



**BRITANNIA**

P&I CLUB / TRUSTED SINCE 1855

**RULES**

2024/25\*

**CLASS 6**

**FREIGHT  
DEMURRAGE  
& DEFENCE**

\* POLICY YEAR

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## Section I Introductory

### RULE 1 ARTICLES OF ASSOCIATION

#### 1 Articles of Association

These Rules are subject to the Articles of Association of The Britannia Steam Ship Insurance Association Europe or The Britannia Steam Ship Insurance Association Limited as applicable.

### RULE 2 DEFINITIONS

#### 2 Definitions

In these Rules the following terms shall have the meanings set out below if not inconsistent with the subject or context.

##### 2.1 The Association

The Britannia Steam Ship Insurance Association Europe or The Britannia Steam Ship Insurance Association Limited as named in the *Certificate of Entry*.

##### 2.2 Associated Company

A person or company affiliated or associated with a Member and to whom the benefit of the cover afforded by the Association to the Member is extended in accordance with Rule 16 *Associated Companies*.

##### 2.3 The Board

The Directors for the time being of the Association or as the context may require those Directors present at a duly convened meeting of the Board at which a quorum is present.

##### 2.4 Call Rate

In relation to any Entered Ship, the rate at which an Estimated Total Call is payable to the Association in accordance with Rule 11.1 *Call Rate*.

##### 2.5 Calls

Any monies payable to the Association in respect of an Entered Ship pursuant to Rule 11 *Calls*.

##### 2.6 Certificate of Entry

A document and any endorsement thereto issued by the Association in accordance with these Rules and the Articles of Association which records the names and seniority of the Members interested in, and evidences the contract of insurance in respect of, an Entered Ship.

##### 2.7 This Class

Class 6 Freight, Demurrage and Defence.

##### 2.8 Closed Policy Year

A Policy Year of the Association which the Board shall have declared to be closed in accordance with Rule 37.1 *Closing of Policy Year*.

##### 2.9 The Committee

The Representatives for the time being of the Association or as the context may require those Representatives present at a duly convened meeting of the Committee at which a quorum is present.

##### 2.10 Contribution

An Estimated Total Call, Exceptional Call or Fixed Premium levied by the Association pursuant to Rule 7 *Special Insurances* and Rule 11 *Calls*.

##### 2.11 Costs

Any legal fees or legal costs, including lawyers' disbursements, and any other expenses, including survey fees, necessarily incurred in defence or prosecution of a claim.

2.11.1 Provided always that the following shall be excluded:

2.11.1.1 expenses or dues incurred by a Member in the operation of or maintenance of any property; and

2.11.1.2 the salary or retainer of any employee or third party.

**2.12 Entered Ship**

A Ship which has been entered for insurance in this Class of the Association.

**2.13 Entered Tonnage**

The tonnage for which a Ship is entered and on which Contribution to the funds of the Association is calculated.

**2.14 Fleet Entry**

The entry of more than one Ship by one or more Members on the basis that those Ships will be treated together as a fleet for underwriting purposes.

**2.15 Full Tonnage**

The gross full tonnage of a Ship as measured in accordance with the *International Convention on Tonnage Measurement of Ships, 1969* and certified or stated in the Certificate of Registry or other official document relating to the registration of such Ship. In case of doubt the tonnage under the said Convention shall prevail. For the purposes of these Rules and the Articles of Association the gross tonnage of a Ship shall remain unchanged for each Policy Year and shall be stated in the *Certificate of Entry* of that Ship at the start of that Policy Year or at the time of entry of that Ship.

**2.16 Hull Policies**

Policies effected on the hull and machinery of a ship including any excess liability policy.

**2.17 Insurance**

Any insurance or reinsurance against the risks specified in these Rules.

**2.18 The Managers**

The Managers for the time being of the Association including, if the Managers are a firm, each partner of the Managers or, if the Managers are a limited or unlimited company, each director of the Managers.

**2.19 Member**

A Member of the Association as defined in Article 3 of the Articles of Association and more particularly a Member of this Class of the Association.

**2.20 Passenger**

A person carried on board an Entered Ship by virtue of holding a ticket of passage.

**2.21 Policy Year**

A year from 12:00:00 UTC on any 20th February to 12:00:00 UTC on the next following 20th February.

**2.22 The Register**

The Register of Members of the Association.

**2.23 Representative**

A representative of a Member appointed to the Committee.

**2.24 Rules**

The rules, regulations and byelaws for the time being in force concerning this Class of the Association.

**2.25 Sanction**

Any applicable economic, financial or trade sanction or embargo.

**2.26 Seafarer**

A person (including the Master) engaged under articles of agreement or otherwise contractually obliged to serve on board an Entered Ship including a substitute for such person and also including such persons while proceeding to or from such Ship.

**2.27 Senior Member**

In respect of an Entered Ship that Member whose name stands first in the Register in respect of such Ship who shall be the Member whose name stands first on the *Certificate of Entry* of such Ship.

### 2.28 Ship

In the context of a ship entered or proposed to be entered in this Class of the Association, any ship, boat, hydrofoil, hovercraft or other description of vessel whether completed or under construction (including a lighter, barge or similar vessel howsoever propelled but excluding

2.28.1 a unit or vessel constructed or adapted for the purpose of carrying out drilling operations in connection with oil or gas exploration or production,

2.28.2 a fixed platform or fixed rig and

2.28.3 a wing-in-ground craft)

used or intended to be used for any purpose whatsoever in navigation or otherwise on, under, over or in water or any part of such ship or any proportion of the tonnage thereof or any share therein.

### 2.29 The United Kingdom

Great Britain and Northern Ireland.

### 2.30 Interpretation

For the purposes of these Rules:

2.30.1 *Writing* shall include printing, typewriting, lithography, facsimile electronic means of written communication and any other mode or modes of representing or reproducing words in a visible form.

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

2.30.3 Words importing persons shall include individuals, partnerships, corporations and associations.

2.30.4 The headings and sub-headings as set out in these Rules are for convenience and ease of reference only and do not affect the construction of any Rule or Sub-Rule.

## RULE 3 NATURE OF COVER

### 3.1 Extent of Cover

The cover provided by this Class of the Association is as set out in these Rules and provides insurance for a Member against Costs incurred by the Member which arise:

3.1.1 in respect of the Member's interest in an Entered Ship; and

3.1.2 in connection with the building, purchase, sale or operation of the Ship; and

3.1.3 out of events occurring during the period of entry of the Ship in the Association;

3.1.4 Provided always that:

3.1.4.1 claims or disputes arising under contract, in tort or under statute shall be deemed to arise as at the date when the cause of action accrues;

3.1.4.2 claims or disputes concerning salvage or towage shall be deemed to arise as at the date when the said services commenced.

### 3.2 Period of Entry

A Ship may be entered in this Class from the first date at which a Member has an interest in the said Ship, which may include the date of entering into:

3.2.1 a charter party in respect of the said Ship; or

3.2.2 a contract to purchase the said Ship; or

3.2.3 a contract to build the said Ship;

and may continue for as long as a Member retains an interest in the Entered Ship.

3.2.4 Provided always that claims arising under a contract of purchase or building shall only be covered if:

3.2.4.1 the Ship was entered as from the date when the relevant contract was signed; and

3.2.4.2 the entry of the Ship is continued until the Member takes possession of the said Ship and for the first Policy Year thereafter or, if the Member does not take possession, until the Member would have taken possession and for the first Policy Year thereafter.

### 3.3 Conditions

The risks covered as set out in Rule 17 *Risk Covered* and Rule 18 *Extent of Cover* are subject to all the conditions set out in the other parts of these Rules and those risks may be varied or supplemented by special terms agreed in writing between a Member and the Managers, either under Rule 7 *Special Insurances* or Rule 17 *Risks Covered*.

### 3.4 Contributions

The entry of a Ship in the Association is only valid provided that the Member has paid Contributions as specified in Rule 7 *Special Insurances* and Rule 11 *Calls* and as set out in the *Certificate of Entry* of the Entered Ship or any notice sent to the Member by the Association or the Managers under Rule 33.1 *Failure to Pay*.

### 3.5 Sanctions

Notwithstanding and without prejudice to any other provision of these Rules, including Rule 3.3 *Conditions*, and the provisions of the Articles of Association, these Rules may, on such notice as the Board may in its discretion decide, be amended at any time (including with effect during the course of a Policy Year) to such extent as the Board may in its discretion determine is necessary as a result of the potential or actual implementation of or change in any Sanction, prohibition, restriction, legislation, regulation or requirement to obtain any licence or approval, by any state, international or supranational organisation or other competent authority.

### 3.6 Insurance Act 2015

The following provisions of the *Insurance Act 2015* (the Act) are excluded from these Rules and the contract of insurance:

#### 3.6.1 Section 8

Section 8 of the Act is excluded. As a result any breach of the duty of fair presentation shall entitle the Association to avoid the contract of insurance, regardless of whether the breach of the duty of fair presentation is innocent, deliberate or reckless.

#### 3.6.2 Section 10

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

#### 3.6.3 Section 11

Section 11 of the Act is excluded. As a result the Rules and all terms of the contract of insurance between the Association and the Member or any party afforded the benefit of cover by the Association, including terms which tend to reduce the risk of loss of a particular kind, loss at a particular location and/or loss at a particular time, must be strictly complied with and if the Member or any party afforded the benefit of cover by the Association fails to comply with any such term, the Association's liability may be excluded, limited or discharged in accordance with these Rules notwithstanding that the breach could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

#### 3.6.4 Section 13

Section 13 of the Act is excluded. As a result the Association shall be entitled to exercise its right to terminate the contract of insurance in respect of the Member and any party afforded the benefit of cover by the Association in the event that a fraudulent claim is submitted by or on behalf of the Member or any party afforded the benefit of cover by the Association.

#### 3.6.5 Section 13A

Section 13A of the Act is excluded. As a result the Rules and the contract of insurance between the Association and the Member and any party afforded the benefit of cover by the Association shall not be subject to nor shall the Association or the Managers be in breach of any implied term that they will pay any sums due in respect of a claim within a reasonable time save where the breach is deliberate or reckless and Section 13A of the Act is excluded to this extent.

