



► **RULES 2016**



**SHIPOWNERS**  
SECURITY FOR SMALL & SPECIALIST VESSELS

# The Shipowners' Club

## AMENDMENTS TO THE RULES FOR 2016

Members' attention is drawn to the changes in the Rules for 2016. Amendments have been made to:

- Rule 1** Basis of Cover
- Rule 2** Standard Cover:
  - Section 10: Towage
  - Section 12: Wreck liabilities
  - Section 14: Cargo liabilities
- Rule 4** Special Cover for Salvors, Charterers and Specialist Operations
  - Part 1: Salvors
  - Part 2: Charterers
- Rule 25** Liability Excluded for War, Bio-chem and Computer Virus Risks
- Rule 28** Liabilities Excluded in Respect of Salvage Vessels, Drilling Vessels, Dredgers and Other Specialist Operations
- Rule 33** Classification and Statutory Certification of Vessel
- Rule 34** Survey of Vessels
- Rule 36** Application for Entry
- Rule 46** Cesser of Insurance
- Rule 56** Laid-up Returns
- Rule 66** Definitions

### Deleted Rule

- Rule 15** Rules Subject to Marine Insurance Act

### New Rule

- Rule 36** Entry

Full details of changes are set out in the circular, Notice of Extraordinary General Meeting Friday 15th January 2016, issued on 27th November 2015. This can be viewed on our website: [www.shipownersclub.com](http://www.shipownersclub.com)

▶ CONTACT DETAILS

## Claims Emergency

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The claims response service is available 24 hours a day, 7 days a week and provides immediate global assistance to all of our Members.

Calling the emergency contact number provides a quick and effective way to speak directly to a duty Shipowners' claims handler in the event of an incident or casualty involving an entered vessel.

During office hours the emergency number will redirect to the relevant corresponding office switchboard.

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Our Members and brokers are supported by a global network of Correspondents who are available to provide practical, local advice and support. Contact details for all the Club's Correspondents can be found online at [www.shipownersclub.com/correspondents](http://www.shipownersclub.com/correspondents)



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# Rules 2016

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# PART 1

## ▶ INTRODUCTORY

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## PART 1: INTRODUCTORY

### **RULE 1 BASIS OF COVER**

- 1** All contracts of insurance afforded by the Association to its Members incorporate all the provisions of these Rules and any Regulations made hereunder.
- 2** The standard cover afforded by the Association to its Members is set out in Rule 2.
- 3** By virtue of Rules 3 and 4 a Member may be afforded special cover against risks other than those set out in Rule 2 provided that such special cover has been agreed by the Managers in writing.
- 4** By virtue of Rule 6 a Member may be afforded Legal Assistance and Defence cover as specified in Rule 6 provided that such cover has been agreed by the Managers in writing.
- 5** The cover afforded by the Association under Rules 2, 3, 4 and 6 is always subject to the procedures, limitations and exclusions set out in Parts 4 and 5 and in the remainder of these Rules unless otherwise agreed by the Managers in writing.
- 6** A Member is only covered against risks which arise:
  - A** out of events occurring during the period of insurance of a vessel in the Association;
  - B** in respect of the Member's interest in the insured vessel; and
  - C** in connection with the operation of the insured vessel by or on behalf of the Member.
- 7** The cover afforded by the Association under Rules 2, 3, 4 and 6 is conditional on payment of calls or premiums in accordance with Rules 49 to 54 unless otherwise agreed by the Managers in writing.
- 8** No act, omission, course of dealing, forbearance, delay or indulgence by the Association in enforcing any of these Rules or any of the terms or conditions of its contracts with Members nor any granting of time by the Association shall prejudice or affect the rights and remedies of the Association under these Rules or under such contracts, and no such matter shall be treated as any evidence of waiver of the Association's rights thereunder, nor shall any waiver of a breach by a Member of such Rules or

contracts operate as a waiver of any subsequent breach thereof. The Association shall at all times and without notice be entitled to insist on the strict application of these Rules and on the strict enforcement of its contracts with Members.

- 9** Notwithstanding the provisions of Rule 16, where a Member has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a seafarer, the Association shall discharge or pay such claim on the Member's behalf directly to such seafarer or dependant thereof.

**Provided always that**

- i the seafarer or dependant has no enforceable right of recovery against any other party and would otherwise be uncompensated,
- ii the amount payable by the Association shall under no circumstances exceed the amount which the Member would have been able to recover from the Association under the Rules and the Member's terms of entry,
- iii where the Association is under no liability to the Member in respect of the claim solely by reason of Rule 49 the Association shall nevertheless discharge or pay the claim but as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such claim.

- 10** Notwithstanding the provisions of Rule 16, where a Member has failed to discharge a legal liability in respect of repatriation under any statutory enactment giving effect to the 2006 Maritime Labour Convention the Association shall discharge such liability on the Member's behalf.

**Provided always that**

- i the amount payable by the Association in discharging such liability shall under no circumstances exceed the amount which the Member would have been able to recover from the Association under the Rules and the Member's terms of entry,
- ii where the Association is under no liability to the Member in respect of the claim solely by reason of Rule 49 the Association shall nevertheless discharge such liability but as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such claim.



- A** All contracts of insurance afforded by the Association to its Members and these Rules and Regulations made hereunder shall be governed by and construed in accordance with English law. In particular they are subject to and incorporate the Marine Insurance Act 1906 and upon its entry into force the Insurance Act 2015 save to the extent such Acts are modified or excluded by the Rules or by the terms of any contracts of insurance.
- B** The following provisions of the Insurance Act 2015 ('the Act') are excluded from the Rules and any contracts of insurance as follows:
- i 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 policy, regardless of whether the breach of the duty of fair presentation is innocent, deliberate or reckless.
  - ii Section 10 of the Act is excluded. As a result all warranties in these Rules or any contracts of insurance must be strictly complied with and if the Member and any joint Member or Co-assured 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.
  - iii Section 11 of the Act is excluded. As a result the Rules and all terms of the contracts of insurance between the Association and the Member and any joint Member or Co-assured, 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 and any joint Member or Co-assured 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.
  - iv Section 13 of the Act is excluded. As a result the Association shall be entitled to exercise its right to terminate the contracts of insurance in respect of the Member and any joint Member or Co-assured in the event that a fraudulent claim is submitted by or on behalf of the Member and/or joint Member and/or Co-assured.

- v Section 13A of the Act is excluded. As a result the Rules and all contracts between the Association and the Member and any insured shall not be subject to nor shall the Association be in breach of any implied term that it will pay any sums due in respect of any claim within a reasonable time save where the breach is deliberate or reckless and Section 13A of the Act is excluded to this extent.
- vi Section 14 of the Act is excluded. As a result, the contracts of insurance between the Association, the Member and any joint Member or Co-assured shall be deemed to be contracts of the utmost good faith, and any breach of the duty of the utmost good faith shall entitle the Association to avoid the contract of insurance.

**C** Save as provided in Rule 1.9, the cover provided by the Association as set out in these Rules is solely for the benefit of the Member. It is not intended, save as provided in Rule 1.9, that rights should be acquired by any third party through the operation of the Contracts (Rights of third Parties) Act 1999 of the United Kingdom or similar legislation.







## PART 2

# ▶ P&I RISKS COVERED

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## ▶ PART 2: P&I RISKS COVERED

### **RULE 2 STANDARD COVER**

Unless otherwise agreed by the Managers in writing a Member is covered against the risks set out in Sections 1 to 22 below in respect of any insured vessel.

#### **1 Liabilities in respect of seafarers**

##### **A Illness, injury, death, medical examination**

- i Liability to pay damages or compensation for personal injury, illness or death of any seafarer whether or not on board a vessel and hospital, medical, funeral or other expenses incurred in relation to such injury, illness or death.
- ii Liability to pay expenses incurred in medical examination of seafarers prior to engagement.

##### **B Repatriation and substitutes' expenses**

- i The expense of repatriating a seafarer of the insured vessel who has been ill or injured or has died or whose repatriation has been necessitated by a casualty to the insured vessel.
- ii The expense of repatriating a seafarer who has been left ashore when there is a statutory obligation to do so.
- iii The expense of repatriating a seafarer under any statutory enactment or provisions either giving effect or equivalent to the 2006 Maritime Labour Convention.
- iv The expense of substituting a seafarer who has been ill, injured or has died.
- v The expense of substituting a seafarer who has been left ashore or been repatriated as a result of illness, injury or statutory obligation.

Provided that

Paragraph B of this Section does not cover expenses which arise out of or are the consequence of

- a the expiry of the seafarer's period of service on the insured vessel either in accordance with the terms of a crew agreement or by mutual consent of the parties to it, or
- b breach by a Member of any crew agreement, or
- c sale of the vessel.

save to the extent they are payable by the Member under any statutory enactment or provisions either giving effect or equivalent to the 2006 Maritime Labour Convention.

### **C Wages and shipwreck unemployment indemnity**

- i Liability to pay wages to any seafarer of the insured vessel during medical or hospital treatment, or during repatriation consequent upon injury or illness, or, in the case of a seafarer engaged as a substitute, while awaiting and during repatriation.
- ii Liability to compensate any seafarer for the loss of his employment caused in consequence of the actual or constructive total loss of an insured vessel.

### **D Loss of or damage to the effects of seafarer**

Liability to pay damages or compensation for loss of or damage to the effects of any seafarers.

Provided that

There shall be no right of recovery in respect of claims relating to cash, negotiable instruments, precious or rare metals or stones, or objects of a rare or precious nature.

Unless otherwise agreed by the Managers in writing the maximum recovery per seafarer under this Section 1D will be limited to US\$ 5,000.

### **E Proviso**

If any of the liabilities or expenses identified in paragraphs A to D of this Section are incurred under the terms of a crew agreement, and would not have arisen but for those terms, there shall be no right of recovery of such liabilities or expenses unless the terms of the crew agreement have been agreed by the Managers in writing.

## **2 Liabilities in respect of passengers**

### **A Illness, injury or death**

Liability arising under a contract of carriage for reward to pay damages or compensation for personal injury, illness or death of any passenger and hospital, medical, funeral or other expenses incurred in relation to such injury, illness or death.



## **B Casualty to the insured vessel**

Liability arising under a contract of carriage for reward to pay damages or compensation to passengers on board an insured vessel arising as a consequence of a casualty to the insured vessel, including the cost of forwarding passengers to destination or return to port of embarkation and of maintenance of passengers ashore.

## **C Loss of or damages to effects**

Liability arising under a contract of carriage for reward to pay damages or compensation for loss of or damage to the effects of any passenger including vehicles carried under the contract.

Provided that

There shall be no right of recovery in respect of claims relating to cash, negotiable instruments, precious or rare metals or stones, valuables or objects of a rare or precious nature.

## **D Provisos**

- i There shall be no right of recovery in respect of the liabilities identified in paragraphs A to C of this Section unless the terms of the contract of carriage for reward have been agreed by the Managers in writing.
- ii There shall be no right of recovery in respect of the liabilities identified in paragraphs A to C of this Section which result from the carriage of any passenger by air, except when such liability occurs during repatriation by air of injured or ill passengers, or of passengers following a casualty to the insured vessel.
- iii There shall be no right of recovery in respect of the liabilities identified in paragraphs A to C of this Section when the passenger is on an excursion from the insured vessel in circumstances where either:
  - a a separate contract has been entered into by the passenger for the excursion, whether or not with the Member; or
  - b the Member has waived any rights of recourse against any sub-contractor or other third party in respect of the excursion.

## **3 Liabilities in respect of persons other than seafarers or passengers**

### **A Illness, injury or death**

Liability to pay damages or compensation for personal injury, illness or death of any person and hospital, medical or funeral or other expenses incurred in relation to such injury, illness or death.

## **B**      **Loss of or damage to effects**

Liability to pay damages or compensation for loss of or damage to the effects of any person on board an insured vessel.

Provided that

There shall be no right of recovery in respect of claims relating to cash, negotiable instruments, precious or rare metals or stones, valuables or objects of a rare or precious nature.

## **C**      **Provisos**

- i      Cover under this section shall not extend to liabilities to seafarer or passengers carried under a contract of carriage for reward which may be covered under Sections 1 or 2 of this Rule.
- ii     If any of the liabilities identified in paragraphs A and B of this Section are incurred under the terms of a contract and would not have arisen but for those terms, there shall be no right of recovery in respect of such liabilities unless the terms of the contract have been agreed by the Managers in writing.
- iii    Cover under paragraphs A and B of this Section is limited to liabilities arising out of a negligent act or omission on board or in relation to an insured vessel or in relation to the handling of her cargo from the time of receipt of that cargo at the port of shipment until delivery of that cargo at the port of discharge.

