they are incorporated into the Lloyd's Standard Form of Salvage Agreements (1990), (1995) or (2000), or incorporated in the terms of a Standard Salvage Agreement approved by the Association.

**Section 21 Fines**

Liability for fines imposed in respect of the insured vessel by any court, tribunal or authority:-

- (a) for short or over delivery of cargo or for failure to comply with regulations relating to declaration of goods or to documentation of the cargo of the insured vessel;

- (b) for smuggling;
- (c) for breach of any law or regulation relating to immigration;
- (d) in respect of the accidental discharge or escape of oil or any hazardous substance from the insured vessel;
- (e) arising for any other reason, but only to such extent as the Committee shall determine.

*PROVIDED THAT:-*

- (a) Subject to paragraph (b) of this proviso, no fine is covered under this Section unless it was imposed on the Member.
- (b) A fine imposed on any other party may only be covered under this Section if:-
  - (i) the Member has been compelled to pay such fine by law or under the terms of a contract or indemnity approved by the Managers; or
  - (ii) the Member has reasonably paid such fine in order to prevent the arrest of the insured vessel or any other vessel or property belonging to the Member or in order to secure its release from arrest; or
  - (iii) the Committee shall otherwise determine.
- (c) The Committee may determine that the Association shall not indemnify a Member wholly or in part in respect of any fine or any costs arising in connection with such fine arising out of any incident or activity which, in the opinion of the Committee, the Member disregarded or failed to take reasonable steps to prevent.
- (d) The Committee shall have power from time to time to make bye-laws imposing restrictions, surcharges, exclusions, limits or any other conditions whatsoever in respect of or in relation to any particular country, area, port or place in connection with fines insured under this Section.

**Section 21A**    **Confiscation of vessels**

Notwithstanding the terms of Rule 16(i) the Committee may authorise the payment, in whole or in part, of a Member's claim for loss of an insured vessel following confiscation of that vessel by any legally empowered court, tribunal or authority by reason of the infringement of any customs law or customs regulation:

*PROVIDED THAT:-*

- (i) the total aggregate amount recoverable from the Association shall under no circumstances exceed the market value of the insured vessel without commitment at the date of the confiscation;
- (ii) the Member shall have satisfied the Committee that he took such steps as appear to the Committee to be reasonable to prevent the infringement of the customs law or customs regulation giving rise to the confiscation;

- (iii) any amount claimed under this Section 21A of Rule 2 shall be recoverable to such extent only as the Committee in its sole discretion may determine without having to give any reasons for its decision;
- (iv) no such claim shall be considered by the Committee until such time as the Member has been deprived of his interest in the insured vessel.

**Section 22 *Inquiries and criminal proceedings***

Costs and expenses incurred by the Member:-

- (a) in protecting his interests before a formal inquiry into the loss of or a casualty involving the insured vessel; or
- (b) in connection with the defence of criminal proceedings brought against the Master of or a Seaman aboard the insured vessel or some other servant or agent of the Member or some other person associated with the Member;

*PROVIDED THAT:-*

No costs or expenses shall be recoverable under this Section unless:-

- (i) they were incurred with the written approval of the Managers, or
- (ii) the Committee determines that they should be recoverable from the Association.

**Section 23 *Liability, costs and expenses incurred by direction of the Managers***

Liability, costs and expenses reasonably and necessarily incurred or sustained by the Member for the purpose or as a result of carrying out a specific written direction of the Managers in connection with the insured vessel, and in the event of a dispute between the Member and the Managers as to whether, or to what extent, any such liability, costs or expenses were so incurred or sustained, the Committee shall determine the issue.

**Section 24 *Sue and labour and legal costs***

- (A) Extraordinary costs and expenses (other than those set out in paragraph (B) of this Section) reasonably incurred on or after the occurrence of any casualty, event or matter liable to give rise to a claim upon the Association and incurred solely for the purpose of avoiding or minimising (as required by Rule 23) any liability or expenditure against which the Member is wholly or, by reason of a deductible or otherwise, partly insured by the Association.
- (B) Legal costs and expenses relating to any liability or expenditure against which the Member is wholly, or, by reason of a deductible or otherwise, partly insured by the Association.

*PROVIDED THAT:-*

- (a) where, by reason of a deductible or otherwise, the Association would be liable to indemnify the Member for part only of a claim made against him by a third party, the Association shall only be liable under this Section for a similar proportion of the

costs and expenses incurred in respect of that claim, unless the Committee shall determine that the full amount of such costs and expenses should be borne by the Association;

- (b) no costs or expenses shall be recoverable under this Section unless:-
  - (i) they were incurred with the approval of the Managers, or
  - (ii) they were incurred by the Association under Rule 26 (employment of lawyers and others), or
  - (iii) the Committee determines that they should be recoverable from the Association.

### **3 Special Cover and Charterers Risks**

#### **(A) General**

- (1) Subject to the Constitution and save in so far as expressly prohibited by these Rules the Managers may accept entries on behalf of the Association of vessels on terms which afford cover against any special or additional risks not set out in Rule 2, whether or not in the nature of Protection and Indemnity Cover. The nature and extent of the risks and the terms and conditions of insurance incorporating any such special terms shall be as agreed in writing between the Member concerned and the Managers.
- (2) The Association shall be at liberty to reinsure in whole or in part any of the risks insured under this Rule 3 and to the extent that the risks covered under or by virtue of this Rule, including the risks covered under Rule 2, are reinsured by the Association, the Member and any Co-Assured shall only be entitled to recover from the Association the net amount actually recovered by the Association under such reinsurance in respect of his claim, together with that portion (if any) of the cover retained by the Association.
- (3) Notwithstanding Rule 2(a) a Member may be insured on the special term that the risks insured may arise otherwise than in respect of any insured vessel or otherwise than in connection with the operation of an insured vessel provided always that this shall have been expressly agreed in writing between the Member and the Managers.
- (4) Unless otherwise expressly agreed, any special insurance as described in subparagraphs (1) and (2) and (3) of this paragraph (A) shall be subject to all the warranties, conditions, exceptions, limitations and other terms contained in these Rules.

#### **(B) Cover for Charterers and related parties**

Without prejudice to the generality of this Rule 3, where an entry of a vessel in the Association is in the name of or on behalf of a charterer (other than a bareboat

charterer or charterer by demise), the charterer may be covered as a Member, and any cargo interests wholly owned or controlled by such charterer or in the same ownership or control as him may be covered as a Co-Assured, upon such terms and conditions as the Managers of the Association may require in respect of the liabilities, losses, costs and expenses set out in Rule 2 and in respect of one or more of the liabilities, losses, costs and expenses set out in sub-paragraphs (1) to (6) of this paragraph (B), namely:

- (1) Liability as charterer to indemnify the owner or disponent owner of the insured vessel in respect of the risks set out in Rule 2.
- (2) Liability as charterer to pay freight, charter hire, demurrage or damages to the owner or disponent owner of the insured vessel as a result of loss of or damage to the vessel for which the Member is responsible, but to the extent (and no more) that cover would otherwise be excluded by virtue of Rule 16(i) to (ix) and Proviso (a)(i) to Rule 2, Section 10.
- (3) Liability as charterer to contribute to general average, special charges or salvage in respect of freight and any property, other than cargo, carried on board the insured vessel and owned or leased by the Member.
- (4) Loss of or damage to fuel oil, stores and supplies belonging to the Member or for which he is responsible.
- (5) Where the Member and the Co-Assured are covered in the capacity of cargo owner, the liabilities, losses, costs and expenses set out in Rule 2, Section 11 where they arise out of an incident occurring at a time when the Member or the Co-Assured:
  - (a) owned all or part of the cargo being carried on the insured vessel; and
  - (b) where the Co-Assured owned all or part of such cargo the Co-Assured was wholly owned or controlled by, or was in the same ownership or control as, the Member and where such liabilities, losses, costs and expenses arose by virtue of the relationship between the Member and the Co-Assured.
- (6) Liabilities, losses, costs and expenses incurred as a charterer and covered under Rule 2 and under this paragraph (B) for which cover would otherwise be excluded by Rule 14, provided that:-
  - (a) cover against such liabilities, losses, costs and expenses may be terminated by the Association on 7 days' notice;
  - (b) there is no cover for liabilities, losses, costs and expenses arising otherwise than from the operation, ownership, management or chartering of a vessel, or in respect of cargo otherwise than in the ordinary course of transit as provided for in the Joint Cargo Committee Termination of Transit Clause (Terrorism) JC 2001/056;



- (c) there is no cover in respect of the risks set out in clause 5 of the Institute War and Strike Clauses, Hulls-Voyage 1/11/95; and
- (d) such cover shall terminate automatically in the circumstances and manner described in clause 6.2 of the Institute War and Strike Clauses, Hulls-Voyage 1/11/95.
- (e) without prejudice to its general limit of liability under this paragraph (B) of Rule 3, the Association's liability under such cover in this sub-paragraph 6 in respect of all parties insured in respect of one vessel in respect of one incident shall not exceed in the aggregate the amount of US\$100,000,000 inclusive of interest and costs. For the purposes of this proviso, claims in respect of loss of or damage to cargo on the same cargo carrying voyage (including claims in respect of cargo's contribution to general average payable by the Member solely by reason of a breach of the contract of carriage) shall be deemed to have arisen out of the same incident and that incident shall be deemed to have occurred at the earliest of:
  - (i) the first place of discharge or port at which such loss or damage was ascertained and at the time of such ascertainment; and
  - (ii) if such loss or damage was ascertained after discharge of the cargo from the insured vessel, at the time and place of discharge; and
  - (iii) where the Member sold the insured vessel (or otherwise disposed of the interest in the insured vessel in respect of which he has been insured) during the cargo carrying voyage, at the time when the last entry for the insured vessel terminated and at the place where the insured vessel was at that time,  
and a reference in this proviso to a cargo carrying voyage shall include, in cases where cargo is carried under a contract for carriage partly in the insured vessel and partly by other means of transport, the entire through or combined transport of that cargo under that contract.
- (f) in respect of such cover, the Member warrants to the Association that the insured vessel is chartered on terms not less favourable to the Member than the following:
  - (i) the vessel's owners may decline any orders sending the vessel to any place which is dangerous through war risks (as defined in clauses 1.1 to 1.3 of the Institute War and Strike Clauses, Hulls-Voyage 1/11/95);
  - (ii) the vessel's owners may insure their own interests against such war risks; and
  - (iii) the Member is to reimburse any premium paid by owners for insurance against such war risks, and the Member shall further use his best endeavours to procure a term of the charterparty that he is not liable for any loss, damage or expense which is or which could be covered by available war risks insurance on normal commercial terms.

- (g) in the event of an insured vessel sailing for, deviating towards, or being within the Territorial Waters of any countries or places described in such Excluded Areas as the Association may from time to time notify (including any port area that at the date of this notice constitutes part of such a country or place howsoever it may hereafter be described), additional premium shall be paid at the discretion of the Association's Managers.

Information of such voyage or deviation shall be given to the Managers as soon as practicable, but the absence of prior notice shall not affect the reinstatement of cover subject to the payment of additional premium to be agreed.

- (h) in the event of the Member not requiring continuation of such cover for an insured vessel proceeding into or remaining in an excluded area, they shall so advise the Managers before the commencement of such voyage, deviation or period and Rule 14 shall apply. Such cover shall be reinstated once such an insured vessel leaves an Excluded Area.

***Cover under sub-paragraphs (1) to (6) of this paragraph (B) is subject to the following provisos:-***

- (a) If the Co-Assured has an interest in the cargo carried on board that vessel that interest shall constitute, for the duration of the voyage on which such cargo is carried, an interest in the vessel sufficient to constitute him a Co-Assured in respect of such vessel under Rule 36, and the provisions of paragraph (c) of the preamble to Rule 2 shall not apply.
- (b) The terms of each charterparty must be in all material respects in a form approved by the Managers.
- (c) There is to be no cover under sub-paragraph (4) of this paragraph (B) in respect of:
- (i) ordinary loss in weight or volume or ordinary degradation or deterioration of such fuel oil, stores or supplies;
  - (ii) loss, damage or expense caused by inherent vice or nature of such fuel oil, stores or supplies;
  - (iii) loss, damage or expense caused by delay, even where such delay is caused by a risk insured by the Association;
  - (iv) loss, damage or expense caused by a terrorist or any person acting from a political motive.
- (d) In respect of the cover under sub-paragraph (4) of this paragraph (B) the Association waives any implied warranty of seaworthiness of the vessel.
- (e) The provisions of Rules 7(2) and 8(3)(b) and of the Oil Pollution Limitation of Cover and Charterer's Limitation of Cover clauses in the Third Schedule to the Rules shall not apply, but the Committee shall have power under this Rule to make Bye-Laws from time to time providing for the limitation of or other restrictions upon the

liability of the Association for claims under all paragraphs of this paragraph (B), including cover under Rule 2. In the absence of any such Bye-Law and save as provided in Rule 3(B)6(e), the Association's liability under all paragraphs of this paragraph (B), including cover under Rule 2 or otherwise, in respect of all parties insured in respect of any one vessel under any one contract of insurance in respect of any one incident shall not exceed in the aggregate the amount of US\$400,000,000 inclusive of interest and costs. For the purposes of this proviso, claims in respect of loss of or damage to cargo on the same cargo carrying voyage (including claims in respect of cargo's contribution to general average payable by the Member solely by reason of a breach of the contract of carriage) shall be deemed to have arisen out of the same incident and that incident shall be deemed to have occurred at the earliest of:-

- (i) the first place of discharge or port at which such loss or damage was ascertained and at the time of such ascertainment; and
- (ii) if such loss or damage was ascertained after discharge of the cargo from the insured vessel, at the time and place of discharge; and
- (iii) where the Member sold the insured vessel (or otherwise disposed of the interest in the insured vessel in respect of which he has been insured) during the cargo carrying voyage, at the time when the last entry for the insured vessel terminated and at the place where the insured vessel was at that time,

and a reference in this proviso to a cargo carrying voyage shall include, in cases where cargo is carried under a contract for carriage partly in the insured vessel and partly by other means of transport, the entire through or combined transport of that cargo under that contract.

#### **4 Special Cover for Salvors**

- (1) Without prejudice to Rule 3 (Special Cover) a Member who is the owner or operator of a salvage tug or other craft specially designed, converted or maintained for use in salvage operations may be insured, but only by special agreement with the Managers and upon such terms as may be required by the Managers, against any liabilities, costs or expenses arising out of any salvage operations or attempted salvage operations performed or to be performed by the Member or by any sub-contractor of the Member or any of their respective servants.
- (2) The cover referred to in paragraph (1) of this Rule may be given on terms that the liabilities, costs or expenses need not arise in respect of any insured vessel or out of the operation of any insured vessel provided always that they arise in connection with the Member's business as a salvor.
- (3) It shall be a condition precedent of every insurance on the terms referred to in paragraph (2) of this Rule that the Member and any company which is a subsidiary or holding company of the Member or a subsidiary of the Member's holding

company shall, at the time when the insurance is given and thereafter within thirty days before the beginning of each Policy Year, apply to enter for insurance in the Association every vessel intended to be used in connection with salvage operations which it then owns or operates (on terms that every such application may be accepted in respect of such one or more vessels as the Managers may determine).

## **5 Omnibus Rule**

Notwithstanding anything to the contrary contained in these Rules, the Committee may determine that the Association shall pay a Member any amount, whether or not the full amount claimed, or shall insure such Member in respect of liabilities, costs or expenses incidental to the business of owning, operating or managing vessels, which arise in accordance with paragraphs (a)(i) to (iii) of the preamble to Rule 2 and which in the opinion of the Committee fall within the scope of the Association's business.

*PROVIDED THAT:-*

- (i) if any such liabilities, costs or expenses are expressly excluded by the provisions of any other Rule, the Committee's decision in favour must be unanimous among those present when the claim is considered; and
- (ii) the Committee need not give any reasons for its decision.

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## Part II - Deductibles, Limitations, Exclusions and Warranties

### 6 Deductibles

Unless otherwise agreed in writing between a Member and the Managers as part of the terms upon which a vessel is entered in the Association, the Member's recovery from the Association shall be subject to the following deductibles:-

#### (1) *Crew Illness and related Expenses*

In respect of liabilities, costs or expenses referred to in Sections 1(B), 3, 4(A), 5 and 6 of Rule 2 (other than those relating to Loss of Life, Personal Injury or Repatriation of Deceased Seamen), the first US\$1,000 of liabilities, costs or expenses arising in any one port.

*PROVIDED THAT:-*

Where two or more claims on the Association have arisen out of the same illness and have necessitated expenditure at more than one port, the first US\$1,000 of the aggregate of those claims shall be deducted.

#### (2) *Effects*

In respect of liabilities, costs or expenses referred to in Section 8 of Rule 2, the first US\$1,000 arising out of any one incident.

#### (3) *Cargo claims and cargo's proportion of General Average*

In respect of liabilities, costs or expenses referred to in Sections 16 and 17 of Rule 2 respectively:-

- (a) US\$3,000 in respect of liabilities, costs or expenses in respect of cargo (other than bulk cargo) carried on each cargo voyage.
- (b) US\$2,000 in respect of liabilities, costs or expenses in respect of bulk cargo carried on each cargo voyage.

#### (4) *Fines*

In respect of the liabilities referred to in Section 21 of Rule 2, the first US\$1,000 arising out of any one incident.

*PROVIDED THAT:-*

Where two or more claims on the Association have arisen out of the same incident and are subject to more than one deductible by reason of paragraphs (1) to (4) of this Rule or by reason of any special terms agreed with the Member, the Member's recovery shall be subject to the highest only of such deductible. None of the above deductibles shall apply to costs or expenses recoverable under Section 24 of Rule 2 (sue and labour and legal costs).

## **7 Limit of the Association's Liability for Pollution**

- (1) The Committee shall have power under this Rule to make bye-laws from time to time providing for limitation of or other restrictions upon the liability of the Association for claims in connection with pollution by oil or hazardous substances, either generally or in relation to any particular port, place or part of the world, flag or class of vessel, trade, substance or type of substance.
- (2) All contracts of insurance between a Member and the Association shall, except as provided in Rule 3 or otherwise agreed in writing by the Managers, be subject to the Association's Oil Pollution Limitation of Cover Clause for the time being in force, which clause shall be a Bye-Law of the Association and shall also at all times be and be deemed to be incorporated in these Rules.
- (3) The Committee shall have power under this Rule to extend by means of Bye-Laws the provisions of the said Clause to include any hazardous substances with such modifications, exclusions and restrictions as it may think fit and to vary or revoke any such Bye-Laws made hereunder.

## **8 Other Limitations of the Association's Liability**

### **(1) *Generally***

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

### **(2) *Unreasonable failure to limit***

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

### **(3) *Limitation for persons other than shipowners***

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

- (b) If a Member has entered a vessel in the Association, and he is not the registered owner or demise charterer of that vessel or the manager or operator having control of the operation and employment of that vessel (being such control as is customarily exercised by a ship owner) or any other person in possession or control of that vessel or an insurer of protection and indemnity risks of such description of persons, then unless otherwise agreed in writing between the Member and the Managers the liability of the Association in respect of any claim brought by the Member relating to that vessel shall not exceed the amount to which he could have limited his liability for the claim if he had been the registered owner and had not been denied the right to limit, and all contracts of insurance between a Member who is a charterer (other than a demise charterer) and the Association shall, except as provided in Rule 3 or otherwise agreed in writing by the Managers, be subject to the Association's Charterer's Limitation of Cover Clause (otherwise than in respect of oil pollution) for the time being in force which clause shall be a Bye-Law of the Association and shall also at all times be and be deemed to be incorporated in these Rules.

## **9 Less than Full Tonnage Entered**

If less than the full gross tonnage of a vessel is entered in the Association, the Member concerned shall, unless the entry of the vessel has been accepted on special terms which otherwise provide, be entitled only to recover such proportion of his claim as the entered tonnage bears to the full gross tonnage.

Where by virtue of these Rules or any special terms which may have been agreed a limit is set to the Association's liability in respect of any or all claims insured by the Association the foregoing provisions shall likewise apply to such limit and the Association's liability in respect thereof shall be reduced accordingly.

## **10 Payment First by the Member, Subrogation and Assignment**

The insurance afforded to a Member is indemnity only and not liability.

Unless the Committee in its discretion otherwise determines it shall be a condition precedent of a Member's right to recover from the funds of the Association in respect of any loss, damage, liabilities, costs or expenses that he shall first have discharged or paid the same otherwise than from money advanced expressly or impliedly for that purpose whether by way of loan or otherwise.

Without prejudice to the Managers' powers under Rule 27 relating to the handing and settlement of claims, where the Association makes a payment to a Member or a Co-Assured and the Member or Co-Assured has rights against a third party, whether by way of a claim for contribution, indemnity or otherwise arising out of a claim or matter in respect of which the Association has made such payment to

the Member or the Co-Assured, the Association shall be subrogated to the rights of the Member and the Co-Assured in respect of the claim or matter to the extent of that payment, including the right to any interest accruing on that amount prior to its recovery from such third party and the right to recover any costs incurred in relation to the exercise of such rights.

Further, the Member and the Co-Assured agree to hold such rights as trustees for the Association and to take such steps as the Association may direct with regard to their enforcement and recovery. All such recoveries, including interest and recovered costs howsoever and whensoever made, are to be paid to the Association, provided that if any such recovery exceeds the amounts paid by the Association, including interest and costs whether paid to third parties or incurred by the Association, the balance shall be paid to the Member.

If required by the Association, the Member and the Co-Assured shall execute a legal assignment of such rights to the Association. In the event that such rights are not assignable or transferable as a matter of law, the Member and the Co-Assured undertake not to dissolve themselves or otherwise render themselves incapable of taking such steps as may be required by the Association in enforcing any such rights against a third party.