#### 3.6.6 Section 14

Section 14 of the Act is excluded. As a result, the contract of insurance between the Association, the Member and any party afforded the benefit of cover by the Association shall be deemed to be a contract of the utmost good faith, and any breach of the duty of the utmost good faith shall entitle the Association to avoid the contract of insurance.

## RULE 4 MEMBERSHIP

### 4.1 Entry of a Ship

Every person whose application to enter a Ship in this Class of the Association for the insurance of that person's interest in that Ship shall (if not already a Member) be and shall become a Member of the Association as from the date of the acceptance of the Member's application and the Member's name shall be entered in the Register.

### 4.2 Directors

Every Director shall (if not already a Member), whilst holding office, be a Member of the Association and the Member's name shall be entered in the Register.

### 4.3 Reinsured Member

Whenever the Association agrees to accept the entry of a Ship by way of reinsurance from an insurer the Managers may in their discretion decide that the person insured by such insurer (if otherwise qualified to be a Member) is to be a Member of the Association in addition to the said insurer and they may accept the application on either basis. If such person is accepted as a Member that person's name shall be entered in the Register.

### 4.4 Cessation of Membership

A person shall cease to be a Member if for any reason whatsoever the entry of all Ships in respect of which the Member's interest was insured by the Association shall have ceased or terminated.

### 4.5 Separate Class

The Members who are entered for the time being in this Class shall form one separate Class within the Association.

## RULE 5 RIGHT OF RECOVERY

### 5.1 Right of Recovery

If a Member shall incur any Costs as hereinafter set out in Rule 17 *Risks Covered* in respect of a Ship which was entered in the Association at the time of the claim giving rise to such Costs, such Member shall be entitled to recover out of the funds of this Class of the Association the amount of such Costs to the extent and on the terms, conditions and exceptions provided by these Rules and by the *Certificate of Entry*. But if a tonnage less than the Full Tonnage of the Ship was entered in the Association, the Member shall, unless the entry of the Ship has been accepted on special terms which otherwise provide, be entitled only to recover such proportion as the Entered Tonnage bears to the Full Tonnage of the Ship.

Provided always that:

5.1.1 unless the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in its discretion otherwise determines, it shall be a condition precedent to a Member's right to recover from the funds of the Association in respect of any liability, costs or expenses that the Member shall first have discharged such liability or paid such costs or expenses.

### 5.2 Subrogation

Any recovery by the Member from the Association is subject to the Association's rights of subrogation and the Member will, on request of the Managers, sign a Certificate of Subrogation.

### 5.3 Set-off

Without prejudice to any other part of these Rules the Association shall be entitled to set-off any amount due from a Member against any amount due to such Member from the Association.

### 5.4 Currency

Where a Member is entitled to a recovery out of the funds of this Class of the Association in respect of a loss suffered by the Member in a currency other than the currency specified in the Member's *Certificate of Entry* under Rule 6.3.7 (the specified currency), that loss shall be converted into the specified currency at the rate of exchange ruling on the day the relevant credit note is issued by the Association to the Member.

### 5.5 Limit

Recovery of Costs in respect of any one claim, dispute or proceeding shall be limited to USD10,000,000, except in respect of any claim, dispute or proceeding under Rule 18.7 *Repairs* or Rule 18.13 *Buying and Selling* in which case recovery of Costs shall be limited to USD2,000,000. For the purpose of this Rule, unless the Managers decide

otherwise, all claims arising in connection with a contract for the repair, alteration, building, purchase or sale of a ship shall be considered to be one claim, dispute or proceeding. In respect of all other claims, disputes or proceedings, the Managers in their sole discretion will decide whether or not a series of claims, disputes or proceedings shall be considered to be a single claim, dispute or proceeding.

**5.6 Sanctions**

The Member shall have no entitlement to recovery out of the funds of this Class of the Association in respect of that part of any liabilities, costs and expenses which is not recovered by the Association under any reinsurance(s) arranged by the Association or the Managers, because, and to the extent, of any shortfall in recovery from such reinsurers by the Association which would result in a violation of any Sanction, or any prohibition or adverse action administered by any state, international or supranational organisation or other competent authority or the risk thereof if payment were to be made by such reinsurers. For the purposes of this Rule 5.6 "shortfall" includes any failure or delay in recovery by the Association by reason of such reinsurers making payment into a designated account in compliance with the requirements of any state, international or supranational organisation or other competent authority.

## Section II Entry and Contribution

### RULE 6 ENTRY

#### 6.1 Application

Any person who wishes to enter a Ship for insurance in this Class of the Association shall apply for such entry in such form as may from time to time be required by the Managers and shall furnish any particulars and information requested by the Managers.

#### 6.2 Fair presentation

6.2.1 The Member or potential Member and any agent:

6.2.1.1 must make to the Association and the Managers a fair presentation of the risk by providing the Managers with all material particulars and information together with any additional particulars and information as the Managers may require;

6.2.1.2 will ensure that every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.

6.2.2 In accordance with Rule 3.6 *Insurance Act 2015*, Section 8 of the *Insurance Act 2015* is excluded. Any breach of Rule 6.2.1.1 or Rule 6.2.1.2 above shall entitle the Association to avoid the contract of insurance, regardless of whether the breach is innocent, deliberate or reckless.

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

#### 6.3 Certificate of Entry

As soon as reasonably practicable after accepting any application for the entry of a Ship in this Class of the Association, the Managers shall issue a *Certificate of Entry* which (subject to any special terms on which such Ship may be entered) shall state:

6.3.1 The names of the Members on whose behalf such Ship has been entered and their interest in such Ship.

6.3.2 The names of the Members on whose behalf such Ship has been entered in the Register in the order in which their names appear on the *Certificate of Entry* and this order shall be conclusive proof of the rights of seniority between Members in accordance with these Rules and the Articles of Association.

6.3.3 The risks against which such Ship has been entered for insurance in the Association and the amount of any deductible or retention to be borne by the Member in respect of such risks,

6.3.4 The date on which the entry of such Ship is to commence.

6.3.5 The Full and Entered Tonnage of such Ship.

6.3.6 Any special terms as to Contribution.

6.3.7 The currency in which Contributions are calculated which shall be the currency in which transactions between the Member and the Association are conducted, subject to the provisions of Rule 12.3 *Currencies*.

6.3.8 Any limitations on the cover provided by the Association which are not set out in these Rules.

#### 6.4 Entered Tonnage

The Managers may accept the entry of a Ship for a tonnage other than the Full Tonnage of such Ship.

#### 6.5 Subject to Rules

The terms and conditions on which a Ship is accepted for entry, including those relating to the nature and extent of the risks covered and the Contributions payable by the Member, shall be those set out in the Rules and byelaws hereinafter mentioned but subject to such variations, within the scope of these Rules, as may have been agreed between the Member and the Managers and set out in the *Certificate of Entry*.

**6.6 Variation of Cover**

If at any time the Managers and the Member agree to vary the terms and conditions on which a Ship is entered the Managers, as soon as reasonably practicable thereafter, shall issue an endorsement to the *Certificate of Entry* stating the nature of such variation and the date from which such variation is to be effective.

**6.7 Contract of Insurance**

Every *Certificate of Entry* issued as aforesaid shall be conclusive evidence of the contract of insurance.

**6.8 Refusal of Application**

The Managers may in their discretion and without giving any reason refuse an application by any person for entry of a Ship in this Class whether or not that person is already a Member of the Association.

**RULE 7 SPECIAL INSURANCES**

**7.1 Fixed Premium**

The Managers may accept the entry of a Ship on terms that the Member is liable to pay a fixed premium provided that every Member whose application for the entry of a Ship is accepted on the basis of paying a fixed premium shall be bound to pay and shall pay to the Association such sums as shall have been agreed with the Managers and at such time or times as the Managers shall have specified.

**7.2 Special Acceptance**

The Managers may accept insurances including entries of Ships on special terms as to Membership and Contribution and as to the nature and extent of risks covered, in respect of additional risks not set out in Rule 17 *Risks Covered* and Rule 18 *Extent of Cover*, provided that where such insurance is accepted the person insured shall be bound to pay and shall pay to the Association such sums as shall have been agreed with the Managers and at such time or times as the Managers shall have specified. In particular the Managers may also accept such insurances from other insurers.

**7.3 Reinsurance and Recovery**

Without prejudice to the generality of Rule 38 *Reinsurance*, the Managers may reinsure the whole or any part of the risk or risks of the Association insured under this Rule 7 *Special Insurances* and where such reinsurance is arranged the Member shall be entitled to recover only the net amount actually recovered under such reinsurance arrangements, together with that proportion (if any) of the risk or risks retained by the Association.

**RULE 8 JOINT ENTRIES**

**8.1 Joint Members**

8.1.1 The Managers may accept an application by the Member as the Senior Member for another person or persons to be added to the entry of a Ship (hereinafter referred to as Joint Members)

Provided always that:

8.1.1.1 unless otherwise agreed in writing by the Managers the Senior Member and all Joint Members shall be jointly and severally liable to pay all Contributions or other sums due to the Association in respect of such entry, and the receipt by any one of such persons of any sums payable by the Association shall be a sufficient discharge of the Association for the same;

8.1.2 In relation to such application under Rule 8.1.1 the Senior Member and each Joint Member warrants that the Joint Member is, in relation to the Entered Ship:

8.1.2.1 interested in its operation, management or manning, or

8.1.2.2 the holding company or the beneficial owner of the Senior Member or any Joint Member falling within Rule 8.1.2.1, or

8.1.2.3 a mortgagee or a financial institution (or its subsidiary or affiliate) leasing the Ship as shipowner to the Senior Member, or

8.1.2.4 the bareboat or demise charterer.



8.1.3 For the purpose of this Rule 8.1, the liability of the Senior Member and all Joint Members to each other shall not be excluded nor be discharged by reason of co-assurance and any payment to the Senior Member or one of the Joint Members in respect of any liabilities, losses, costs and expenses shall operate only as satisfaction but not exclusion or discharge of the liability of the Senior Member and the Joint Members to each other.

**8.2 Disclosure**

Failure by the Senior Member or any Joint Member to disclose material information within the knowledge of the Senior Member or the Joint Member shall be deemed to have been failure of the Senior Member and all the Joint Members.