## **4**      **Diversion expenses**

Expenses incurred as a result of diversion or delay of an insured vessel (over and above the expenses that would have been incurred but for the diversion or delay) which was made necessary for the following reasons:

- A**      Securing necessary treatment ashore of sick or injured persons or arranging the repatriation of dead bodies aboard the insured vessel.
- B**      Awaiting a substitute for a sick or injured seafarer who has been landed ashore for treatment.
- C**      Landing stowaways, refugees or persons saved at sea.
- D**      For the purpose of saving or attempting to save life at sea.



## **5 Liabilities and expenses in relation to deserters, stowaways and refugees**

Liabilities and expenses, other than those covered under Section 4 of this Rule, incurred by the Member in discharging his obligations towards or making necessary arrangements for deserters, stowaways and refugees or persons saved at sea, including rescue expenses, but only if and to the extent that the Member is legally liable for the expenses or they are incurred with the agreement of the Managers.

## **6 Liabilities for life salvage**

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

## **7 Collision with other vessels**

The liabilities, set out in paragraphs A, B and C below, to pay damages to any other person as a consequence of a collision between the insured vessel and any other vessel, but only if and to the extent that such liabilities are not recoverable under the hull policies of the insured vessel.

### **A Contact with other vessels or cargo or property on other vessels**

One fourth, or such other proportion as may have been agreed by the Managers in writing, of the liabilities arising out of the collision other than the liabilities identified in paragraph B of this Section.

### **B Other liabilities**

Liability arising out of the collision for or relating to:

- i the raising, removal, disposal, destruction, lighting or marking of obstructions, wrecks, cargoes, or any other thing;
- ii any real or personal property or thing whatsoever (except other vessels or property on other vessels);
- iii pollution or contamination of any real or personal property except other vessels with which the insured vessel is in collision and property on such other vessels;
- iv the cargo or other property on the insured vessel, or general average contributions, special charges or salvage paid by the owners of that cargo or property;

- v loss of life, personal injury or illness.

**C Excess collision liabilities**

That part of the Member's liability, arising out of the collision, which exceeds the sum recoverable under the hull policies of the insured vessel solely by reason of the fact that the liability exceeds the valuation of the vessel in those policies.

**D Provisos**

- i For the purposes of assessing any sum recoverable under paragraph C of this Section the Board may determine the value at which the insured vessel should have been insured if it had been 'fully insured' in accordance with Rule 24. There shall be a right of recovery only in respect of the excess, if any, of the amount which would have been recoverable under such policies if the insured vessel had been insured thereunder at such value.
- ii Unless the Board otherwise determines, there shall be no right of recovery of any franchise or deductible borne by the Member under the hull policies of the insured vessel.
- iii If the insured vessel shall come into collision with another vessel belonging wholly or in part to the Member, he shall have the same right of recovery from the Association, and the Association shall have the same rights, as if such other vessel belonged wholly to different owners.
- iv If both vessels are to blame, then where the liability of either or both of the vessels in collision becomes limited by law, claims under this section shall be settled upon the principle of single liability, but in all other cases claims under this section shall be settled upon the principle of cross liabilities, as if the owner of each vessel had been compelled to pay the owner of the other vessel such proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Member in consequence of the collision.

**8 Loss of or damage to property**

Liability to pay damages or compensation for any loss of or damage to any property, or for infringement of rights, whether on land or water and whether fixed or moveable.

Provided that



- A** There shall be no right of recovery under this Section in respect of:
- i liabilities which arise under the terms of any contract or indemnity to the extent that they would not have arisen but for those terms;
  - ii liabilities against which cover is available under the following Sections of this Rule:
    - Section 1D, 2C, 3B: Liabilities in respect of effects
    - Section 7: Collision with other vessels
    - Section 9: Pollution
    - Section 10: Towage
    - Section 12: Wreck liabilities
    - Section 14: Cargo liabilities
    - Section 17: Property on board the insured vessel;
  - iii liabilities excluded from any of the Sections listed in paragraph ii above by reason only of some proviso, warranty, condition, exception, limitation or other like term applying to claims under such Section;
  - iv any franchise or deductible borne by the Member under the hull policies of the insured vessel.
- B** If the insured vessel causes loss or damage to property or infringes rights belonging wholly or in part to the Member, he shall have the same rights of recovery from the Association and the Association shall have the same rights as if such property or rights belonged wholly to different owners.

## **9** **Pollution**

Subject to Rule 21A, the liabilities, losses, damages, costs and expenses set out in paragraphs A to E below when and to the extent that they are caused or incurred in consequence of the discharge or escape from the insured vessel of oil or any other substance, or the threat of such discharge or escape.

- A** Liability for loss, damage or contamination.
- B** Any loss, damage or expense which the Member incurs, or for which he is liable, as a party to any agreement approved by the Board, including the costs and expenses incurred by the Member in performing his obligations under such agreements.
- C** The costs of any measures reasonably taken for the purpose of avoiding or minimising pollution or any resulting loss or damage together with any liability for loss or damage to property caused by measures so taken.



- D** The costs of any measures reasonably taken to prevent an imminent danger of the discharge or escape from the insured vessel of oil or any other substance.
- E** The costs or liabilities incurred as a result of compliance with any order or direction given by any government or authority for the purpose of preventing or reducing pollution or the risk of pollution, provided always that such costs or liabilities are not recoverable under the hull policies of the insured vessel.
- F** A Member insured in respect of a vessel which is a 'relevant ship' as defined in the Small Tanker Owners Pollution Indemnification Agreement (STOPIA) 2006 shall, unless the Managers otherwise agree in writing, be a party to STOPIA 2006 for the period of entry of the vessel in the Club.
- G** A Member insured in respect of a vessel which is a 'relevant ship' as defined in the Tanker Oil Pollution Indemnity Agreement (TOPIA) shall, unless the Managers otherwise agree in writing, be a party to TOPIA for the period of entry of the vessel in the Club.

Unless the Managers have agreed in writing or unless the Directors otherwise determine there shall be no cover under Rule 2 Section 9 in respect of such a vessel during a period the Member is not a party to TOPIA.

**H** **Provisos**

- i If the discharge or escape from the insured vessel causes loss, damage or contamination to property belonging wholly or in part to the Member, he shall have the same rights of recovery from the Association and the Association shall have the same rights as if such property belonged wholly to different owners.
- ii The value of any vessel or wreck and of any stores and materials, or cargo or other property, removed and saved as a result of any measures taken as outlined in this Section shall either be credited to the Association or deducted from any recovery due from the Association.
- iii Unless the Board in its discretion otherwise decides there shall be no right of recovery of any liabilities, losses, damages, costs or expenses arising as a consequence of the discharge or escape of any hazardous waste, previously carried on the insured vessel, from any land based dump, storage or disposal facility.



## 10 **Towage**

### **A Customary towage of an insured vessel**

Liability under the terms of a contract for the customary towage of an insured vessel, that is to say:

- i towage for the purpose of entering or leaving port or manoeuvring within the port during the ordinary course of trading; or
- ii towage of such insured vessels as are habitually towed in the ordinary course of trading from port to port or from place to place.

### **B Towage of an insured vessel other than customary towage**

Liability under the terms of a contract for towage of an insured vessel other than the customary towage covered under paragraph A of this Section but only if and to the extent that cover has been agreed by the Managers in writing.

### **C Towage by an insured vessel**

Liability arising out of towage of another vessel or object by an insured vessel.

Provided that

Liability for loss of or damage to or wreck removal of the towed vessel or object or any cargo or property thereon is excluded unless:

- i such towage was necessary for the purpose of saving life or property at sea, or
- ii the insured vessel is towing under an approved contract, or
- iii cover has otherwise been agreed by the Managers in writing.

#### **Note to section 10C ii**

The contracts set out under A and B below are approved provided that they are not amended so as to increase the liability of the insured vessel. In countries where the terms of those contracts would not be enforceable at law the Managers may approve, on a case by case basis, contracts in which a Member contracts on the basis most likely to be effective in upholding the right to limit liability provided always that the towage contract should not impose upon the tug any liability for the negligence of any other party:

## **D Where there is a contract with the owner of the tow**

- i the United Kingdom, Netherlands, Scandinavian or German standard towage conditions;
- ii the International Ocean Towage Agreement's 'Towhire' or 'Towcon' conditions;
- iii Lloyd's Standard Form of Salvage Agreement 1980 (LOF 1980), or Lloyd's Standard Form of Salvage Agreement 1990 (LOF 1990), or Lloyd's Standard Form of Salvage Agreement 1995 (LOF 1995), or Lloyd's Standard Form of Salvage Agreement 2000 (LOF 2000);
- iv terms as between the owner of the insured vessel on the one part, and the owner of the tow and the owners of any cargo or other property on board the tow on the other part, that each shall be responsible for any loss or damage to his own vessel, cargo or other property on his own vessel and for loss of life or personal injury of his own employees or contractors, without any recourse whatsoever against the other, that is 'knock for knock' terms.

## **E Where there is no direct contractual relationship with the owner of the tow**

A charter which contains:

- i 'knock for knock' terms, as in the Note to Section 10C ii paragraph iv above, covering the property of sub-contractors of the charterers as well as the property of the charterers themselves; or
- ii a separate clause within the charter requiring that all towage be carried out on terms no less favourable than 'knock for knock' terms.

## **11 Liability arising under certain indemnities and contracts**

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

- A** cover has been agreed by the Managers in writing upon such terms as the Managers may require; or
- B** the Board in its discretion decides that the Member should be reimbursed.



## Note

Provided that the terms of any indemnity or contract have been submitted to the Managers in advance so that cover may be agreed in writing and endorsed on the Certificate of Insurance the Association may be able to cover such liabilities arising out of such indemnities or contracts as follows:

- i Statutory or common law liabilities or contractual liabilities assumed under an indemnity or contract when it provides that each party to the indemnity or contract will be responsible for loss of or damage to his own equipment, fuel or other property and the equipment, fuel or other property of any of his co-venturers or other contractors, and for death or injury to his own employees and the employees of any of his co-venturers or other contractors, irrespective of each other's fault or neglect.
- ii Liability under the terms of such indemnity or contract to pay damages or compensation for loss of life, personal injury or illness of any seafarer on an insured vessel arising during the course of his contract of employment.
- iii Liability under the terms of such indemnity or contract to pay damages or compensation for loss of life, personal injury or illness of any person, other than a seafarer, on or near an insured vessel.
- iv Liability under the terms of such indemnity or contract for loss of, damage to, interference with or infringement of rights relating to any ship, harbour, dock, pier, jetty, land or any fixed or moveable thing whatsoever.
- v Liability under the terms of such indemnity or contract for loss of or damage to cargo or other property.

The Association does not, however, cover claims arising out of the operation of submarines or mini-submarines or claims arising out of the use of divers while engaged in diving operations.

## 12 Wreck liabilities

- A** Liabilities and expenses relating to the raising, removal, destruction, lighting or marking of the wreck of the insured vessel or of any cargo equipment or other property which is or was carried on board the insured vessel, when such raising, removal, destruction, lighting or marking is compulsory by law or the costs thereof are legally recoverable from the Member.
- B** Liabilities and expenses incurred by the Member as the result of any such raising, removal, destruction, lighting or marking of the wreck of the insured vessel or of such cargo or other property or any attempt thereat.

**C** Liabilities and expenses incurred by the Member as the result of the presence or involuntary shifting of the wreck of the insured vessel or any cargo or other property which is or was carried on board such wreck or as a result of his failure to raise, remove, destroy, light or mark such wreck or such cargo or other property.

**D Provisos**

- i There shall be no right of recovery from the Association unless the insured vessel became a wreck as the result of a casualty occurring during the vessel's period of insurance; but in this case the Association shall continue to be liable for the claim notwithstanding that in other respects the liability of the Association shall have terminated pursuant to Rule 46.
- ii In respect of a claim under paragraph A of this Section, the value of all vessel's stores and materials saved, as well as the value of the wreck itself, the value of all cargo or other property saved to which the Member is entitled, salvage remuneration received by the Member and any sum recovered by the Member from third parties shall first be deducted from or set off against such liabilities or expenses and only the balance thereof, if any, shall be recoverable from the Association.
- iii There shall be no right of recovery from the Association under this Section if the Member, without the agreement of the Managers in writing, shall have transferred his interest in the wreck (otherwise than by abandonment to his hull and machinery underwriters) prior to the raising, removal, destruction, lighting or marking of the wreck or prior to the incident giving rise to liability.
- iv Where the liabilities arise, or the expenses are incurred, under the terms of any contract or indemnity and would not have arisen but for those terms, those liabilities or expenses are only covered if and to the extent that
  - a those terms have been agreed by the Managers in writing, or
  - b the Board in its discretion decides that the Member should be reimbursed.
- v Unless the Board in its discretion shall otherwise determine, there shall be no right of recovery from the Association under this Section where the liabilities, costs and expenses or any part thereof:
  - a would not have been incurred had the insured vessel been 'fully insured' in accordance with the meaning of these words in Rule 24, or
  - b are incurred more than two years after the vessel, cargo, equipment or other property became a wreck or was lost.