#### **11 No Liability Until Calls and Other Sums Paid**

Without prejudice to anything elsewhere contained in these Rules it shall be a condition precedent of a Member's right to recover from the funds of the Association in respect of any loss, damage, liabilities, costs or expenses that all such Calls and other amounts whatsoever as shall have become due from the Member to the Association shall (whether in respect of this Class or any other Class) have been paid in full by the Member or by some assignee or other person on his behalf.

*PROVIDED THAT:-*

The Committee may waive the above condition, but in such event the Association shall be entitled to set off any amount due from a Member against any amount due to him from the Association.

#### **12 Exclusion of Sums Insurable Under Hull Policies**

Unless otherwise agreed in writing or the Committee otherwise determines, the Association shall not be liable for any loss, damage, liabilities, costs or expenses in connection with an insured vessel:-

- (i) against which a Member would be insured if the insured vessel were at all times fully insured under Hull Policies on terms not less wide than those of the Lloyd's Marine Policy with the Institute Time Clauses (Hulls) 1/10/83 attached, or
- (ii) which would not be recoverable under such Policies by reason of some franchise, deductible or deduction of a similar nature in such Policies.



“Fully insured” in this Rule means insured at such insured value as the Committee determines represents the market value of the insured vessel, disregarding any charter or other engagement to which she may be committed.

### **13 Association Not Liable for Interest**

In no case shall a Member be allowed interest on any claim he may have against the Association.

### **13A Premium Tax and Other Excise Taxes**

The Member shall pay on demand to the Association or its order the amount of any premium tax or other excise tax for which the Association determines it or the Member has or may become liable and shall indemnify and hold harmless the Association in respect of any loss, damage, liability, cost or expense which the Association may incur in respect of such premium tax or other excise tax.

### **14 Liability Excluded for War Risks**

- (1) Except as provided in paragraphs (2) and (3) of this Rule or 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 detention (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.

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- (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 (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.

- (h) 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.
- (i) 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.
- (3) A Member shall be covered for liability to seamen and for sue and labour costs upon the following terms:

***Supplemental Cover 2004 (Biochemical Risks)***

- 1.1 Subject to the terms and conditions and exclusions set out herein, cover is extended to include the liability of the Member:
  - (a) to pay damages, compensation or expenses in consequence of the personal injury to or illness or death of any seaman (including diversion expenses, repatriation and substitute expense and shipwreck unemployment indemnity),
  - (b) for the legal costs and expenses incurred solely for the purpose of avoiding or minimising any liability or risk insured by an Association (other than under the Omnibus Rule)
- 1.2 where such liability is not recoverable under either
  - (a) cover provided by the Association for such liabilities, costs, losses and expenses as would be covered under the Rules but for the exclusion of war risks in Rule 14, or
  - (b) any underlying war risk policies covering the same risks,

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- 1.3 solely by reason of the operation of an exclusion of liabilities, costs, losses and expenses directly or indirectly caused by or contributed to by or arising from
- (a) any chemical, biological, biochemical 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,
- 1.4 other than liabilities, costs, losses and expenses arising from
- (a) explosives or the methods of the detonation or attachment thereof
  - (b) the use of the entered ship or its cargo as a means for inflicting harm, unless such cargo is a chemical or biochemical weapon
  - (c) the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.
2. Excluded Areas
- 2.1 Unless and to the extent the Directors may in their discretion otherwise determine, there shall be no recovery in respect of any liabilities, costs, losses and expenses directly or indirectly caused by or contributed to by or arising out of any event, accident or occurrence within the ports, places, zones or areas or during such period as are specified in Clause 2.2 of this paragraph 3.
- 2.2 At any time or times before, or at the commencement of, or during the Policy Year, the Managers on behalf of the Association may by notice to the Member specify, the ports, places, countries, zones and periods referred to in Clause 2.1 of this paragraph 3 from a date and time not being less than 24 hours from midnight on the day the notice is given to the Member.
3. Cancellation
- Cover hereunder may by notice to the Member be cancelled by the Association from a date and time specified by the Association, not being less than 24 hours from midnight on the day notice of cancellation is given to the Member.
4. Limit of Liability
- 4.1 Subject to Clause 4.2 of this paragraph 3 the limit of the liability of the Association under this extension of cover in respect of all claims shall be in the aggregate US\$30 million each ship any one accident or occurrence or series thereof arising from any one event.
- 4.2 In the event that there is more than one entry by any person for biochemical cover as provided herein in respect of the same ship with the Club and/or any other insurer which participates in the Pooling Agreement or General Excess Loss Reinsurance Contract, the aggregate recovery in respect of all liabilities, costs, losses and expenses arising under such entries shall not exceed the amount

stipulated in Clause 4.1 of this paragraph 3 and the liability of the Association under each such entry shall be limited to such proportion of that amount as the claims arising under that entry bear to the aggregate of all such claims recoverable from the Association and any such other insurer.

5. Deductible

The deductible shall be the deductible applicable to the relevant cover set out in the Certificate of Entry.

**14A Liability Excluded for Certain Risks**

There is no cover in respect of any loss, damage, liabilities, costs and expenses incurred by a Member in respect of any of the following:-

- (a) personnel (other than marine crew) on board the insured vessel (being an accommodation vessel) employed otherwise than by the Member when there has not been a contractual allocation of risks as between the Member and the employer of the personnel which has been approved by the Association; and,
- (b) hotel and restaurant guests and other visitors and catering crew of the insured vessel when the insured vessel is moored (otherwise than on a temporary basis) and is open to the public as a hotel, restaurant, bar or other place of entertainment.

**15 Liability Excluded for Nuclear Risks and in Respect of Pollution by Waste and the Carriage of Live Animals**

Notwithstanding the provisions of Rule 15, unless either (1) the Committee otherwise determines or (2) it is otherwise agreed in writing between the Member and the Association, there is no cover in respect of any liability, cost or expense (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or his 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 directly or indirectly caused by or arises from:-

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
- (c) any weapon of war or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter

other than liabilities, costs and expenses arising out of carriage of excepted matter (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulations made thereunder) as cargo in an Insured Vessel.

- (e) The intended or actual carriage of live animals.
- (f) The discharge or escape, or the threat of discharge or escape, or the presence of any substance, material, product, or waste determined or deemed to be hazardous, from or in any dump, site, storage or disposal facility, whether or not such substance, material, product or waste was previously carried on an entered ship as cargo, fuel or stores and whether at any time mixed or combined in any way in whole or in part with any other substance whatsoever.

**16 Liability Excluded for Damage to Insured Vessel, Loss of Hire, etc.**

There is no cover except as otherwise provided in this Rule, or as otherwise agreed in writing between a Member and the Association pursuant to Rule 3, for:-

- (i) loss of or damage to an insured vessel or any part thereof;
- (ii) loss of or damage to any equipment on board an insured vessel or to any containers, lashings, stores or fuel thereon, to the extent that the same are owned or leased by the Member or by any person associated with or under the same management as the Member;
- (iii) the cost of repairs to an insured vessel or any charges or expenses in connection therewith;
- (iv) loss of freight or hire or any proportion thereof, unless such loss forms part of a claim recoverable from the Member for loss in respect of cargo or is, with the consent of the Managers in writing, included in the settlement of such a claim;
- (v) salvage of an insured vessel or services in the nature of salvage provided to an insured vessel and any costs and expenses in connection therewith;
- (vi) loss arising out of cancellation of a charter or other engagement of an insured vessel;
- (vii) loss arising out of irrecoverable debts or out of the insolvency of any person, including insolvency of agents;
- (viii) claims relating to demurrage on or detention of an insured vessel;
- (ix) unless specifically insured by the Association, losses arising out of or during the towage or salvage of another vessel by an insured vessel except where such towage or salvage was necessary for the purpose of saving or attempting to save life or property at sea.

*PROVIDED THAT:-*

The foregoing exclusions of cover shall not prevent recovery of claims under the following Sections of Rule 2:-

Section 5:	Diversion Expenses;
Section 7:	Life Salvage;
Section 13:	Indemnities and Contracts;
Section 17:	Unrecoverable general average contributions;
Section 18:	Ship's proportion of general average;
Section 20:	Salvors' expenses under Lloyd's Form;
Section 23:	Expenses incurred by direction of the Managers;
Section 24:	Sue and labour and legal costs.

**17 Exclusion of Certain Liabilities, Costs and Expenses of Salvage Vessels, Drilling Vessels, Dredgers and Others, Specialist Operations, Diving etc.**

Without prejudice to Rule 4, unless special cover shall have been agreed in writing between a Member and the Managers, there is no cover in respect of:-

- (A)
- (i) liabilities, costs and expenses arising out of salvage operations conducted by an insured vessel or provided by a Member, other than liabilities, costs and expenses arising out of salvage operations conducted by an insured vessel for the purpose of saving or attempting to save life at sea; and
  - (ii) liabilities, costs and expenses incurred by an Insured Owner (being a professional salvor) which are covered by a special agreement between that Insured Owner and the Association or Reinsured Entity, and which arise out of the operation of, and in respect of that Insured Owner's interest in an insured vessel.
- (B) liabilities, costs and expenses incurred in respect of a drilling vessel or barge or any other vessel or barge employed to carry out drilling or production operations in connection with oil or gas exploration or production, including any accommodation unit moored or positioned on site as an integral part of any such operations, to the extent that such liabilities, costs or expenses arise out of or during drilling or production operations.
- For the purposes of this paragraph B a vessel shall be deemed to be carrying out production operations if (inter alia) it is a storage tanker or other vessel engaged in the storage of oil, and either;
- (i) the oil is transferred directly from a producing well to the storage vessel; or
  - (ii) the storage vessel has oil and gas separation equipment on board and gas is being separated from oil whilst on board the storage vessel other than by natural venting.
- (C) liabilities, costs and expenses incurred by a Member during the course of performing specialist operations including but not limited to dredging, blasting, pile-driving, well-stimulation, cable or pipelaying, construction, installation or

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maintenance work, core sampling, depositing of spoil, professional oil spill response or professional oil spill response training and tank cleaning (otherwise than on the insured vessel) (but excluding fire-fighting) to the extent that such liabilities, costs 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; or
- (ii) the failure to perform such specialist operations by the Member or the fitness for purpose or quality of the Member's work, products or services; or
- (iii) any loss of or damage to the contract work.

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

- (a) loss of life, injury or illness of crew and other personnel on board the insured vessel; or
- (b) the wreck removal of the insured vessel; or
- (c) oil pollution emanating from the insured vessel or the threat thereof.

but only to the extent that such liabilities, losses, costs and expenses are covered under Rule 2.

- (D) liabilities, costs and expenses incurred by a Member in connection with any claim brought against it arising out of:
  - (i) waste incineration or disposal operations carried out by the insured vessel (other than any such operations carried out as an incidental part of other commercial activities, not being specialist operations); or
  - (ii) the operation by the Member of submarines, mini-submarines or diving bells; or
  - (iii) the activities of professional or commercial divers where the Member is responsible for such activities, other than
    - (a) activities arising out of salvage operations being conducted by an insured vessel where the divers form part of the crew of that insured vessel (or of diving bells or other similar equipment or craft operating from the insured vessel) and where the Member in respect of the insured vessel is responsible for the activities of such divers; and
    - (b) incidental diving operations carried out in relation to the inspection, repair or maintenance of the insured vessel or in relation to damage caused by the insured vessel; and
    - (c) recreational diving activities.



## **18 Double Insurance**

- (1) Unless the Committee otherwise determines, the Association shall not be liable for any loss, damage, liabilities, costs or expenses in respect of an insured vessel which are recoverable under any other insurance or which would have been so recoverable:-
  - (i) apart from any terms in such other insurance excluding or limiting liability on the ground of double insurance; and
  - (ii) if the insured vessel had not been entered in the Association with cover against the risks set out in or specifically agreed pursuant to these Rules.
- (2) In no case shall the Association be liable for any franchise, deductible or deduction of a similar nature borne by a Member under such other insurance.

## **19 Date Compliance & Exclusion of Cover if Adventure Illegal, Hazardous or Improper**

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

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

- (a) no value for current date would cause any interruption in operation
- (b) date based functionality and performance shall behave consistently for all dates
- (c) in all interfaces and data storage, the century in any date shall be specified either explicitly or by unambiguous algorithms or inference Rules

If a Member fails to fulfil the obligations contained in this Rule the Committee may reject or reduce any claim against the Association arising directly or indirectly out of such failure.

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

## **20 Classification Surveys of Vessels, Ship Management and Safety**

### **A Classification of vessel**

Unless otherwise agreed in writing by the Managers and without prejudice to Rules 20 (B) and (C) the following are conditions of the insurance of every insured vessel:-

- (i) The insured vessel must be and remain throughout the period of entry classed with a Classification Society approved by the Managers, and
- (ii) The Member concerned must promptly call to the attention of that Classification Society or the Society's surveyors any incident or condition which has given or might give rise to damage in respect of which the Classification Society might make recommendations as to repairs or other action to be taken by the Member, and
- (iii) The Member must comply with all the Rules, recommendations, requirements and restrictions of that Classification Society relating to the insured vessel within the time or times specified by the Society, and
- (iv) The Member must immediately inform the Managers if, at any time during the period of entry, the Classification Society with which that vessel is classed is changed, together with all outstanding recommendations, requirements or restrictions specified by any Classification Society relating to that vessel as at the date of such change, and
- (v) The Member shall provide, if required by the Managers, a list of all recommendations, requirements and restrictions specified by any Classification Society with which the insured vessel has at any time been classed, and where any periodic docking survey or any special survey of hull, boilers, machinery or equipment is overdue, a statement as to whether or not an extension has been permitted by such Classification Society, and if further required by the Managers, all such information shall be certified by such Classification Society, and
- (vi) The Member authorises the Managers to inspect any documents and obtain any information relating to the maintenance of Class of the insured vessel in the possession of any Classification Society with which that vessel is or at any time has been classed, and will where necessary authorise such Classification Society or Societies to disclose and make available such documents and information to the Managers upon request by the Managers and for whatever purposes the Managers may consider necessary.

### **B Surveys**

- (1) The Managers may as a condition of acceptance or continuation or renewal of entry in the Association require a prospective Member or as the case may be a

Member to submit any vessel to be entered by him or as the case may be any insured vessel already entered by him in the Association to be surveyed by a surveyor nominated by the Managers at the Member's or the prospective Member's expense on a date and at a place satisfactory to the Managers. Unless and until such survey has taken place or until any repairs or other action recommended by the surveyor have been carried out to the satisfaction of the Managers, the entry will not be accepted or continued or renewed save on such terms as the Managers may, in their discretion, agree. Furthermore, the Managers shall be empowered, as a condition of the acceptance, continuation or renewal of the entry of any insured vessel, to amend the terms of entry in the light of such survey.

- (2) Without prejudice to the provisions of Rule 20A and 20C no claim for recovery from the Association arising from any incident whatsoever arising between the time of the Managers' requirement for survey and the time such survey repairs or recommended actions have been carried out shall be allowed save as determined by the Committee or the Managers if the vessel shall not have been submitted for survey or repaired as aforesaid.
- (3) Without prejudice to the provisions in paragraph (1) and (2) of this Rule 20(B) in the light of such survey or any other survey or inspection of the insured vessel and any recommendations by any surveyor or the Managers as to repairs or other action to be taken by the Member, the Managers shall have the power, in their discretion, to:
  - (a) terminate the Member's entry forthwith whereupon the Member shall cease to be insured and shall be allowed a return of premium pro rata for the period in respect of which the insurance has ceased.
  - (b) amend or vary the terms of entry in such manner as they think fit.
  - (c) impose conditions in the terms of entry in such form as they think fit including, without limitation, the exclusion of all or part of the risks specified in Rule 2 unless and until the Member has complied with the recommendations of the survey as to repairs or the action to be taken by the Member within such time as may be specified by the Managers to the satisfaction of the Managers and their surveyor.
- (4) The Member shall promptly notify the Managers of any incident or condition including, without limiting the generality of the foregoing, any casualty or intervention or direction of State or Port regulatory or supervisory authority which might give rise to repairs or other action to be taken by the Member or give rise to a request by the Managers for a condition survey or further condition surveys. The Member shall provide the Managers with any information or documents requested at any time by the Managers relating to the condition, maintenance and operation of the insured vessel or her whereabouts.

**C *Ship Management and Appraisals***

Without prejudice to the provisions of Rule 20A and 20B, the Managers may as a condition of acceptance, continuation or renewal of entry in the Association make an assessment of or carry out or require a prospective Member or, as the case may be, a Member to undergo a safety or other appraisal by the Managers (or such other person as the Managers may designate) of the management systems and/or operational practices employed by the prospective Member or Member ashore or on board any vessel to be entered by him or, as the case may be, any insured vessel. The appraisal shall be conducted at the expense of the prospective Member or the Member in such manner and at such places and times as the Managers may determine.

In the light of such appraisal the Managers may determine to:

- (a) Terminate the Member's entry forthwith whereupon the Member shall cease to be insured by the Association.
- (b) Amend or vary the terms of entry in such manner as they think fit.
- (c) Impose conditions of any kind in the terms of entry in such form as they think fit, including, without limitation, the exclusion of all or any of the risks specified in Rule 2 unless and until the Member or prospective Member has complied to the satisfaction of the Managers with any or all recommendations made by the Managers and within such time as may be required by them.

**D *Confidentiality of and Liability for Surveys and Appraisals***

Unless the Managers agree in writing, neither the Member or prospective Member or their servants or agents shall disclose to any party other than the Association or the Managers any information relating to a safety appraisal or a survey carried out under this Rule. Neither the Association or the Managers shall be under any liability whatsoever for any loss, liability, cost or expense which a Member or Co-Assured may incur in respect of advice or assistance provided by the Association or the Managers in connection with classification of the insured vessel, or in respect of any statutory requirements, surveys, certification or appraisals.

**E *Classification, Survey and Appraisal of Chartered Vessels***

The Committee may determine that a Member who is a charterer (other than a demise charterer) shall be relieved from any of the conditions set out in this Rule where such charterer Member satisfies the Committee that he had no knowledge of or control over circumstances causing the breach of such condition.

**F *Statutory Requirements***

Unless otherwise agreed in writing by the Managers, it is a condition of cover that every Member insured in respect of an insured vessel shall at all times comply

with all statutory requirements of the state of the vessel's flag relating to the construction, adaptation, condition, fitment, equipment and manning of the vessel.

### **G Certification**

Unless otherwise agreed in writing by the Managers, it is a condition of cover that every Member insured in respect of an insured vessel shall at all times maintain the validity of such statutory certificates as are issued in respect of such vessel by or on behalf of the state of the vessel's flag.

Unless the Committee otherwise determines no claim shall be recoverable from the Association in respect of events occurring during any period in which the validity of such certificates is not maintained.

## **21 Rules Subject to Marine Insurance Act**

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 manager.

## **22 Disclosure if Entry Continued**

A Member who desires to continue the entry for insurance of an insured vessel (whether or not a notice has been or is to be given pursuant to Rule 39) shall immediately prior to the 30 days before the commencement of the next ensuing Policy Year be under the same duty to the Association as regards disclosure of material circumstances as if he were an applicant desiring to enter a vessel for insurance in the Association.

## **23 Obligation to Sue and Labour**

- (1) Upon the occurrence of any casualty, event or matter liable to give rise to a claim by a Member upon the Association, it shall be the duty of the Member and his agents to take and continue to take all such steps as may be reasonable for the purpose of avoiding or minimising any liability, costs or expenses in respect whereof he may be insured by the Association.
- (2) The duty imposed on a Member and his agents hereunder shall be to take such steps as could reasonably be expected to be taken by a competent and prudent uninsured owner in the same or similar circumstances and no account shall be

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taken of any circumstances peculiar to the Member such as his lack of means or inability to provide the requisite funds for any reasons whatsoever.

- (3) If a Member commits any breach of this obligation, the Committee may determine to reject any claim by him against the Association arising out of the casualty, event or matter, or reduce the sum otherwise payable by the Association in respect thereof by such amount as it may determine.

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## Part III - Claims

### **24 Notification of Claims, Admission of Liability, etc.**

- (1) A Member must:-
  - (a) promptly notify the Managers of every casualty, event or matter which is liable to give rise to a claim upon the Association and of every event or matter (including any legal or arbitration proceedings commenced against the Member) which is liable to cause the Member to incur loss, damage, liabilities, costs or expenses for which he may be insured by the Association;
  - (b) promptly notify the Managers of every survey or opportunity to survey in connection with a matter referred to under (a);
  - (c) at all times promptly notify the Managers of any information, documents or reports in his or his servants' or agents' possession, power or knowledge relevant to such casualty, event or matter as is referred to under (a);
  - (d) whenever so requested by the Managers, promptly produce to the Managers and/or allow the Managers or their agents to inspect, copy or photograph, all relevant documents of whatsoever nature in his or his servants' or agents' possession or power;
  - (e) permit the Managers or their agents to interview any servant, agent or other person who may have been employed by the Member at the material time or at any time thereafter or whom the Managers may consider likely to have any direct or indirect knowledge of the matter or who may have been under a duty at any time to report to the Member in connection therewith.
- (2) A Member shall not settle or admit liability for any claim for which he may be insured by the Association, nor submit to judgement in respect of such a claim, nor enter into any arrangement with a judgement creditor for the discharge or payment of any such claim or for the provision of funds to discharge the judgement debt without prior written consent of the Managers.
- (3) If a Member commits any breach of his obligations referred to in (1) or (2) above the Committee may determine to reject any claim by the Member against the Association arising out of the casualty, event or matter, or reduce the sum otherwise payable by the Association in respect thereof by such amount as it may determine.