**8.3 Conduct**

Conduct of the Senior Member or any Joint Member which would have entitled the Association to decline to indemnify the Senior Member or the Joint Member shall be deemed the conduct of the Senior Member and all the Joint Members.

**8.4 Extent of cover**

The Association shall not insure any Joint Member against any liabilities, costs or expenses which arise other than out of operations and/or activities customarily carried on by or at the risk and responsibility of shipowners (or the case of a charterer's entry, a charterer) and which are within the scope of the cover afforded by these Rules and the *Certificate of Entry*.

**8.5 Limits of cover**

Where any Ship is entered in the names of or on behalf of Joint Members, any limits on the cover provided by the Association and set out in these Rules or the *Certificate of Entry* shall apply to all Joint Members in the aggregate as if the Ship had been entered by the Senior Member only.

**8.6 Communications**

Unless the Managers have otherwise agreed in writing, all communication from or on behalf of the Association to the Senior Member or any Joint Member shall be deemed to be within the knowledge of the Senior Member and all Joint Members and any communication from the Senior Member or any Joint Member to the Association or to the Managers shall be deemed to have been made with the full approval and authority of the Senior Member and all the Joint Members.

**8.7 PROVIDED ALWAYS THAT:**

There shall be no recovery in respect of any liabilities, costs or expenses which arise as the result of a claim brought between any of the Joint Members or with the Senior Member.

## RULE 9 PERIOD OF INSURANCE

**9.1 Attachment and Contribution**

Unless otherwise agreed at the time of entry and subject as otherwise provided in these Rules, the insurance shall begin at the time on the date stated in the *Certificate of Entry* when the Member first has an interest in the Entered Ship or, in the case of a change in the terms of entry, immediately after 24:00:00 UTC on that date at the place where the Ship is located and shall continue until 12:00:00 UTC on 20 February next following. All Contributions shall be calculated as if the entry of the Ship or change in the terms of entry had taken place at 12:00:00 UTC on the date stated in the *Certificate of Entry*.

**9.2 Change of Conditions**

The insurance shall continue for the next Policy Year on the same terms and conditions as those in force for the current Policy Year, unless at the request of a Member other terms shall be agreed, or unless:

- 9.2.1 notice shall have been given in writing by either the Member to the Managers or the Managers to the Member not later than 12:00:00 UTC on 20 January in any year, that the insurance (not being for a fixed period) specified in the notice is to cease. In either event the insurance shall cease at the end of the then current Policy Year; or unless
- 9.2.2 the Managers shall have given notice not later than 12:00:00 UTC on 20 January that the terms of the insurance by the Association for the next following Policy Year are to be changed. In the event of such notice being given, the insurance for the next following Policy Year shall continue on such terms as may be agreed between the Member and the Managers before 12:00:00 UTC on 20 February immediately following such notice and, if no terms shall by then have been agreed, the insurance shall thereupon cease.
- 9.2.3 PROVIDED ALWAYS THAT:
- 9.2.3.1 if before 20 December in any year the Managers give notice of a decision of the Board under Rule 11.1.1 the Member shall be deemed to have agreed to and accepted such decision and/or resolution and the insurance shall continue for the next Policy Year unless by 20 January following the Member gives notice to the Managers under Rule 9.2.1; or
- 9.2.3.2 if the Managers give notice of an alteration in the Rules of the Association before the end of a Policy Year the Member shall be deemed to have agreed to and accepted such alteration and the insurance shall continue for the next Policy Year with the alteration taking effect from the start of that Policy Year.

**9.3 Notice of Termination of Cover by Board or Managers**

The Board or Managers may at any time by 30 days' notice to a Member terminate the entry of any Ship in this Class.

**9.4 Prohibition of Withdrawal**

An Entered Ship shall not be withdrawn from the Association at any time or in any manner except under the provisions of Rule 9.2 *Change of Conditions* or with the consent of the Board or Managers.

## RULE 10 CONTRIBUTION BY WAY OF CALLS

**10.1 Mutual Insurance**

Subject to Rule 7 *Special Insurances*, Members who have entered Ships for insurance in this Class of the Association for any part of a Policy Year shall through the Association insure each other as hereinafter set out against Costs which they or any of them may incur or may become liable to pay in respect of such Entered Ships, and for this purpose the said Members shall contribute by way of Calls to the funds required to meet:

- 10.1.1 The claims, expenses of the Association and other outgoings (whether incurred, accrued or anticipated) which in the opinion of the Board necessarily and properly fall upon this Class of the Association in respect of such Policy Year.
- 10.1.2 Such transfers to reserves or provisions as the Board may deem it expedient to make, including transfers to reserves and provisions in respect of any deficiency which has occurred, or which may be thought likely to occur in respect of any Closed Policy Year as the Board thinks fit.
- 10.1.3 The proportion attributable to this Class of such sums as the Association may by any Governmental legislation or regulation be required to set aside in order to establish and/or maintain an adequate Solvency Margin and/or Guarantee Fund in respect of any Policy Year.

**10.2 Estimated Total Call**

The said Calls shall be levied by means of an Estimated Total Call or Exceptional Calls in accordance with the provisions of Rule 11 *Calls*.

## RULE 11 CALLS

### 11.1 Call Rate

- 11.1.1 Before the start of a Policy Year the Association shall levy upon Members an Estimated Total Call calculated at the Call Rate upon their Ships (subject to any special terms on which such Ships may be entered).
- 11.1.2 The Call Rate in respect of each Entered Ship shall be notified in writing to the Member and may be altered in accordance with the provisions of Rule 6.6 *Variation of Cover* and Rule 9.2.2.

### 11.2 Discount

If at any time before the closure in accordance with Rule 37.1 *Closing of Policy Year* of any Policy Year the Board determines that the whole of the Estimated Total Call (together with any transfers from reserves made for the credit of or in respect of such Policy Year) is not required for the purposes set out in Rule 10 *Contribution by Way of Calls*:

- 11.2.1 it may declare a discount of such percentage of the Estimated Total Call as it may decide; and
- 11.2.2 the liability of the Member to pay the Estimated Total Call under Rule 11.1.1 shall be reduced accordingly.

### 11.3 Exceptional Calls

The Board may at any time or times during or after the end of each Policy Year (but not after such Policy Year has been closed in accordance with Rule 37.1 *Closing of Policy Year*) direct that an Exceptional Call shall be paid by each Member in respect of Ships entered for such Policy Year of such amount as the Board may think fit. All Exceptional Calls so made shall be calculated pro rata to the Estimated Total Call (less any returns of Call) in the relevant Policy Year.

## RULE 12 PAYMENT

### 12.1 Instalments

Subject to Rule 7.2 *Special Acceptance*, the Estimated Total Call and every Exceptional Call shall be payable in such instalments and on such dates as the Board may specify.

### 12.2 Notification

As soon as reasonably practical after the amount of any Estimated Total Call or the rate of any Exceptional Call shall have been fixed the Managers shall notify each Member concerned of:

- 12.2.1 such amount or such rates;
- 12.2.2 the date on which the Call concerned is payable or, if such Call is payable by instalments, of the amounts of such instalments and the respective dates on which they are payable;
- 12.2.3 the amount payable by such Member in respect of each Ship entered by the Member.

### 12.3 Currencies

Notwithstanding Rule 6.3.7 the Managers may require any Member to pay all or any part of any sums payable by the Member in such currencies as the Managers may specify.

### 12.4 Tax

The Member shall pay on demand to the Association the amount of any tax or other financial demand, relating to Calls or other sums due from or paid by the Member to the Association, for which the Managers determine the Association has or may become liable.

### 12.5 Set-off

No claim of any kind whatsoever by a Member against the Association shall give the Member a right of set-off against the Contributions or other sums of whatsoever nature due to the Association or shall entitle a Member to withhold or delay payment of any such Contributions or sums.

### 12.6 Penalty for Late Payment

Without prejudice to the rights and remedies of the Association under Rule 33.1 *Failure to Pay*, if any Contribution or instalment or part thereof or any other sum of whatsoever nature due from any Member is not paid by such Member on or before the date specified for payment thereof the Board may order such Member to pay interest on the amount not so paid, from and including the date so specified down to the date of payment, at such rate as the Board may from time to time determine.

**12.7 Bad Debts**

If any Contribution or other payment due from a Member to the Association is not paid and if the Board decides that payment cannot be obtained, the sums required to make good any resulting shortfall or deficiency in the funds of the Association shall be deemed to be expenses of the Association for the purposes of Contribution under Rule 10 *Contribution by Way of Calls*.

**12.8 Effect of a Member's Non-Payment**

Without prejudice to the provisions of Rule 33 *Cesser of All Insurances* and Rule 34 *Cesser of Ship Entry*, if any Contribution or other payment due from a Member to the Association is not paid within 30 days of the date of service on a Member of a debit note, notice or other demand for payment there shall be no recovery from the Association in respect of any liabilities incurred by the Member in respect of any Ship which is or has been entered for insurance by the Member in the Association.

Provided always that:

12.8.1 the Managers may serve a notice extending the time for payment and the Member may then make arrangements satisfactory to the Managers prior to the expiry of the period of grace allowed in the said notice for the payment of any such Contribution or other payment.

**RULE 13 RELEASE**

**13.1 Request by Member for Release**

Upon or at any time after the cesser of insurance in respect of an Entered Ship for any reason, the Managers may, at the request of the Member, release the Member from liability for further contribution to Calls in respect of such Ship on such terms and including the payment of such amount, as the Managers, in their sole discretion, may deem to be appropriate in the circumstances.

**13.2 No Request by Member for Release**

In the absence of such a request from the Member the Managers shall nevertheless have power to assess, as at the date of the cesser, or at any time thereafter, the liability of any Member for further Contributions in respect of such Ship and the amount of such assessment shall be payable by the Member on demand without any set-off.

**13.3 Scope of Release**

The Managers may release a Member from liability from further contribution to either or both of the Estimated Total Call or Exceptional Calls made under Rule 11.3 *Exceptional Calls*.

**13.4 Effect of Payment of Release Call**

Upon payment of such assessment and fulfilment of such other terms as the Managers, in their sole discretion, may deem to be appropriate in the circumstances, the Member shall be released from liability for further contribution to Calls in respect of such Ship.