## 13 Quarantine expenses

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

## 14 Cargo liabilities

The liabilities and expenses set out in paragraphs A to D below when and to the extent that they relate to cargo intended to be or being or having been carried in the insured vessel.

### A **Loss, shortage, damage or other responsibility**

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

### B **Disposing of damaged cargo**

The additional costs and expenses, over and above those which would have been incurred by him in any event under the contract of carriage, incurred by the Member in discharging or disposing of damaged or worthless cargo, but only if and to the extent that the Member is unable to recover those costs from any other party.

### C **Failure of consignee to remove cargo**

The liabilities and additional costs incurred by a Member, over and above the costs which would have been incurred by him if the cargo had been collected or removed, solely by reason of the total failure of a consignee to collect or remove cargo at the port of discharge or place of delivery, but only if and to the extent that such liabilities or costs exceed the proceeds of sale of the cargo and the Member has no recourse to recover those liabilities or costs from any other party.

### D **Through or transshipment bills of lading**

Liability for loss, shortage, damage or other responsibility in respect of cargo carried by a means of transport other than the insured vessel, when the liability arises under a through or transshipment bill of lading, or other form of contract approved by the Managers in writing, which provides for carriage partly to be performed by the insured vessel.

## E

### Provisos

#### i **Hague and Hague-Visby Rules**

Unless the Member has previously obtained appropriate special cover by agreement with the Managers or the Board in its discretion otherwise determines, there shall be no recovery from the Association in respect of liabilities which would not have been incurred or sums which would not have been payable by the Member if the cargo had been carried on terms no less favourable to the Member than those laid down in the Hague or Hague-Visby Rules, save where the contract of carriage is on terms less favourable to the Member than those laid down in the Hague or Hague-Visby Rules solely because of the relevant terms of carriage being of mandatory application.

#### ii **Regulations as to terms and methods of carriage**

The Board shall have power from time to time to make Regulations prescribing the use of any particular clause or form of contract, either generally or in any particular trade or in relation to the system and method of carriage, storage, transport, custody and handling of cargo intended to be, being or having been carried in an insured vessel. The Board may in its discretion reject or reduce a claim on the Association arising as a consequence of the failure by a Member to adhere to the terms of such Regulations.

#### iii **Deviation**

Unless the Board in its discretion shall otherwise determine, or cover has been agreed by the Managers in writing prior to the deviation, there shall be no recovery from the Association in respect of liabilities, costs and expenses arising from a deviation, in the sense of a departure from or delay in prosecution of the contractually agreed voyage or adventure, or from events occurring during or after a deviation, if as a result of such deviation the Member is not entitled to rely on any defences or rights of limitation which would otherwise have been available to him to eliminate or reduce his liability.

#### iv **Certain exclusions from cover**

Unless the Board in its discretion shall otherwise determine, there shall be no right of recovery from the Association in respect of any liabilities, costs and expenses arising from:

- a the issue of a bill of lading, waybill or other document containing or evidencing the contract of carriage, issued with the knowledge of the Member or his Master with an incorrect description of the cargo or its quantity or its condition.



- b the issue of a bill of lading, waybill or other document containing or evidencing the contract of carriage which contains any fraudulent misrepresentation, including but not limited to the issue of an ante-dated or post-dated bill of lading.
- c delivery of cargo carried under a negotiable bill of lading or similar document (including an electronic bill of lading) without production of that bill of lading by the person to whom delivery is made (or the equivalent thereof in the case of an electronic bill of lading). Except where cargo has been carried on the insured vessel under the terms of a non-negotiable bill of lading, waybill or other non-negotiable document, and despite having been properly delivered as required by that document, liability nevertheless arises under the terms of a negotiable bill of lading or other similar document of title (issued by or on behalf of a party other than the Member) providing for carriage in part upon the insured vessel and in part upon another vessel or by another mode of transport.
- d delivery of cargo carried under a waybill or similar non-negotiable document to a party other than the party nominated by the shipper as the person to whom delivery should be made.
- e discharge of cargo at a port or place other than in accordance with the contract of carriage.
- f late arrival or non-arrival of the insured vessel at a port or place of loading, or failure to load, or delay in loading any particular cargo, other than liabilities and expenses arising under a bill of lading already issued.
- g any deliberate breach of the contract of carriage on the part of the Member or his manager.
- v **Value declared on bill of lading**  
Where the value of any cargo is declared upon the bill of lading at a figure in excess of US\$ 2,500 (or the equivalent in the currency in which the declared value is expressed) per unit, piece or package, the right of recovery from the Association under this Section shall not exceed US\$ 2,500 per unit, piece or package unless otherwise agreed by the Managers in writing.
- vi **Rare and valuable cargo**  
There shall be no right of recovery from the Association in respect of claims relating to the carriage of specie, bullion, precious metals or stones, plate, works of art or other objects of a rare or precious nature, bank notes or other forms of currency, bonds or other negotiable instruments, unless otherwise agreed by the Managers in writing.



vii **Property of the Member**

In the event that any cargo lost or damaged on board the insured vessel shall be the property of the Member, he shall be entitled to the same right of recovery from the Association and the Association shall have the same rights as if the cargo had belonged to a third party and that third party had concluded a contract of carriage of the cargo with the Member on terms at least as favourable to the Member as the Hague-Visby Rules.

viii **Fishing vessel**

Where the insured vessel is a fishing vessel, there shall be no right of recovery under this Section for liabilities and expenses relating to the catch of that vessel or to any fish or fish products carried therein.

ix **Paperless trading**

Unless special cover has been agreed in writing by the Managers, there shall be no recovery from the Association for any liability, cost or expense arising out of or in consequence of:

- a Member's participation in or use of any system or contractual arrangement the predominant purpose of which is to replace paper-based documentation in shipping and/or international trade with electronic messages, including without limitation, the Bolero system (any such system or arrangement being referred to in this proviso as a 'paperless system'); or
- b a document which is created or transmitted under a paperless system which document contains or evidences a contract of carriage; or
- c the carriage of goods pursuant to such a contract or carriage.

Provided that

The Board may in its discretion pay a proportion or the whole of any such liability, cost or expense in so far as it determines that it would have arisen and would have been within the cover provided by the Association if the Member had not participated in or used a paperless system and any contract of carriage had been contained in or evidenced by a paper document.

## 15 **Unrecoverable general average contributions**

The proportion of general average expenditure, special charges or salvage which the Member is or would be entitled to claim from cargo or from some other party to the marine adventure and which is not legally recoverable by reason only of a breach of the contract of carriage.



Provided that

- i All the provisos to Section 14 shall also apply to claims under this Section.
- ii Unless the Member has previously obtained appropriate special cover by agreement with the Managers, the proportions of general average expenditure which the Member is or would be entitled to claim from cargo or from some other party to the marine adventure shall be deemed to have been adjusted in accordance with the York/Antwerp Rules 1974, 1994 or 2004 and the Member's right of recovery from the Association limited accordingly.

## **16 Ship's proportion of general average**

Ship's proportion of general average, special charges or salvage not recoverable under the hull and machinery policies solely by reason of the sound value of an insured vessel having been assessed for contribution to general average, special charges or salvage at a value in excess of the amount for which such vessel should have been insured if it had been 'fully insured' in accordance with the meaning of those words in Rule 24.

## **17 Property on board the insured vessel**

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

Provided that

- A** There shall be no right of recovery under this Section for loss of or damage to any property which forms part of the insured vessel or which is owned, leased or hired in by the Member or by any company associated with or under the same management as the Member; and
- B** Unless the Member has obtained appropriate special cover by agreement with the Managers, there shall be no right of recovery from the Association of any liability which arises under a contract or indemnity entered into by him and would not have arisen but for such contract or indemnity.

## **18 Special compensation to salvors**

- A** Liability of the Member to reimburse a salvor of the insured vessel for his 'reasonably incurred expenses' (together with any increment awarded thereon) under the exception to the principle of 'no cure - no pay' contained in Clause 1(a) of the Lloyd's Standard Form of Salvage Agreement 1980 (LOF 1980).

- B** Liability of the Member to pay to a salvor of the insured vessel 'special compensation' within the meaning of Article 14 of the International Convention on Salvage 1989 as incorporated by Clause 2 of Lloyd's Standard Form of Salvage Agreement 1990 (LOF 1990) and as included in Lloyd's Standard Form of Salvage Agreement 1995 (LOF 1995), for operations to prevent or minimise damage to the environment.
- C** Liability of the Member to pay to a salvor of the insured vessel 'Scopic Remuneration' within the meaning of the Scopic Clause as supplementary to Lloyd's Standard Form of Salvage Agreement 1995 (LOF 1995) or as incorporated into Lloyd's Standard Form of Salvage Agreement 2000 (LOF 2000).

**Provided that**

- i In respect of a claim under paragraph C of this Section, in the event of the salvage of the vessel or any property on board and, in accordance with the Scopic Clause, there is no Article 13 award, the residual value of the vessel and of any property to which the Member is entitled shall first be deducted from or set off against such liability and only the balance shall be recoverable from the Association.
- ii Unless the Board in its discretion shall otherwise determine, there shall be no right of recovery from the Association under this Section where the liabilities, costs and expenses or any part thereof would not have been incurred had the insured vessel been 'fully insured' in accordance with the meaning of these words in Rule 24.

**19 Fines**

Fines as set out in paragraphs A to D below when and to the extent that they are imposed in respect of an insured vessel by any competent court, tribunal or authority and are imposed upon the Member or upon any seafarer whom the Member may be legally liable to reimburse or reasonably reimburses with the agreement of the Managers.

- A** For short or over delivery of cargo, or failure to comply with regulations relating to the declaration of goods, or documentation of cargo, provided that the Member is covered by the Association for cargo liabilities under Rule 2 Section 14 and subject to the provisions of that Rule.
- B** For breach of any immigration law or regulation.
- C** In respect of accidental escape or discharge of oil or other substance from the insured vessel.



**D** For smuggling or any infringement by Master or crew of any customs law or regulation other than in relation to cargo carried on the vessel.

**E** **Provisos**

- i Notwithstanding the terms of Rule 27 paragraph 1 the Board in its discretion may admit claims for loss of an insured vessel following final confiscation of the vessel by a competent court, tribunal or authority by reason of infringement of any customs law or customs regulation, to such extent as it shall think fit. The amount recoverable shall not exceed the market value of the insured vessel at the date of final confiscation, disregarding any charter or other engagements, to which the vessel may be committed.
- ii There shall be no right of recovery under this Section for fines arising out of infringements or violations of or non-compliance with the provisions regarding construction, adaptation and equipment of ships contained in the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 and as modified or amended by any subsequent protocol, or the legislation of any state giving effect to that Convention; but the Board in its discretion may admit claims for such fines to such extent as it shall think fit.
- iii There shall be no right of recovery under this Section for fines arising out of infringements or violations of or non-compliance with the provisions of the ISM or ISPS Codes; but the Board in its discretion may admit claims for such fines to such extent as it shall think fit.

**20** **Inquiries and criminal proceedings**

**A** Expenses incurred by the Member in protecting his interests during an investigation by any government or authority into the loss of or a casualty involving the insured vessel.

**B** Expenses incurred by the Member in connection with the defence of criminal proceedings brought against the Master of or a seafarer aboard the insured vessel or some other servant or agent of the Member or some other person associated with the Member.

**C** **Provisos**

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

- i they were incurred with the agreement of the Managers in writing; or
- ii the Board in its discretion decides that they should be recoverable from the Association.

## **21 Liabilities and expenses incurred by direction of the Managers**

Liabilities and expenses reasonably and necessarily incurred or sustained by the Member for the purpose or as a result of carrying out a specific written direction of the Managers in connection with the insured vessel.

## **22 Sue and labour and legal costs**

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

**B** Legal costs and expenses relating to any liability or expenditure against which the Member is wholly, or, by reason of a deductible or otherwise, partly insured by the Association, but only to the extent that those costs and expenses have been incurred with the agreement of the Managers or to the extent that the Board in its discretion decides that the Member should recover from the Association.

Provided that

There shall be no right of recovery under this Rule for any cost or expense related to ransom demands, extortion, blackmail, bribery or any illegal payments.

## **RULE 3 SPECIAL COVER**

**1** The Managers may accept entries of vessels on special terms as to calls, or which afford cover against any special or additional risks. The nature and extent of the risks and the terms and conditions of insurance incorporating any such special terms shall be as agreed by the Managers in writing.