### **25 Time Bar**

- (1) Without prejudice to the duty of prompt notification contained in Rule 24, if a Member:-
  - (i) fails to notify the Managers of any casualty, event or matter referred to in Rule 24 within one year after he has knowledge thereof (or in the opinion of the Committee ought to have known thereof), or

- (ii) fails to submit a claim to the Managers for reimbursement of any loss, damage, liabilities, costs or expenses within one year after discharging the same (in the case of an agreed settlement, after he receives the Managers' approval for the settlement in accordance with Rule 24(2)), the Member's claim against the Association shall be extinguished and the Association shall be under no further liability in respect thereof unless the Committee shall otherwise determine.
- (2) Without prejudice to paragraph (1) of this Rule, no claim shall in any event be recoverable from the Association unless written notice thereof has been given to the Managers within three years from the time of the casualty or other event or matter giving rise to the claim.

## **26 Employment of Lawyers and Other Persons**

- (1) Without prejudice to any other provisions of these Rules and without waiving any of the Association's rights hereunder, the Managers may at any and all times appoint and employ on behalf of a Member upon such terms as they may think fit lawyers, surveyors or other persons (whether or not lawyers, surveyors or other persons have already been appointed or employed by the Member) for the purpose of dealing with any matter liable to give rise to a claim by the Member upon the Association, including, but not limited to, investigating, or advising upon any such matter and taking or defending legal or other proceedings in connection therewith. The Managers may also at any time discontinue such employment as they may think fit.
- (2) All lawyers, surveyors and other persons appointed by the Managers on behalf of a Member or appointed by a Member with the prior consent of the Managers shall at all times be and be deemed to be appointed and employed on the terms:-
  - (i) that (without prejudice to their right to retire from the matter on any other grounds) they shall be entitled to retire from the matter if either the Managers or the Member so requests or if such person considers that a conflict of interest has arisen or may arise between the Member and the Association so that he ought to retire from the matter;
  - (ii) that they have been instructed by the Member at all times (both while so acting and after having retired from the matter) to give advice and to report to the Managers in connection with the matter without prior reference to the Member;
  - (iii) that they are to produce to the Managers without prior reference to the Member any documents or information in their possession or power relating to such matter, as if such person had been appointed to act and had at all times been acting on behalf of the Association and notwithstanding that any such advice, reports, documents or information would otherwise be the subject of legal or any other form of privilege.



## **27 Powers of the Managers relating to the Handling and Settlement of Claims**

- (1) The Managers shall have the right if they so decide:-
  - (a) to control or direct the conduct of any claim or legal or other proceedings relating to any liability, loss, damage, costs or expenses in respect whereof a Member is or may be insured in whole or in part;
  - (b) to require the Member to take any step in connection with the handling of such claim or proceedings which the Managers may think appropriate;
  - (c) to require the Member to settle, compromise or otherwise dispose of such claim or proceedings in such manner and upon such terms as the Managers see fit.
- (2) If a Member does not settle, compromise, dispose of or take steps in connection with the handling of a claim or proceedings as required by the Managers in accordance with paragraph (1) of this Rule, any eventual recovery by the Member from the Association in respect of such claim or proceedings shall be limited to the amount he would have recovered if he had acted as required by the Managers.
- (3) Where the Association has provided bail or other security in accordance with Rule 28 (Bail) and the Member fails to comply with a requirement made or direction given under this Rule, the Association by giving to the Member fourteen days' written notice to this effect shall (unless in the meantime the Association has been released from its liability in respect of such bail or other security) be entitled in the name of the Member to defend, settle or otherwise deal with such claim or potential claim against him and the Member shall on demand indemnify the Association against any loss, damage, liabilities, costs and expenses incurred by the Association as a result of exercising its rights under this Rule; except insofar as such loss, damage, liabilities, costs and expenses, if incurred by the Member, would be recoverable under his insurance with the Association.

## **28 Bail**

In no circumstances shall the Association be obliged to provide 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. The Association may agree to provide such bail or security in a particular case on such terms as it may consider necessary; if it does so agree, then subject to any variation of any of (a) to (e) 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 an undertaking in the form set out in the Second Schedule (form B3);
- (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) 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.

The Association shall in no circumstances provide cash deposits.

## **29 Abandonment of Vessel to Association on Total Loss**

Upon an insured vessel becoming an actual total loss, or if the vessel is agreed by Hull Underwriters as constituting a constructive or compromised total loss (whether or not subject to production to Hull Underwriters of further evidence concerning the casualty), or becomes a commercial total loss the Managers shall, subject to the Hull Underwriters' rights in the matter, be entitled to request the Member concerned to abandon the vessel to the Association, or to such other person, body, corporation, authority etc. (including the world at large), as the Managers shall nominate. Unless the Member concerned, upon receipt of such request from the Managers, so abandons the vessel, the liability of the Association arising from such loss shall be limited to the amount he would have recovered if he had abandoned the vessel as requested by the Managers.

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## PART IV - Entry For and Cesser of Insurance

### 30 Eligibility for Insurance or Reinsurance

- (1) The Managers on behalf of the Association may enter into a contract of insurance in respect of any vessel with any of the following persons: the registered owner, owners in partnership, owners holding separate shares in severalty, part owner, mortgagee, trustee, charterer, operator, manager or builder of that vessel, any other person whatsoever interested in or in possession of the vessel, or any other person who in the opinion of the Managers should be regarded and treated as any of the persons above mentioned.

For the purposes of this paragraph, a vessel shall include an unidentified vessel which the person entering into a contract of insurance with the Association has agreed to employ or operate under a charter or similar contract, provided that such vessel shall be entered as a named vessel as soon as it is identified.

- (2) Subject to the Constitution and save insofar as expressly prohibited by these Rules, the Managers may enter into contracts of reinsurance on behalf of the Association whereby the Association agrees to reinsure the risks arising in connection with any one or more vessels insured by another association or insurer or else agrees to reinsure the whole or any part or proportion of the insurance business of any other association or insurer. The consideration payable to the Association and the terms and conditions on which the reinsurance is accepted by the Association shall be such as are agreed between the Managers on behalf of the Association and such other association or insurer. Save where otherwise agreed in writing the other association or insurer shall be in every respect subject to and bound by the provisions of these Rules and his contract with the Association shall for all purposes take effect as though he were the owner of any vessel or vessels in connection with which the relevant risks may arise and had as owner entered the vessel or vessels in the Association for insurance.
- (3) The Association may continue to be a party to The Pooling Agreement and to any addendum, variation or replacement which may be made to such agreement, or to any other agreement of a similar nature or purpose and in particular may be or become a shareholder in Hydra and a party to any agreement with or associated with Hydra and the Association's shareholding in it.
- (4) The Association or the Managers on its behalf may effect the reinsurance or ceding of any risks insured by the Association (including any risk which may fall on the Association by reason of a reinsurance or pooling agreement referred to in paragraphs (2) and (3) of this Rule) with such reinsurers and on such terms as the Managers shall consider appropriate.
- (5) Subject to the Constitution and save insofar as expressly prohibited by these Rules the Committee may agree to enter into arrangements on behalf of the Members of this Class whereby this Class agrees to indemnify by way of reinsurance or otherwise any other one or more of the other Classes in respect of all or any part of the risks insured by such Class on such terms as the Committee shall determine.

**31 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 the purposes of such entry 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 the same fleet to perform any obligation whatsoever towards the Association shall be deemed to be a failure of all Members and joint Members within such fleet. In the case of a failure to pay Calls or any other sums 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.

**32 Entered Tonnage; Monetary Rate; Basic Rate of Contribution**

Before an application is accepted for the entry of a vessel the applicant and the Managers shall agree the entered tonnage and monetary rate for the vessel concerned. In deciding upon the monetary rate of any vessel the Managers may take into account all matters which they may consider relevant including (without prejudice to the generality of the foregoing) the degree of risk estimated to be involved in the proposed insurance.

The basic rate of contribution of the vessel for the purpose of calculating the mutual element(s) of Calls shall be the entered tonnage multiplied by the monetary rate.

**33 Certificate of Entry and Notification of Variations**

- (1) As soon as reasonably practical after accepting an application for the entry of a vessel for insurance in the Association the Managers on behalf of the Association shall issue to the applicant a Certificate of Entry in such form as may from time to time be prescribed by the Managers but so that such Certificate of Entry shall state the date of the commencement of the period of insurance and the terms and conditions on which the vessel has been accepted for insurance.

- (2) If at any time or from time to time the Managers on behalf of the Association and a Member shall agree to vary the terms relating to an insured vessel, the Managers shall, as soon as reasonably practical thereafter, notify the Member in writing of the terms of such variation and the date from which such variation is to be effective.
- (3) Every Certificate of Entry and every notification as aforesaid shall be conclusive evidence and binding for all purposes as to the commencement of the period of insurance, as to the terms and conditions on which the vessel has been entered for insurance, and as to the terms of any variation and the date from which such variation is to be effective; provided that in the event that any Certificate of Entry or any such notification shall have been defaced or lost or in the opinion of the Managers contains any error or omission the Managers may on behalf of the Association issue a new Certificate of Entry or a new notification which shall be conclusive evidence and binding as aforesaid.

#### **34 Period of Insurance**

Unless otherwise agreed in writing, the period of insurance of a vessel entered in the Association shall commence at the time and date specified in the Certificate of Entry and shall continue until noon of the 20th February next ensuing and thereafter, unless terminated in accordance with these Rules, from Policy Year to Policy Year.

#### **35 Inception of Membership**

If the Managers on behalf of the Association accept an application for the entry of a vessel for insurance in the Association from a person who is not already a Member of the Association, then unless he is to be a Co-Assured that person may, if agreed with the Association or the Managers on its behalf, as from the commencement of the period of insurance of that vessel, be and become a Member or joint Member of the Association and his name shall be entered in the Register of Members of the Association.

Without prejudice to the provisions of Rule 31 the Managers may accept an application from a Member for another person or persons to become Joint Members or Co-Assured insured in respect of an insured vessel and to provide cover for such persons upon the terms set out in Paragraphs A to E of Rule 36

The Member who makes such application shall be deemed to have full power and authority to act in the name of and on behalf of the Joint Member and the Co-Assured and neither the Association nor the Managers shall be liable in any manner whatsoever to any Member, Joint Member or Co-Assured in the event that the Member did not, in fact, have such power and authority.

A Joint Member shall become a Member of the Association, shall be named in the Certificate of Entry and his name shall be entered in the Register of Members of the Association. He shall, unless otherwise agreed in writing with the Managers, be jointly and severally liable to the Association with all other Members insured in respect of such entry and in particular shall be jointly and severally liable with such other Members to pay all amounts due to the Association in respect of such entry.

## **36 Joint Members, Co-Assured and Affiliates**

### **A Joint Members**

- (1) Any Member who has made an application as described in Rules 31 and 35 warrants that he is, in relation to the insured vessel, either the owner, owner in partnership, owner holding separate shares in severalty, part owner, trustee, charterer (whether bareboat, demise or otherwise) of the entered ship, a manager or operator having control of the operation and employment of the insured vessel (being such control as is customarily exercised by a shipowner), or any other person in possession and control of the insured vessel.
- (2) In relation to any such application from a Member for any person or persons to become a Joint Member the Member and each Joint Member warrants that the Joint Member is, in relation to the insured vessel, either:
  - (i) interested in the operation, management or manning of an insured ship; or
  - (ii) the holding company or the beneficial owner of the person identified in the Certificate of Entry as the Member or of any person interested in the operation, management or manning of the insured vessel; or
  - (iii) a mortgagee of the insured vessel; or
  - (iv) the charterer of the insured vessel.
- (3) The cover afforded to a Joint Member shall extend only to risks, liabilities and expenses arising out of operations and/or activities customarily carried on by or at the risk and responsibility of shipowners (or, in the case of a Charterer's Entry, charterers) and which are within the scope of the cover afforded by the Rules and any special terms set out in the Certificate of Entry.

### **B Co-Assured - Charterer**

A Co-Assured insured under this Paragraph B shall not be a Member of the Association but shall be named in any Certificate of Entry and shall be a charterer of the insured Vessel, being a charterer which is affiliated to or associated with the Member. Such Co-Assured charterer shall only be covered for the risks, liabilities and expenses in respect of which the affiliated or associated Member has cover.

### **C Co-Assured – Other than a contractor or charterer**

A Co-Assured insured under the terms of this Paragraph C shall not be a Member of the Association but shall be named in any Certificate of Entry and shall not be a contractor or sub-contractor of the Member for the provision of services by or to the insured vessel or a charterer of all or any part of the insured vessel.

Notwithstanding the fact that such Co-Assured is named in the Certificate of Entry, the cover of the Association will only extend insofar as the Co-Assured may be found liable to pay in the first instance for loss or damage which is properly the

responsibility of the Member or any Joint Member in respect of the entry and there is no cover in respect of any amount which would not have been recoverable from the Association by the Member or Joint Member had the claim in respect of such loss or damage been made or enforced against them. Once the Association has made indemnification under such cover it shall not be under any further liability and shall not make any further payment to any person or company whatsoever, including any Member or Joint Member insured, in respect of that loss or damage.

**D Co-Assured - Contractor**

A Co-Assured insured under this Paragraph D shall not be a Member of the Association but shall be named in any Certificate of Entry and shall be a contractor or sub-contractor of a Member for the provision of services by or to the insured vessel, provided that:

- (a) the contract has been approved by the Association with which the insured vessel is entered; and
- (b) the contract provides that each party should be similarly responsible for any loss or damage to its own (or its sub-contractors') property and loss of life or personal injury to its own (or its sub-contractors') personnel.
- (c) the Co-Assured shall only be covered for liabilities, costs and expenses which are to be borne by the Member under the terms of the contract and would, if borne by the Member, be recoverable by the Member from the Association.

**E Co-Assured - Affiliates and Associates**

Unless otherwise agreed by the Managers the Association provides cover to any person associated or affiliated to a Member provided that the cover afforded to such person is restricted whereby should a claim in respect of which a Member named in the Certificate of Entry is insured by the Association be made or enforced through a person or company affiliated or associated with such Member, the Association shall if so requested by the Member indemnify such person or company against any loss which as a consequence thereof such person or company shall have incurred in that capacity provided always that there is no cover for any amount which would not have been recoverable from the Association by the Member had such claim been made or enforced against him. Once the Association has made such indemnification it shall not be under any further liability and shall not make any further payment to any person or company whatsoever, including the Member, in respect of the loss or damage in respect of which the claim was brought.

The following provisos shall apply to this Rule 36

- (i) The receipt by the Member or any Joint Member or Co-Assured of any sums paid by the Association in respect of such an entry shall be sufficient discharge by the Association for the same;

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- (ii) Any provision of these Rules by which a Member or Joint Member or Co-Assured ceases to be insured or ceases to be entitled to recover from the Association in respect of any liability, loss or damage to which he might be entitled under these Rules shall be deemed to apply to all Members and all Joint Members and all Co-Assureds. Failure by the Members or any one of the Joint Members or Co-Assureds to comply with any of the obligations under these Rules is deemed to be the failure of the Members and all the Joint Members and all the Co-Assureds. Conduct of a Member or any one Joint Member or Co-Assured which would have entitled the Association to decline to indemnify it shall be deemed to be the conduct of all Members and all Joint Members and Co-Assureds;
- (iii) The contents of any communication between the Member or any Joint Member or Co-Assureds and the Association or the Managers, their servants or agents, shall be deemed to be within the knowledge of the Member and all Joint Members or Co-Assureds;
- (iv) The cover provided in respect of Members, Joint Members and Co-Assureds insured under the same entry shall not extend to any disputes of whatsoever nature or howsoever arising either among such Joint Members and Co-Assureds or with the Member;
- (v) The Managers shall not be bound to issue on behalf of the Association more than one Certificate of Entry in respect of each insured vessel or more than one Endorsement Slip and delivery of such Certificate of Entry or Endorsement Slip, as the case may be, to one of several jointly insured Members shall be sufficient delivery to each and all of such Members and any Co-Assured.
- (vi) Failure by any Member or Joint Member or any Co-Assured who is named in the same Certificate of Entry to disclose material information within his knowledge shall be deemed to have been the failure of all the Members, Joint Members and all Co-Assureds;
- (vii) No Member or Joint Member or Co-Assured shall recover any amounts from the Association save for those liabilities arising out of operations and/or activities customarily carried on by or at the risk of or responsibility of shipowners and which are within the scope of the Member's operations as a Member;
- (viii) Unless otherwise agreed in writing with the Managers and recorded in the Certificate of Entry, where a charterer or other party is named as a Member, Joint Member or Co-Assured and a waiver of subrogation is required under a contract, rights of subrogation against such Joint Member or Co-Assured shall be waived only where the Managers have agreed such a waiver in writing. Any such waiver will apply only to those liabilities, costs and expenses which are borne by the Member or other Joint Member under the terms of the relevant contract and shall not apply to any liabilities, costs and expenses which are to be borne by the charterer or party under the terms of that contract.
- (ix) Without prejudice to the provisions of the Third Schedule any limitation of the



Association's liability to a Member, whether in these Rules or in an agreed special term, shall be construed as a limitation on the aggregate amount payable to all Members and Co-Assureds insured in respect of one entry. In such cases the claim of the registered owner of the insured vessel shall be preferred to the claims of the other Members and any Co-Assureds, which shall rank in equal shares among themselves as to any balance provided that in such cases the Committee may take into account the possibility of further claims against the Association being made by the Members and Co-Assureds or any other party and may withhold such sums from distribution as it thinks fit in order to meet those claims.

### **37 Assignment**

- (1) No insurance given by the Association and no interest under these Rules or under any contract between the Association and any Member may be assigned without the written consent of the Managers who shall have the right in their discretion to give or refuse such consent without stating any reason or to give such consent upon any such terms or conditions as they may think fit. Any purported assignment made without such consent or without there being due compliance with any such terms and conditions as the Managers may impose shall, unless the Managers in their absolute discretion otherwise determine, be void and of no effect.
- (2) Whether or not the Managers shall expressly so stipulate as a condition for giving their consent to any assignment, the Association shall be entitled in settling any claim presented by the assignee to deduct or retain such amount as the Managers may then estimate to be sufficient to discharge any liabilities of the assignor to the Association, whether existing at the time of the assignment or having accrued or being likely to accrue thereafter.
- (3) Where the Managers consent to an assignment, they shall, after any conditions which they have imposed have been complied with, and upon receipt of due notice of assignment, issue on behalf of the Association an Endorsement Slip giving particulars of the assignment, including the time from which it is to take effect; and that Endorsement Slip shall be conclusive evidence of those particulars.

### **38 Variation of Contract**

- (1) If the Managers shall desire to vary the monetary rate per entered ton of the tonnage of any insured vessel for the next following Policy Year, they may give notice in writing to the Member concerned of the proposed variation of the monetary rate (either by circulated letter or otherwise howsoever) but not later than 50 days prior to the 20th February next ensuing. The Association shall also have power to give a general notice of variation as aforesaid by means of Bye-Laws.
- (2) Where any such notice of variation is given, the period of insurance of the insured vessel or vessels concerned shall continue for the next following Policy Year upon

the terms that the monetary rate has been varied as set out in the said notice and that the Member or Members concerned shall be bound by such variation as if he or they had agreed the same in writing with the Association unless (either before or after such notice of variation):-

- (i) a notice of termination has been given in accordance with Rule 39;
  - (ii) the period of insurance has previously terminated for any other reason whatsoever; or
  - (iii) the monetary rate and the basic rate of contribution in respect of the insurance concerned have otherwise been agreed between the Member and the Association.
- (3) Unless any such event shall have occurred as is mentioned in sub-paragraphs (i) to (iii) of paragraph (2) hereof, a notice of variation of the monetary rate shall constitute an Endorsement Slip for the purposes of Rule 33.
- (4) If before the end of any Policy Year these Rules shall have been altered in any respect which affects the terms and conditions of the contract of insurance between a Member and the Association, then such alteration shall be binding upon the Member and for all purposes take effect as from the commencement of the next ensuing Policy Year.

### **39 Termination by Notice**

- (1) The period of insurance of an insured vessel may be terminated at noon on 20th February of any year by not less than 30 days' prior written notice of termination being given by the Member concerned to the Managers, or by the Managers to the Member.
- (2) If, after notice of termination has been given, the Managers and the Member agree on new terms of insurance, the notice of termination shall thereupon cease to have effect and the period of insurance of the vessel shall continue for the next ensuing Policy Year on the new terms.
- (3) Except with the written consent of the Managers, an insured vessel shall not be withdrawn by a Member at any time or in any manner otherwise than pursuant to paragraph (1) of this Rule.

### **40 Cesser of Insurance on Certain Specified Events**

- (1) A 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 upon the happening of any of the following events:
- (a) If the Member is an individual:
    - (i) upon his death, or
    - (ii) if a receiving order shall be made against him, or

- (iii) if he shall become bankrupt or make any composition or arrangement with his creditors, or
- (iv) if he shall become incapable by reason of mental disorder or criminal conviction of managing and administering his property and affairs, or
- (v) if under any system of law other than English law, there occurs an event in relation to that individual which has a similar effect to any of the above.
- (b) If the Member is a corporation:
  - (i) upon the passing of any resolution for voluntary winding up, or
  - (ii) upon an order being made for compulsory winding up, or
  - (iii) upon dissolution, or
  - (iv) upon the appointment of an administrator, receiver, trustee, custodian, liquidator or other similar official for its or for substantially all of its assets, or
  - (v) upon crystallisation of, and/or possession being taken of any of its assets comprised in or subject to a floating charge, by or on behalf of the holder of such charge, or
  - (vi) if under any system of law other than English law, there occurs an event in relation to that corporation which has a similar effect to any of the above.

Termination shall be deemed to take place when the event occurred or, where relevant, upon the making of the first court order, but if there is no such method of determination the effective date and time shall be such date and time as when the Managers notify the Member that they have reasonable grounds for believing that any of the above situations or conditions have occurred.