**13.5 Effect of Release**

As from the date of the release of an Entered Ship under this Rule 13 in respect of the Estimated Total Call and Exceptional Calls the Member shall be under no further liability to contribute to the corresponding Calls in respect of that Ship under Rule 10 *Contribution by Way of Calls* nor shall the Member have any right to share in any return of Contributions or other receipts under Rule 37.2 *Disposal of Excess Funds* or Rule 39 *Reserves* in respect of that Ship.

**RULE 14 RECOVERY OF CONTRIBUTIONS**

**14.1 Recovery**

All monies from time to time payable by a Member may be recovered by action commenced under the instructions of the Managers in the name of the Association.

**RULE 15 FLEET ENTRY**

**15.1 Effect of Fleet Entry**

Where one or more Ships have been entered as a Fleet Entry then the debts of any one Member in respect of any such Entered Ship shall be treated as the debt of all the other Members whose Ships are or were entered as part of the same Fleet Entry and the Association shall be entitled to act as if all the Ships forming part of the Fleet Entry were

entered by the same Member.

## RULE 16 ASSOCIATED COMPANIES

### 16.1 Extension of Cover to Associated Companies

The Managers may accept the entry of any Ship on terms that the benefit of the cover afforded by the Association to a Member in respect of that Ship shall be extended to Associated Companies of that Member. The rights and obligations as between the Association and any such Associated Company shall be such as may be agreed between the Member and the Managers.

### 16.2 Conditions of Reimbursement

The liability of the Association to the Member and to Associated Companies to whom cover is extended in accordance with Rule 16.1 shall be limited in amount to reimbursement of claims relating to liabilities, costs or expenses incurred by one or more of the Associated Companies to the extent and amount only that the Member:

- 16.2.1 would have incurred the same liabilities, costs and expenses if the same claims had been pursued against the Member; and
- 16.2.2 would thereafter have been entitled to obtain reimbursement from the Association in accordance with the terms of entry of the Ship in the Association.

Provided always that:

- 16.2.2.1 conduct of any Associated Company which would have entitled the Association to decline to indemnify that company shall be deemed to be the conduct of the Member.

### 16.3 Receipt of Reimbursement

The receipt by the Member, or any Associated Company to whom cover has been extended in accordance with Rule 16.1 above, of any reimbursement by the Association shall be deemed to be the receipt by the Member and all such Associated Companies jointly and shall fully discharge the Association from any further liability to the Member and any Associated Companies in respect of the loss or damage in respect of which the claim was brought.

## Section III Risks Covered

### RULE 17 RISKS COVERED

#### 17 Risks Covered

The Member shall be insured by the Association in accordance with the provisions of Rule 3 *Nature of Cover* against the following Costs:

##### 17.1 Costs of Legal or Other Proceedings

The Costs of or incidental to any legal or other proceedings which a Member may take or defend with the support of the Board, the Committee or the Managers for the purpose of asserting or defending any of the claims or disputes specified in Rule 18 *Extent of Cover*, including any such Costs which the Member may become liable to pay to any other party to those proceedings.

##### 17.2 Costs of Claims, Disputes, Legal or Other Proceedings

The Costs of or incidental to any of the claims, disputes, legal or other proceedings specified in Rule 18.15 *Enquiries* and Rule 18.16 *Omnibus* to which a Member may be a party or at which the Member may be represented, in both cases with the support of the Board, the Committee or the Managers, including any such Costs which the Member may become liable to pay to any other party to those proceedings.

##### 17.3 Costs incurred by the Member

The Costs incurred by a Member with the approval of the Managers for the purpose of obtaining legal or other advice in connection with any of the claims, disputes or proceedings specified in Rule 18 *Extent of Cover*.

### RULE 18 EXTENT OF COVER

#### 18 Extent of Cover

The cover provided under Rule 17 *Risks Covered* in accordance with the provisions of Rule 3 *Nature of Cover* applies to the following claims, disputes and proceedings involving the Entered Ship:

##### 18.1 Freight, Hire and Demurrage

Claims in respect of freight, deadfreight, hire, demurrage, despatch or other remuneration arising under any contract of affreightment, charter party, bill of lading or other contract connected with the employment of an Entered Ship.

##### 18.2 Detention and Delay

Claims in respect of the detention or loss of use of, or delay to, an Entered Ship.

##### 18.3 Loss and Damage

Claims arising out of the loss of or damage to an Entered Ship.

##### 18.4 General Average

Claims in respect of general and particular average contributions or charges.

##### 18.5 Carriage of Goods

Claims in respect of the breach of any contract of affreightment, charter party, bill of lading, or other contract of carriage or the breach of any legal duty arising in connection with the carriage of goods.

##### 18.6 Supplies

Claims in respect of the supply of fuel, materials or equipment, or other necessaries to an Entered Ship.

##### 18.7 Repairs

Claims in respect of negligent repair of or alteration to an Entered Ship.

##### 18.8 Stevedores

Claims in respect of improper loading, lightening, stowage, trimming or discharge of cargo.

##### 18.9 Insurers and Brokers

Claims in respect of amounts due from or to:

- 18.9.1 underwriters, brokers and any other persons conducting the business of marine insurance;
- 18.9.2 shipbrokers.

**18.10 Salvage and Towage**

Claims in respect of salvage, towage or pilotage services rendered by or to an Entered Ship.

*Provided always* that there shall be no cover under this Rule in respect of any tug, supply boat or salvage vessel unless the vessel has been declared as such at the time of entry and any cover has been agreed by the Managers and is specified in the Terms of Entry.

**18.11 Passengers**

Claims by or against Passengers arising under a ticket of passage.

**18.12 Seafarers and Others**

Claims by or against Seafarers, stowaways or other persons on or about an Entered Ship.

Provided always that:

- 18.12.1 there shall be no cover under this Rule for claims by or against Seafarers which arise under or in connection with a collective agreement or an agreement of service.

**18.13 Buying and Selling**

Claims arising under a contract for the building, purchase, sale or mortgage of an Entered Ship.

**18.14 Port and Customs**

Claims by or against port authorities, ship's agents, customs authorities or terminal owners.

**18.15 Enquiries**

Representation of a Member at official investigations, Coroners' Inquests or other enquiries.

**18.16 Omnibus**

All such claims, disputes and legal or other proceedings which are not specified in Rules 18.1 to 18.15 and which, in the discretion of the Board (or, in the case of claims not exceeding USD2,000,000, the Committee), come within the scope of the cover afforded by the Association, but only to the extent that the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may decide that the Member should recover from the Association.

## Section IV Exclusions, Limitations and Warranties

### RULE 19 GENERAL EXCLUSIONS

#### 19 General Exclusions

The cover provided by this Class is exclusively in respect of the Costs as defined in Rule 2 *Definitions* and specified in Rule 17 *Risks Covered*; in no circumstances shall the Member be covered for any other loss, cost, liability or expense howsoever arising other than such as may be covered under Rule 32.3 *Small Claims* or Rule 32.4 *Costs, Losses and Liabilities*.

### RULE 20 RISKS SPECIFICALLY EXCLUDED

#### 20 Risks Specifically Excluded

**20.1** Subject always to the absolute discretion of the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) under Rule 32.1 *Sole Discretion to Decide*, there shall be no recovery from the Association in respect of Costs which arise in respect of:

**20.1.1 Bad debts**

Claims against persons from whom there is, in the opinion of the Managers, no reasonable prospect of recovery, taking into account any legal problems of enforcement and any assets available to satisfy a judgement or award.

**20.1.2 Admitted debts**

Claims against a Member which relate to money owed by that Member and where, in the opinion of the Managers, there is no justification in the Member's refusal to pay.

**20.1.3 Claims against the Association**

Claims against the Association.

**20.1.4 Support**

Any legal or other proceedings or the appointment of any lawyers or other experts at a time when the Member is not supported by the Association in respect of such proceedings or appointment or when the Member has failed to comply with a direction issued by the Managers under Rule 31.1 *Control of Claims* or the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) under Rule 32.2 *Terms*.

**20.1.5 Matters the Member knew or ought to have known**

Matters where the Member knew or ought to have known that the Member was in breach of any regulations or agreements whether relating to safety, navigation, port requirements, or contracts of employment, or otherwise.

**20.1.6 Road vehicles**

Liabilities which a Member may incur as the owner or operator of a road vehicle.

**20.1.7 Diving**

The activities of professional or commercial divers where the Member is responsible for such activities, unless:

20.1.7.1 special cover has been agreed between the Member and the Managers under Rule 7 *Special Insurances*; or

20.1.7.2 the activities are incidental to and carried out in relation to the inspection, repair or maintenance of the Entered Ship or in relation to damage caused by the Entered Ship; or

20.1.7.3 the activities are recreational.

**20.1.8 Sanctions**

Matters where the provision of cover or a payment by the Association in respect thereof may expose the Association or the Managers to the risk of being subject to any Sanction, penalty, prohibition or any adverse action by a state, international or supranational organisation or other competent authority.