**2** Notwithstanding Rule 1 paragraph 6 a Member may be insured on the special term that the risks insured may arise otherwise than in respect of the insured vessel or otherwise than in connection with the operation of the insured vessel provided that this shall have been agreed by the Managers in writing.



## **RULE 4 SPECIAL COVER FOR SALVORS, CHARTERERS AND SPECIALIST OPERATIONS**

### **1 Salvors**

Notwithstanding Rule 28, provided that special cover has been agreed by the Managers in writing and endorsed on the Certificate of Insurance, and provided that he has paid such calls as may be required by the Managers, a Member who is the owner or operator of a salvage tug or other vessel intended to be used for salvage operations (including for the purposes of this Rule 4, wreck removal) may be covered for the following:

- A** Liabilities and expenses arising in respect of risks covered under Rule 2.
- B** Liabilities and expenses caused by oil pollution during salvage operations whether or not they arise in respect of the Member's interest in the insured vessel.
- C** Liabilities and expenses, not covered under paragraph 1A or B of this Rule, caused by events occurring during salvage operations whether or not they arise in respect of the Member's interest in the insured vessel. Cover under this paragraph 1C of this Rule is only available as specifically agreed by the Managers in writing and endorsed on the Certificate of Insurance and on payment of such additional calls as the Managers may require.

#### **Provided that**

- i** There shall be no right of recovery under this Rule of any liability or expense which is incurred under the terms of an indemnity or contract unless the terms of the indemnity or contract have been agreed by the Managers in writing.
- ii** The cover afforded under this Rule in connection with any salvage or attempted salvage operations shall be in all respects the same as that afforded under Rule 2 in respect of the operations of the insured vessel save that in the case of cover afforded under paragraph 1B or 1C of this Rule the liabilities and expenses need not arise in respect of an insured vessel or out of the operation of an insured vessel provided that they arise in connection with the Member's business as a salvor.
- iii** It shall be a condition of cover under this Rule that the Member shall apply to enter for insurance in the Association every vessel intended to be used in connection with salvage operations at the time when the insurance is given and, thereafter, at least 30 days before the beginning of each policy year.

## 2 Charterers

When the entry of an insured vessel in the Association is in the name of or on behalf of a charterer of the insured vessel or part thereof (other than a demise or bareboat charter), the following liabilities and expenses may be covered on such terms and conditions as may be agreed by the Managers in writing.

- A** Liability of the charterer, together with expenses incidental thereto, to indemnify the owner or disponent owner of the insured vessel in respect of the risks set out in Rule 2.
- B** Notwithstanding the provisions of paragraphs 1, 2 and 3 of Rule 27, the charterer's liability, together with the costs and expenses incidental thereto, for loss of or damage to the insured vessel.
- C** Notwithstanding the provisions of paragraph 2 of Rule 27, the loss incurred by the charterer as a result of loss of or damage to bunkers, fuel or other property of the charterer on board the insured vessel.

## 3 Specialist operations

A Member may be covered against any of the liabilities or expenses which arise out of or during any of those operations in respect of which cover is excluded or restricted either under Rule 28 or otherwise under these Rules upon such terms and conditions as may be agreed by the Managers in writing.

## RULE 5 OMNIBUS RULE

Notwithstanding anything to the contrary contained in these Rules the Board in its discretion shall have power to admit a right of recovery by a Member in respect of liabilities or expenses incidental to the business of owning, operating or managing vessels, which in the opinion of the Board fall within the scope of the cover of Rules 2, 3 or 4.

Provided that

- A** Any amount claimed under this Rule which but for this Rule would be expressly excluded by the provisions of any other Rule may only be paid if the decision of those members of the Board present when the claim is considered is unanimous.
- B** Any amount claimed under this Rule shall be recoverable to such extent only as the Board in its discretion may determine.







# PART 3

## ▶ LEGAL ASSISTANCE AND DEFENCE COVER

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## ▶ PART 3: LEGAL ASSISTANCE AND DEFENCE COVER

### **RULE 6** LEGAL ASSISTANCE AND DEFENCE COVER

- 1** The Managers may accept the entry of a vessel for Legal Assistance and Defence cover as provided in this Rule 6, but no such cover shall be afforded to a Member without the agreement of the Managers in writing.
- 2** Unless otherwise stated cover under this Rule is subject to the claims procedures, limitations and exclusions set out in Parts 4 and 5 and in the remainder of these Rules.
- 3**
- A** The cover afforded by the Association shall apply to claims, disputes or proceedings:
  - i** under any charterparty, bill of lading, contract of affreightment or other contract, including, but not limited to claims and disputes concerning hire, off-hire, set-off, freight, deadfreight, laytime, demurrage and/or damages for detention, despatch, speed, performance and description of a vessel, port safety and orders to an insured vessel;
  - ii** under any charterparty, bill of lading, contract of affreightment or other contract, the exercise or assertion of any rights arising thereunder or generally, including but not limited to the right of withdrawal, exercise of lien, and claims arising therefrom;
  - iii** in respect of the cancellation of a charterparty or other contract;
  - iv** in respect of the loss of, damage to or detention of an insured vessel;
  - v** in respect of the supply of inferior, unsatisfactory or unsuitable fuel, materials or equipment, or other necessities;
  - vi** for negligent or improper repair of or alteration to an insured vessel;
  - vii** in respect of general and/or particular average contributions or charges;
  - viii** in respect of improper loading, lightering, stowage, trimming or discharge of cargo;

- ix in respect of and in connection with charges, disbursements, accounts received from agents, stevedores, chandlers, brokers, customs, harbour or other authorities, or others connected with the running, management and operation of an insured vessel;
- x in respect of amounts due from or to underwriters and any other persons and/or companies conducting the business of marine insurance, other than amounts due to or from the Association;
- xi in respect of salvage or towage services rendered by an insured vessel except where the insured vessel is a salvage tug or other vessel used or intended to be used for salvage operations and the claim arises as a result of or during any salvage operations or attempted salvage operations;
- xii by or against passengers intended to be, being or having been carried on an insured vessel or their personal representatives or dependants;
- xiii by or against officers, crews, stowaways and other persons on or about an insured vessel;
- xiv in connection with the building, purchase or sale of an insured vessel;

**Provided that**

Claims arising in connection with the building or purchase of a vessel shall fall within the cover provided by the Association only if an entry has been made with effect from the date of the relevant contract or such date as may be agreed by the Managers in writing.

- xv in connection with the mortgage of an insured vessel;
- xvi in connection with the representation of a Member at official investigations, inquests, or other enquiries whatsoever in relation to an insured vessel.

**B** The Board in its discretion shall have power to extend cover to a Member in respect of any claims, disputes or proceedings not covered under paragraph 3A of this Rule which in the opinion of the Board fall within the scope of the Legal Assistance and Defence cover and it may impose such conditions on such right of recovery as it thinks fit.

**4** Subject to paragraphs 5, 6, 7 and 8 of this Rule 6 and to Rule 21C a Member shall be covered in respect of:



- A** the costs and expenses incurred in obtaining advice in connection with any of the claims, disputes or proceedings described in paragraph 3 of this Rule;
- B** the costs and expenses of or incidental to such claims, disputes or proceedings including costs which the Member may become liable to pay to any other party to such claims, disputes or proceedings.

**5**

**A** There shall be no right of recovery from the Association under paragraph 4 of this Rule unless the Board, in its discretion, has decided that the Member is entitled to such a right of recovery. The Board may, in its discretion impose such conditions on such right of recovery as it thinks fit and shall be entitled at any time to rescind or discontinue any right of recovery or amend or supplement any condition attached thereto.

**B** In exercising its discretion under this paragraph 5, the Board shall be entitled to take into account any matters that may appear to it relevant, including but not limited to:

- i the merits of the claims or disputes or proceedings in relation to which the Member seeks to be covered by the Association;
- ii the interests of the Association as a whole in addition to the interests of the individual Member;
- iii the reasonableness of the Member's conduct.

**6** Unless the Board in its discretion otherwise decides, there shall be no right of recovery under paragraph 3 of this Rule if the principal amount involved in the claim, dispute or proceedings is less than US\$ 2,000.

**7** With reference to Rule 24 paragraph 2, any right of recovery under this Rule shall be assessed on the basis that any franchise, deductible or deduction in the hull policies shall be deemed not to exceed 25% of the vessel's insured value.

**8 Deductibles**

**A** Unless otherwise agreed by the Managers in writing, each Member shall bear:

- i the first US\$ 750 of such costs and expenses as total up to US\$ 3,000 incurred in connection with any claim, dispute or proceedings;
- ii one fourth of such costs and expenses as exceed US\$ 3,000 in total, subject to a maximum deductible of US\$ 30,000.

- B** In assessing the Member's rights of recovery from the Association account shall be taken of any costs paid or set off by the other party to the claim, dispute or proceedings and the Member's right of recovery shall be limited to the net costs payable by the Member.
  
- C** In the case of a settlement of a claim, dispute or proceedings in which the other party does not make any contribution to the Member's costs, the Board in its discretion shall decide the sum to which the Member's right of recovery from the Association shall be restricted.





## PART 4

# ▶ CLAIMS PROCEDURES

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# Rules 2016

## PART 4: CLAIMS PROCEDURES

### RULE 7 OBLIGATION TO SUE AND LABOUR

- 1** It shall be the duty of the Member and his agents at all times, whether before, at the time of, during or after the occurrence of any event or matter liable to give rise to a right of recovery by a Member from the Association, to take all such steps, whether in relation to his business or to the insured vessel or otherwise, as may be reasonable for the purpose of averting or minimising any expense or liability in respect of which he may be covered by the Association.
- 2** The duty imposed on a Member and his agents hereunder shall be to take such steps as could reasonably be expected to be taken by a competent and prudent uninsured owner in the same or similar circumstances and no account shall be taken of any circumstances peculiar to the Member such as his lack of means or inability to provide the requisite funds for any reasons whatsoever.

### RULE 8 NOTIFICATION OF CLAIMS

A Member must:

- 1** Promptly notify the Managers of every event or matter which is liable to give rise to a claim upon the Association and of every event or matter including any legal or arbitration proceedings commenced against the Member which is liable to cause the Member to incur liabilities or expenses for which he may be covered by the Association.
- 2** Promptly notify the Managers of every survey or opportunity to survey in connection with such event or matter.
- 3** At all times promptly notify the Managers of any information documents or reports in his or his agents' possession power or knowledge relevant to such event or matter.
- 4** Whenever so requested by the Managers, promptly produce to the Managers and/or allow the Managers or their agents to inspect, copy or photograph, all relevant documents of whatsoever nature in his or his agents' possession or power.
- 5** Permit the Managers or their agents to interview any servant, agent or other person who may have been employed by the Member at any time whom the Managers may consider likely to have any direct or indirect knowledge of the matter or who may have been under a duty at any time to report to the Member in connection therewith.



## **RULE 9 ADMISSION OF LIABILITY**

A Member shall not settle or admit liability for any claim for which or for the expenses of which he may be covered by the Association without the agreement of the Managers in writing.

## **RULE 10 EFFECT OF BREACHES OF OBLIGATIONS IN RULES 7, 8 AND 9**

If a Member commits any breach of his obligations in Rules 7, 8, and 9, the Board may in its discretion reject any claim by him against the Association arising out of any event or matter, or reduce the sum otherwise recoverable from the Association in respect thereof by such amount as it may determine.

## **RULE 11 APPOINTMENT OF LAWYERS AND OTHER PERSONS**

Without prejudice to any other provisions of these Rules and without waiving any of the Association's rights hereunder, the Managers may at any time appoint on behalf of a Member upon such terms as they may think fit lawyers, surveyors or other persons for the purpose of dealing with any matter liable to give rise to a claim by the Member upon the Association, including, but not limited to, investigating, or advising upon any such matter and taking or defending legal or other proceedings in connection therewith. The Managers may also at any time discontinue such employment as they may think fit.

## **RULE 12 BASIS OF APPOINTMENT**

All lawyers, surveyors and other persons appointed by the Managers on behalf of a Member or appointed with the prior consent of the Managers shall at all times be deemed to be appointed on the terms that they have been instructed by the Member at all times to give advice and to report to the Managers in connection with the matter without prior reference to the Member, that they are to produce to the Managers without reference to the Member any documents or information in their possession or power relating to such matter as if such person had been appointed to act and had at all times been acting on behalf of the Association and notwithstanding that any such advice, reports, documents or information would otherwise be the subject of legal or any other form of privilege.

## **RULE 13 POWERS OF THE MANAGERS RELATING TO THE HANDLING AND SETTLEMENT OF CLAIMS**

- 1** The Managers shall have the right, but not an obligation, if they so decide to control or direct the conduct of any claim or legal or other proceedings relating to any liabilities or expenses in respect of which a Member is or may be covered in whole



or in part or which may give rise to a claim by the Member upon the Association and to require the Member to settle, compromise or otherwise dispose of such claims or proceedings in such manner and upon such terms as the Managers see fit.