The provisions of this Rule 40(1) shall also apply to any Co-Assured as if he had been a Member.

- (2) A Member shall cease to be insured by the Association and the period of insurance shall terminate in respect of any vessel entered by him upon the happening of any of the following events affecting such vessel:-
  - (i) if he shall part with or assign the whole or any part of his interest in the insured vessel whether by Bill of Sale or other formal document or otherwise or shall cease to have an interest in the insured vessel or shall part with or transfer the entire control or possession of the insured vessel, whether by demise charter or otherwise;
  - (ii) if the insured vessel shall be mortgaged or otherwise hypothecated without an undertaking or guarantee having been given to the Association, in a form and by such person as may be approved by the Managers in writing, to pay all Calls and other sums due or to become due in respect of the insured vessel;

- (iii) if any person having given an undertaking or guarantee under the preceding paragraph (2)(ii) fails to discharge his liability thereunder upon demand by the Managers;
- (iv) if the management of the insured vessel is transferred or the flag of the insured vessel is changed. Where a vessel is entered for insurance through an agent (not being an insurance broker) such agent shall for the purpose of this paragraph (2)(iv) of this Rule be deemed to be the manager of the insured vessel unless at the time of the vessel's entry for insurance the Managers were furnished in writing with the name of the management of the vessel to be insured;
- (v) if the insured vessel shall become an actual total loss or shall be agreed by Hull Underwriters as constituting a constructive total loss or a compromised total loss (whether or not subject to production to Hull Underwriters of further evidence concerning the casualty), or shall become a commercial total loss, except as regards liabilities, costs and expenses arising out of the casualty which gave rise to the loss of the vessel;
- (vi) if the insured vessel shall be missing for ten days from the date she was last heard of or from her being posted at Lloyd's as missing, whichever shall be the earlier;
- (vii) if the insured vessel ceases to be classed or its classification is suspended or the Member fails to fulfil any of the conditions of Rule 20(A) to 20(F) inclusive.

*PROVIDED THAT:-*

Where a Member ceases to be insured by reason of any of the events set out in this Rule 40 paragraph (2)(i)-(2)(iii) and (2)(v)-(2)(vii), the Managers may on behalf of the Association agree in writing to extend the period of insurance on such terms as they think fit.

Where a Member ceases to be insured by any of the events set out in Rule 40 (2)(iv), the Managers may determine that the Member shall remain insured on the same terms and conditions that applied at the time of the event until the end of the same policy year.

#### **41 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(1)) 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 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 No Waiver**

Without prejudice to the generality of Rule 55, no act, omission, course of dealing, forbearance, delay or indulgence of any kind by or on behalf of the Association nor the granting of time, nor the acceptance by the Association (whether express or implied) of liability for, or the recognition of, any claim, and whether occurring before or after any of the events or termination or notice provisions contained in Rules 40 and 41 shall derogate from the effect of such Rules or be treated as any waiver of any of the Association's rights thereunder.

#### **43 Liability of Association on Cesser of Insurance**

When a Member ceases to be insured otherwise than under Rule 41 (termination for non-payment), such cesser shall not prejudice any claim of the Member against the Association for liabilities, costs and expenses arising out of events occurring before the date of cessation.

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#### **44 End of Membership**

For the avoidance of any doubt, the obligations of a Member to the Association shall continue and shall be deemed to be cumulative from initial acceptance as a Member throughout each Policy Year of membership until not only has that Member ceased to be a Member, because for any reason the periods of insurance of all vessels entered by him for insurance in the Association have ended, but also he has discharged all the obligations, whenever arising, in respect of his membership in full.

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## Part V - Calls and Finance

### 45 Liability for Calls and Other Sums

Members who have vessels entered for insurance in the Association in respect of any Policy Year shall, unless otherwise agreed in writing, provide by way of Advance Calls, Additional Calls, Overspill Calls, Releases and contributions to a Solvency Margin and Guarantee Fund all funds which the Committee determines are required:-

- (i) To meet such of the general expenses of the Association as the Committee may from time to time determine shall be charged against the insurance business of this Class in respect of such Policy Year.
- (ii) To meet the claims, reinsurance premiums, expenses and outgoings (whether incurred, accrued or anticipated) of the insurance business of this Class in respect of such Policy Year (including without prejudice to the generality of the foregoing, any proportion of any claims, expenses or outgoings of any insurer other than the Association which has fallen or which may be thought likely to fall upon this Class by virtue of any reinsurance or pooling agreement concluded between the Association and such other insurer).
- (iii) For such transfers to the reserves or other accounts of the Association (as referred to in Rule 51) and for subsequent application for the purposes of such reserves or other accounts or otherwise as the Committee determine.
- (iv) For such transfers as the Committee may determine to meet any deficiency which has occurred or may be thought likely to occur in any closed Policy Year or Years.
- (v) To meet such proportion (if any) as the Committee may determine appropriate of the claims, reinsurance premiums, expenses and outgoings (whether incurred, accrued or anticipated) of the other Classes of the Association.
- (vi) To be set aside in order to establish and/or maintain an adequate Solvency Margin and Guarantee Fund in respect of any Policy Year.

### 46 Advance Call

At such time or times during or after the end of each Policy Year as the Committee shall determine, and subject to Rule 48 (reduction of Calls for vessels insured for part of a year) and to any special terms agreed with the Association, each Member shall pay to the Association an Advance Call for that Policy Year in respect of each of his vessels insured during that Policy Year.

The Advance Call shall comprise two elements:-

- (i) the mutual element, which shall be the Member's basic rate of contribution for each of his vessels; and

- (ii) the fixed element, which shall be such contribution as the Committee may determine to the premiums payable by the Association for that Policy Year under the General Excess Loss Reinsurance Contracts effected collectively by the parties to the Pooling Agreement.

#### **47 Additional Calls**

- (1) At any time or times during or after the end of a Policy Year but not after such Policy Year has been closed, the Association may levy one or more Additional Calls for that Policy Year in respect of each vessel insured during that Policy Year.
- (2) The Association shall levy such Call comprising either or both of two elements:-
  - (i) the mutual element, which shall be a percentage determined by the Committee to be applied to the mutual element of the Advance Calls for that Policy Year; and
  - (ii) the fixed element, which shall be such contribution as the Committee may determine to the reinstatement and/or additional premiums (if any) payable in respect of that or any other Policy Year by the Association under the General Excess Loss Reinsurance Contracts effected collectively by the parties to the Pooling Agreement.
- (3) All persons who are or were Members for that Policy Year shall pay by way of Additional Call or Calls an amount ascertained by adding together:-
  - (i) the sum or sums ascertained by multiplying the mutual element of the Advance Call paid or payable by each such person for each of his vessels in respect of such Policy Year by the percentage determined by the Committee under Rule 47(2)(i); and
  - (ii) the sum or sums (if any) determined by the Committee under Rule 47(2)(ii) to be contributed by each such person for each of his vessels in respect of such Policy Year.
- (4) The Committee or the Managers may at any time take any necessary steps to enable such persons to become aware of their financial commitments for the relevant Policy Year by indicating an estimate of the percentage at which it is hoped that the mutual element of any Additional Call or Calls will be levied.

If any such estimate shall be given to any such person it shall be without prejudice to the right of the Association to levy the mutual element of Additional Calls for the relevant Policy Year in accordance with these Rules at a greater or lesser percentage than so indicated and neither the Association, the Committee nor the Managers shall under any circumstances be under any liability whatsoever or howsoever arising as a result of any estimate so given or in respect of any error, omission or inaccuracy contained therein.

#### **47A Overspill Claims and Calls**

- 1(1) All claims incurred by the Association or by any other party to the Pooling Agreement under the entry of any one vessel arising from any one incident or



- occurrence including any claim in respect of liability for the removal or non-removal of any wreck shall be treated for the purposes of this Rule as if they were one claim.
- 1(2) Any reference to a claim incurred by the Association or by any other party to the Pooling Agreement shall be deemed to include the costs and expenses associated therewith.
- 2(1) Without prejudice to any other applicable limit, any Overspill Claim incurred by the Association shall not be recoverable from the Association in excess of the aggregate of:
- (a) that part of the Overspill Claim which is eligible for pooling under the Pooling Agreement but which, under the terms of the Pooling Agreement, is to be borne by the Association; and
  - (b) the maximum amount that the Association is able to recover from the other parties to the Pooling Agreement as their contributions to the Overspill Claim.
- 2(2) The aggregate amount referred to in paragraph 2(1) of this Rule shall be reduced to the extent that the Association can evidence
- (a) that costs have been properly incurred by it in collecting or seeking to collect
    - (i) Overspill Calls levied to provide funds to pay that part of the Overspill Claim referred to in paragraph 2(1)(a), or
    - (ii) the amount referred to in paragraph 2(1)(b), or
  - (b) that it is unable to collect an amount equal to that part of the Overspill Claim referred to in paragraph 2(1)(a) that it had intended to pay out of the levy of Overspill Calls because any Overspill Calls so levied, or parts thereof, are not economically recoverable, provided that if, due to a change in circumstances, such amounts subsequently become economically recoverable, the aggregate amount referred to in paragraph 2(1) shall be reinstated to that extent.
- 2(3) In evidencing the matters referred to in paragraph 2(2)(b) the Association shall be required to show that
- (a) it has levied Overspill Calls in respect of the Overspill Claim referred to in paragraph 2(1) on Members in accordance with and in the maximum amounts permitted under paragraph 5; and
  - (b) it has levied those Overspill Calls in a timely manner, has not released or otherwise waived a Member's obligation to pay those Calls and has taken all reasonable steps to recover those Calls.
- 3(1) The funds required to meet any Overspill Claim incurred by the Association shall be provided
- (a) from such sums as the Association is able to recover from the other parties to the Pooling Agreement as their contributions to the Overspill Claim, and

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- (b) from such sums as the Association is able to recover from any special insurance which may, in the discretion of the Association, have been effected to protect the Association against the risk of payments of Overspill Claims, and
  - (c) from such proportion as the Association in its discretion determines of any sums standing to the credit of such reserves as the Association may in its discretion have established, and
  - (d) by levying one or more Overspill Calls in accordance with paragraph 5, irrespective of whether the Association has sought to recover or has recovered all or any of the sums referred to in paragraph 3(1)(b) but provided the Association shall first have made a determination in accordance with paragraph 3(1)(c), and
  - (e) from any interest accruing to the Association on any funds provided as aforesaid.
- 3(2) The funds required to pay such proportion of any Overspill Claim incurred by any other party to the Pooling Agreement which the Association is liable to contribute under the terms of the Pooling Agreement shall be provided in the manner specified in paragraph 3(1)(b) - (e).
- 3(3) To the extent that the Association intends to provide funds required to pay any Overspill Claim incurred by it in the manner specified in paragraph 3(1)(d), the Association shall only be required to pay such Overspill Claim as and when such funds are received by it, provided that it can show from time to time that in seeking to collect such funds, it has taken the steps referred to in paragraph 2(3)(a) and (b).
- 4(1) Any of the issues referred to in paragraph 4(2) on which the Association and a Member cannot agree shall be referred to a panel (the "Panel") constituted in accordance with arrangements established in the Pooling Agreement, which acting as a body of experts and not as an arbitration tribunal, shall determine the issue.
- 4(2) This paragraph 4 shall apply to any issue of whether, for the purpose of applying any of paragraphs 2(2), 2(3) or 3(3) in relation to any Overspill Claim (the "relevant Overspill Claim")
- (a) costs have been properly incurred in collecting or seeking to collect Overspill Calls; or
  - (b) any Overspill Call or part thereof is economically recoverable; or
  - (c) in seeking to collect the funds referred to in paragraph 3(3), the Association has taken the steps referred to in that sub-paragraph.
- 4(3) If the Panel has not been constituted at a time when a Member wishes to refer an issue to it, the Association shall, on request by the Member, give a direction for the constitution of the Panel as required under the Pooling Agreement.

- 4(4) The Association may (and, on the direction of the Member, shall) give such direction as is required under the Pooling Agreement for the formal instruction of the Panel to investigate any issue and to give its determination as soon as reasonably practicable.
- 4(5) The Panel shall in its discretion decide what information, documents, evidence and submissions it requires in order to determine an issue and how to obtain these, and the Association and the Member shall co-operate fully with the Panel.
- 4(6) In determining any issue referred to it under this paragraph, the Panel shall endeavour to follow the same procedures as it follows in determining issues arising in respect of the relevant Overspill Claim which are referred to it under the Pooling Agreement.
- 4(7) In determining an issue the members of the Panel
- (a) shall rely on their own knowledge and expertise, and
  - (b) may rely on any information, documents, evidence or submission provided to it by the Association or the Member as the Panel sees fit.
- 4(8) If the three members of the Panel cannot agree on any matter, the view of the majority shall prevail.
- 4(9) The Panel shall not be required to give reasons for any determination.
- 4(10) The Panel's determination shall be final and binding upon the Association and the Member (subject only to paragraph 4(11)) and there shall be no right of appeal from such determination.
- 4(11) If the Panel makes a determination on an issue referred to in paragraph 4(2)(b) or (c) the Association or the Member may refer the issue back to the Panel, notwithstanding paragraph 4(10), if it or he considers that the position has materially changed since the Panel made its determination.
- 4(12) The costs of the Panel shall be paid by the Association.
- 4(13) Costs, indemnities and other sums payable to the Panel by the Association in relation to any Overspill Claim, whether the reference to the Panel has been made under this paragraph 4 or under the Pooling Agreement, shall be deemed to be costs properly incurred by the Association in respect of that Overspill Claim for the purposes specified in paragraph 2(2)(a).
- 5(1) If
- (a) the Association shall at any time determine that funds are or may in future be required to pay part of an Overspill Claim (whether incurred by the Association or by any other party to the Pooling Agreement); and
  - (b) the Association shall have made a declaration under paragraphs 6(1) or 6(3) that a Policy Year shall remain open for the purpose of levying an Overspill Call or Calls in respect of that Overspill Claim, the Association in its discretion, at any time or

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times after such declaration has been made, may levy one or more Overspill Calls in respect of that Overspill Claim in accordance with paragraph 5(2).

- 5(2) The Association shall levy any such Overspill Call
  - (a) on all Members entered in the Association on the Overspill Claim Date in respect of vessels entered by them at that time, notwithstanding the fact that, if the Overspill Claim Date shall be in a Policy Year in respect of which the Association has made a declaration under paragraph 6(3), any such vessel may not have been entered in the Association at the time the relevant incident or occurrence occurred, and
  - (b) at such percentage of the Convention Limit of each such vessel as the Association shall determine.
- 5(3) An Overspill Call shall not be levied in respect of any vessel entered on the Overspill Claim Date by a Member with an overall limit of cover equal to or less than the Group Reinsurance Limit.
- 5(4) The Association shall not levy on any Member in respect of the entry of any one vessel an Overspill Call or Calls in respect of any one Overspill Claim exceeding in the aggregate two and one half percent (2½%) of the Convention Limit of that vessel.
- 5(5) If at any time after the levying of an Overspill Call upon the Members in respect of vessels entered in the Association in any Policy Year, it shall appear to the Association that the whole of such Overspill Call is unlikely to be required to meet the Overspill Claim in respect of which such Overspill Call was levied, the Association may decide to dispose of any excess which in the opinion of the Association is not so required in one or both of the following ways:
  - (a) by transferring the excess or any part thereof to the reserves; or
  - (b) by returning the excess or any part thereof to those Members who have paid that Overspill Call in proportion to the payments made by them.
- 6(1) If at any time prior to the expiry of a period of thirty-six months from the commencement of a Policy Year (the "relevant Policy Year"), any of the parties to the Pooling Agreement sends a notice (an "Overspill Notice") in accordance with the Pooling Agreement that an incident has occurred in the relevant Policy Year which has given or at any time may give rise to an Overspill Claim, the Association shall as soon as practicable declare that the relevant Policy Year shall remain open for the purpose of levying an Overspill Call or Calls in respect of that claim and the relevant Policy Year shall not be closed for the purpose of making an Overspill Call or Calls in respect of that claim until such date as the Association shall determine.
- 6(2) If at the expiry of the period of thirty-six months provided for in paragraph 6(1), no Overspill Notice as therein provided for has been sent, the relevant Policy Year shall be closed automatically for the purpose of levying Overspill Calls only, whether or not closed for any other purposes, such closure to have effect from the date falling thirty-six months after the commencement of the relevant Policy Year.

- 6(3) If at any time after a Policy Year has been closed in accordance with the provisions of paragraphs 6(1) or 6(2), it appears to the Association that an incident or occurrence which occurred during such closed Policy Year may then or at any time in the future give rise to an Overspill Claim, the Association shall as soon as practicable declare that the earliest subsequent open Policy Year (not being a Policy Year in respect of which the Association has already made a declaration in accordance with paragraphs 6(1) or 6(3)) shall remain open for the purpose of levying an Overspill Call or Calls in respect of that claim and such open Policy Year shall not be closed for the purpose of making an Overspill Call or Calls in respect of that claim until such date as the Association shall determine.
- 6(4) A Policy Year shall not be closed for the purpose of levying Overspill Calls save in accordance with this paragraph 6.
- 7(1) If
- (a) the Association makes a declaration in accordance with paragraphs 6(1) or 6(3) that a Policy Year shall remain open for the purpose of levying an Overspill Call or Calls, and
  - (b) a Member who is liable to pay any such Overspill Call or Calls as may be levied by the Association in accordance with paragraph 5 ceases or has ceased to be insured by the Association for any reason, or the Association determines that the insurance of any such Member may cease, the Association may require such Member to provide to the Association by such date as the Association may determine (the "due date") a guarantee or other security in respect of the Member's estimated future liability for such Overspill Call or Calls, such guarantee or other security to be in such form and amount (the "guarantee amount") and upon such terms as the Association in its discretion may deem to be appropriate in the circumstances.
- 7(2) Unless and until such guarantee or other security as is required by the Association has been provided by the Member, the Member shall not be entitled to recovery from the Association of any claims whatsoever and whensoever arising in respect of any and all vessels entered in the Association for any Policy Year by him or on his behalf.
- 7(3) If such guarantee or other security is not provided by the Member to the Association by the due date, a sum equal to the guarantee amount shall be due and payable by the Member to the Association on the due date, and shall be retained by the Association as a security deposit on such terms as the Association in its discretion may deem to be appropriate in the circumstances.
- 7(4) The provision of a guarantee or other security as required by the Association (including a payment in accordance with paragraph 7(3)) shall in no way restrict or limit the Member's liability to pay such Overspill Call or Calls as may be levied by the Association in accordance with paragraph 5.

**47B 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 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 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 (including but not limited to matters such as inflation and currency fluctuations).
- (3) The amounts calculated and notified by the Managers under paragraph (1) 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) 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) 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.

#### **47C Solvency Margin and Guarantee Fund**

A Member shall pay on demand such sums as the Association may by any Government legislation or Regulation be required to set aside in order to establish and/or maintain an adequate Solvency Margin and/or Guarantee Fund. A Member shall contribute to such sums in proportion to his basic rate of contribution payable in respect of the relevant Policy Years.

#### **48 Reduction of Calls for Vessels Insured for Part of a Year**

- (1) Where the period of insurance of a vessel commences during the course of a Policy Year, the Advance, Additional and Overspill Calls, Solvency Margin and Guarantee Fund Contribution and any Release in respect of that vessel for that Policy Year shall be reduced pro rata, that is to say by the same proportion as the period between the commencement of the Policy Year and the commencement of the period of insurance bears to the whole Policy Year.
- (2) Where the period of insurance of a vessel ends during the course of a Policy Year by reason of one of the events in Rule 40(2)(i)-(vi) and the Member gives the Managers notice in writing of that event within one month of its occurrence, the Advance, Additional and Overspill Calls, Solvency Margin and Guarantee Fund Contribution and any Release in respect of that vessel for that Policy Year shall be reduced pro rata, that is to say by the same proportion as the period between the end of the period of insurance and the end of the Policy Year bears to the whole Policy Year.

- (3) Save as aforesaid, a Member shall remain liable to pay Advance, Additional and Overspill Calls, Solvency Margin and Guarantee Fund Contribution and any Release for the whole Policy Year, notwithstanding the cesser of insurance of a vessel during the course of that Policy Year.

#### **49 Payment of Calls and Other Sums Due to the Association**

- (1) Calls and other sums due to the Association shall be paid on demand 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 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 the same fleet as that vessel in accordance with Rule 31 and shall be in addition to, and in no way construed as a waiver or amendment of, any other contractual or maritime lien which the Association may expressly or impliedly possess in respect of 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 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.

#### **50 Laid-Up Returns**

- (1) If an insured vessel shall be laid-up in any safe port for a period of thirty or more consecutive days after finally mooring there (such period being computed from the day of arrival to the day of departure, one only of such days being included) the Member concerned shall be allowed a return of Calls except Overspill Calls



calculated at the rate of 90 per cent of his total Calls except Overspill Calls payable in respect of such vessel for the period of lay-up. From that return there shall be deducted the reinsurance premiums which the Association remains liable to pay to reinsurance underwriters in respect of the insured vessel for the period of lay-up.

- (2) For the purpose of this Rule a vessel shall not be treated as laid-up if she had either crew members (other than for her maintenance or security) or cargo on board.

Provided that the Managers may allow a return of up to 50% of the Calls except Overspill Calls in respect of such vessel for such period of lay up where the vessel is laid up with crew (other than necessary for her maintenance and safety) but without any cargo on board. From that return there shall be deducted the reinsurance premiums which the Association remains liable to pay to reinsurance underwriters in respect of the insured vessel for the period of lay-up.