**20.1.9 Cyber risks**

Liabilities directly or indirectly caused by or contributed to by or arising from the use or operation, as a means



for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system;

Provided always that:

- 20.1.9.1 Subject otherwise to the terms of entry, the Costs otherwise recoverable shall not be prejudiced where liabilities arise from the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm;
- 20.1.9.2 Where the terms of entry otherwise afford cover in respect of the risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, this Rule 20.1.9 shall not operate to exclude Costs (which would otherwise be recoverable) in respect of liabilities arising from the use of any computer, computer system, computer software programme, computer process or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

**20.1.10 Declared Communicable Diseases**

- 20.1.10.1 Liabilities directly arising from any transmission or alleged transmission of a Declared Communicable Disease.
- 20.1.10.2 The exclusion in Rule 20.1.10.1 shall not apply to liabilities which arise directly from an identified instance of a transmission of a Declared Communicable Disease, and it is established to the satisfaction of the Managers that such transmission took place before the date of determination by the World Health Organisation (WHO) of the Declared Communicable Disease.
- 20.1.10.3 Irrespective of whether Rule 20.1.10.2 may apply, there shall not in any event be cover for any:
  - 20.1.10.3.1 liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for the Declared Communicable Disease whether the measures are preventative or remedial;
  - 20.1.10.3.2 liability for or loss, cost or expense arising out of any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of the Declared Communicable Disease;
  - 20.1.10.3.3 loss, damage, liability, cost or expense caused by or arising out of fear of or the threat of the Declared Communicable Disease.
- 20.1.10.4 In this Rule 20.1.10, a Declared Communicable Disease is an outbreak of a Communicable Disease which the WHO has determined to be a Public Health Emergency of International Concern and Communicable Disease means any disease, known or unknown, which can be transmitted by means of any substance or agent from any organism to another organism where:

- 20.1.10.4.1 the substance or agent includes but is not limited to a virus, bacterium, parasite or other organism or any variation or mutation of any of the foregoing, whether deemed living or not, and
- 20.1.10.4.2 the method of transmission, whether direct or indirect, includes but is not limited to human touch or contact, airborne transmission, bodily fluid transmission, transmission to or from or via any solid object or surface or liquid or gas, and
- 20.1.10.4.3 the disease, substance or agent may, acting alone or in conjunction with other co-morbidities, conditions, genetic susceptibilities, or with the human immune system, cause death, illness or bodily harm or temporarily or permanently impair human physical or mental health or adversely affect the value of or safe use of property of any kind.

## RULE 21 EXCLUSION OF CERTAIN SPECIALIST RISKS

### 21 Exclusion of Certain Specialist Risks

**20.1** There shall be no recovery from the Association in respect of any Costs relating to claims in respect of expenses of an Entered Ship which is:

#### 21.1.1 Salvage tugs

a salvage tug or other Ship used or intended to be used for salvage or wreck removal operations, when the claim arises as a result of any salvage and/or wreck removal service or attempted salvage and/or wreck removal service, unless cover has been specifically extended for such operations.

#### 21.1.2 Drilling and production

used for drilling, core sampling, or production operations in connection with oil or gas exploration or production when the claim arises out of or during such operations. In respect of any Entered Ship employed to carry out production operations in connection with oil or gas production, the exclusion shall apply from the time that a connection, whether directly or indirectly, has been established between the Entered Ship and the well pursuant to a contract under which the Entered Ship is employed, until such time that the Entered Ship is finally disconnected from the well in accordance with that contract.

#### 21.1.3 Storage ships

Used for the storage of oil when either:

- 21.1.3.1 oil is transferred directly from a producing well to the Ship and the claim arises out of or during such transfer; or
- 21.1.3.2 the Ship has oil and gas separation equipment on board and gas is being separated from oil whilst on board (other than by natural venting) and the claim arises out of or during such separation.

#### 21.1.4 Waste ships

used for waste incineration or waste disposal operations, when the claim arises out of those operations.

#### 21.1.5 Entertainment ships

moored on a permanent basis open to the public as a hotel, restaurant, bar or other place of entertainment, when the claim arises in respect of hotel or restaurant guests or other visitors or the catering crew of the Ship.

#### 21.1.6 Underwater operations

used as or in connection with the operation of a submarine, mini-submarine, diving bell, or remotely operated underwater vehicle.

#### 21.1.7 Specialist operations

used for specialist operations including but not limited to dredging, blasting, pile-driving, well-intervention, cable or pipe-laying, construction, installation or maintenance work, core sampling, mining, depositing of spoil, and power generation and decommissioning, where the claim arises out of or is incurred during those operations.

Provided always that:

- 21.1.7.1 this exclusion applies to Ships other than tugs, firefighting Ships and salvage Ships; and

21.1.7.2 Special Cover may be agreed between the Member and the Managers under Rule 7 *Special Insurances*.

## RULE 22 IMPRUDENT TRADING

### 22 Imprudent Trading

22.1 The Association shall not insure a Member against any Costs arising out of or consequent upon an Entered Ship carrying contraband, blockade running, or being employed in an unlawful trade, or performing any voyage or being employed in any trade if the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) having regard to all the circumstances shall be of the opinion that the nature of the carriage, trade or voyage in respect of which the Ship was engaged was imprudent, unsafe, unduly hazardous or improper.

## RULE 23 EXCLUSION OF NUCLEAR RISKS

### 23 Exclusion of Nuclear Risks

Unless otherwise agreed in writing there shall be no recovery from the Association 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 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 directly or indirectly caused by or arises from:

- 23.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
- 23.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
- 23.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
- 23.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.
- 23.5 PROVIDED ALWAYS THAT:
  - 23.5.1 this exclusion shall not apply to liabilities, costs or expenses arising out of the carriage of "excepted matter" (as defined in the *Nuclear Installations Act 1965* of the United Kingdom or any regulation made thereunder) as cargo in an Entered Ship and agreed by the Managers in writing.

## RULE 24 EXCLUSION OF RISKS COVERED BY HULL POLICIES

### 24 Exclusion of Risks covered by Hull Policies

The Association shall not insure a Member to any extent whatsoever against any Costs, loss liability or expense against which the Member would be insured (save to the extent of any franchise or deductible) if the Entered Ship were fully insured either:

- 24.1 Under Hull Policies on terms not less wide than those of the Lloyd's Marine Policy MAR Form 1/1/82 with the Institute Time Clauses Hulls 1/10/83 attached; or
- 24.2 Under policies providing for Time Charterers' liability for damage to Hull on terms not less wide than those available under Rule 19.24.2 of the *Rules of Class 3 – Protection & Indemnity* – of the Association.
- 24.3 PROVIDED ALWAYS THAT:
  - 24.3.1 Any franchise or deductible to which any such policy is subject shall be deemed not to exceed 1 percent of the Entered Ship's insured value or, if not known, of the free uncommitted market value of the Entered Ship; and
  - 24.3.2 The Member shall provide the Managers with satisfactory evidence of the relevant franchise or deductible.

## RULE 25 EXCLUSION OF WAR RISKS

### 25 Exclusion of War Risks

The Association shall not insure a Member to any extent whatsoever against any costs, loss, liability or expense against which the Member would be insured if the Entered Ship were fully insured under War Risks Policies on terms no less wide than those of the Institute Time War and Strikes Clauses Hulls – Time 1/10/83 and the Institute Protection and Indemnity War and Strikes Clauses Hulls – Time 20/7/87.

## RULE 26 EXCLUSION OF RISKS COVERED BY PROTECTION & INDEMNITY POLICIES

### 26 Exclusion of Risks Covered by Protection & Indemnity Policies

The Association shall not insure a Member to any extent whatsoever against any cost for which the Member would be insured if the Entered Ship were fully insured under P&I policies on terms not less wide than those of Class 3 – Protection & Indemnity – of the Association current at the time when the claim arises and with no deductible or franchise applicable to claims under those policies or could be insured subject to the exercise of a discretion contained therein.

## RULE 27 OTHER INSURANCES

### 27.1 Double Insurance

Unless the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall, in its discretion, otherwise determine there shall be no contribution by the Association to Costs recoverable under any other insurance or which would have been so recoverable:

- 27.1.1 apart from any terms in such other insurance excluding or limiting liability on the ground of double insurance; and
- 27.1.2 if the Ship had not been entered in the Association with cover against the risks set out in these Rules.

### 27.2 Certification

Where any person other than the Association has provided evidence to any authority of financial responsibility of the Member, there shall be no contribution by the Association to the Member or to any such person in respect of any Costs resulting therefrom.

PROVIDED ALWAYS THAT:

This Rule may be waived either:

- 27.2.1 by prior agreement with the Association in writing or,
- 27.2.2 if the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in its discretion so decides.

## RULE 28 CLASSIFICATION AND CONDITION OF SHIPS

### 28.1 Classification

Every Member warrants that every Ship entered by the Member for insurance in this Class is and shall remain throughout the period of entry fully classed with a classification society approved by the Managers and that throughout such period the Member will fully and timely comply with all the rules, recommendations and requirements of such

society relating to the Entered Ship.

Provided always that:

28.1.1 the Board may in its discretion waive compliance with this warranty for such periods and on such terms as it thinks fit.

#### **28.2 Change of Classification**

Any change of classification or classification society shall forthwith be notified to the Managers in writing, together with all outstanding recommendations, requirements or restrictions specified by any classification society as at the date of such change.

#### **28.3 Information from the Member**

Where required by the Managers it is a condition precedent to the Member's right of recovery from the Association that the Member shall first have provided to the Managers an assurance that the Entered Ship's class has been maintained, as well as a list of recommendations, requirements or restrictions specified by any classification society and where any periodic docking survey or any special survey of hull, machinery or equipment is overdue, a statement as to whether or not an extension has been permitted by the classification society. If the Managers so require, such information shall be certified by the classification society.

#### **28.4 Statutory Requirements**

Every Member

28.4.1 shall comply with all the statutory requirements of the state of the Ship's flag relating to the construction, adaptation, condition, fitment, equipment, manning and loading of the Entered Ship; and

28.4.2 must at all times maintain the validity of any statutory certificates which are required and issued by or on behalf of the state of the Ship's flag.

28.4.3 PROVIDED ALWAYS THAT the Board may in its discretion waive compliance with this Rule for such periods and on such terms as it thinks fit.

#### **28.5 Information from the Classification Society**

Should the Association wish to approach the classification society directly for information, the Member will provide the necessary authorisation.

#### **28.6 Survey before Entry or Re-Entry**

The Managers may as a condition of entry or re-entry of a Ship in the Association require the Member or prospective Member to submit the Ship to survey by a surveyor appointed by the Managers. The Managers in their discretion may require the Member or prospective Member to bear the expense of such survey. In the light of such survey the Managers may:

28.6.1 refuse the entry or re-entry of the Ship; or

28.6.2 refuse the entry or re-entry of the Ship until repairs or other action recommended by the surveyor have been carried out to the satisfaction of the Managers within any time limit prescribed by the Managers; or

28.6.3 accept the entry or re-entry of the Ship on such special terms as the Managers may in their discretion decide.