- 2** If a Member does not settle, compromise, dispose of or take steps in connection with the handling of a claim or proceedings as required by the Managers in accordance with paragraph 1 of this Rule, any eventual recovery by the Member from the Association in respect of such claim or proceedings shall be limited to the amount he would have recovered if he had acted as required by the Managers.
- 3** Unless otherwise agreed by the Managers in writing, when the Association has paid a claim to or on behalf of a Member the whole of any recovery from a third party in respect of that claim shall be credited and paid to the Association up to an amount corresponding with the sum paid by the Association together with any interest element on that sum comprised in the recovery, provided, however, that when, because of a deductible in his terms of entry, the Member has contributed to settlement of the claim, any such interest element shall be apportioned between the Member and the Association taking into account the payments made by each and the dates on which those payments were made.

#### **RULE 14 BAIL**

- 1** The Association shall not be obliged to provide bail or other security in relation to claims made against a Member in any circumstances whatsoever. It shall be a condition precedent of the Managers' consideration of the provision of such bail or security that:
  - A** the Member gives an undertaking to the Association on such terms as the Managers may require;
  - B** the Member remits to the Association any deductible that may apply to such claim, and any call or other amount outstanding due to the Association;
  - C** the Association shall be entitled to a commission from the Member of 1% on the amount of bail or security to be provided.

The Association shall in no circumstances provide cash deposits.

- 2** If the Association does provide bail or other security in relation to claims made against a Member it shall be without prejudice to the Member's obligations and the Association's rights under these Rules and shall not constitute any admission of a right of recovery from the funds of the Association of the claim in respect of which such bail or other security is provided.

# PART 5



## LIMITATIONS AND EXCLUSIONS

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## PART 5: LIMITATIONS AND EXCLUSIONS

### **RULE 15 BLANK**

### **RULE 16 PAYMENT FIRST BY THE MEMBER**

Unless the Board in its discretion otherwise decides, it is a condition precedent of a Member's right to recover from the funds of the Association in respect of any liabilities, costs or expenses that he shall first have discharged or paid the same.

### **RULE 17 NO LIABILITY UNTIL CALLS PAID**

Without prejudice to anything elsewhere contained in these Rules it shall be a condition precedent of a Member's right to recover from the funds of the Association in respect of any liabilities, costs or expenses that all such calls and other amounts whatsoever as shall have become due from the Member to the Association shall have been paid in full without any set-off or discount.

### **RULE 18 INTEREST AND CONSEQUENTIAL LOSS**

A Member shall have no right to recovery of interest on any claim he may have against the Association.

Unless the Board in its discretion shall otherwise determine a Member shall have no right to recover any losses suffered as a consequence of delay or failure on the part of the Association to reimburse a Member.

### **RULE 19 SET-OFF**

Without prejudice to anything elsewhere contained in 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.

### **RULE 20 DEDUCTIBLES**

The Member's right of recovery from the Association in respect of any claim shall be subject to such deductible as may be agreed by the Managers in writing. If a single incident gives rise to a number of claims with different deductibles the aggregate of all claims arising from the incident shall be subject to the highest deductible applicable to any of those claims.

## **RULE 21A LIMIT OF THE ASSOCIATION'S LIABILITY FOR OIL POLLUTION**

- 1** The Association's liability for claims in connection with oil pollution shall be limited to US\$ 1,000 million each accident or occurrence.
- 2** The limit of US\$ 1,000 million shall apply irrespective of whether the accident or occurrence involves the escape of oil from one vessel or more than one vessel and to all claims brought by the Member or joint Members in relation to an insured vessel in respect of such accident or occurrence whether under one section of Rule 2 or more than one section. If the aggregate of such claims exceeds US\$ 1,000 million, the liability of the Association for each claim shall be such proportion of US\$ 1,000 million as such claim bears to the aggregate of all such claims. If and to the extent that a Member has, in relation to any claim in connection with oil pollution, other insurance not being solely in respect of the excess of US\$ 1,000 million, then the limit of US\$ 1,000 million shall be reduced by the amount of the stated limit of such other insurance and there shall be no right of recovery in respect of any such claim to the extent that it does not exceed the stated limit of such other insurance.
- 3** When the insured vessel provides salvage or other assistance to another vessel following a casualty, a claim by the Member in relation to the insured vessel in respect of oil pollution arising out of the salvage, that assistance or the casualty shall be aggregated with any liabilities or expenses incurred in respect of oil pollution with the same casualty when such other vessels are either:
  - i covered by the Association in respect of oil pollution, or
  - ii covered for those risks by any other Association which participates in the Pooling Agreement and the Group excess reinsurance policy.

In these circumstances the limit of the liability of the Association shall be such proportion of US\$ 1,000 million as the claim by the Member in relation to the insured vessel bears to the aggregate of all the said claims.

## **RULE 21B LIMIT OF THE ASSOCIATION'S LIABILITY FOR OVERSPILL CLAIMS**

Without prejudice to any other applicable limit, there shall be no right of recovery of any overspill claim except in accordance with Rule 53.



## **RULE 21C LIMIT OF THE ASSOCIATION'S LIABILITY FOR LEGAL ASSISTANCE AND DEFENCE CLAIMS**

Without prejudice to the discretionary basis of the cover as described in paragraph 4 of Rule 6 the Association's liability for claims arising under Rule 6 shall in any event be limited to US\$ 5 million in the aggregate in respect of any one claim, dispute, or proceedings.

## **RULE 21D LIMIT OF THE ASSOCIATION'S LIABILITY IN CONNECTION WITH PASSENGERS, SEAFARERS AND OTHER PERSONS**

- 1** The Association's liability for claims in connection with passengers shall be limited in the aggregate to US\$ 2,000 million each accident or occurrence.
- 2** The Association's liability for claims in connection with passengers and seafarers shall be limited in the aggregate to US\$ 3,000 million each accident or occurrence.

Provided that

Where claims are made against any other Association which participates in the Pooling Agreement, the aggregate of all claims arising out of each accident or occurrence in respect of liability to passengers or seafarers shall be limited to the amounts shown above and the liability of each Association shall be limited to such proportion of those amounts as the claims recoverable by such persons from the Association bears to the aggregate of all such claims otherwise recoverable from the Association and any other such Association.

For the purpose of this Rule alone 'Passenger' shall mean a person carried on board a vessel under a contract of carriage or who, with the consent of the carrier, is accompanying a vehicle or live animals covered by a contract for the carriage of goods and a 'Seafarer' shall mean any other person on board a vessel not being a Passenger.

## **RULE 21E LIMIT OF THE ASSOCIATION'S LIABILITY TO CHARTERERS**

In relation to vessels insured by or on behalf of a Member who is a charterer, other than a bareboat charterer, the Association's liability to such Member in respect of all claims shall be limited to US\$ 350 million each accident or occurrence. In the event that more than one charterer, other than a bareboat charterer, is insured in respect of the same vessel by the Association or by any other Association which participates in the Pooling Agreement and the Group excess reinsurance policy, the aggregate recovery in respect of all claims brought by all such charterers

arising out of any one accident or occurrence shall not exceed the sum of US\$ 350 million, and the liability of the Association to each charterer covered by the Association shall be limited to such proportion of US\$ 350 million as the claim of such charterer bears to the aggregate of all such claims recoverable from the Association and any other such Association.

## **RULE 22 OTHER LIMITATIONS OF THE ASSOCIATION'S LIABILITY**

### **1 General limitation**

Subject to these Rules the Association insures the liability of a Member in respect of an insured vessel as his liability may ultimately be determined and fixed by law, including laws pertaining to limitation of vessel owners' liability. The Association shall in no circumstances be liable for any sum in excess of such legal liability. If less than the full gross tonnage of a vessel is entered in the Association, the Member concerned shall be entitled only to recover such proportion of his claim as the entered tonnage bears to the full gross tonnage.

### **2 Limitations for persons other than vessel owners**

If a Member has entered a vessel in the Association, and he is not the registered owner, demise charterer, manager or operator of that vessel or an insurer of protection and indemnity risks of such description of persons, then unless otherwise agreed by the Managers in writing the liability of the Association in respect of any claim brought by the Member relating to that vessel shall not exceed the amount to which he could have limited his liability for the claim if he had been the registered owner and had not been denied the right to limit.

## **RULE 23 DOUBLE INSURANCE**

**1** Unless the Board otherwise determines, there shall be no right of recovery from the Association of any claim in respect of liabilities or expenses which are recoverable under any other insurance or which would have been so recoverable:

**A** apart from any terms in such other insurance excluding or limiting liability on the ground of double insurance; and

**B** if the insured vessel had not been entered in the Association with cover against the risks set out in these Rules.

**2** In no case shall the Association be liable for any franchise, deductible or deduction of a similar nature borne by a Member under such other insurance.



## **RULE 24 EXCLUSION OF SUMS INSURABLE UNDER HULL POLICIES**

Unless otherwise agreed by the Managers in writing or the Board otherwise determines, the Association shall not be liable for any liabilities or expenses in connection with an insured vessel:

- 1** against which a Member would be insured if the insured vessel were, at the date of the incident giving rise to such liabilities or expenses, fully insured under hull policies on terms not less wide than those of the Lloyd's Marine Policy with the Institute Time Clauses (Hulls) 1/10/83 attached;
- 2** which would not be recoverable under such policies by reason of some franchise, deductible or deduction of a similar nature in such policies.

'Fully insured' in paragraph 1 of this Rule means insured at such insured value as in the discretion of the Board represents the full market value of the insured vessel, disregarding any charter or other engagement to which she may be committed.

## **RULE 25 LIABILITY EXCLUDED FOR WAR, BIO-CHEM AND COMPUTER VIRUS RISKS**

There shall be no right of recovery from the Association in respect of any liabilities or expenses, whether or not a contributory cause of their being incurred was any neglect on the part of the Member or the Member's servant or agents, when the incident giving rise to the liability or expenses was caused by the following:

- 1** War, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power or by any act of terrorism.
- 2** Capture, seizure, arrest, restraint or detainment (barratry or piracy excepted) and the consequences thereof or any attempt thereat.
- 3** Mines, torpedoes, bombs, rockets, shells, explosives or similar weapons of war (save for those liabilities or expenses which arise solely by reason of the transport of such weapons whether on board the insured vessel or not), provided that this exclusion shall not apply to the use of such weapons, either as a result of government order or through compliance with a written direction given by the Managers or the Board, where the reason for such use is the avoidance or mitigation of liabilities, costs or expenses which would otherwise fall within the cover given by the Association.



- 4 Any chemical, biological, bio-chemical or electromagnetic weapon.
- 5 The use or operation, as a means of inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

Provided that

- i The Board may resolve that special cover be provided to the Members against any or all of the risks set out in Rule 2, notwithstanding that those liabilities, costs or expenses would otherwise be excluded by this Rule and that such special cover should be limited to such sum or sums and be subject to such terms and conditions as the Board may from time to time determine.
- ii The exclusion in Rule 25 shall not apply to liabilities, costs and expenses of a Member insofar only as they are discharged by the Association on behalf of the Member pursuant to a demand made under a guarantee, undertaking or certificate issued by the Club in accordance with, or pursuant to, any other law, regulation or international convention coming into force during the current Policy Year. Where any such guarantee, undertaking or certificate is provided by the Club on behalf of the owner as guarantor or otherwise, the owner agrees that:
  - a any payment by the Club under any guarantee, undertaking or certificate above, in discharge of the said liabilities, costs and expenses shall, to the extent of any amount recovered under any other policy of insurance or extension to the cover provided by the Association, be by way of loan; and
  - b there shall be assigned to the Club, to the extent and on the terms that the Managers determine in their discretion to be practicable, all the rights of the owner under any such other insurance and against any third party; and
  - c unless the Managers shall otherwise determine, the owner shall indemnify the Club to the extent that any payment under any guarantee, undertaking or certificate referred to above, in discharge of the said liabilities, costs and expenses is or would have been recoverable under a standard P&I War Risk policy of insurance, had the owner complied with all the terms and conditions thereof, under which the vessel shall be deemed to be insured without deductible for its full value,



## **RULE 26 LIABILITY EXCLUDED FOR CERTAIN NUCLEAR RISKS**

There shall be no right of recovery from the Association in respect of any liabilities, costs or expenses (irrespective of whether a contributory cause of them being incurred was any neglect on the part of the insured owner or his servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or cost or expense is incurred, was directly or indirectly caused by or arises from:

- A** ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
- B** the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
- C** any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
- D** the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter

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

## **RULE 27 MISCELLANEOUS EXCLUSIONS**

There shall be no right of recovery from the Association in respect of the following:

- 1** Loss of or damage to an insured vessel or any part thereof.
- 2** Loss of or damage to any equipment on board an insured vessel or to any containers, lashings, stores or fuel thereon, to the extent that they are owned or leased by the Member or by any company associated with or under the same management as the Member.
- 3** The cost of repairs to an insured vessel or any charges or expenses in connection therewith.
- 4** Loss of freight or hire or any proportion thereof, unless such loss forms part of a claim recoverable from the Member for loss in respect of cargo or is, with the agreement of the Managers in writing, included in the settlement of such a claim.