- (3) Unless agreed in writing by the Managers no claim for laid-up returns relating to any Policy Year shall be recoverable from the Association unless written notice thereof has been given to the Association within six months of the end of the Policy Year concerned, and a Member shall not be entitled to laid-up returns in respect of an insured vessel as from the time such vessel shall have been agreed by Hull Underwriters as constituting a constructive total loss or a compromised total loss (whether or not subject to production to Hull Underwriters of further evidence concerning the casualty) or shall have become a commercial total loss.
- (4) If an insured vessel commences or recommences trading after such vessel has been and remained in safety in any safe port for a period of four consecutive calendar months or more after finally mooring there (such period being computed from the day of arrival to the day of departure, one only of such days being included) in circumstances in which the Member concerned is entitled to Laid-up Returns under paragraph (1) or (2) of this Rule, he shall be obliged immediately to inform the Managers of such commencement or recommencement so as to enable the Managers if they think fit to require to be satisfied as to the condition of the insured vessel by a survey of the insured vessel or otherwise.
- (5) If the Member does not so inform the Managers, the Association shall not be liable for any loss, damage, liability, costs or expenses which would have been avoided if the opportunity for such survey had been given, a survey had been carried out and all defects revealed in that survey had been remedied.

## **51 Reserves**

- (1) The Association may establish and maintain such reserve funds or other accounts for such contingencies or purposes (to the benefit of the Association in all or any of its Classes) as the Committee may determine.
- (2) Without prejudice to the generality of paragraph (1) of this Rule, the Association may establish and maintain reserves or other accounts to provide a source of funds available to be applied for any purposes of the Association, including (but not limited to) the following:

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- (i) To eliminate or reduce the amount of Additional Calls in respect of any past, present or future Policy Year;
  - (ii) To eliminate or reduce any deficiency which has occurred or may be thought likely to occur in respect of any closed Policy Year;
  - (iii) To protect the Association against any actual or potential losses on exchange or interest rate differentials, or in connection with any realised or unrealised investments;
  - (iv) To provide against direct or indirect fiscal or other obligations incurred in jurisdictions where the Association may be providing or be deemed to be providing insurance to Members or insured vessels.
- (3) In addition, the Association shall create reserves in the following instances:
- (a) From the proceeds of any Calls made pursuant to Rule 47C in order to establish and maintain an adequate Solvency Margin and/or Guarantee Fund;
  - (b) From the proceeds of any Overspill Calls made pursuant to Rules 45 and 47A, in which event the following provisions will apply:
    - (i) One or more Overspill Reserves so created shall be made up from the proceeds of one Overspill Call only and shall be specified to be in respect of a particular Overspill Claim (whether such claim has occurred or is anticipated);
    - (ii) Any Overspill Reserve shall be invested as a separate fund and any gains or losses in the fund so invested shall be credited or debited to the said Overspill Reserve;
    - (iii) Each Member who has made a contribution to an Overspill Call which has been used to create an Overspill Reserve or Reserves shall have an interest in such Overspill Reserve or Reserves proportional to the amount actually contributed by him to the Overspill Call;
    - (iv) If more than one Overspill Call has been made in respect of one Overspill Claim and more than one Overspill Reserve created in respect of such Overspill Claim, then such Overspill Reserves shall be utilised for the payment of such Overspill Claim in the order in which they were established;
    - (v) Any sums standing to the credit of an Overspill Reserve or Reserves shall be used to eliminate or reduce the specified Overspill Claim or to pay such claim in whole or in part, or shall be returned to or held to the account of a Member according to his interest and in accordance with Rule 47A hereof;
- (4) The Committee may determine the application of the sums standing to the credit of any reserve for any of the purposes for which the reserve was maintained even though the sum be paid in respect of any different Policy Year or years from that from which the funds originated. The sums standing to the credit of any reserve may be applied for any other or different purposes whenever the Committee determines this to be in the interests of the Association or its Members. The Committee may also at any time transfer sums from one reserve to another.

- (5) The funds required to establish such reserves or accounts may be raised in either or both of the following ways:-
- (i) the Committee, when determining the rate of any Advance or Additional Calls for any Policy Year, may determine that any specified amount or proportion of such Calls shall be transferred to and applied for the purpose of any such reserve or account;
  - (ii) the Committee may on the closing of any Policy Year or at any time or times thereafter determine that any specified amount or proportion of the funds standing to the credit of that Policy Year shall be transferred to and applied for the purposes of any such reserve or account.

## **52 Closing of Policy Years in Respect of Additional Calls**

The following provisions of this Rule 52 shall apply only to the closing of a Policy Year in respect of Additional Calls, whether such closing takes effect at the same time as or separately from the closing of such Policy Year in respect of Overspill Calls.

- (1) The Committee shall with effect from such date after the end of each Policy Year as it thinks fit determine that such Policy Year shall be closed.
- (2) After any Policy Year shall be closed no further Additional Calls shall be levied on the Members for that Policy Year.
- (3) The Committee may determine that any Policy Year is closed in respect of Additional Calls notwithstanding that it is known or anticipated that there are in existence or may in the future arise claims, reinsurance premiums, expenses or outgoings in respect of such Policy Year (apart from Overspill Claims) which have not yet accrued or whose validity, extent or amount have yet to be established.
- (4) If upon the closing of any Policy Year it shall appear to the Committee that the whole of the Calls and other receipts in respect of such Policy Year (and of all transfers from reserves and provisions made for the credit of or in respect of that Policy Year) is unlikely to be required to meet the claims, expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 45 (Liability for Calls and other Sums)), then the Committee may determine to dispose of any excess which in its opinion is not so required in one or any of the following ways:-
  - (i) by transferring the excess or any part thereof to the reserves of the Association in accordance with Rule 51;
  - (ii) by applying the excess or any part thereof to meet any deficiency which has occurred or may be thought likely to occur in any closed Policy Year or Years;
  - (iii) by returning the excess or any part thereof to the Members entered for such Policy Year in accordance with paragraph (7) of this Rule.

- (5) If at any time or times after a Policy Year shall have been closed it shall appear to the Committee that the claims, reinsurance premiums, expenses or outgoings arising in respect of that Policy Year (as referred to in Rule 45 (Liability for Calls and other Sums)) exceed or are likely to exceed the totality of the Calls and other receipts in respect of such Policy Year (and of all transfers from reserves and provisions made for the credit of or in respect of such Policy Year) then the Committee may determine to provide for such deficiency in any one or more of the following ways:-
- (i) by transferring funds from the reserves or other accounts of the Association;
  - (ii) by transferring funds standing to the credit of any different closed Policy Year;
  - (iii) by levying Advance or Additional Calls in respect of an open Policy Year with the intention (as permitted by Rule 45) of applying a part thereof to meet any such deficiency;
  - (iv) where the deficiency arises from an Overspill Claim, by levying one or more Overspill Calls in accordance with Rules 45 and 47A.
- (6) At any time after any Policy Year shall have been closed the Committee may determine to amalgamate the accounts of any two or more closed Policy Years and to pool the amount standing to the credit of the same. If the Committee shall so determine then the two or more closed Policy Years concerned shall for all purposes be treated as though they constituted a single closed Policy Year.
- (7) Any amount which the Committee may determine to return to the Members in accordance with paragraph (4)(iii) of this Rule shall be returned to the Members entered in respect of such Policy Year in proportion to the Advance and any Additional Calls paid by them in respect of such Policy Year (after taking into account any returns or rebates applicable thereto under their terms of entry or under any other provision of these Rules) save that no return shall be made to any Member whose entry ceased in the course of such Policy Year by reason of Rule 40(1)(Death or Incapacity), Rule 40 (2)(vii) (Termination in respect of Classification Survey or Appraisal) or 41 (non-payment) or whose liability for Calls in respect of such Policy Year has been assessed under the provisions of Rule 47B (Releases).

### **53 Investment**

- (1) The funds of the Association may be invested as determined by the Committee by means of the purchase of such stocks, shares, bonds, debentures or other securities or the purchase of such currencies, commodities, or other real or personal property, or by means of being deposited in such accounts or by means of being loaned on such terms and in such manner as the Committee determines. The funds of the Association may also be invested by such other method as the Committee may determine including investments in and loans to any holding subsidiary or associated company of the Association or any one or more of the Classes of the Association on such terms and in such manner as the Committee determines.

- (2) The Committee may determine that all or any of the funds standing to the credit of any Policy Year or of any reserve or account shall be pooled and invested either as one fund or as two or more separate funds.
- (3) If any funds shall have been so pooled and invested the Committee may determine the apportionment of the income arising on the pooled investments among and between the different Policy Years, reserves and accounts from which the fund or funds so invested originated. The Committee may similarly determine the apportionment of the capital gains and losses and gains and losses on exchange realised and unrealised.
- (4) Without prejudice to paragraph (3) of this Rule, the Committee may determine that after the closing of any Policy Year that year shall not be credited with any share of the apportionments made under that paragraph and that its share shall instead be credited to any reserve or account maintained by the Association.

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## Part VI - Miscellaneous

### **54 Delegation of Authority and Settlement of Claims on the Association, etc.**

- (1) All actions taken by the Committee and/or the Managers under these Rules are deemed to be taken for and on behalf of the Association.
- (2) The Committee shall meet as often as required to consider claims on the Association and any other matters relating to the business of the Association.
- (3) The Committee shall under no circumstances be obliged to permit a Member (whether or not he is also a Director) or his representatives to be present when considering a claim by the Association against him or by him on the Association and, unless the Committee otherwise determines, all representations and submissions to the Committee by or on behalf of a Member in connection with such a claim shall be made in writing.
- (4) Whenever any power, duty or discretion is conferred or imposed upon the Managers by virtue of agreement between them and the Association or by these Rules, such power, duty or discretion may, subject to any terms, conditions or restrictions contained therein, be exercised by the Managers or by any servant or agent of the Managers to whom the same shall have been delegated or sub-delegated.
- (5) The Committee may also confer any of its powers, duties or discretions to any Sub-Committee or Section of the Committee in accordance with the provisions as regards delegation contained in the Constitution in which event such power, duties or discretion shall be exercisable by such Sub-Committee or Section.
- (6) Wherever in these Rules provision is made for any question or matter to be determined by the Committee or the Managers, the Committee or the Managers (as the case may be) shall have absolute discretion in making such determination.

### **55 Forbearance**

No act, omission, course of dealing, forbearance, delay or indulgence by the Association in enforcing any of these Rules or any of the terms or conditions of its contracts with Members nor any granting of time by the Association shall prejudice or affect the rights and remedies of the Association under these Rules or under such contracts, and no such matter shall be treated as any evidence of waiver of the Association's rights thereunder, nor shall any waiver of a breach by a Member of such Rules or contracts operate as a waiver of any subsequent breach thereof. The Association shall at all times and without notice be entitled to insist on the strict application of these Rules and on the strict enforcement of its contracts with Members.

**56 Bye-Laws**

- (1) Without prejudice to any power given to the Committee by any of these Rules (other than this Rule 56) to make Bye-Laws the Committee shall have the power under this Rule 56 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 56, 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.

**57 Notices**

- (1) Any notice, demand, order, direction, recommendation, request or other document (hereinafter referred to collectively as "notice or other document") required by these Rules to be served on a Member may be served as the Managers may determine in any one or more of the following modes:-
  - (a) personally, or
  - (b) by sending it through the post in a prepaid letter or by telegram, cable, radio telegraph, telefax, telex, courier or electronic mail addressed to him:-
    - (i) at his address as appearing in the Register of Members; or
    - (ii) at any other address of which he has given written notice to the Managers as his address for service; or

- (iii) if a vessel to which the notice or other document relates, or another vessel entered by the Member whose period of insurance has not come to an end, was last entered for insurance, or her insurance was last renewed (whichever is the later), through a broker or other agent, at any place of business of that broker or agent.
- (2) Every notice or other document served as aforesaid shall, if posted, be deemed to be served on the day following the day of postage; if sent by telegram, cable or radio telegraph, be deemed to be served on the day of handing in to the relevant office; if sent by telex or telefax, courier or electronic mail, on the day of despatch. In any case proof of posting, handing in or despatch shall be sufficient proof of service.
- (3) The successors of any Member served as aforesaid with any notice or other document shall be bound by that notice or other document whether or not the Association has notice of that person's death, disability, lunacy, bankruptcy or liquidation.

## **58 Membership of National and International Organisations**

The Committee may determine that the Association may join or be affiliated or cause any Member to join or become affiliated to any National or International Society or Organisation (anywhere in the world) and for this purpose may authorise the payment by the Association to those bodies of such subscriptions or grants as the Committee determines, either out of the general funds of the Association or by means of such special contributions to be levied from the Members concerned.

## **59 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 Queen's Counsel practising at the Commercial Bar or, if none is available, any other practising Queen's Counsel and the submission to Arbitration and all the proceedings therein shall be subject to the provisions of the Arbitration Act 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 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 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.

## 60 Definitions

In these Rules unless the context or subject matter otherwise requires:-

"ASSOCIATION" means The West of England Ship Owners' Mutual Insurance Association (Luxembourg).

"BASIC RATE OF CONTRIBUTION", in relation to an insured vessel, means the amount which constitutes the basis on which the mutual element(s) of Calls are payable to the Association in respect of that vessel and which is calculated by multiplying the entered tonnage by the monetary rate of the insured vessel.

“BULK CARGO” means a full cargo consisting of one commodity or similar produce that is trimmed and/or in bags and/or bales or a full cargo consisting of liquids in bulk.

“CALL” means any sum payable to the Association in respect of an insured vessel pursuant to Rules 45 - 49.

“CARGO VOYAGE” means the period from the receipt for shipment of cargo intended to be carried in a vessel within the dock area at the first port or place of loading, or the commencement of loading of cargo into the vessel at that port or place, whichever is the earlier, until the final discharge thereof from the vessel within the dock area at the last port or place of discharge, or delivery thereof within the dock area at that port or place, whichever is the later:-

*PROVIDED THAT:-*

- (i) in relation to an insured vessel engaged in the liner trade or similar trade (such as general cargo loaded and discharged at various ports or places), or
- (ii) where any cargo is partly carried or intended to be carried by a means of transport other than the insured vessel, or
- (iii) where the carriage of cargo in the insured vessel is only incidental to the employment of the insured vessel, the expression “cargo voyage” shall mean such period of time as may be agreed between the Member concerned and the Managers in writing, or in the absence of such an agreement, such period of time as the Committee may determine.

“CLASS” and “CLASSES” means (as the context shall require) any one or more or all of the categories of risks in respect of which the Association offers insurance and/or the Members entered for insurance of such risks, namely

Class 1 - Protection and Indemnity

Class 2 - Freight, Demurrage and Defence

Class 3 - Ship’s Officers and/or Crew Strikes

Class 4 - Port Area Strikes

“CLOSED POLICY YEAR” means a Policy Year which has been closed in accordance with Rule 47A and 52.

“CO-ASSURED” means a person who is named in a Certificate of Entry as a person capable of benefiting and/or accepting obligations from such Entry in addition to or in substitution for the named Member.

“COMMERCIAL TOTAL LOSS”. An insured vessel is a commercial total loss if, for whatever reason:-

- (a) it is abandoned because its actual total loss appears to the Member on reasonable grounds to be unavoidable, or

- (b) it would cost more to repair (if damaged), to recover (if the Member has been deprived of its possession) or otherwise to preserve from actual total loss than its market value when repaired, recovered or preserved as the case may be.

“COMMITTEE” means the Board of Directors for the time being of the Association.

“CONSTITUTION” means the Constitution for the time being of the Association.

“CONVENTION LIMIT” in respect of a vessel, means the limit of liability of the Shipowner of that vessel for claims (other than claims for loss of life or personal injury) at the Overspill Claim Date calculated in accordance with the text at 19th November 1976 of Article 6 paragraph 1(b) of the International Convention on Limitation of Liability for Maritime Claims 1976 (the “Convention”) unchanged or revised by any subsequent protocol, revision or amendment and converted from Special Drawing Rights into United States Dollars at the rate of exchange conclusively certified by the Association as being the rate prevailing on the Overspill Claim Date, provided that,

- (a) where a vessel is entered for a proportion (the “relevant proportion”) of its tonnage only, the Convention Limit shall be the relevant proportion of the limit of liability calculated and converted as aforesaid, and
- (b) each vessel shall be deemed to be a seagoing ship to which the Convention applies, notwithstanding any provision in the Convention to the contrary.
- (c) where the gross tonnage of the vessel has not been measured in accordance with the Convention, that gross tonnage shall, for the purposes only of determining the Convention Limit, be determined in such manner as the Association shall consider appropriate.

“EFFECTS” includes any personal property on board an insured vessel, by or on behalf of, or in the charge of the persons specified in Rule 2, Section 2A and in Rule 2, Section 8, whether or not that property belongs to any of such persons.

“ENTERED TONNAGE” means the tonnage agreed between the Association and an applicant for insurance of a vessel at the time of acceptance of that vessel for the purpose of calculating the basic rate of contribution and, in certain cases, the limits of the Association’s liability in connection with that vessel.

“FINES” includes civil penalties, and other impositions similar in nature to fines.

“GROSS TONNAGE” means the gross tonnage of a vessel calculated in accordance with the 1969 Tonnage Measurement Convention (or if no such tonnage has been fixed, then the gross registered tonnage) as certified in the Certificate of Registry of such vessel or if no such certificate exists, in any other official document relating to the registration of such vessel.

“GROUP REINSURANCE LIMIT” means the amount of the smallest claim (other than any claim arising in respect of oil pollution) incurred by the Association or by

any other party to the Pooling Agreement which would exhaust the largest limit for any type of claim (other than a claim arising in respect of oil pollution) from time to time imposed in the Group General Excess Loss Reinsurance Contract effected collectively by parties to the Pooling Agreement and others.

“HAGUE RULES” means the provisions of the International Convention for the Unification of certain Rules relating to Bills of Lading signed at Brussels, on 25th August, 1924.

“HAGUE-VISBY RULES” means the Hague Rules as amended by the Protocol to amend the said Convention signed at Brussels on 23rd February, 1968.

“HAMBURG RULES” means the provisions of the United Nations Convention on the Carriage of Goods by Sea, 1978, done at Hamburg on 31st March 1978.

“HAZARDOUS SUBSTANCE” means any substance or part of a class thereof or any element or compound (other than oil) which (a) in the sole opinion of the Committee by its nature, characteristics or admixture constitutes or is liable to constitute a substantial danger to human health or welfare, property, animal, plant or marine life, the environment or its amenities or a serious interference with the enjoyment of any of the aforesaid matters and has been specified as a hazardous substance by the Committee pursuant to Rule 7, or (b) has been designated as a hazardous substance or pollutant by any Government or other Authority or any official International Organisation.

“INCIDENT” means any one incident or occurrence (save that a series of incidents or occurrences having the same origin shall be treated as one incident or occurrence taking place at the time of the first of them).

“INSURED” and “INSURANCE” means insured and insurance in respect of the risks covered under these Rules and shall include reinsured and reinsurance.

“INSURED VESSEL” means a vessel which has been entered for insurance in this Class of the Association.

“MANAGERS” means the Managers for the time being of the Association.

“MEMBER” means a Member for the time being of the Association and includes a joint Member where the context so admits.

“MONETARY RATE” means the amount of money per ton of the entered tonnage of any insured vessel agreed between the Member concerned and the Managers (or as varied by the Committee or the Managers under Rule 38) for the purpose of ascertaining the basic rate of contribution upon which Calls are payable to the Association.

“NOON” means noon G.M.T.

“OIL” means oil of any description whatsoever including any mixture containing oil.

“OVERSPILL CALL” means a Call levied by the Association pursuant to Rule 47A (5) for the purpose of providing funds to pay part of an Overspill Claim.

“OVERSPILL CLAIM” means that part (if any) of a claim (other than a claim arising in respect of oil pollution) incurred by the Association or by any other party to the Pooling Agreement under the terms of entry of a vessel which exceeds or may exceed the Group Reinsurance Limit.

“OVERSPILL CLAIM DATE” means in relation to any Overspill Call, the time and date on which there occurred the incident giving rise to the Overspill Claim in respect of which the Overspill Call is made or, if the Policy Year in which such incident occurred has been closed in accordance with the provisions of paragraphs 6(1) and 6(2) of Rule 47A, noon GMT on 20th August of the Policy Year in respect of which the Association makes a declaration under paragraph 6(3) of that Rule.

“PASSENGER” means any person not engaged or employed in any capacity in connection with the business of an insured vessel carried or intended to be or having been carried in such vessel for reward.

“PERIOD OF INSURANCE”, in relation to an insured vessel, means the period of time during which (according to the terms of any contract of insurance) the Association is at risk as regards the occurrence of events in relation to that vessel which may give rise to a liability on the part of the Association to indemnify the Member concerned.

“PERSON” shall be deemed to include any individual or any bodies corporate or incorporate.

“POLICY YEAR” means a year from noon on any 20th February to noon on the next following 20th February.

“POOLING AGREEMENT” means the agreement, to which the Association is a party, between certain protection and indemnity associations of 20th February 1996, whereby the parties undertake to share in agreed proportions the burden of claims (above an agreed retention) of the insurance business of each of them, as the same may be amended from time to time, and any addenda to or replacements of the said agreement.

“SALVAGE OPERATIONS” means operations in the nature of salvage to any property in danger whatsoever, whether or not a recognised subject of salvage under maritime law, or operations in connection with the raising, removal, destruction or rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such a vessel.

“SEAMAN” means any person (including the Master and apprentices) engaged or employed in any capacity in connection with the business of any insured vessel as part of such vessel's normal complement, whether on board or proceeding to or from such vessel.

# 1

“SPECIAL TERMS” means terms other than, or which vary the terms of insurance set out in these Rules, agreed between the Managers on behalf of the Association and the assured pursuant to the powers of the Association as set out in the Constitution to accept vessels for insurance on special terms.