#### **28.7 Ship Management Appraisal**

Without prejudice to any warranties or other duties and obligations imposed on a Member under these Rules or the general law, the Managers may at any time and from time to time require a Member to undergo an appraisal of the management systems ashore or on board Ship relating to the operation of Ships managed or operated by the Member by a surveyor appointed by the Managers on a date and at a place agreed between the Member and the Managers and within such time limit as may be specified by the Managers. The Managers may in their discretion require the Member to bear the expense of such appraisal. In the light of such appraisal or in the event of failure by the Member to undergo such appraisal within the time limit specified by the Managers, the Managers shall have the power, in their discretion to:

28.7.1 terminate the entry of all Ships entered by the Member forthwith; or

28.7.2 amend, vary or impose special terms on the Terms of Entry of Ships entered by that Member with immediate effect in such manner as they think fit, including the exclusion of all or part of the risks specified in Rule 17 *Risks Covered* and Rule 18 *Extent of Cover* for such time or period as they may specify.

Provided always that:

28.7.2.1 if the Member does not accept such amendment, variation or condition the Member shall have the option of withdrawing the entry of the Member's Ships forthwith.

#### **28.8 Condition Survey**

Without prejudice to any warranties or other duties and obligations imposed on a Member under these Rules or the general law, the Managers may at any time and from time to time require a Member to submit the Member's Entered Ship to survey by a surveyor appointed by the Managers on a date and at a place agreed between the Member and the Managers and within such time limit as may be specified by the Managers. The Managers may in their discretion require the Member to bear the expense of such survey. In the light of such survey or in the event of failure by the Member to submit the Entered Ship to such survey within the time limit specified by the Managers, the Managers shall have the power, in their discretion, to:

28.8.1 terminate the entry of the Ship forthwith; or

28.8.2 amend, vary or impose special terms on the Terms of Entry of the Ship with immediate effect in such manner as they think fit, including the exclusion of all or part of the risks specified in Rule 17 *Risks Covered* and Rule 18 *Extent of Cover* for such time or period as they may specify.

Provided always that:

28.8.2.1 if the Member does not accept such amendment, variation or condition the Member shall have the option of withdrawing the Member's entry of the Ship forthwith.

#### **28.9 Right of Adjudication**

If any difference or dispute between a Member and the Managers shall arise concerning the actions taken by the Managers under this Rule 28, the Member shall have the right to refer the matter to adjudication by the Board under Rule 44 *Differences and Disputes*. Pending such adjudication, any such action taken by the Managers shall bind the Member.

#### **28.11 Obligation of Member**

Notwithstanding the provisions of this Rule 28 nothing shall relieve the Member of the Member's obligation to keep the Member's Entered Ship at all times in a proper condition. Any recommendations or observations of a surveyor acting under any part of this Rule shall be treated as within the actual knowledge of the Member. Any failure by the Member to implement the said recommendations shall entitle the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in its discretion to refuse, in whole or in part, a claim for recovery from the Association in respect of any incident whatsoever occurring after such recommendations have been made.

### **RULE 29 BYELAWS**

#### **29.1 Power to Pass Byelaws**

The Board shall have power to pass byelaws ordering and prescribing the conditions and/or the form of contracts of carriage generally, or for use in any particular trade, or for any particular port or place.

#### **29.2 Recommendations**

The Board may also recommend the use of any particular form of contract of carriage in any particular trade. Members whose Ships are engaged in such trades shall endeavour to use the appropriate form of contract of carriage when the circumstances of the fixture or engagement of such Ships permit.

#### **29.3 Notice**

Notice shall be sent by the Managers to all Members upon the passing of any such byelaw or issue of such recommendation. The byelaws or recommendation shall come into operation on the date stated in the notice and shall thereupon be assumed to be incorporated in these Rules and shall be included in, or with, every copy of these Rules issued by the Association as soon as may be conveniently possible. If a Member shall commit a breach of such byelaw the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may reject or reduce any claim made by the Member to the extent to which it would not have arisen if the Member had complied with the byelaw and the burden of proving in each case that the claim (or portion thereof) could not have been avoided by

such a compliance shall be on the Member. The Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may further impose such terms upon the Member as it may think fit as a condition of the continuance of the entry of the Member's Ship or Ships in this Class.

## Section V Claims

### RULE 30 OBLIGATION OF THE MEMBER IN RESPECT OF CLAIMS

#### 30.1 Notice

Every Member shall be bound to give prompt notice in writing to the Managers of every claim likely to give rise to Costs recoverable under these Rules. The Member shall furnish the Managers as soon as reasonably possible with all documents or information relevant thereto.

#### 30.2 Approval

Before incurring any Costs which may be recoverable under these Rules a Member must seek the prior approval of the Managers under Rule 31.2 *Condition Precedent to Recovery under these Rules*.

#### 30.3 Information

A Member must at all times promptly notify the Managers of any information, documents or reports in the Member's or the Member's agents' possession or knowledge relevant to any incident referred to under Rule 30.1 *Notice* above. Further the Member shall, whenever so requested by the Managers, give the Association or its representatives free access to such information, documents or reports with liberty to inspect and copy the same. Such free access shall include the right to conduct a survey, or to interview any officer, servant or agent of the Member who may in the opinion of the Association be in possession of information relevant to the said incident.

#### 30.4 Time Limit for Notice

Every claim of the type referred to in Rule 30.1 *Notice* above, shall be notified to the Association by the Member as soon as possible, but in no case later than 12 months after the Member has notice of the potential claim.

#### 30.5 Time Limit for Reimbursement

All requests by a Member for reimbursement of any Costs recoverable from the Association under these Rules and the *Certificate of Entry* must be made to the Association within 12 months of the payment of the Cost by the Member.

### RULE 31 POWERS OF THE MANAGERS RELATING TO THE HANDLING AND SETTLEMENT OF CLAIMS

#### 31.1 Control of Claims

The Managers shall have the right, if they so decide, to control or direct the conduct of any claim or legal or other proceedings relating to any matter which may result in Costs in respect of which the Member is or may be insured under these Rules and the *Certificate of Entry* and to require the Member to settle, compromise or otherwise dispose of such claim or proceedings in such manner and on such terms as the Managers see fit.

#### 31.2 Condition Precedent to Recovery under these Rules

It shall be a condition precedent for the recovery of Costs under these Rules that the Managers shall have given prior approval to the action giving rise to such Costs. In particular the Managers shall decide whether or not legal or other proceedings should be commenced or defended. Save only that any Costs incurred as a matter of urgency where consultation with the Managers was not practicable shall be notified to the Managers as soon as is reasonably possible and the Managers shall then decide whether or not to continue any action already commenced and not yet concluded.

#### 31.3 Referral

In the case of doubt as to the advisability of commencing or continuing any legal or other proceedings in the exercise of their powers under Rules 31.1 or 31.2 the Managers shall refer the matter to the Board for decision under Rule 32.1 *Sole Discretion to Decide*.

Provided always that:

31.3.1 the Managers shall in any event refer the decision to the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) if a Member shall so request.



#### **31.4 Appointment of Experts**

- 31.4.1 Without prejudice to any other provision of these Rules and without waiving any of the Association's rights hereunder, the Managers may at any and all times appoint on behalf of the Member, on such terms as the Managers may think fit, lawyers, surveyors or other persons with a view to obtaining advice on, investigating or dealing with any matter which may result in Costs in respect of which the Member is or may be insured under these Rules. The Managers may also at any time discontinue such employment if they think fit.
- 31.4.2 All lawyers, surveyors or other persons appointed by the Managers on behalf of the Member, or appointed by the Member with the prior consent of the Managers, shall at all times be and be deemed to be appointed and employed on the terms:
- 31.4.2.1 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 Association in connection with the matter without prior reference to the Member and to produce to the Association without prior reference to the Member any documents or information in their possession or power relating to such matter, all as if such person had been appointed to act and had at all times been acting on behalf of the Association;
- 31.4.2.2 that any advice they may give to the Member is that of an independent contractor employed by the Member and shall in no way bind the Association.

#### **31.5 Bail**

The Association may give bail or other security in respect of Security for Costs. The Association is under no obligation to provide bail or other security on behalf of any Member, but where the same is provided it shall be on such terms as the Managers may consider appropriate and shall not constitute any admission of liability by the Association for the claim in respect of which the bail or other security is given. In no case shall cash deposits be made by the Association.

#### **31.6 Recovery of Costs**

Insofar as Costs are covered under these Rules, the Association shall be entitled to any sum which the Member recovers in respect of such Costs pursuant to any award, judgment or settlement agreement. If any claims, disputes or proceedings are settled or compromised for a lump sum which includes costs recoverable from any other party, or without any or adequate provision as to the payment of such costs, then in any of those events the Association shall be entitled to recover from the Member such reasonable sum as the Managers may in their sole discretion determine as being attributable to costs.

### **RULE 32 POWERS OF THE BOARD AND THE COMMITTEE RELATING TO THE CONTROL AND SETTLEMENT OF CLAIMS ON THE ASSOCIATION**

#### **32.1 Sole Discretion to Decide**

Save insofar as is provided under Rule 31 *Powers of the Managers relating to the Handling and Settlement of Claims* the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall have sole discretion to decide which legal or other proceedings shall be commenced or defended, which claims under Rule 18 *Extent of Cover* shall be taken up and as to the conduct thereof and as to the discontinuance or settlement of any such claims.

#### **32.2 Terms**

The Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall be entitled at any time in their absolute discretion to impose such terms as they think fit as a condition of their continued support for a claim under Rule 18 *Extent of Cover*.

#### **32.3 Small Claims**

If the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall be of the opinion that it is not appropriate for a Member to be supported by the Association in connection with any claim or dispute or proceedings having regard solely to the probable Costs likely to be incurred in such proceedings as compared with the amount in dispute then the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may in its discretion (in addition to refusing to support the Member in such proceedings) pay to the Member out of the funds of this Class of the Association the whole or part of the claim by or against the Member as the Board (or, in the case of claims not exceeding 2,000,000, the Committee) may think fit.

#### **32.4 Costs, Losses and Liabilities**

- 32.4.1 The Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall have power in its discretion to determine that the Member should be reimbursed in whole or in part for any Costs incurred for which the Association would not be liable by virtue of Rule 20 *Risks Specifically Excluded*.
- 32.4.2 The Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall have power in its discretion to determine that the Member should be reimbursed in whole or in part for any losses, liabilities or expenses incurred, for which the Association would not be liable by virtue of Rule 19 *General Exclusions*, which are incidental to the risks covered by Rule 17 *Risks Covered* and 18 *Extent of Cover*.