- 5 Salvage of an insured vessel or services in the nature of salvage provided to an insured vessel and any costs and expenses in connection therewith.
- 6 Loss arising out of cancellation of a charter or other engagement of an insured vessel.
- 7 Loss arising out of unrecoverable debts or out of the insolvency of any person, including insolvency of agents.
- 8 Claims relating to demurrage on or detention of an insured vessel unless such demurrage or detention forms part of a claim otherwise covered by the vessel's entry in the Association. In no case shall a Member be entitled to recover sums in excess of the vessel's actual running costs.

**Provided that**

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

Section 4:	Diversion expenses
Section 6:	Liabilities for life salvage
Section 10:	Towage
Section 11:	Liability arising under certain indemnities and contracts
Section 15:	Unrecoverable general average contributions
Section 16:	Ship's proportion of general average
Section 18:	Special compensation to salvors
Section 21:	Liabilities and expenses incurred by direction of the Managers
Section 22:	Sue and labour and legal costs

**RULE 28 LIABILITIES EXCLUDED IN RESPECT OF SALVAGE VESSELS, DRILLING VESSELS, DREDGERS AND OTHER SPECIALIST OPERATIONS**

Unless special cover shall have been agreed by the Managers in writing pursuant to Rules 3 and 4, there shall be no right of recovery from the Association of any claim relating to liabilities and expenses incurred by a Member in respect of the following:

- 1 An insured vessel which is a salvage tug or other vessel used or intended to be used for salvage operations (including wreck removal), when the claim arises as a result of or during any salvage operations or attempted salvage operations other than salvage operations conducted by the insured vessel for the purpose of saving or attempting to save life at sea.

- 2** An insured vessel being a drilling vessel or barge or any other vessel or barge employed to carry out drilling or production operations in connection with oil or gas exploration or production, including any accommodation unit moored or positioned on site as an integral part of any such operations, to the extent that such liabilities and expenses arise out of or during drilling or production operations.
- A** An insured vessel shall be deemed to be carrying out production operations if (inter alia) it is a storage tanker or other vessel engaged in the storage of oil, and either:
- i the oil is transferred directly from a producing well to the storage vessel; or
  - ii the storage vessel has oil and gas separation equipment on board and gas is being separated from oil whilst on board the storage vessel other than by natural venting; and
- B** In respect of any insured vessel employed to carry out production operations in connection with oil or gas production, the exclusion shall apply:
- i from the time that a connection, whether directly or indirectly, has been established between the insured vessel and the well until such time that the insured vessel has been disconnected from the well as part of a planned procedure to leave the site for the purpose of navigation to shore or to another production site; or
  - ii where the insured vessel is unintentionally, as well as intentionally as an emergency response, disconnected from the well; or
  - iii where the insured vessel remains connected to the well, but the production is shut down, whether or not as an emergency response.
- 3** The performance of specialist operations including, but not limited to, dredging, blasting, pile driving, well-stimulation, cable or pipe laying, construction, installation or maintenance work, core sampling, depositing of spoil, professional oil spill response or professional oil spill response training (but excluding fire-fighting), to the extent that such liabilities and expenses arise as a consequence of:
- A** claims brought by any party for whose benefit the work has been performed, or by any third party (whether connected with any party for whose benefit the work has been performed or not), in respect of the specialist nature of the operations; or
- B** the failure to perform such specialist operations by the Member or the fitness for purpose and quality of the Member's work, products or services, including any defect in the Member's work, products or services; or

**C** any loss of or damage to the contract works.

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

- i loss of life, injury or illness of crew and other personnel on board the insured vessel, and,
- ii the wreck removal of the insured vessel, and,
- iii oil pollution emanating from the insured vessel,

but only to the extent that such liabilities and expenses are otherwise covered by the Association in accordance with the Rules.

**4** The activities of professional or commercial divers, when the Member is responsible for such activities other than

- i activities arising out of salvage operations being conducted by an insured vessel where the divers form part of the crew of that insured vessel (or of diving bells or other similar equipment or craft operating from the insured vessel) and where the Member is responsible for the activities of such divers
- ii recreational diving activities
- iii incidental diving activities carried out in relation to the inspection, repair or maintenance of the insured vessel or in relation to damage caused by the insured vessel.

**5** Waste incineration or disposal operations carried out by the insured vessel (other than any such operations carried out as an incidental part of other commercial activities).

**6** The operations of submarines, mini-submarines or diving bells.

**7** An insured vessel being a semi-submersible heavy lift vessel or other vessel designed exclusively for the carriage of heavy lift cargo where the claim arises out of the loss of or damage to or wreck removal of cargo, unless the cargo is being carried under a contract on unamended Heavycon terms or any other contract approved by the Managers in writing.



## **RULE 29 LIABILITIES EXCLUDED IN RESPECT OF NON-MARINE PERSONNEL**

There shall be no right of recovery from the Association in respect of any liabilities or expenses incurred in respect of any of the following:

- 1** Personnel, other than seafarers, on board the insured vessel, being an accommodation vessel, employed otherwise than by the Member, where there has not been a contractual allocation of risks as between the Member and the employer of the personnel which has been agreed by the Managers in writing.
- 2** Hotel and restaurant guests and other visitors and catering crew of the insured vessel when the insured vessel is moored, otherwise than on a temporary basis, and is open to the public as a hotel, restaurant, bar or other place of entertainment.

## **RULE 30 LIABILITIES EXCLUDED IF AS A RESULT OF WILFUL MISCONDUCT**

There shall be no right of recovery of any claim from the Association if it arises out of wilful misconduct on the part of the Member (being an act intentionally done or a deliberate omission by the Member with knowledge that the performance or omission will probably result in injury or loss, or an act done or omitted in such a way as to allow an inference of a reckless disregard for the probable consequences).

## **RULE 31 LIABILITIES EXCLUDED IF ADVENTURE ILLEGAL, HAZARDOUS OR IMPROPER**

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

## **RULE 32 LIABILITIES EXCLUDED IF UNRECOVERABLE FROM REINSURERS AS A CONSEQUENCE OF SANCTIONS, PROHIBITIONS OR RESTRICTIONS UNDER UN RESOLUTIONS OR TRADE OR ECONOMIC SANCTIONS, LAWS OR REGULATIONS OF THE EUROPEAN UNION, UK OR UNITED STATES OF AMERICA**

There shall be no right of recovery of any claim from the Association for that part of any liabilities, costs or expenses which is not recovered by the Association from any party to the Pooling Agreement and/or from any reinsurer because of a shortfall

in recovery from such party or reinsurer by reason of any sanction, prohibition or restrictions under UN Resolutions or trade or economic sanctions, laws or regulations of the European Union, UK or United States of America or the risk thereof if payment were to be made by such party or reinsurer. For the purposes of this Rule, 'shortfall' includes, but is not limited to, any failure or delay in recovery by the Association by reason of the said party or reinsurer making payment into a designated account in compliance with the requirements of any competent authority or government.

### **RULE 33 CLASSIFICATION AND STATUTORY CERTIFICATION OF VESSEL**

Unless otherwise agreed by the Managers in writing the following are conditions of the insurance of every insured vessel.

- 1** The insured vessel must be and remain throughout the period of entry classed with a classification society approved by the Managers.
- 2** The Member concerned must promptly call to the attention of that classification society or the society's surveyors any incident or condition which has given or might give rise to damage in respect of which the classification society might make recommendations as to repairs or other action to be taken by the Member.
- 3** The Member must comply with all the Rules, recommendations and requirements of that classification society relating to the insured vessel within the time or times specified by the society.
- 4** The Member must immediately inform the Managers if, at any time during the period of entry, the classification society with which that vessel is classed is changed, and advise the Managers of all outstanding recommendations, requirements or restrictions specified by any classification society relating to that vessel as at the date of such change.
- 5** The Member authorises the Managers to inspect any documents and obtain any information relating to the maintenance of class of the insured vessel in the possession of any classification society with which the vessel is, or at any time has been, classed and will where necessary authorise such classification society to disclose and make available such documents and information to the Managers upon request by the Managers and for whatever purposes the Managers may consider necessary.



- 6** The Member must comply with all statutory requirements of the flag state relating to the construction, adaptation, condition, fitment and equipment of the insured vessel and must at all times maintain the validity of such statutory certificates as are issued by or on behalf of the flag state in relation to such requirements.
- 7** The Member must comply with all statutory requirements of the flag state relating to manning the vessel.
- 8** The Member must comply with all statutory requirements of the flag state relating to safety management and must at all times maintain the validity of ISM certificates, ISPS certificates, and other certificates issued by or on behalf of the flag state in relation to such requirements.

Unless and to the extent that the Board in its discretion otherwise decides, a Member shall not be entitled to a right of recovery from the Association in respect of any claim whatsoever arising during such period that he has not fulfilled these conditions, notwithstanding that such failure to comply may not have increased the risk of any loss which may have occurred.

#### **RULE 34 SURVEY OF VESSELS AND MANAGEMENT AUDIT**

The Managers may at any time in their discretion appoint a surveyor or such other person as they may think fit on behalf of the Association:

- i to inspect an insured vessel or a vessel proposed for insurance, and,
- ii to perform a management audit on the Member or Member proposed for insurance.

The Member or proposed Member shall:

- A** afford all facilities as may be required for such inspection;
- B** comply with all recommendations as the Managers may make following such inspection/audit;
- C** consent to and authorise the disclosure by the Managers to any Association which is a party to the Pooling Agreement any survey or inspection of such ship undertaken on behalf of the Association either pursuant to an application for, or after entry in, the Association; and
- D** waive any rights or claims against the Association of whatsoever nature arising in respect of or relating to the contents of or opinions expressed in any survey or inspection so disclosed



Provided always that

- a such survey or inspection may only be disclosed to another Association when an application for entry of such ship is made thereto; and
- b the disclosure of the survey or inspection shall be for the limited purpose only of that Association considering an application to enter such ship for insurance.

Unless and to the extent that the Board in its discretion otherwise decides, a Member who commits any breach of his obligations under paragraphs A and B above shall not be entitled to a right of recovery from the Association in respect of any claim whatsoever arising after such breach is committed until such time as the Member has complied with these obligations. Notwithstanding that such failure to comply may not have increased the risk of any loss which may have occurred.

In no case shall a Member be entitled to recover any liabilities or expenses arising out of any defect or matter concerning the vessel or the Member's management of the vessel(s) as revealed in the course of such inspection and/or audit.

### **RULE 35 SURVEY OF VESSELS AFTER LAY-UP**

- 1** If an insured vessel has been laid-up for a period of six months or more, whether the vessel has been entered in the Association for all or part of the period of lay-up and whether or not laid-up returns have been claimed or paid in accordance with Rule 56 the Member shall give the Managers notice that the vessel is to be recommissioned not less than seven days before the vessel leaves the place of lay-up.
- 2** Upon receipt of such notice the Managers in their discretion may appoint a surveyor or such person as they may think fit to inspect the vessel on behalf of the Association, and the Member shall afford such facilities as may be required for such inspection.
- 3** The Member shall comply with such recommendations as the Managers may make following such inspection.

Unless and to the extent that the Board in its discretion otherwise decides, a Member who commits any breach of his obligations under paragraphs 1 to 3 above shall not be entitled to a right of recovery from the Association in respect of any claim whatsoever arising after such breach is committed until such time as the Member has complied with these obligations.

In no case shall a Member be entitled to recover any liabilities or expenses arising out of any defect or matter concerning the vessel which was revealed in the course of such inspection.



## PART 6

# ▶ ENTRY FOR AND CESSER OF INSURANCE

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## ▶ PART 6: ENTRY FOR AND CESSER OF INSURANCE

### RULE 36A APPLICATION FOR ENTRY

- 1** Any applicant who desires to enter a vessel for insurance in the Association shall make application for such entry in such form as may from time to time be required by the Managers.
- 2** The Managers shall be entitled in their absolute discretion to refuse any application for the entry of a vessel for insurance in the Association, whether or not the applicant is a Member of the Association.
- 3** The applicant and any agent must make to the Managers a fair presentation of the risk by providing the Managers with all material particulars and information together with any additional particulars and information as the Managers may require.
- 4** The applicant and any agent 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.
- 5** In accordance with Rule 1.11.B(i), Section 8 of the Insurance Act 2015 is excluded. Any breach of this Rule 36A shall entitle the Association to avoid the contract of insurance, regardless of whether the breach is innocent, deliberate or reckless.