“SUCCESSORS” means the heirs, executors, administrators, personal representatives, assignees (when permitted under these Rules), receiver, curator or other person authorised to act on behalf of one who becomes incapable by reason of mental disorder of managing his property or affairs, trustee in bankruptcy, liquidator and other successors whatsoever.

“THESE RULES” means the Rules of this Class of the Association and the Schedules thereto as originally framed or as from time to time altered, abrogated or added to, for the time being in force.

“THIS CLASS” means Class 1 - Protection and Indemnity - and/or the Members entered for insurance therein as the context shall require.

“VESSEL” (in the context of a vessel entered or proposed to be entered in the Association) means any ship, boat or other description of vessel (including a lighter, barge, or like vessel howsoever propelled) or hovercraft, rig or structure (including any ship, boat, vessel, hovercraft, rig or structure under construction) used or intended to be used for any purpose whatsoever in navigation or otherwise on, under, over or in water (including inland waters of any description), or any part thereof or any proportion of the tonnage thereof or any share therein.

“WRITING, IN” means written, printed or lithographed or visibly expressed in all or any of these or any other modes of representing or reproducing words.

Words importing the singular number only shall include the plural number and vice versa.

Words importing the masculine gender only shall include the feminine gender. Words importing persons shall include corporations.

# Schedules

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## The First Schedule

In cases where the carriage, storage or handling of cargo or other property on land in or outside the dock area of the port of loading, discharge or an intermediate port is covered by a Bill of Lading or other contract as is mentioned in Rule 2, Section 16(C), the Managers will generally approve such a Bill of Lading or other contract if it either (i) exempts the Member from all liability for such carriage, storage or handling or (ii) provides for such carriage, storage or handling to be performed on terms not less favourable to the Member than one of the following:-

- (a) the ICC (International Chamber of Commerce) Rules or similar terms;
- (b) CMR (Convention on the Contract for the International carriage of goods by Road) or CIM (International Convention concerning the carriage of goods by Rail) terms;
- (c) the standard road or rail conditions applicable in the state where carriage, storage or handling on land takes place;
- (d) the internal law of the state where carriage, storage or handling on land takes place.

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## The Second Schedule

Counter Security Terms (FORM B.3)

*NOTE: This undertaking should bear the date on which application for bail or security was made to the Association.*

To: The West of England Ship Owners Mutual  
Insurance Association (Luxembourg)

.....20.....

Dear Sirs,

Vessel: .....

Voyage: .....

Date: .....

Casualty\*/Incident\*: .....

Bills of Lading\*: .....

Nature of Claim: .....

We hereby request you (either personally or through your agents) to provide bail or other security for the above claim in the sum of ..... which bail or security is now being requested and/or is now required in order to avoid the arrest or detention of MV ..... or in order to secure her release from arrest.

In consideration of your providing such bail or security (hereinafter called "the bail or security") we hereby agree as follows:-

1. To pay immediately upon any liability being incurred by you or your agents under or in connection with the bail or security a sufficient sum to discharge such liability in full and generally to take all such measures as may be necessary to ensure that such liability is discharged in full without delay as soon as it may be incurred and that neither you nor your agents shall be required to make any payment whatsoever to discharge such liability save out of the funds (hereinafter called "the funds") which we shall have provided.

Provided that, subject to having first complied with the previous paragraph in all respects, we reserve our right to claim repayment of any sums we may pay hereunder which we believe are recoverable in accordance with your Rules and

2. To indemnify you and hold you harmless in respect of any loss or damage whatsoever which may result from your giving the bail or security and to reimburse to you at any time upon your demand any sum or sums of money which you may be called upon to pay under or in connection with the bail or security.
3. To pay on demand all your costs, expenses, charges and commission (as specified in your Rules) in connection with the provision of the bail or security.



4. To reimburse you immediately upon your written demand in respect of any claim(s) or judgements which you may pay under the bail or security together with all costs and expenses whatsoever that you have incurred in handling, processing or defending such claim or judgement. You may at your absolute discretion and without our agreement or authority: (a) defend, negotiate, settle, pay or otherwise dispose of any and all such claims, and (b) appeal or comply with any and all such judgements.
5. Without prejudice to the foregoing, in the event that, in breach of our obligation under Clause 1 above, we fail to provide the funds and you are obliged nevertheless to incur or, notwithstanding that you have no such obligation, you elect to incur any such liability, loss, damage, costs, expenses, charges or commission, then
  - (a) you shall be entitled to demand from us immediate payment of the amount of any such liability, loss, damage, costs, expenses, charges or commission;
  - (b) in the event that, in breach of our obligations hereunder, such payment is not immediately made, we will pay to you interest thereon or on any part thereof for the time being outstanding at the rate of 2 per cent per annum above the offered rate between prime banks in the London Inter Bank Euro-dollar Market for 3 month deposits (the rate being determined monthly on the first day of the appropriate month) until such payment is made.
6. That in relation to our obligations as to payment and indemnity to the Association hereunder all or any sums due from us to the Association shall be paid by us in full, without discount set-off or counter claim of any kind whatsoever.
7. That in addition to this letter of undertaking we shall upon your first demand provide you with such additional counter security as you may from time to time require. Should we fail to provide such additional counter security to you on such demand, we shall immediately pay to you the amount for which we hereby request you to provide the bail or security.
8. That, by providing any of the bail or security, you shall incur no obligation whatsoever to provide any further bail or security in connection with the above claim and that you may at any time in your absolute discretion cause the above bail or security to be cancelled or released.
9. That this agreement shall be governed by English law and the Association's Rules and that, without prejudice to your rights to institute proceedings in any other jurisdiction, the High Court of Justice in London shall have jurisdiction to hear and determine any action brought by you in connection herewith.

Yours faithfully,

.....

*\* Delete whichever is inapplicable.*

*(NOTE: The above form B3 is expressly referred to in Rule 28 (the Bail Rule).)*

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## The Third Schedule

### **Bye-Laws**

Every agreement made after 20th February, 1972 in connection with all Contracts of Carriage shall contain certain provisions (*i.e. the New Jason Clause and the Both to Blame Collision Clause*) to the following effect:

#### ***New Jason Clause***

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery."

#### ***Both to Blame Collision Clause***

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.

The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships, or objects are at fault in respect of a collision or contact."

INTEREST PAYABLE TO ASSOCIATION ON CALLS AND OTHER SUMS AFTER DUE DATE OF PAYMENT

“(Effective as regards Calls and other sums payable on or after Noon G.M.T., 1st April 2003). Interest at the rate of 7.5% per annum shall be payable by each Member on any Calls and other sums due from him to the Association as from the due date of payment. Any interest payable as aforesaid shall accrue from day to day.”

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## The Fourth Schedule

### **Clauses Recommended by the Association**

#### ***For Voyages to or from Canadian Ports***

“CLAUSE PARAMOUNT: All the terms provisions and conditions of the Canadian Water Carriage of Goods Act, 1936, and of the Rules comprising the Schedule thereto are, so far as applicable, to govern the contract contained in this Bill of Lading and the ship owners are to be entitled to the benefit of all privileges, rights and immunities contained in such Act and in the Schedule thereto as if the same were herein specifically set out. If anything herein contained be inconsistent with the said provisions, it shall to the extent of such inconsistency and no further be null and void.

The Carrier shall be under no responsibility whatsoever for loss of or damage to goods howsoever and wheresoever occurring when such loss or damage arises prior to the loading on and/or subsequent to the discharge from the Carrier’s ship.”

#### ***For Voyages to or from U.S. Ports***

“CLAUSE PARAMOUNT: This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. The provisions stated in said Act shall (except as may be otherwise specifically provided herein) govern before the goods are loaded on and after they are discharged from the ship and throughout the entire time the goods are in the custody of the Carrier. The Carrier shall not be liable in any capacity whatsoever for any delay, non-delivery or mis-delivery, or loss of or damage to the goods occurring while the goods are not in the actual custody of the Carrier.”

#### ***Voyage Clause***

“With liberty to sail without pilots, to proceed via any route, to proceed to, return to and stay at any port or ports whatsoever (including the loading port) in any order in or out of the route or in a contrary direction to or beyond the port of destination once or more often for bunkering or loading or discharging cargo or embarking or disembarking passengers whether in connection with the present a prior or subsequent voyage or any other purposes whatsoever, and before giving delivery of the within mentioned cargo at the port of discharge herein provided

and with the like liberties as aforesaid to leave and then return to and discharge the said cargo at such port, to tow or be towed, to make trial trips with or without notice, to adjust compasses, or to repair or dry-dock with or without cargo on board. The exercise of any liberty in this clause shall form part of the agreed voyage.”

***General Average***

In all charterparties containing a General Average Clause any reference to the York/Antwerp Rules should be followed by “1994”.



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THE FIRST SCHEDULE      Form B3

THE SECOND SCHEDULE    Bye-Laws



## Class 2 - Freight, Demurrage and Defence

The following Rules numbered 1 to 55 inclusive shall apply only to contracts of insurance effected by the Association in this Freight, Demurrage and Defence Class (Class 2) of the Association and are to be construed accordingly.

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### Part I - Introductory

#### **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 54 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.

*(NOTE: the definitions of "Association", "Member", "Co-Assured", "Managers", "Committee", "Vessel" and other terms used in these Rules are set out in Rule 55).*

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## Part II - Risks Covered and Claims Handling

### 2 Disputes Covered

The Association insures each of its Members in the manner and to the extent provided in Rule 3 in connection with claims, disputes or proceedings which arise:

- (a) out of events occurring during the period of insurance of any insured vessel entered by him and
- (b) in respect of the Member's interest, whether actual or prospective, in the insured vessel and which relate to the matters enumerated below, namely:-
  - (i) freight, deadfreight, demurrage, detention or any other matter arising out of a charter party, Bill of Lading or other contract of affreightment or the carriage of goods in or the trading of the insured vessel generally;
  - (ii) detention, salvage, general average contributions and charges (except where the insured vessel is a salvage tug or other craft specially designed, converted, or maintained for use in salvage operations and the claim arises as a result of or during any salvage operations or attempted salvage operations; but the Committee in its absolute discretion may allow claims of this type to be covered);
  - (iii) a policy of insurance, other than with the Association, the West of England Ship Owners' Mutual Insurance Association (London) Limited or the West of England Mutual War Risks Association Limited;
  - (iv) damage sustained by the insured vessel;
  - (v) representation at official inquiries and protection against any interference by a public body, authority, company or corporation in matters connected with the business of ship owning;
  - (vi) any contract for the building, purchase, sale, conversion or repair of the insured vessel (including any guarantee in connection with such contract) only if the contract was made at the beginning of or during the period of insurance or the Managers agree in writing that claims, disputes or proceedings arising from the particular contract will be covered;
  - (vii) any mortgage of the insured vessel or contract for such mortgage;
  - (viii) any other contract in relation to the insured vessel;
  - (ix) any other matter which the Committee determines falls within the scope of the Freight, Demurrage and Defence Class.

### 3 Extent of Cover

Subject to any special terms which may be agreed a Member is entitled:

- (a) to recover from the Association the costs and expenses incurred in connection with any of the claims, disputes and proceedings described in Rule 2, (including costs and expenses payable to other parties to such proceedings under any judgement or order therein), but only if the Committee has determined that the case merits the support of the Association and has not withdrawn that support;
- (b) to receive legal advice from the Association in connection with any of the claims, disputes and proceedings described in Rule 2 or the possibility thereof;
- (c) to recover from the Association the costs and expenses incurred in obtaining advice in connection with the claims, disputes and proceedings aforesaid or the possibility thereof from lawyers, surveyors, representatives and other persons (other than employees of the Member or of the Association or Managers), where the Managers have consented to the obtaining of such advice.

*PROVIDED THAT:*

No costs or expenses shall be recoverable from the Association unless:

- a) they have been incurred with the prior consent in writing of the Managers; or
- b) they have been incurred by the Association on behalf of the Member in accordance with Rule 9 (Employment of Lawyers and others); or
- c) the Committee shall determine that they were reasonably incurred and ought in all the circumstances to be borne by the Association, and
- d) they are not excluded by any proviso, warranty, condition, exemption, limitation, deductible or other term contained in these Rules or in the terms of entry, and
- e) they were incurred by the Member in the capacity in which the Member has entered the insured vessel in the Association.

There shall be no recovery from the Association in excess of US\$5 million in the aggregate in respect of any case as defined in Rule 55.

### 4 Omnibus Rule

Notwithstanding anything to the contrary contained in these Rules, the Committee may determine that the Association shall pay a Member any amount, whether or not the full amount claimed, in respect of losses, liabilities, costs or expenses incidental to the business of owning, operating or managing vessels, which in the opinion of the Committee fall within the scope of the Association's business.

*PROVIDED THAT:* the Committee need not give any reasons for its decision.

**5 Discretion of Committee**

- (1) The Committee may determine whether any particular case merits the support of the Association, and without prejudice to the generality of the foregoing the Committee shall in exercising its discretion be entitled to take into account the consideration whether or not to support a Member in respect of any particular case is in the interest of the Membership.
- (2) The Committee may at any and all times impose such terms as a condition of supporting a Member in any particular case as it thinks fit.
- (3) The Committee may at any time withdraw the Association's support from a Member in any particular case if it considers that such case ought to be settled or otherwise discontinued, and the Association shall not be liable for any costs and expenses incurred in connection with such case after the time of such withdrawal of support.

**6 Obligation to Sue and Labour**

- (1) Upon the occurrence of any casualty, dispute, event or matter liable to give rise to a claim by a Member upon the Association, it shall be the duty of the Member and his agents to take and continue to take all such steps as may be reasonable for the purpose of averting or minimising any expense or liability in respect whereof he may be insured by the Association.
- (2) The duty imposed on a Member and his agents hereunder shall be to take such steps as could reasonably be expected to be taken by a competent and prudent uninsured owner in the same or similar circumstances and no account shall be taken of any circumstances peculiar to the Member such as his lack of means or inability to provide the requisite funds for any reasons whatsoever.
- (3) If a Member commits any breach of this obligation, the Committee may determine to reject any claim by him against the Association arising out of the casualty, dispute, event or matter, or reduce the sum payable by the Association in respect thereof by such amount as it may determine.

**7 Notification of Claims, Admission of Liability, etc.**

- (1) A Member must:
  - (a) promptly notify the Managers of every casualty, event or matter which is liable to give rise to a claim upon the Association and of every event or matter (including any legal or arbitration proceedings commenced against the Member) which is liable to cause the Member to incur liabilities, costs or expenses for which he may be insured by the Association;
  - (b) promptly notify the Managers of every survey or opportunity to survey in connection with a matter referred to under (a);

- (c) at all times promptly notify the Managers of any information, documents or reports in his or his servants' or agents' possession, power or knowledge relevant to such casualty, event or matter as is referred to under (a);
  - (d) whenever so requested by the Managers, promptly produce to the Managers and/or allow the Managers or their agents to inspect, copy or photograph, all relevant documents of whatsoever nature in his or his servants' or agents' possession or power;
  - (e) permit the Managers or their agents to interview any servant, agent or other person who may have been employed by the Member at the material time or at any time thereafter or whom the Managers may consider likely to have any direct or indirect knowledge of the matter or who may have been under a duty at any time to report to the Member in connection therewith.
- (2) A Member shall not settle or admit liability for any claim for which he may be insured by the Association, nor submit to judgement in respect of such a claim, nor enter into any arrangement with a judgement creditor for the discharge or payment of any such claim or for the provision of funds to discharge the judgement debt without prior written consent of the Managers.
  - (3) If a Member commits any breach of his obligations referred to in (1) or (2) above the Committee may determine to reject any claim by the Member against the Association arising out of the casualty, event or matter, or reduce the sum otherwise payable by the Association in respect thereof by such amount as it may determine.

## **8 Time Bar**

- (1) Without prejudice to the duty of prompt notification contained in Rule 7, if a Member:
  - (a) fails to notify the Managers of any casualty, event or matter referred to in Rule 7 within one year after he has knowledge thereof (or in the opinion of the Committee ought to have known thereof), or
  - (b) fails to submit a claim to the Managers for reimbursement of any loss, damage, liabilities, costs or expenses within one year after discharging the same (in the case of an agreed settlement, after he receives the Managers' approval for the settlement in accordance with Rule 7(2)), the Member's claim against the Association shall be extinguished and the Association shall be under no further liability in respect thereof unless the Committee shall otherwise determine.
- (2) Without prejudice to paragraph (1) of this Rule, no claim shall in any event be recoverable from the Association unless written notice thereof has been given to the Managers within three years from the time of the casualty or other event or matter giving rise to the claim.

## **9 Employment of Lawyers and other Persons**

- (1) Without prejudice to any other provisions of these Rules and without waiving any of the Association's rights hereunder, the Managers may at any and all times appoint and employ on behalf of a Member upon such terms as they may think fit lawyers, surveyors or other persons (whether or not lawyers, surveyors or other persons have already been appointed or employed by the Member) for the purpose of dealing with any matter liable to give rise to a claim by the Member upon the Association, including, but not limited to, investigating, or advising upon any such matter and taking or defending legal or other proceedings in connection therewith. The Managers may also at any time discontinue such employment as they may think fit.
- (2) The costs and expenses incurred in connection with a particular case shall only be recoverable from the Association on condition that all lawyers, surveyors and other persons employed in the case are appointed with the prior consent of the Managers, or by the Managers under paragraph (1) of this Rule.
- (3) All lawyers, surveyors and other persons appointed by the Managers on behalf of a Member or appointed by a Member with the prior consent of the Managers shall at all times be and be deemed to be appointed and employed on the terms:
  - (i) that (without prejudice to their right to retire from the matter on any other grounds) they shall be entitled to retire from the matter if either the Managers or the Member so requests or if such person considers that a conflict of interest has arisen or may arise between the Member and the Association so that he ought to retire from the matter;
  - (ii) that they have been instructed by the Member at all times (both while so acting and after having retired from the matter) to give advice and to report to the Managers in connection with the matter without prior reference to the Member;
  - (iii) that they are to produce to the Managers without prior reference to the Member any documents or information in their possession or power relating to such matter, as if such person had been appointed to act and had at all times been acting on behalf of the Association and notwithstanding that any such advice, reports, documents or information would otherwise be the subject of legal or any other form of privilege.

## **10 Powers of the Managers relating to the Handling and Settlement of Claims**

- (1) The Managers shall have the right if they so decide:
  - (a) to control or direct the conduct of any claim or legal or other proceedings relating to any liability, loss, damage, costs or expenses in respect whereof a Member is or may be insured in whole or in part;

- (b) to require the Member to take any step in connection with the handling of such claim or proceedings which the Managers may think appropriate;
- (c) to require the Member to settle, compromise or otherwise dispose of such claim or proceedings in such manner and upon such terms as the Managers see fit.
- (2) If a Member does not settle, compromise, dispose of or take steps in connection with the handling of a claim or proceedings as required by the Managers in accordance with paragraph (1) of this Rule, any eventual recovery by the Member from the Association in respect of such claim or proceedings shall be limited to the amount he would have recovered if he had acted as required by the Managers.
- (3) Where the Association has provided bail or other security in accordance with Rule 51 (Bail) and the Member fails to comply with a requirement made or direction given under this Rule, the Association by giving to the Member fourteen days' written notice to this effect shall (unless in the meantime the Association has been released from its liability in respect of such bail or other security) be entitled in the name of the Member to defend, settle or otherwise deal with such claim or potential claim against him and the Member shall on demand indemnify the Association against any loss, damage, liabilities, costs and expenses incurred by the Association as a result of exercising its rights under this Rule; except insofar as such loss, damage, liabilities, costs and expenses, if incurred by the Member, would be recoverable under his insurance with the Association.

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## Part III - Deductibles, Limitations, Exclusions and Warranties

### 11 Deductibles and Party and Party Costs

- (1) Unless otherwise agreed in writing, and subject to Rule 5 (discretion to support a case), each Member shall bear the first US\$5,000 of the costs and expenses incurred in connection with each case in respect of each insured vessel. The said sum of US\$5,000 shall be payable by the Member forthwith upon demand by the Managers whenever, in accordance with Rule 9, any lawyer, surveyor or other person is appointed and employed by the Managers on behalf of the Member or appointed and employed by the Member with the prior consent of the Managers. In the event that the costs and expenses in any case which the Association supports are less than US\$5,000, and the Member has paid that sum to the Association, the difference between the costs and expenses which the Association has made itself liable for to any such lawyer, surveyor or other person and the said sum of US\$5,000 will be refunded to the Member without interest.
- (2) It is the obligation of every Member whom the Association shall support under these Rules to account strictly to the Association for all costs, expenses and disbursements recovered by order, award or settlement in every case supported by the Association.

**12 Less than Full Tonnage Entered**

If less than the full gross tonnage of a vessel is entered in the Association, the Member concerned shall, unless the entry of the vessel has been accepted on special terms which otherwise provide, be entitled only to recover such proportion of his claim as the entered tonnage bears to the full gross tonnage.

Where by virtue of these Rules or any special terms which may have been agreed a limit is set to the Association's liability in respect of any or all claims insured by the Association the foregoing provisions shall likewise apply to such limit and the Association's liability in respect thereof shall be reduced accordingly.

**13 Payment First by the Member**

The insurance afforded to a Member is indemnity only and not liability.

Unless the Committee in its discretion otherwise determines it shall be a condition precedent of a Member's right to recover from the funds of the Association in respect of any loss, damage, liabilities, costs or expenses that he shall first have discharged or paid the same otherwise than from money advanced expressly or impliedly for that purpose whether by way of loan or otherwise.

**14 No Liability until Calls and other Sums Paid**

Without prejudice to anything elsewhere contained in these Rules it shall be a condition precedent of a Member's right to recover from the funds of the Association in respect of any costs or expenses that all such Calls and other amounts whatsoever as shall have become due from the Member to the Association (whether in respect of this Class or any other Class) shall have been paid in full by the Member or by some assignee or other person on his behalf.