#### **32.5 Cover**

The Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may from time to time resolve that in respect of any specified future claims or classes of claims arising in the next Policy Year they will only be supported as to a specified amount or proportion of any type or types of Costs. Where the Board so resolves, notice of such resolution shall be given to all Members as soon as is conveniently possible and an appropriate endorsement shall be endorsed on the Terms of Entry of all Members for the next and future Policy Years.

#### **32.6 Agreement of Claims**

The Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall meet as often as may be required for settlement of claims which shall be paid by the Association as the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may determine in accordance with these Rules, but the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall have power from time to time to authorise the Managers to effect payment of claims without prior reference to the Board (or, in the case of claims not exceeding USD2,000,000, the Committee). No Director shall sit on the Board and no Representative shall sit on the Committee while it is engaged in the settlement of any claim in which the Director or Representative is interested.

#### **32.7 Power of the Board and the Committee in respect of Claims**

Without prejudice to any other provisions of these Rules, the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall have power in its discretion to reject a claim or reduce the sum payable by the Association in respect thereof, if:

- 32.7.1 in the opinion of the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) the Member making the claim has not taken such steps before, at the time of, or after the incident or events giving rise to the claim, to protect the Member's interests as the Member should have done or as the Member would have done if the Member had not been insured in this Class;
- 32.7.2 the Ship in respect of which the claim is submitted has ceased before the incident which gave rise to the claim to be fully classed by a classification society approved by the Managers or if the Member has failed fully and timely to comply with all the rules, recommendations and requirements of such society and the Member has failed to give notice of this cesser or failure to the Managers;
- 32.7.3 the Member has failed fully to comply with the recommendations of a surveyor appointed by the Managers under Rule 28 *Classification and Condition of Ships*;
- 32.7.4 the claim shall have been settled or any liability shall have been admitted, by or on behalf of, the Member without the prior consent in writing of the Managers;
- 32.7.5 the Member failed to comply with a recommendation or directive made at any time by the Board, the Committee or the Managers to the Member, in connection with the handling or settlement of the claim or potential claim;
- 32.7.6 the Member shall have failed to comply with any of the Member's obligations under Rule 30 *Obligation of the Member in respect of Claims*.

#### **32.8 Interest**

Save only as provided in Rule 3.6 *Insurance Act 2015* a Member shall not be entitled to be paid interest on the Member's claim against the Association.

## Section VI Cesser of Insurance

### RULE 33 CESSER OF ALL INSURANCES

#### 33 Cesser of All Insurances

A Member shall cease to be insured by the Association in respect of all Ships entered by the Member upon the happening of any of the following events:

##### 33.1 Failure to Pay

If, having failed to pay when due and demanded by the Managers any sum due from the Member to the Association, the Member is served with a notice by or on behalf of the Managers or the Association requiring the Member to pay such sum and the Member fails to pay such sum in full on, or before, the date specified in such notice.

##### 33.2 Failure of Individual

If, being an individual, the Member shall die, or shall become of unsound mind or otherwise mentally unfit, shall become bankrupt or shall make any arrangement or composition with the Member's creditors generally.

##### 33.3 Failure of Corporation

If, being a corporation, an effective resolution is passed for voluntary winding up or it applies to the court to be wound up or an order is made by the court for its compulsory winding up or it is dissolved or upon the appointment of a receiver or manager in respect of all or part of the corporation's business or upon possession being taken of any property of the corporation under the provisions of a charge secured upon that property or upon its entering into or becoming subject to any composition or arrangement with its creditors or upon its commencing or being the subject of any proceedings before a court, arbitration tribunal, dispute resolution body or equivalent, of competent jurisdiction under any bankruptcy or insolvency laws to seek protection from its creditors or to re-organise its affairs.

##### 33.4 Sanctions

If, by virtue of any Sanction, prohibition or any adverse action by a state, international or supranational organisation or other competent authority, the Association is prohibited from insuring the Member.

### RULE 34 CESSER OF SHIP ENTRY

#### 34 Cesser of Ship Entry

A Member shall cease to be insured by the Association in respect of an Entered Ship upon the happening of any of the following events in relation to such Ship:

##### 34.1 Transfer of Interest

If the Member shall cease to have a legal, beneficial or other interest in the Ship, or if entire control and possession is transferred whether by demise charter or otherwise.

##### 34.2 Change of Management

If the managers or operators of the Ship shall be changed.

##### 34.3 Total Loss of Ship

If the Ship becomes a total loss or is accepted by the hull insurers as being a constructive, compromised or arranged total loss, except as regards liabilities flowing from the casualty which gave rise to such total loss of the Ship.

##### 34.4 Ship Missing

If the Ship shall be missing for ten days from the date it was last heard of or from it being posted at Lloyd's as missing, whichever shall be the earlier.

##### 34.5 Mortgage of the Ship

If the Ship be mortgaged or otherwise hypothecated, unless an undertaking or guarantee approved by the Managers is given to pay all Contributions due or to become due in respect of the Ship.

Provided always that:

34.5.1 the Managers may waive this provision.

**34.6 Classification**

If the Member fails to meet the requirements of Rule 28 *Classification and Condition of Ships*.

**34.7 Termination**

If the entry of the Ship shall have been terminated in accordance with Rule 9.3 *Notice of Termination of Cover by Board or Managers*, Rule 28.7 *Ship Management Appraisal* or Rule 28.8 *Condition Survey*.

**34.8 Sanctions**

If, by virtue of any Sanction, prohibition or any adverse action by a state, international or supranational organisation or other competent authority, the Association is prohibited from insuring the Entered Ship.

## RULE 35 EFFECT OF CESSER

**35.1 Cesser for Failure to Pay**

If the cesser of insurance shall have occurred by virtue of Rule 33.1 *Failure to Pay* the Association shall not be liable for any claims under these Rules in respect of any Ship which has been entered by the Member, whether the incident giving rise to such claim occurred before or after the cesser of insurance, unless the incident giving rise to such claim occurred during a Policy Year which had been closed at the time of the cesser of insurance.

**35.2 Cesser for any Other Reason**

If the cesser of insurance or cesser of the Ship's entry shall have occurred by virtue of any other reason, the Association shall remain liable for all claims under these Rules arising by reason of any incident which occurred before the cesser but shall be under no liability whatsoever by reason of any incident which occurred after the cesser.

Provided always that:

35.2.1 the provisions of Rule 35.1 above shall apply to the contract of insurance even if the entry of the Ship shall have ceased under the provisions of Rule 33.2 *Failure of Individual*, Rule 33.3 *Failure of Corporation* or Rule 34 *Cesser of Ship Entry* before the notice specified in Rule 33.1 *Failure to Pay* shall have been issued or taken effect.

35.2.2 the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may in its discretion admit either wholly or partly any claim for which the Association is under no liability under this Rule whether the incident giving rise to such claim occurred before or after the cesser of insurance.

**35.3 No Waiver of Rights**

Without prejudice to the generality of Rule 41 *Forbearance* 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 the cesser of insurance, shall derogate from the effect of Rule 33 *Cesser of All Insurances* and Rule 34 *Cesser of Ship Entry* or be treated as a waiver of any of the Association's rights thereunder.

## RULE 36 CONTRIBUTIONS DUE ON CESSER OF INSURANCE

**36.1 Liability for Contributions**

Subject to the Member's liability being otherwise agreed or assessed under Rule 13 *Release*, a Member whose Entered Ship or Ships cease to be insured by the Association for any reason, shall be and remain liable to pay to the Association all Contributions in respect of such Ship or Ships for all Policy Years which have not been closed under Rules 37.1 *Closing of Policy Year* as at the date of such cesser, including the Policy Year in which the insurance ceases which, under Rule 10 *Contribution by Way of Calls*, such Member would have been liable to pay had the insurance of such Ship or Ships not ceased.

Provided always that:

36.1.1 the Member shall be liable for Contributions for the Policy Year in which the insurance ceases pro rata only for the period beginning with the date of entry and ending with the happening of the event that occasioned the cesser of insurance if:

- 36.1.1.1 such cesser arises by virtue of Rule 9.3 *Notice of Termination of Cover by Board or Managers*; or
- 36.1.1.2 such cesser arises upon the happening of any of the events specified under Rule 34 *Cesser of Ship Entry* and the Member gives notice of the event in writing to the Managers within one month of the date thereof; or
- 36.1.1.3 such cesser arises by virtue of Rule 33.1 *Failure to Pay*, in such case the Member's liability to pay Contributions shall include the sum specified in the notice given under that Rule.

**36.2 Set-off**

For the purpose of determining whether any (and, if so, what) sum is due for the purposes of Rule 36.1 *Liability for Contributions* or otherwise under these Rules no account shall be taken of any amount due or alleged to be due by the Association to the Member for any reason whatsoever, and no set-off of any kind (including any set-off which might otherwise have arisen by reason of the bankruptcy or winding up of the Member) shall be allowed against such sum (whether or not any set-off against Contributions has been allowed at any time in the past), except to the extent (if any) to which any sum demanded by the Managers as due, and required to be paid in a notice served under Rule 33.1 *Failure to Pay*, may (in the Managers' discretion) in itself have already allowed for a set-off or credit in favour of the Member.

## Section VII The Funds of the Association

### RULE 37 CLOSING OF POLICY YEARS

#### 37.1 Closing of Policy Year

The Board shall, at such time as it may deem expedient after the end of a Policy Year declare that such Policy Year shall be closed.

#### 37.2 Disposal of Excess Funds

If prior to closing any Policy Year the Contributions and other receipts (including transfers from reserves and provisions) in respect of such Policy Year shall exceed the claims, expenses, losses and other outgoings (whether incurred, accrued or anticipated) falling upon the Association for that year together with all transfers to reserves and provisions made out of the Contributions paid in respect of such Policy Year, then the excess may be disposed of either:

37.2.1 by being put to General Reserve in accordance with the provisions of Rule 39.1 *General Reserve*; and/or

37.2.2 the Board may order it to be returned in whole or in part to the Members who paid such Contributions in proportion to their respective Contributions, save that no return shall be made in respect of any Ship which has been subject to a release under Rule 13 *Release* or which was entered on special terms which specifically excluded liability to contribute to Exceptional Calls, or the entry of which ceased by reason of the application of Rule 33.1 *Failure to Pay*.