### RULE 36B ENTRY

The 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.

## **RULE 37 ENTERED TONNAGE: BASE RATE OF CONTRIBUTION**

Before an application is accepted for the entry of a vessel, the applicant and the Managers shall agree the gross tonnage and premium. Where no calculation of gross tonnage has been undertaken the applicant and the Managers will agree an entered tonnage and premium. In deciding upon the basic rate of contribution for any vessel the Managers may take into account all matters which they may consider relevant including (without prejudice to the generality of the foregoing) the degree of risk estimated to be involved in the proposed insurance.

## **RULE 38 CERTIFICATE OF INSURANCE AND ENDORSEMENT SLIP**

- 1** As soon as reasonably practical after accepting an application for the entry of a vessel for insurance in the Association the Managers shall issue to the applicant a Certificate of Insurance in such form as may from time to time be prescribed by the Managers but so that such Certificate of Insurance shall state the date of the commencement of the period of insurance and the terms and conditions on which the vessel has been accepted for insurance.
- 2** If at any time or from time to time the Managers and a Member shall agree to vary the terms relating to an insured vessel, the Managers shall, as soon as reasonably practical thereafter, issue to the Member an endorsement slip stating the terms of such variation and the date from which such variation is to be effective.
- 3** Every Certificate of Insurance and every endorsement slip issued as aforesaid shall be conclusive evidence and binding for all purposes as to the commencement of the period of insurance, as to the terms and conditions on which the ship has been entered for insurance, and as to the terms of any variation and the date from which such variation is to be effective; provided that in the event that any Certificate of Insurance or any endorsement slip shall have been defaced or lost or in the opinion of the Managers contains any error or omission the Managers may in their discretion issue a new Certificate of Insurance or a new endorsement slip which shall be conclusive evidence and binding as aforesaid.

## **RULE 39 PERIOD OF INSURANCE**

The period of insurance of a vessel entered in the Association shall commence at the time and date specified in the Certificate of Insurance and shall continue until noon on the renewal date next ensuing and thereafter, unless terminated in accordance with these Rules, from policy year to policy year.



## **RULE 40 INCEPTION OF MEMBERSHIP**

- 1** If the Association accepts an application for the entry of a vessel for insurance in the Association from an applicant who is not already a Member of the Association, then that applicant shall, as from the commencement of the period of insurance of that vessel, be and become a Member of the Association.
- 2** Whenever the Association agrees to accept the reinsurance of any risks in accordance with Rule 42 the Managers may in their discretion decide that the insurer reinsured by the Association and/or the assured of such insurer is to be a Member or that neither of them is to be a Member and they may accept the application on any such basis.

## **RULE 41 JOINT ENTRIES AND CO-ASSURED**

- 1** If any entry of an insured vessel is made in the names of or on behalf of more persons than one whether jointly or separately interested (such persons being hereinafter referred to as 'joint Member' or 'joint Members' as the case may be) the terms upon which each joint Member shall be entitled to rights of recovery from the Association and upon which the Association shall be entitled to calls from the joint Members shall be agreed by the Managers in writing.
  - a** The Managers shall not be bound to issue more than one Certificate of Insurance in respect of each insured vessel or more than one endorsement slip and delivery of such Certificate of Insurance or endorsement slip, as the case may be, to one of several jointly insured Members shall be sufficient delivery to each and all of such persons.
  - b** The joint Members and each of them shall be jointly and severally liable to pay all calls and other sums due to the Association in respect of such entry and the receipt of any one of such joint Members for any sums payable by the Association in respect of such entry shall be a sufficient discharge of the Association for the same.
- 2** The Managers may accept an application from a Member or joint Member for another person or persons to become Co-assureds in respect of that Member's or joint Member's entry.
  - a** The liability of the Association to a Co-assured only extends insofar as he may be found liable to pay in the first instance for liabilities which are properly the responsibility of the Member or joint Member which, if the Member or joint Member has entered into a contract with the co-assured, means those liabilities which are to be borne by the Member or joint Member under such contract and nothing in this Rule shall be construed as extending cover in

respect of any amount which would not have been recoverable from the Association by the Member or joint Member had a claim in respect of such loss or damage be made or enforced against him.

- b Once the Association has indemnified a Co-assured it shall not be under any further liability to any person in respect of that claim.

### 3

- a Failure by any joint Member to disclose material information within his knowledge shall be deemed to have been the failure of all the joint Members.
- b Conduct of any joint Member which would have entitled the Association to exclude a right of recovery by him shall be deemed the conduct of all the joint Members.
- c Unless otherwise agreed by the Managers in writing, the contents of any communication from or on behalf of the Association to any joint Member shall be deemed to be within the knowledge of all the joint Members, and any communication from any joint Member to the Association, the Managers or their agents shall be deemed to have been made with the full approval and authority of the joint Members.
- d There shall be no right of recovery from the Association in respect of any liabilities, costs and expenses arising directly or indirectly from disputes between joint Members or between Co-assureds. The cover provided to Co-assureds does not extend to any liabilities, costs and expenses arising directly or indirectly from disputes between Co-assureds and Members or joint Members.

## RULE 42 REINSURANCE

- 1 The Managers may enter into contracts of reinsurance on behalf of the Association whereby the Association agrees to reinsure the risks arising in connection with any one or more vessels insured by another association or insurer or else agrees to reinsure the whole or any part or proportion of the insurance business of any other association or insurer. The consideration payable to the Association and the terms and conditions on which the reinsurance is accepted by the Association shall be such as are agreed between the Managers and such other association or insurer. Save where otherwise agreed in writing the other association or insurer shall be in every respect subject to and bound by the provisions of these Rules and his contract with the Association shall for all purposes take effect as though he were the owner of any vessel or vessels in connection with which the relevant risks may arise and had as owner entered the vessel or vessels in the Association for insurance.



- 2 The Managers shall have the right in their discretion to effect on behalf of the Association the reinsurance or ceding of any risks insured by the Association (including any risk which may fall on the Association by reason of a reinsurance agreement referred to in paragraph 1 of this Rule) with such reinsurers and on such terms as the Managers shall consider appropriate.
- 3 The Managers shall also have the right in their discretion to arrange for the reinsurance by one Class of the Association of risks underwritten by another such Class, on such terms and conditions as the Managers shall consider appropriate.

#### **RULE 43 ASSIGNMENT**

- 1 No insurance given by the Association and no interest under these Rules or under any contract between the Association and any Member may be assigned without the agreement of the Managers in writing. Any purported assignment made without such agreement shall be void and of no effect unless the Managers in their discretion otherwise determine.
- 2 Whether or not the Managers shall expressly so stipulate as a condition for giving their consent to any assignment, the Association shall be entitled in settling any claim presented by the assignee to deduct or retain such amount as the Managers may then estimate to be sufficient to discharge any liabilities of the assignor to the Association, whether existing at the time of the assignment or having accrued or being likely to accrue thereafter.

#### **RULE 44 VARIATION OR RENEWAL OF TERMS**

- 1 If the Managers desire to vary or renew the terms of entry for any insured vessel they may serve notice in writing on the Member concerned of the proposed variation or renewal of the terms of entry not later than 30 days prior to the renewal date next ensuing. The Board shall also have power to give a general notice of variation.
- 2 Unless acceptance of the proposed variation or renewal of the terms of entry has been received by the Managers prior to the renewal date next ensuing, or there has been another agreement by the Managers in writing as to the terms of entry, cover in respect of the insured vessel shall cease on the renewal date next ensuing pursuant to Rule 46.2.G.



## RULE 45 TERMINATION BY NOTICE

- 1 The period of insurance of an insured vessel may be terminated at noon on the renewal date of any year by not less than 30 days prior written notice of termination being given by the Member concerned to the Managers or being served by the Managers on the Member.
- 2 The Board or the Managers may, at any time and without giving reasons, terminate the entry of an insured vessel by not less than 30 days written notice of termination, effective from the expiry thereof.
- 3 Unless otherwise agreed by the Managers in writing, an insured vessel shall not be withdrawn by a Member at any time or in any manner otherwise than pursuant to paragraph 1 of this Rule.
- 4 Without prejudice to any other provision or power in the Rules, the Managers may, on such notice in writing as they may decide, terminate the insurance of the Member in respect of any and all vessels entered by him or on his behalf where any such vessel has been employed in an unlawful trade or where, in the opinion of the Managers, the Member or the provision of insurance to the Member may expose the Association to the risk of being or becoming subject to any sanction, prohibition or adverse action under the United Nations Resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.
- 5 A Member whose period of insurance in respect of an insured vessel has been terminated by notice shall still be liable for calls assessed and levied under either Rule 52, 53 or 55 in relation to the period of his membership, and shall remain entitled to a return of calls on the closing of a policy year under Rule 58.3.C until the liability of such Member for further calls has been assessed under Rule 55.1.

## RULE 46 CESSER OF INSURANCE

- 1 A Member shall forthwith cease to be insured by the Association in respect of any and all vessels entered by him or on his behalf upon the happening of any of the following events:
  - A **Where the Member is an individual:**
    - i upon his death;
    - ii if a receiving order is made against him;



- iii if he becomes bankrupt;
- iv if he makes any composition or arrangement with his creditors generally;
- v if he becomes incapable by reason of his mental disorder of managing or administering his property and affairs.

**B Where the Member is a corporation:**

- i upon the passing of any resolution for its voluntary winding up (other than voluntary winding up for the purpose of company or group reorganisation);
- ii upon an order being made for its compulsory winding up;
- iii upon its dissolution;
- iv upon a receiver or manager being appointed of all or part of its business or undertaking;
- v upon its commencing proceedings under any bankruptcy or insolvency laws to seek protection from its creditors or to reorganise its affairs.

**2** Unless otherwise agreed by the Managers in writing, a Member shall forthwith cease to be insured by the Association in respect of any vessel entered by him or on his behalf upon the happening of any of the following events in relation to such a vessel:

- A** Upon the Member parting with or assigning the whole or part of his interest in the vessel whether by bill of sale or other formal document or agreement or in any other way whatsoever.
- B** Upon the mortgaging or hypothecation of the vessel or of any part of the Member's interest in that vessel.
- C** Upon the managers of the vessel being changed by the appointment of new managers.
- D** Upon undisputed possession being taken by or on behalf of a secured party.
- E** Upon the vessel ceasing to be or not being classed with a classification society approved by the Managers.
- F** Upon the period of insurance of an insured vessel being terminated by either the Member or the Managers giving notice in accordance with Rule 45.

- G** Upon failure to accept a proposed variation or renewal of the terms of entry as provided in Rule 44.2.
- 3** Unless otherwise agreed by the Managers in writing, a Member shall forthwith cease to be insured by the Association in respect of any vessel entered by him or on his behalf upon the happening of whichever shall be the earliest of the following events:
  - A** Upon the vessel being missing for ten days from the date when she was last heard of.
  - B** Upon the vessel being posted at Lloyd's as missing.
  - C** Upon the vessel becoming an actual total loss.
  - D** Upon acceptance by hull underwriters (whether of marine or war risks) that the vessel is a constructive total loss.
  - E** Upon agreement by hull underwriters (whether of marine or war risks) to pay to the Member in relation to the vessel an unrepaired damage claim which exceeds the market value of the vessel without commitment immediately prior to the casualty which gave rise to such claim.
  - F** Upon a compromise or settlement with hull underwriters (whether of marine or war risks) on the basis of which the vessel is considered or deemed to be an actual or constructive total loss.
  - G** Upon a decision by the Managers that the ship is to be considered or deemed to be an actual or constructive total loss or otherwise abandoned.
  - H** Upon the vessel being employed or being permitted to be employed by the Member in a carriage, trade or on a voyage which may in any way howsoever expose the Association to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever under the United Nations Resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America, or if the provision of insurance by the Association in respect of such vessel or such carriage, trade or voyage is or becomes unlawful, prohibited or sanctionable. Notwithstanding that the happening of such event may not have increased the risk of any loss which may have occurred.