*PROVIDED THAT:*

The Committee may waive the above condition, but in such event the Association shall be entitled to set off any amount due from a Member against any amount due to him from the Association.

**15 Exclusion of Sums Insurable under other Insurances**

Unless otherwise agreed in writing or the Committee otherwise determines, there is no cover for any costs or expenses in connection with an insured vessel:

- (i) which would be recoverable from Hull underwriters if the insured vessel were at all times fully insured under Hull Policies on the terms of the Lloyd's Marine Policy with the Institute Time Clauses (Hulls) 1.10.83 attached, or
- (ii) which would be recoverable from the Association if the insured vessel were entered for insurance in any other Class of the Association at full gross tonnage



and for its ordinary cover, regardless of any limitation therein or any deductible applicable thereto, or

- (iii) which would be excluded from the insurances mentioned in paragraphs (i) and (ii) above by reason of clauses 23, 24, 25 or 26 of the Institute Time Clauses (Hulls) 1.10.83 or Rule 14 (Liability excluded for War Risks) of the Class 1 Rules of the said Association respectively, or
- (iv) which would be excluded from the insurances mentioned in paragraphs (i) and (ii) above by reason of any deductible, franchise or deduction of a similar nature in those insurances (other than a deductible of 1% of the insured value in the case of the Hull Policies), or
- (v) which would be recoverable from any other insurers in respect of loss of the following : hire, freight, employment or use of the insured vessel.

“Fully insured” in paragraph (i) of this Rule means insured at such insured value as the Committee determines represents the market value of the insured vessel, disregarding any charter or other engagement to which she may be committed.

## **16 Association Not Liable for Interest**

In no case shall a Member be allowed interest on any claim he may have against the Association.

## **17 Premium Tax and other Excise Taxes**

The Member shall pay on demand to the Association or its order the amount of any premium tax or other excise tax for which the Association determines it or the Member has or may become liable and shall indemnify and hold harmless the Association in respect of any loss, damage, liability, cost or expense which the Association may incur in respect of such premium tax or other excise tax..

## **18 Double Insurance**

- (1) Unless the Committee otherwise determines, the Association shall not be liable for any loss, damage, liabilities, costs or expenses in respect of an insured vessel which are recoverable under any other insurance or which would have been so recoverable:
  - (i) apart from any terms in such other insurance excluding or limiting liability on the ground of double insurance; and
  - (ii) if the insured vessel had not been entered in the Association with cover against the risks set out in these Rules.
- (2) In no case shall the Association be liable for any costs or expenses in connection with any franchise, deductible or deduction of a similar nature borne by a Member under such other insurance.

**19 Liability Excluded if Adventure Illegal, Hazardous or Improper**

No claim shall be recoverable from the Association if it arises out of or is consequent upon an insured vessel carrying contraband, blockade running or being employed in an unlawful trade, or if the Committee having regard to all the circumstances shall be of the opinion that the carriage, trade, voyage or any other activity on board or in connection with the insured vessel, was imprudent, unsafe, unduly hazardous or improper.

**20 Costs in Connection with Bail Not Covered**

No costs, expenses or charges incurred by a Member in connection with the provision of bail or other security, whether by the Association or not, to obtain the release of or prevent the arrest or attachment of an insured vessel or any other property or assets whatsoever of that Member shall be recoverable from the Association.

**21 Rules Subject to Marine Insurance Act**

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.

**22 Disclosure if Entry Continued**

A Member who desires to continue the entry for insurance of an insured vessel (whether or not a notice has been or is to be given pursuant to Rule 32) shall immediately prior to the 30 days before the commencement of the next ensuing Policy Year be under the same duty to the Association as regards disclosure of material circumstances as if he were an applicant desiring to enter a vessel for insurance in the Association.

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## Part IV - Entry For and Cesser of Insurance

### 23 Eligibility for Insurance or Reinsurance

- (1) The Managers on behalf of the Association may enter into a contract of insurance in respect of any vessel with any of the following persons: the registered owner, owners in partnership, owners holding separate shares in severalty, part owner, mortgagee, trustee, charterer, operator, manager or builder of that vessel, any other person interested in or in possession of the vessel, or any other person who in the opinion of the Managers should be regarded and treated as any of the persons above mentioned.

For the purposes of this paragraph, a vessel shall include an unidentified vessel which the person entering into a contract of insurance with the Association has agreed to employ or operate under a charter or similar contract, provided that such vessel shall be entered as a named vessel as soon as it is identified.

- (2) Subject to the Constitution and save insofar as expressly prohibited by these Rules, the Managers may enter into contracts of reinsurance on behalf of the Association whereby the Association agrees to reinsure the risks arising in connection with any one or more vessels insured by another Association or insurer or else agrees to reinsure the whole or any part or proportion of the insurance business of any other Association or insurer. The consideration payable to the Association and the terms and conditions on which the reinsurance is accepted by the Association shall be such as are agreed between the Managers and such other Association or insurer. Save where otherwise agreed in writing the other Association or insurer shall be in every respect subject to and bound by the provisions of these Rules, and his contract with the Association shall for all purposes take effect as though he were the owner of any vessel or vessels in connection with which the relevant risks may arise and had as owner entered the vessel or vessels in the Association for insurance.
- (3) The Association or the Managers on its behalf may effect the reinsurance or ceding of any risks insured by the Association (including any risk which may fall on the Association by reason of a reinsurance agreement referred to in paragraph (2) of this Rule) with such reinsurers and on such terms as the Managers shall consider appropriate.
- (4) Subject to the Constitution and save insofar as expressly prohibited by these Rules the Committee may agree to enter into arrangements on behalf of the Members of this Class of the Association whereby the Members of this Class of the Association agree to indemnify by way of reinsurance or otherwise any other one or more of the other Classes of the Association in respect of all or any part of the risks insured by such Class on such terms as the Committee shall determine.

### 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 the purposes of such entry 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 the same fleet to perform any obligation whatsoever towards the Association shall be deemed to be a failure of all Members and joint Members within such fleet. In the case of a failure to pay Calls or any other sums 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 34.

## **25 Entered Tonnage: Basic Rate of Contribution**

Before an application is accepted for the entry of a vessel the applicant and the Managers shall agree the entered tonnage and basic rate of contribution for the vessel concerned. In deciding upon the basic rate of contribution of any vessel the Managers may take into account all matters which they may consider relevant including (without prejudice to the generality of the foregoing) the degree of risk estimated to be involved in the proposed insurance.

## **26 Certificate of Entry and Endorsement Slip**

- (1) As soon as reasonably practical after accepting an application for the entry of a vessel for insurance in the Association the Managers on behalf of the Association shall issue to the applicant a Certificate of Entry in such form as may from time to time be prescribed by the Managers but so that such Certificate of Entry shall state the date of the commencement of the period of insurance and the terms and conditions on which the vessel has been accepted for insurance.
- (2) If at any time or from time to time the Managers on behalf of the Association and a Member shall agree to vary the terms relating to an insured vessel, the Managers shall, as soon as reasonably practical thereafter, issue to the Member an Endorsement Slip stating the terms of such variation and the date from which such variation is to be effective.
- (3) Every Certificate of Entry and every Endorsement Slip issued as aforesaid shall be conclusive evidence and binding for all purposes as to the commencement of the period of insurance, as to the terms and conditions on which the vessel has been

entered for insurance, and as to the terms of any variation and the date from which such variation is to be effective; provided that in the event that any Certificate of Entry or any Endorsement Slip shall have been defaced or lost or in the opinion of the Managers contains any error or omission the Managers may on behalf of the Association issue a new Certificate of Entry or a new Endorsement Slip which shall be conclusive evidence and binding as aforesaid.

## **27 Period of Insurance**

Unless otherwise agreed in writing, the period of insurance of a vessel entered in the Association shall commence at the time and date specified in the Certificate of Entry and shall continue until noon of the 20th February next ensuing and thereafter, unless terminated in accordance with these Rules, from Policy Year to Policy Year.

## **28 Inception of Membership**

If the Managers on behalf of the Association accept an application for the entry of a vessel for insurance in the Association from a person who is not already a Member of the Association, then unless he is to be a Co-Assured that person may, if agreed with the Association or the Managers on its behalf, as from the commencement of the period of insurance of that vessel, be and become a Member or joint Member of the Association and his name shall be entered in the Register of Members of the Association.

## **29 Joint Entries**

Where a Certificate of Entry for an insured vessel records as parties insured thereunder more persons than one whether jointly or separately interested, any such persons who are not Members of the Association are hereinafter referred to as "Co-Assured" or "Co-Assureds". Where such persons are Members of the Association in respect of such vessel they are hereinafter referred to as "joint Member" or "joint Members" and in such circumstances:

- (i) the Managers shall not be bound to issue on behalf of the Association more than one Certificate of Entry in respect of each insured vessel or more than one Endorsement Slip and delivery of such Certificate of Entry or Endorsement Slip, as the case may be, to one of several jointly insured Members shall be sufficient delivery to each and all of such persons;
- (ii) the joint Members and each of them shall be jointly and severally liable to pay all Calls and other sums due to the Association in respect of such entry and the receipt of any one of such joint Members for any sums payable by the Association in respect of such entry shall be a sufficient discharge of the Association for the same;
- (iii) failure by any joint Member or any Co-Assured who is named in the same Certificate of Entry to disclose material information within his knowledge shall be deemed to have been the failure of all the joint Members and/or all Co-Assureds;

- (iv) conduct of any joint Member or any Co-Assured who is named in the same Certificate of Entry which would have entitled the Association to decline to indemnify him shall be deemed the conduct of all the joint Members and/or all Co-Assureds;
- (v) unless the Managers have otherwise agreed in writing, the contents of any communication from or on behalf of the Association to any joint Member and/or Co-Assured shall be deemed to be within the knowledge of all the joint Members and/or Co-Assureds and any communication from any joint Member and/or Co-Assured to the Association, the Managers or their agents shall be deemed to have been made with the full approval and authority of all the joint Members and/or Co-Assureds;
- (vi) the Association shall in no case be liable for any costs or expenses incurred in connection with any dispute or proceedings between the joint Members and/or Co-Assureds or any of them;
- (vii) any limitation of the Association's liability to a Member, whether in these Rules or in an agreed special term, shall be construed as a limitation on the aggregate amount payable to all joint Members and/or Co-Assureds. In such cases the claim of the registered owner of the insured vessel shall be preferred to the claims of the other joint Members and/or any Co-Assureds, which shall rank *pari passu* among themselves as to any balance; provided that in such cases the Committee may take into account the possibility of further claims against the Association being made by the joint Members and/or Co-Assureds or any of them, and may withhold such sums from distribution as it thinks fit in order to meet those claims.

### **30 Assignment**

- (1) No insurance given by the Association and no interest under these Rules or under any contract between the Association and any Member may be assigned without the written consent of the Managers who shall have the right in their discretion to give or refuse such consent without stating any reason or to give such consent upon any such terms or conditions as they may think fit. Any purported assignment made without such consent or without there being due compliance with any such terms and conditions as the Managers may impose shall, unless the Managers in their absolute discretion otherwise determine, be void and of no effect.
- (2) Whether or not the Managers shall expressly so stipulate as a condition for giving their consent to any assignment, the Association shall be entitled in settling any claim presented by the assignee to deduct or retain such amount as the Managers may then estimate to be sufficient to discharge any liabilities of the assignor to the Association, whether existing at the time of the assignment or having accrued or being likely to accrue thereafter.
- (3) Where the Managers consent to an assignment, they shall, after any conditions which they have imposed have been complied with, and upon receipt of due

notice of assignment, issue on behalf of the Association an Endorsement Slip giving particulars of the assignment, including the time from which it is to take effect; and that Endorsement Slip shall be conclusive evidence of those particulars.

### **31 Variation of Contract**

- (1) If the Managers shall desire to vary the basic rate of contribution of any insured vessel for the next following Policy Year, they may give notice in writing to the Member concerned of the proposed variation of the basic rate of contribution (either by circulated letter or otherwise howsoever) but not later than 50 days prior to the 20th February next ensuing.
- (2) Where any such notice of variation is given, the period of insurance of the insured vessel or vessels concerned shall continue for the next following Policy Year upon the terms that the basic rate of contribution has been varied as set out in the said notice and that the Member or Members concerned shall be bound by such variation as if he or they had agreed the same in writing with the Association unless (either before or after such notice of variation):
  - (i) a notice of termination has been given in accordance with Rule 32;
  - (ii) the period of insurance has previously terminated for any other reason whatsoever; or
  - (iii) the basic rate of contribution in respect of the insurance concerned has otherwise been agreed between the Member and the Association.
- (3) Unless any such event shall have occurred as is mentioned in sub-paragraphs (i) to (iii) of paragraph (2) hereof, a notice of variation of the basic rate of contribution shall constitute an Endorsement Slip for the purposes of Rule 26.
- (4) If before the end of any Policy Year these Rules shall have been altered in any respect which affects the terms and conditions of the contract of insurance between a Member and the Association, then such alteration shall be binding upon the Member and for all purposes take effect as from the commencement of the next ensuing Policy Year.

### **32 Termination by Notice**

- (1) The period of insurance of an insured vessel may be terminated at noon on 20th February of any year by not less than 30 days' prior written notice of termination being given by the Member concerned to the Managers, or by the Managers to the Member.
- (2) If, after notice of termination has been given, the Managers and the Member agree on new terms of insurance, the notice of termination shall thereupon cease to have effect and the period of insurance of the vessel shall continue for the next ensuing Policy Year on the new terms.

- (3) Except with the written consent of the Managers, an insured vessel shall not be withdrawn by a Member at any time or in any manner otherwise than pursuant to paragraph (1) of this Rule.

### **33 Cesser of Insurance on Certain Specified Events**

- (1) A 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 upon the happening of any of the following events:
  - (a) If the Member is an individual:
    - (i) upon his death, or
    - (ii) if a receiving order shall be made against him, or
    - (iii) if he shall become bankrupt or make any composition or arrangement with his creditors, or
    - (iv) if he shall become incapable by reason of mental disorder or criminal conviction of managing and administering his property and affairs, or
    - (v) if under any system of law other than English law, there occurs an event in relation to that individual which has a similar effect to any of the above.
  - (b) If the Member is a corporation:
    - (i) upon the passing of any resolution for voluntary winding up, or
    - (ii) upon an order being made for compulsory winding up, or
    - (iii) upon dissolution, or
    - (iv) upon the appointment of an administrator, receiver, trustee, custodian, liquidator or other similar official for its or for substantially all of its assets, or
    - (v) upon crystallisation of, and/or possession being taken of any of its assets comprised in or subject to a floating charge, by or on behalf of the holder of such charge, or
    - (vi) if under any system of law other than English law, there occurs an event in relation to that corporation which has a similar effect to any of the above.

Termination shall be deemed to take place when the event occurred or, where relevant, upon the making of the first court order, but if there is no such method of determination the effective date and time shall be such date and time as when the Managers notify the Member that they have reasonable grounds for believing that any of the above situations or conditions have occurred.

The provisions of this Rule 33(1) shall also apply to any Co-Assured as if he had been a Member.



- (2) A Member shall cease to be insured by the Association and the period of insurance shall terminate in respect of any vessel entered by him upon the happening of any of the following events affecting such vessel:
- (i) if he shall part with or assign the whole or any part of his interest in the insured vessel whether by Bill of Sale or other formal document or otherwise or shall cease to have an interest in the insured vessel or shall part with or transfer the entire control or possession of the insured vessel, whether by demise charter or otherwise;
  - (ii) if the insured vessel shall be mortgaged or otherwise hypothecated without an undertaking or guarantee having been given to the Association in a form and by such person as may be approved by the Managers in writing, to pay all Calls and other sums due or to become due in respect of the insured vessel;
  - (iii) if any person having given an undertaking or guarantee under the preceding paragraph (2)(ii) fails to discharge his liability thereunder upon demand by the Managers;
  - (iv) if the management of the insured vessel is transferred or the flag of the insured vessel is changed. Where a vessel is entered for insurance through an agent (not being an insurance broker) such agent shall for the purpose of this paragraph (2)(iv) of this Rule be deemed to be the manager of the insured vessel unless at the time of the vessel's entry for insurance the Managers were furnished in writing with the name of the management of the vessel to be insured;
  - (v) if the insured vessel shall become an actual total loss or shall be agreed by Hull Underwriters as constituting a constructive total loss or a compromised total loss (whether or not subject to production to Hull Underwriters of further evidence concerning the casualty), or shall become a commercial total loss, except as regards liabilities, costs and expenses arising out of the casualty which gave rise to the loss of the vessel;
  - (vi) if the insured vessel shall be missing for ten days from the date she was last heard of or from her being posted at Lloyd's as missing, whichever shall be the earlier.

*PROVIDED THAT:*

Where a Member ceases to be insured by reason of any of the events set out in this Rule 33 paragraph (2)(i)-(2)(vi), the Managers may on behalf of the Association agree in writing to extend the period of insurance on such terms as they think fit.

### **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 42(1)) 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 claims, 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 claims, 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 are greater or lesser than the sum actually due;
- (b) in determining what sums 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 claims, losses, 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.

### **35 No Waiver**

Without prejudice to the generality of Rule 50, no act, omission, course of dealing, forbearance, delay or indulgence of any kind by or on behalf of the Association nor the granting of time, nor the acceptance by the Association (whether express or implied) of liability for, or the recognition of, any claim, and whether occurring before or after any of the events or termination or notice provisions contained in Rules 33 and 34 shall derogate from the effect of such Rules or be treated as any waiver of any of the Association's rights thereunder.

**36 Liability of Association on Cesser of Insurance**

When a Member ceases to be insured otherwise than under Rule 34 (Termination of Insurance for Non-payment), such cesser shall not prejudice any claim of the Member against the Association for costs or expenses and liabilities arising out of events occurring before the date of cessation.

**37 End of Membership**

For the avoidance of any doubt, the obligations of a Member to the Association shall continue and shall be deemed to be cumulative from initial acceptance as a Member throughout each Policy Year of membership until not only has that Member ceased to be a Member, because for any reason the periods of insurance of all vessels entered by him for insurance in the Association have ended, but also he has discharged all the obligations, whenever arising, in respect of his membership in full.

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**Part V - Calls and Finance****38 Liability for Calls**

Members who have vessels entered for insurance in the Association in respect of any Policy Year shall, unless otherwise agreed in writing, provide by way of Advance Calls, Additional Calls, Releases and contributions to a Solvency Margin and Guarantee Fund all funds which the Committee determines are required:

- (i) To meet such of the general expenses of the Association as the Committee may from time to time determine shall be charged against the insurance business of this Class in respect of such Policy Year;
- (ii) To meet the claims, expenses and outgoings (whether incurred, accrued or anticipated) of the insurance business of this Class in respect of such Policy Year (including without prejudice to the generality of the foregoing, any proportion of any claims, expenses or outgoings of any insurer other than the Association which has fallen or which may be thought likely to fall upon this Class by virtue of any reinsurance or pooling agreement concluded between the Association and such other insurer);
- (iii) For such transfers to the reserves or other accounts of the Association (as referred to in Rule 45) and for subsequent application for the purposes of such reserves or other accounts or otherwise as the Committee determine;
- (iv) For such transfers as the Committee may determine to meet any deficiency which has occurred or may be thought likely to occur in any closed Policy Year or Years;

- (v) To meet such proportion as the Committee may determine appropriate of the claims, expenses and outgoings (whether incurred, accrued or anticipated) of any one or more of the other Classes of the Association;
- (vi) To be set aside in order to establish and/or maintain an adequate Solvency Margin and Guarantee Fund in respect of any Policy Year.

### **39 Advance Call**

At such time or times during or after the end of each Policy Year as the Committee shall determine, and subject to Rule 41 (Reduction of Calls for vessels insured for part of a year) and to any special terms agreed with the Association, each Member shall pay to the Association the basic rate of contribution of each of his vessels insured during that Policy Year. The amount so payable shall constitute the Advance Call for that Policy Year in respect of that vessel.

### **40 Additional Calls**

- (1) At any time or times during or after the end of a Policy Year but not after that Policy Year has been closed, the Association may levy one or more Additional Calls for that Policy Year in respect of each vessel insured during that Policy Year.
- (2) The Association may levy such Calls by deciding upon a percentage to be applied to the Advance Calls for that Policy Year.
- (3) All persons who are or were Members for that Policy Year shall pay by way of Additional Call or Calls a sum or sums ascertained by multiplying the Advance Call paid or payable by each such person for each of his vessels in respect of such Policy Year by the percentage as determined by the Committee.
- (4) The Committee or the Managers may at any time take any necessary steps to enable such persons to become aware of their financial commitments for the relevant Policy Year by indicating an estimate of the percentage at which it is hoped that any Additional Call or Calls will be levied. If any such estimate shall be given to any such person it shall be without prejudice to the right of the Association to levy Additional Calls for the relevant Policy Year in accordance with these Rules at a greater or lesser percentage than so indicated and neither the Association, the Committee nor the Managers shall under any circumstances be under any liability whatsoever or howsoever arising as a result of any estimate so given or in respect of any error, omission or inaccuracy contained therein.

### **41 Reduction of Calls for Vessels Insured for Part of a Year**

- (1) Where the period of insurance of a vessel commences during the course of a Policy Year, the Advance and Additional Calls, Solvency Margin and Guarantee Fund Contribution and any Release in respect of that vessel for that Policy Year shall be reduced pro rata, that is to say by the same proportion as the period between the

commencement of the Policy Year and the commencement of the period of insurance bears to the whole Policy Year.