#### 37.3 Amalgamation of Closed Policy Years

On closing a Policy Year, or at any time thereafter, the Board may resolve 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 Board shall so resolve then the two or more Closed Policy Years concerned shall for all purposes be treated as though they constituted a single Closed Policy Year.

#### 37.4 Closed Policy Year Balances

If in respect of any Closed Policy Year it shall appear to the Board that the claims, expenses, losses and other outgoings (whether incurred, accrued or anticipated) falling upon the Association for that year, together with all transfers to reserves and provisions, will not balance with the Contributions and other receipts (including transfers from reserves and other provisions) in respect of that year, then any credit shall be transferred to the General Reserve of the Association and any deficit shall be treated as an expense of the Association and may be made up either by a transfer from the General Reserve of the Association or by Calls under Rule 10.1 *Mutual Insurance*.

### RULE 38 REINSURANCE

#### 38.1 Individual Ships

The Managers may reinsure on behalf of the Association the whole or any part of the risks arising in connection with any Entered Ship or Ships on such terms and with such reinsurers as the Managers shall consider appropriate.

#### 38.2 Risks of the Association

The Managers may reinsure or cede on behalf of the Association the whole or any part of the risks of the Association with such reinsurers and on such terms as the Managers shall consider appropriate.

### RULE 39 RESERVES

#### 39 Reserves

The Board may establish and maintain such reserve funds or other accounts for such contingencies or purposes as it in its discretion thinks fit.

In particular:

#### 39.1 General Reserve

The Board may set aside at any time to General Reserve such sums from the proceeds of the Estimated Total Call or Exceptional Call in respect of any Policy Year as it thinks fit. Such General Reserve may be used by the Board at any time:

- 39.1.1 so as to provide in whole or in part for any claims, expenses, losses or other outgoings of the Association (whether incurred, accrued or anticipated) and including, but not limited to, any deficiency which has occurred or may occur in respect of any Closed Policy Year or so as to eliminate or reduce any Call in respect of any Policy Year past, present or future; or
- 39.1.2 to make a distribution to Members of such amount and in such manner as it thinks fit.

## RULE 40 INVESTMENT

### 40.1 Investment Management

Subject to the approval of the Board the funds of this Class of the Association may be invested by the Managers or by any investment manager or firm of brokers or agents appointed by the Managers. The Board may from time to time and at any time lay down such guidelines for the investment of the funds of the Association as it shall think fit.

### 40.2 Investment Media

Such investments may be made 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 as the Managers may think fit, or by such other method as the Board may approve.

### 40.3 Pooling of Funds

Unless the Board otherwise decides the funds standing to the credit of all Policy Years and of any reserve or account of this Class, shall be pooled and invested as one fund.

### 40.4 Gains and Losses

When funds are so pooled any dividends, interest, or accruals of interest and any realised or unrealised investment gains or losses, arising on the pooled funds shall be credited or debited, as the case may be, to the income and expenditure account of the Association in the financial year in which such gains or losses arise.

40.4.1 Any such gains may be used to meet:

40.4.1.1 the claims, expenses, losses and other outgoings (whether incurred, accrued or anticipated) which in the opinion of the Board necessarily and properly fall upon this Class of the Association; or

40.4.1.2 such transfers to reserves or provisions as the Board may deem it expedient to make, including transfers to reserves and provisions in respect of any deficiency which has occurred or which may be likely to occur in respect of any Closed Policy Year as the Board thinks fit.

40.4.2 Any such losses shall be treated as an expense of the Association and may be made up either by a transfer from any investment reserve, the General Reserve or by Calls under Rule 10.1 *Mutual Insurance*.

## Section VIII General Terms and Conditions

### RULE 41 FORBEARANCE

#### 41.1 No Admission or Promise to Forego

No act, omission, forbearance or conduct of the Association whatsoever and whensoever occurring, whether by or through its officers, servants or agents or otherwise, shall constitute any admission or promise that the Association will forgo any of its rights under these Rules.

#### 41.2 Advice of Experts

Any person appointed under Rule 31.4 *Appointment of Experts* is appointed to assist the Member, and any recommendations and advice which such person may give shall in no way bind, prejudice or affect the rights and remedies of the Association under these Rules.

#### 41.3 Waiver by the Board

Notwithstanding any neglect or non-compliance with, or breach of, any of these Rules by a Member the Board may in its sole discretion waive any of the Association's rights arising therefrom and may pass and pay in full or in part any claim which it thinks fit. The Association shall nevertheless at all times and without notice be entitled to insist on the strict application of these Rules.

### RULE 42 ASSIGNMENT

#### 42.1 No Assignment

No insurance afforded 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.

#### 42.2 Set-off

The Association shall be entitled before making any payment to an assignee of the Member to deduct or retain such amount as the Managers may then estimate to be sufficient to discharge any liabilities or potential liabilities of the Member to the Association.

### RULE 43 DELEGATION

#### 43.1 Delegation by the Board

Whenever any power, duty or discretion is stated in these Rules to be vested in the Board, such power, duty or discretion shall be exercisable by the Board unless the same shall have been delegated to any sub-committee of the Board, or to the Managers, in accordance with the provisions as regards delegation contained in the Articles of Association of the Association in which event the power, duty or discretion may be exercised by any person to whom the same shall have been so delegated.

#### 43.2 Delegation by the Managers

Whenever any power, duty or discretion is conferred or imposed upon the Managers by virtue of these Rules such power, duty or discretion may, subject to any terms, conditions or restrictions contained in these Rules, be exercised by any one or more of the Managers or by any employee of the Managers to whom the same shall have been delegated or sub-delegated.

### RULE 44 DISPUTES AND DIFFERENCES

#### 44.1 Adjudication by the Board

If any difference or dispute between the Association or the Managers and any other person shall arise out of or in connection with these Rules or any contract of insurance between the Association and a Member such difference or dispute shall in the first instance be referred to and adjudicated by the Board notwithstanding that the Board may have already considered the matter before any such difference or dispute arose. Such reference and adjudication shall be on written submissions only.



#### 44.2 Arbitration

If the Member or such other person does not accept the decision of the Board, or if the Board shall fail to make any award within three months of the reference to it, the difference or dispute shall then be referred to arbitration in London.

- 44.2.1 The arbitration shall be conducted by two arbitrators, one to be appointed by each of the parties, and in case the arbitrators shall not agree then the difference or dispute shall be referred to the decision of an umpire to be appointed by them.
- 44.2.2 No Member of the Association nor the Managers nor any employee of the Managers shall act as arbitrator or umpire.
- 44.2.3 The evidence and proceedings upon any arbitration may in the discretion of the arbitrators or umpire be taken in a mercantile way without regard to legal technicalities respecting evidence.
- 44.2.4 The arbitrators or umpire may, in case any point of law shall arise, take the opinion of such counsel or solicitor as they may think fit, and may act upon any such opinion, and unless the arbitrators or umpire taking such an opinion otherwise direct, the costs of and incidental thereto shall be deemed to be part of the costs of the award.
- 44.2.5 The costs of and incidental to any such reference and award shall be in the discretion of the arbitrators or umpire respectively.
- 44.2.6 The submission to arbitration and all the proceedings therein shall be subject to the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof.

#### 44.3 Sole Remedy

No Member nor such other person shall be entitled to maintain any action, suit or other legal proceedings against the Association otherwise than in accordance with the procedures laid down in this Rule 44 and may only commence proceedings, other than the arbitration under Rule 44.2 *Arbitration* above, so as to enforce an award under such arbitration and then only for such sum, if any, as the award may direct to be paid by the Association. The sole obligation of the Association to such Member or other person under these Rules, and any *Certificate of Entry*, in respect of such difference or dispute shall be to pay such sum as may be directed by such an award.

### RULE 45 NOTICES

#### 45.1 Notice Served on the Association

A notice required under these Rules to be served on the Association may be served by sending it through the post in a prepaid letter or by sending it by facsimile message or by electronic mail to the Association at the Association's registered office for the time being.

#### 45.2 Notice Served on a Member

A notice required under these Rules to be served on a Member may be served by sending it through the post in a prepaid letter or by sending it by facsimile message or by electronic mail to such Member at the Member's address as appearing in the Register or at any place of business of a broker or other intermediary through whom a Ship to which the notice relates is or was entered in the Association. In the case of Joint Members, a notice shall be served on any Joint Member, and such service shall be sufficient service upon all Joint Members.

#### 45.3 Addresses

Any Member described in the Register by an address not within the United Kingdom who shall from time to time give the Association an address within the United Kingdom at which notices may be served upon the Member, shall be entitled to have notices served upon the Member at such address, which shall be deemed to be the Member's address as appearing in the Register for the purposes of Rule 45.2 *Notice Served on a Member*.

#### 45.4 Date of Service of Notice

Any notice or other document if served by post shall be deemed to have been served on the day following the day on which the letter containing the same was put in the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post in a prepaid envelope. Any notice served by facsimile machine or electronic mail, shall be deemed to have been served on the day after it was despatched and in proving such service it shall be sufficient to prove that the notice was duly despatched.

**45.5 Successors**

The successors of anyone who is or was at any time a Member of the Association shall be bound by a notice or other document served as aforesaid if sent to the last such address of such Member notwithstanding that the Association may have notice that the Member has become of unsound mind or is otherwise mentally unfit, or of the Member's death, bankruptcy or liquidation.

**RULE 46 JURISDICTION**

**46.1 English Law**

These Rules and any contract of insurance between the Association and a Member shall be governed by and construed in accordance with English law.

Provided always that:

46.1.1 it is not intended that any benefit or rights should be acquired through the operation of the *Contracts (Rights of Third Parties) Act 1999* or other similar legislation.

**46.2 Jurisdiction**

Any dispute or difference with the Association (including disputes over the interpretation, effect or application of Rule 44 *Disputes and Differences*) shall (subject to Rule 44) be decided exclusively by the High Court in London.