- (2) Where the period of insurance of a vessel ends during the course of a Policy Year by reason of one of the events in Rule 33 (Cesser of Insurance on Certain Specified Events) and the Member gives the Managers notice in writing of that event within one month of its occurrence, the Advance and Additional Calls, Solvency Margin and Guarantee Fund Contribution and any Release in respect of that vessel for that Policy Year shall be reduced pro rata, that is to say by the same proportion as the period between the end of the period of insurance and the end of the Policy Year bears to the whole Policy Year.
- (3) Save as aforesaid, a Member shall remain liable to pay Advance and Additional Calls, Solvency Margin and Guarantee Fund Contribution and any Release for the whole Policy Year in full, notwithstanding the cesser of insurance of a vessel during the course of that Policy Year.

#### **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 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 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 the same fleet as that vessel in accordance with Rule 24 and shall be in addition to, and in no way construed as a waiver or amendment of, any other contractual or maritime lien which the Association may expressly or impliedly possess in respect of 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 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 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) 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 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 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 (including but not limited to matters such as inflation and currency fluctuations).
- (3) The amounts calculated and notified by the Managers under paragraph (1) 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) 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 46(4).
- (5) 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 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 54.

#### **44 Laid-Up Returns**

- (1) If an insured vessel shall be laid-up in any safe port for a period of ninety or more consecutive days after finally mooring there (such period being computed from the day of arrival to the day of departure, one only of such days being included) the Member concerned shall be allowed a return of Calls calculated at the rate of 50 per cent of his total Calls payable in respect of such vessel for the period of lay-up. From that return there shall be deducted 50 per cent of the reinsurance premiums which the Association remains liable to pay to reinsurance underwriters in respect of the insured vessel for the period of lay-up.
- (2) For the purpose of this Rule a vessel shall not be treated as laid-up if she had either crew members (other than for her maintenance or security) or cargo on board.
- (3) Unless agreed in writing by the Managers no claim for laid-up returns relating to any Policy Year shall be recoverable from the Association unless written notice thereof has been given to the Association within six months of the end of the Policy Year concerned, and a Member shall not be entitled to laid-up returns in respect of an insured vessel as from the time such vessel shall have been agreed by Hull Underwriters as constituting a constructive total loss or a compromised total loss (whether or not subject to production to Hull Underwriters of further evidence concerning the casualty) or shall have become a commercial total loss.

#### **45 Reserves**

- (1) The Association may establish and maintain such reserve funds or other accounts for such contingencies or purposes (to the benefit of the Association in all or any of its Classes) as the Committee may determine.
- (2) Without prejudice to the generality of paragraph (1) of this Rule, the Association may establish and maintain reserves or other accounts to provide a source of funds available to be applied for any purposes of the Association, including (but not limited to) the following:
  - (i) To eliminate or reduce the amount of Additional Calls in respect of any past, present or future Policy Year;
  - (ii) To eliminate or reduce any deficiency which has occurred or may be thought likely to occur in respect of any closed Policy Year;
  - (iii) To protect the Association against any actual or potential losses on exchange or interest rate differentials, or in connection with any realised or unrealised investments;
  - (iv) To provide against direct or indirect fiscal or other obligations incurred in jurisdictions where the Association may be providing or be deemed to be providing insurance to Members or insured vessels.
- (3) In addition, the Association shall create a reserve from the proceeds of any Calls made pursuant to Rule 48 in order to establish and maintain an adequate Solvency Margin and/or Guarantee Fund.

- (4) The Committee may determine the application of the sums standing to the credit of any reserve for any of the purposes for which the reserve was maintained even though the sum be paid in respect of any different Policy Year or Years from that from which the funds originated. The sums standing to the credit of any reserve may be applied for any other or different purposes whenever the Committee determines this to be in the interests of the Association or its Members. The Committee may also at any time transfer sums from one reserve to another.
- (5) The funds required to establish such reserves or accounts may be raised in either or both of the following ways:
  - (i) the Committee, when determining the rate of any Advance or Additional Calls for any Policy Year, may determine that any specified amount or proportion of such Calls shall be transferred to and applied for the purpose of any such reserve or account;
  - (ii) the Committee may on the closing of any Policy Year or at any time or times thereafter determine that any specified amount or proportion of the funds standing to the credit of that Policy Year shall be transferred to and applied for the purposes of any such reserve or account.

#### **46 Closing of Policy Years**

- (1) The Committee shall with effect from such date after the end of each Policy Year as it thinks fit determine that such Policy Year shall be closed.
- (2) After any Policy Year shall have been closed no further Additional Calls may be levied in respect of that Policy Year.
- (3) The Committee may determine that any Policy Year is closed notwithstanding that it is known or anticipated that there are in existence or may in the future arise claims, expenses or outgoings in respect of such Policy Year which have not yet accrued or whose validity, extent or amount have yet to be established.
- (4) If upon the closing of any Policy Year it shall appear to the Committee that the whole of the Calls and other receipts in respect of such Policy Year (and of all transfers from reserves and provisions made for the credit of or in respect of that Policy Year) are unlikely to be required to meet the claims, expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 38), then the Committee may determine to dispose of any excess which in their opinion is not so required in one or any of the following ways:
  - (i) by transferring the excess or any part thereof to the reserves of the Association in accordance with Rule 45;
  - (ii) by applying the excess or any part thereof to meet any deficiency which has occurred or may be thought likely to occur in any closed Policy Year or Years;
  - (iii) by returning the excess or any part thereof to the Members entered for such Policy Year in accordance with paragraph (7) of this Rule.



- (5) If at any time or times after a Policy Year shall have been closed it shall appear to the Committee that the claims, expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 38) exceed or are likely to exceed the totality of the Calls and other receipts in respect of such Policy Year (and of all transfers from reserves and provisions made for the credit of or in respect of such Policy Year) then the Committee may determine to provide for such deficiency in any one or more of the following ways:
- (i) by transferring funds from the reserves or other accounts of the Association;
  - (ii) by transferring funds standing to the credit of any different closed Policy Year;
  - (iii) by Advance or Additional Calls in respect of an open Policy Year with the intention (as permitted by Rule 38) of applying a part thereof to meet any such deficiency.
- (6) At any time after any Policy Year shall have been closed the Committee may determine to amalgamate the accounts of any two or more closed Policy Years and to pool the amounts standing to the credit of the same. If the Committee shall so determine then the two or more closed Policy Years concerned shall for all purposes be treated as though they constituted a single closed Policy Year.
- (7) Any amount which the Committee may determine to return to the Members in accordance with paragraph (4)(iii) of this Rule shall be returned to the Members entered in respect of such Policy Year in proportion to the Calls paid by them in respect of such Policy Year (after taking into account any returns or rebates applicable thereto under their terms of entry or under any other provision of these Rules) save that no return shall be made to any Member whose entry ceased in the course of such Policy Year by reason of Rule 33 (Cesser of insurance on Certain Specified Events) or 34 (non-payment) or whose liability for Calls in respect of such Policy Year has been assessed under the provisions of Rule 43 (releases).

#### **47 Investment**

- (1) The funds of the Association may be invested as determined by the Committee by means of the purchase of such stocks, shares, bonds, debentures or other securities or the purchase of such currencies, commodities, or other real or personal property, or by means of being deposited in such accounts or by means of being loaned on such terms and in such manner as the Committee determines. The funds of the Association may also be invested by such other method as the Committee may determine including investments in and loans to any holding subsidiary or associated company of the Association or any one or more of the Classes of the Association on such terms and in such manner as the Committee determines.
- (2) The Committee may determine that all or any of the funds standing to the credit of any Policy Year or of any reserve or account shall be pooled and invested either as one fund or as two or more separate funds.

- (3) If any funds shall have been so pooled and invested the Committee may determine the apportionment of the income arising on the pooled investments among and between the different Policy Years, reserves and accounts from which the fund or funds so invested originated. The Committee may similarly determine the apportionment of the capital gains and losses and gains and losses on exchange realised and unrealised.
- (4) Without prejudice to paragraph (3) of this Rule, the Committee may determine that after the closing of any Policy Year that year shall not be credited with any share of the apportionments made under that paragraph and that its share shall instead be credited to any reserve or account maintained by the Association.

#### **48 Solvency Margin and Guarantee Fund**

A Member shall pay on demand such sums as the Association may by any Government legislation or Regulation be required to set aside in order to establish and/or maintain an adequate Solvency Margin and/or Guarantee Fund. A Member shall contribute to such sums in proportion to his basic rate of contribution payable in respect of the relevant Policy Years.

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## **Part VI - Miscellaneous**

#### **49 Delegation of Authority and Settlement of Claims on the Association, etc.**

- (1) All actions taken by the Committee and/or the Managers under these Rules are deemed to be taken for and on behalf of the Association.
- (2) The Committee shall meet as often as required to consider claims on the Association and any other matters relating to the business of the Association.
- (3) The Committee shall under no circumstances be obliged to permit a Member (whether or not he is also a Director) or his representatives to be present when considering a claim by the Association against him or by him on the Association and, unless the Committee otherwise determines, all representations and submissions to the Committee by or on behalf of a Member in connection with such a claim shall be made in writing.
- (4) Whenever any power, duty or discretion is conferred or imposed upon the Managers by virtue of agreement between them and the Association or by these Rules, such power, duty or discretion may, subject to any terms, conditions or restrictions contained therein, be exercised by the Managers or by any servant or agent of the Managers to whom the same shall have been delegated or sub-delegated.

- (5) The Committee may also confer any of its powers, duties or discretions to any Sub-Committee or section of the Committee in accordance with the provisions as regards delegation contained in the Constitution in which event such power, duties or discretion shall be exercisable by such Sub-Committee or Section.
- (6) Wherever in these Rules provision is made for any question or matter to be determined by the Committee or the Managers, the Committee or the Managers (as the case may be) shall have absolute discretion in making such determination.

## **50 Forbearance**

No act, omission, course of dealing, forbearance, delay or indulgence by the Association in enforcing any of these Rules or any of the terms or conditions of its contracts with Members nor any granting of time by the Association shall prejudice or affect the rights and remedies of the Association under these Rules or under such contracts, and no such matter shall be treated as any evidence of waiver of the Association's rights thereunder, nor shall any waiver of a breach by a Member of such Rules or contracts operate as a waiver of any subsequent breach thereof. The Association shall at all times and without notice be entitled to insist on the strict application of these Rules and on the strict enforcement of its contracts with Members.

## **51 Bail**

In no circumstances shall the Association be obliged to provide 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. The Association may agree to provide such bail or security in a particular case on such terms as it may consider necessary; if it does so agree, then subject to any variation of any of (a) to (e) 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;
- (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 providing the bail or security, sign and forward to the Association an undertaking in the form set out in the First Schedule;
- (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) 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.

The Association shall in no circumstances provide cash deposits.

## **52 Notices**

- (1) Any notice, demand, order, direction, recommendation, request or other document (hereinafter referred to collectively as "notice or other document") required by these Rules to be served on a Member may be served as the Managers may determine in any one or more of the following modes:
  - (a) personally, or
  - (b) by sending it through the post in a prepaid letter or by telegram, cable, radio telegraph, telefax, telex, courier or electronic mail addressed to him:
    - (i) at his address as appearing in the Register of Members;
    - (ii) at any other address of which he has given written notice to the Managers as his address for service; or
    - (iii) if a vessel to which the notice or other document relates, or another vessel entered by the Member whose period of insurance has not come to an end, was last entered for insurance, or her insurance was last renewed (whichever is the later), through a broker or other agent, at any place of business of that broker or agent.
- (2) Every notice or other document served as aforesaid shall, if posted, be deemed to be served on the day following the day of postage; if sent by telegram, cable or radio telegraph be deemed to be served on the day of handing in to the relevant office; if sent by telex or telefax, courier or electronic mail, on the day of despatch. In any case proof of posting, handing in or despatch shall be sufficient proof of service.
- (3) The successors of any Member served as aforesaid with any notice or other document shall be bound by that notice or other document whether or not the Association has notice of that person's death, disability, lunacy, bankruptcy or liquidation.

## **53 Membership of National and International Organisations**

The Committee may determine in respect of such of the Members of the Association as are eligible, that the Association may become a Member of or affiliated to any National or International Society or Organisation (anywhere in the world) and for this purpose may authorise the payment by the Association to those bodies of such subscriptions or grants as the Committee determines, either out of the general funds of the Association or by means of such special contributions to be levied from the Members concerned.

## 54 Jurisdiction

- (1) 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 Queen's Counsel practising at the Commercial Bar or, if none is available, any other practising Queen's Counsel and the submission to Arbitration and all the proceedings therein shall be subject to the provisions of the Arbitration Act 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 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 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.

## 55 Definitions

In these Rules unless the context or subject matter otherwise requires:

“ASSOCIATION” means The West of England Ship Owners’ Mutual Insurance Association (Luxembourg).

“BASIC RATE OF CONTRIBUTION”, in relation to an insured vessel, means the amount, as agreed between the Member concerned and the Managers or as varied by the Managers under Rule 31 which constitutes the basis upon which Calls are payable to the Association in respect of that vessel.

“CALL” means any sum payable to the Association in respect of an insured vessel pursuant to Rules 38 - 43 and 48.

“CASE” means any claim or claims, dispute or disputes or proceedings which the Committee determines shall be treated as a case.

“CLASS” and “CLASSES” means (as the context shall require) any one or more or all of the categories of risks in respect of which the Association offers insurance and/or the Members entered for insurance of such risks, namely

Class 1 - Protection and Indemnity

Class 2 - Freight, Demurrage and Defence

Class 3 - Ship’s Officers and/or Crew Strikes

Class 4 - Port Area Strikes

“CLOSED POLICY YEAR” means a Policy Year which has been closed in accordance with Rule 46.

“CO-ASSURED” means a person who is named in a Certificate of Entry as a person capable of benefiting and/or accepting obligations from such Entry in addition to or in substitution for the named Member.

“COMMERCIAL TOTAL LOSS”: An insured vessel is a commercial total loss if, for whatever reason:

- (a) it is abandoned because its actual total loss appears to the Member on reasonable grounds to be unavoidable, or

- (b) it would cost more to repair (if damaged), to recover (if the Member has been deprived of its possession) or otherwise to preserve from actual total loss than its market value when repaired, recovered or preserved as the case may be.

“COMMITTEE” means the Board of Directors for the time being of the Association.

“CONSTITUTION” means the Constitution for the time being of the Association.

“COSTS AND EXPENSES” means costs and expenses charged or incurred by the Association or by lawyers, surveyors, representatives or other persons (excluding, however, all salaries and expenses of Member’s employees and any office expenses of the Member) in connection with any claim, dispute or proceedings or the possibility thereof.

“ENTERED TONNAGE” means the tonnage agreed between the Association and an applicant for insurance of a vessel at the time of acceptance of that vessel.

“EVENT”, for the purpose of determining whether a claim, dispute or proceedings arise out of events occurring during the period of insurance of a vessel, means:

- (a) where the claim, dispute or proceedings relate to a contract of towage or salvage of the vessel, the beginning of the towage or salvage services;
- (b) in all other cases, the accruing of the cause of action.

“GROSS TONNAGE” means the gross tonnage of a vessel calculated in accordance with the 1969 Tonnage Measurement Convention (or if no such tonnage has been fixed, then the gross registered tonnage) as certified in the Certificate of Registry of such vessel or, if no such certificate exists, in any other official document relating to the registration of such vessel.

“INCIDENT” means any one accident or occurrence (save that a series of incidents having the same origin shall be treated as one incident taking place at the time of the first of them).

“INSURED” and “INSURANCE” means insured and insurance in respect of the risks covered by these Rules and shall include reinsured and reinsurance.

“INSURED VESSEL” means a vessel which has been entered for insurance in this Class of the Association, whether identified or not at the time of entry.

“MANAGERS” means the Managers for the time being of the Association.

“MEMBER” means a Member for the time being of the Association and includes a joint Member when the context so admits.

“NOON” means noon G.M.T.

“PERIOD OF INSURANCE”, in relation to an insured vessel, means the period of time during which (according to the terms of any contract of insurance) the Association is at risk as regards the occurrence of events in relation to that vessel which may give rise to a liability on the part of the Association to indemnify the Member concerned.

# 2

“POLICY YEAR” means a year from noon on any 20th February to noon on the next following 20th February.

“SALVAGE OPERATIONS” means operations in the nature of salvage to any property in danger whatsoever, whether or not a recognised subject of salvage under maritime law, or operations in connection with the raising, removal, destruction or rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such a vessel.

“SPECIAL TERMS” means terms other than, or which vary terms of insurance set out in these Rules, agreed between the Managers on behalf of the Association and the assured pursuant to the powers of the Association as set out in the Constitution to accept vessels for insurance on special terms.

“SUCCESSORS” means the heirs, executors, administrators, personal representatives, assignees (when permitted under these Rules), receiver, curator or other person authorised to act on behalf of one who becomes incapable by reason of mental disorder of managing his property or affairs, trustee in bankruptcy, liquidator and other successors whatsoever.

“THESE RULES” means the Rules of this Class of the Association and the Schedule thereto as originally framed or as from time to time altered, abrogated or added to, for the time being in force.

“THIS CLASS” means this Class 2 - Freight, Demurrage and Defence and/or the Members entered for insurance therein as the context shall require.

“VESSEL” (in the context of a vessel entered or proposed to be entered in the Association) means any ship, boat or other description of vessel (including a lighter, barge, or like vessel howsoever propelled) or hovercraft, rig or structure (including any ship, boat, vessel, hovercraft, rig or structure under construction) used or intended to be used for any purpose whatsoever in navigation or otherwise on, under, over or in water (including inland waters of any description), or any part thereof or any proportion of the tonnage thereof or any share therein.

“WRITING, IN” means written, printed or lithographed or visibly expressed in all or any of these or any other modes of representing or reproducing words.

Words importing the singular number only shall include the plural number and vice versa.

Words importing the masculine gender only shall include the feminine gender. Words importing persons shall include corporations.



# Class 2 - The First Schedule

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## THE FIRST SCHEDULE

Counter Security Terms (FORM B.3)

*NOTE: This undertaking should bear the date(s) on which application for bail or security was made to the Association.*

To: The West of England Ship Owners Mutual  
Insurance Association (Luxembourg)

.....20.....

Dear Sirs,

Vessel: .....

Voyage: .....

Date: .....

Casualty\*/Incident\*: .....

Bills of Lading\*: .....

Nature of Claim: .....

We hereby request you (either personally or through your agents) to provide bail or other security for the above claim in the sum of ..... which bail or security is now being requested and/or is now required in order to avoid the arrest or detention of MV ..... or in order to secure her release from arrest.

In consideration of your providing such bail or security (hereinafter called "the bail or security") we hereby agree as follows:-

1. To pay immediately upon any liability being incurred by you or your agents under or in connection with the bail or security a sufficient sum to discharge such liability in full and generally to take all such measures as may be necessary to ensure that such liability is discharged in full without delay as soon as it may be incurred and that neither you nor your agents shall be required to make any payment whatsoever to discharge such liability save out of the funds (hereinafter called "the funds") which we shall have provided.

Provided that, subject to having first complied with the previous paragraph in all respects, we reserve our right to claim repayment of any sums we may pay hereunder which we believe are recoverable in accordance with your Rules and

2. To indemnify you and hold you harmless in respect of any loss or damage whatsoever which may result from your giving the bail or security and to reimburse to you at any time upon your demand any sum or sums of money which you may be called upon to pay under or in connection with the bail or security.
3. To pay on demand all your costs, expenses, charges and commission (as specified in your Rules) in connection with the provision of the bail or security.

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4. To reimburse you immediately upon your written demand in respect of any claim(s) or judgements which you may pay under the bail or security together with all costs and expenses whatsoever that you have incurred in handling, processing or defending such claim or judgement. You may at your absolute discretion and without our agreement or authority: (a) defend, negotiate, settle, pay or otherwise dispose of any and all such claims, and (b) appeal or comply with any and all such judgements.
5. Without prejudice to the foregoing, in the event that, in breach of our obligation under Clause 1 above, we fail to provide the funds and you are obliged nevertheless to incur or, notwithstanding that you have no such obligation, you elect to incur any such liability, loss, damage, costs, expenses, charges or commission, then
  - (a) you shall be entitled to demand from us immediate payment of the amount of any such liability, loss, damage, costs, expenses, charges or commission;
  - (b) in the event that, in breach of our obligations hereunder, such payment is not immediately made, we will pay to you interest thereon or on any part thereof for the time being outstanding at the rate of 2 per cent per annum above the offered rate between prime banks in the London Inter Bank Euro-dollar Market for 3 month deposits (the rate being determined monthly on the first day of the appropriate month) until such payment is made.
6. That in relation to our obligations as to payment and indemnity to the Association hereunder all or any sums due from us to the Association shall be paid by us in full, without discount set-off or counter claim of any kind whatsoever.
7. That in addition to this letter of undertaking we shall upon your first demand provide you with such additional counter security as you may from time to time require. Should we fail to provide such additional counter security to you on such demand, we shall immediately pay to you the amount for which we hereby request you to provide the bail or security.
8. That, by providing any of the bail or security, you shall incur no obligation whatsoever to provide any further bail or security in connection with the above claim and that you may at any time in your absolute discretion cause the above bail or security to be cancelled or released.
9. That this agreement shall be governed by English law and the Association's Rules and that, without prejudice to your rights to institute proceedings in any other jurisdiction, the High Court of Justice in London shall have jurisdiction to hear and determine any action brought by you in connection herewith.

Yours faithfully,

.....

*\* Delete whichever is inapplicable.*

## Class 2 - The Second Schedule

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### THE SECOND SCHEDULE - Bye-Laws

#### **Interest Payable to Association on Calls and Other Sums After Due Date Of Payment**

“(Effective as regards Calls and other sums payable on or after Noon G.M.T., 1 April 2003). Interest at the rate of 7.5% per annum shall be payable by each Member on any Calls and other sums due from him to the Association as from the due date of payment. Any interest payable as aforesaid shall accrue from day to day.”



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**(This Index does not form part of the Rules)**

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