## **RULE 47 EFFECTS OF CESSER OF INSURANCE**

When a Member ceases to be insured by virtue of an event as described in paragraph 1 of Rule 46 or when a Member ceases to be insured in respect of any



vessel by virtue of any event as described in paragraph 2 or 3 of Rule 46 (the date on which any such event occurs being hereinafter referred to as the 'date of cessation') then – in respect of:

- a all vessels insured by the Member, where the event falls within paragraph 1 of Rule 46; and
- b the vessel concerned, where the event falls within paragraphs 2 or 3 of Rule 46:

- 1** The Member shall be and remain liable to pay
- A** all such calls as may have been levied for the relevant policy year in accordance with Rule 54; and
- B** all overspill calls for the relevant policy year; and
- C** all calls and other sums payable in respect of previous policy years.
- 2** The Association shall remain liable for all claims under these Rules arising by reason of any event which occurred prior to the date of cessation but shall not otherwise be under any liability whatsoever by reason of anything occurring after the date of cessation, save that the Association shall remain liable in relation to liabilities flowing from any one of the events listed in paragraph 3 of Rule 46.
- 3** The Member shall be allowed a return of calls for the relevant policy year on a pro rata basis from noon on the date of the happening of such event to the end of the relevant policy year. No claim for a return of calls relating to any policy year shall be recoverable from the Association unless written notice has been given to the Association within six months of the end of the policy year concerned.

## **RULE 48 CANCELLATION OF INSURANCE**

When a Member has failed to pay, either in whole or in part, any amount due from him to the Association, the Managers may serve notice in writing requiring him to pay such amount by any date specified in such notice, not being less than seven days from the date on which such notice is served. If the Member fails to make such payment in full on or before the date so specified, the insurance of the Member (whether the insurance is current on such date or has ceased by virtue of any other provisions of these Rules) in respect of any and all vessels entered in the Association by him or on his behalf shall be cancelled forthwith without further notice or other formality.

## RULE 49 EFFECTS OF CANCELLATION OF INSURANCE

When the insurance of a Member is cancelled in accordance with Rule 48 (which time is hereinafter in this Rule 49 referred to as 'the date of cancellation') then:

- 1** Subject to paragraph 2A of this Rule 49, such Member shall be and remain liable for all calls and other sums payable in respect of the policy year in which the date of cancellation occurs on a pro rata basis for the period up to the date of cancellation or such earlier date as the Managers in their discretion agree in writing;
- 2** The Member shall be and remain liable
  - A** for all overspill calls payable in respect of the policy year in which the date of cancellation occurs, and
  - B** for all calls and other sums payable in respect of previous policy years.
- 3** The Association shall cease to be liable for any claims of whatsoever kind under these Rules in respect of any and all vessels entered in the Association by or on behalf of such Member which:
  - A** arise by reason of any event occurring on or after the date of cancellation; or
  - B** have occurred or arisen during a Members period of insurance in respect of which any sums remained due but unpaid to the Association in whole or in part on the date of cancellation;
  - C** irrespective of whether the Association may have admitted liability for or appointed lawyers, surveyors or any other person to deal with such claims;
  - D** irrespective of whether the Association at the date of or prior to the date of cancellation knew that such claims might or would arise;
  - E** irrespective of whether the Member has ceased to be insured by reason of Rule 46.
- 4** The Board may in its discretion and upon such terms as it thinks fit, including but not restricted to terms as to payment of calls or other sums, admit either in whole or in part any claim in respect of any vessel entered by a Member for which the Association is under no liability by virtue of this Rule.





## PART 7

# ▶ CALLS AND FINANCE

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## ▶ PART 7: CALLS AND FINANCE

### RULE 50 LIABILITY FOR CALLS

Every Member who has entered a vessel for insurance in the Association in respect of any policy year (not being a closed policy year) shall, unless otherwise agreed by the Managers in writing, provide, by way of calls to be levied from such Member in accordance with the provisions of Rules 51 and 52, all funds which in the opinion of the Board are required

- 1 To meet such of the general expenses of the Association as the Board may from time to time think fit to charge against the insurance business of the Association in respect of such policy year.
- 2 To meet the claims, expenses and outgoings (whether incurred, accrued or anticipated) of the insurance business of the Association in respect of such policy year (including without prejudice to the generality of the foregoing, any proportion of any claims, expenses or outgoings of any insurer other than the Association which has fallen or which may be thought likely to fall upon the Association by virtue of any reinsurance concluded between the Association and such other insurer).
- 3 For such transfers to the reserves or other accounts of the Association (as referred to in Rule 57) and for subsequent application for the purposes of such reserves or other accounts or otherwise as the Board may think expedient.
- 4 For such transfers as the Board may think proper to meet any deficiency which has occurred or may be thought likely to occur in any closed policy year or years.
- 5 For such sums as may be required by any government legislation or regulation to be set aside for the establishment or maintenance of an adequate solvency margin or guarantee fund in respect of any policy year.

### RULE 51 MUTUAL CALLS

At such time or times during or after the end of each policy year as the Board shall approve, and subject to Rule 54 and to any special terms agreed with the Association, each Member shall pay to the Association the basic rate of contribution of each of his vessels insured during that policy year. The amount so payable shall constitute the mutual call for that policy year in respect of that vessel.



## RULE 52 ADDITIONAL CALLS

- 1** At any time or times during or after the end of a policy year, but not after such policy year has been closed, the Board may levy one or more additional calls for that policy year in respect of each vessel insured during that policy year, including any vessel or vessels in respect of which a Member has ceased to be insured in accordance with Rule 46. The Board may levy such a call either
  - A** by deciding upon a percentage of the net mutual call, or
  - B** by deciding upon a percentage of the basic rate of contribution of all vessels insured during that policy year.
- 2** In relation to a vessel insured for any policy year a Member shall be bound to pay by way of additional call a sum ascertained, in the case of paragraph 1A by multiplying the percentage ordered by the Board by the net mutual call paid or payable by him in respect of such policy year and, in the case of paragraph 1B by multiplying the percentage ordered by the Board by the basic rate of contribution of the insured vessel by the entered tonnage of the ship in the Association.
- 3** The Board or the Managers may at any time seek to enable Members to become aware of their financial commitment for the relevant policy year by indicating an estimate of the percentage at which it is hoped that any additional call or calls will be levied. If any such estimate shall be given to any Member it shall be without prejudice to the right of the Board to levy additional calls for the relevant policy year in accordance with these Rules at a greater or lesser percentage than so indicated and neither the Association, nor the Board, nor the Managers shall under any circumstances be under any liability in respect of any estimate so given or in respect of any error, omission or inaccuracy contained therein.

## RULE 53 OVERSPILL CALLS, CLAIMS AND GUARANTEES

### 1 **Introductory**

Any reference to a claim incurred by the Association or by any other party to the Pooling Agreement shall be deemed to include the costs and expenses associated therewith.

### 2 **Recoverability of overspill claims**

- A** Without prejudice to any other applicable limit, any overspill claim incurred by the Association shall not be recoverable from the Association in excess of the aggregate of



- a that part of the overspill claim which is eligible for pooling under the Pooling Agreement but which, under the terms of the Pooling Agreement, is to be borne by the Association, and
- b the maximum amount that the Association is able to recover from the other parties to the Pooling Agreement as their contributions to the overspill claim.

**B** The aggregate amount referred to in Rule 53.2.A. shall be reduced to the extent that the Association can evidence

- a that costs have been properly incurred by it in collecting or seeking to collect
  - i overspill calls levied to provide funds to pay that part of the overspill claim referred to in Rule 53.2.A.a, or
  - ii the amount referred to in Rule 53.2.A.b, or
- b that it is unable to collect an amount equal to that part of the overspill claim referred to in Rule 53.2.A.a which it had intended to pay out of the levy of overspill calls because any overspill calls so levied, or parts thereof, are not economically recoverable, provided that if, due to a change in circumstances, such amounts subsequently become economically recoverable, the aggregate amount referred to in Rule 53.2.A shall be reinstated to that extent.

**C** In evidencing the matters referred to in Rule 53.2.B.b the Association shall be required to show that

- a it has levied overspill calls in respect of the overspill claim referred to in Rule 53.2.A on all Members entered in the Association on the overspill claim date in accordance with and in the maximum amounts permitted under Rule 53.5, and
- b it has levied those overspill calls in a timely manner, has not released or otherwise waived a Member's obligation to pay those calls and has taken all reasonable steps to recover those calls.

### **3** Payment of overspill claims

**A** The funds required to pay any overspill claim incurred by the Association shall be provided

- a from such sums as the Association is able to recover from the other parties to the Pooling Agreement as their contributions to the overspill claim, and

- b from such sums as the Association is able to recover from any special insurance which may, in the discretion of the Board, have been effected to protect the Association against the risk of payments of overspill claims and
- c from such proportion as the Board in its discretion determines of any sums standing to the credit of such overspill reserve as the Board may in its discretion have established in accordance with Rule 57 and
- d by levying one or more overspill calls in accordance with Rule 53.5, irrespective of whether the Association has sought to recover or has recovered all or any of the sums referred to in Rule 53.3.A.b but provided the Board shall first have made a determination in accordance with Rule 53.3.A.c, and
- e from any interest accruing to the Association on any funds provided as aforesaid.

**B** The funds required to pay such proportion of any overspill claim incurred by any other party to the Pooling Agreement which the Association is liable to contribute under the terms of the Pooling Agreement shall be provided in the manner specified in Rules 53.3.A.a to 53.3.A.e.

**C** To the extent that the Association intends to provide funds required to pay any overspill claim incurred by it in the manner specified in Rule 53.3.A.d, the Association shall only be required to pay such overspill claim as and when such funds are received by it, provided that it can show from time to time that, in seeking to collect such funds, it has taken the steps referred to in Rules 53.2.C.a and 53.2.C.b.

#### **4** Overspill claims - expert determinations

**A** Any of the issues referred to in Rule 53.4.B on which the Association and a Member cannot agree shall be referred to a panel ('the Panel') constituted in accordance with arrangements established in the Pooling Agreement which, acting as a body of experts and not as an arbitration tribunal, shall determine the issue.

**B** This Rule 53.4 shall apply to any issue of whether, for the purpose of applying any of Rules 53.2.B, 53.2.C and 53.3.C in relation to any overspill claim ('the relevant overspill claim')

- a costs have been properly incurred in collecting or seeking to collect overspill calls, or
- b any overspill call or part thereof is economically recoverable, or

- c in seeking to collect the funds referred to in Rule 53.3.C, the Association has taken the steps referred to in that Rule.
- C** If the Panel has not been constituted at a time when a Member wishes to refer an issue to it, the Board shall, on request by the Member, give a direction for the constitution of the Panel as required under the Pooling Agreement.
- D** The Board may (and, on the direction of the Member, shall) give such direction as is required under the Pooling Agreement for the formal instruction of the Panel to investigate any issue and to give its determination as soon as reasonably practicable.
- E** The Panel shall in its discretion decide what information, documents, evidence and submissions it requires in order to determine an issue and how to obtain these, and the Association and the Member shall co-operate fully with the Panel.

In determining any issue referred to it under this Rule 53.4 the Panel shall endeavour to follow the same procedures as it follows in determining issues arising in respect of the relevant overspill claim which are referred to it under the Pooling Agreement.
- F** In determining an issue the members of the Panel
  - a shall rely on their own knowledge and expertise, and
  - b may rely on any information, documents, evidence or submission provided to it by the Association or the Member as the Panel sees fit.
- G** If the three members of the Panel cannot agree on any matter, the view of the majority shall prevail.
- H** The Panel shall not be required to give reasons for any determination.
- I** The Panel's determination shall be final and binding upon the Association and the Member (subject only to Rule 53.4.J) and there shall be no right of appeal from such determination.
- J** If the Panel makes a determination on an issue referred to in Rules 53.4.B.b or 53.4.B.c the Association or the Member may refer the issue back to the Panel notwithstanding Rule 53.4.I, if it considers that the position has materially changed since the Panel made its determination.
- K** The costs of the Panel shall be paid by the Association.

**L** Costs, indemnities and other sums payable to the Panel by the Association in relation to any overspill claim, whether the reference to the Panel has been made under this Rule 53.4 or under the Pooling Agreement, shall be deemed to be costs properly incurred by the Association in respect of that overspill claim for the purposes specified in Rule 53.2.B.a.

## **5** Levying of overspill calls

**A** If

- a the Board shall at any time determine that funds are or may in future be required to pay part of an overspill claim (whether incurred by the Association or by any other party to the Pooling Agreement); and
- b the Board shall have made a declaration under Rules 53.6.A or 53.6.C that a Policy Year shall remain open for the purpose of levying an overspill call or calls in respect of that overspill claim, the Association, in the Board's discretion, at any time or times after such declaration has been made, may levy one or more overspill calls in respect of that overspill claim in accordance with Rule 53.5.B.

**B** The Association shall levy any such overspill call

- a on all Members entered in the Association on the overspill claim date in respect of vessels entered by them at that time, notwithstanding the fact that, if the overspill claim date shall be in a policy year in respect of which the Association has made a declaration under Rule 53.6.C, any such vessel may not have been entered in the Association at the time the relevant incident or occurrence occurred, and
- b at such percentage of the Convention Limit of each such vessel as the Board in its discretion shall decide.

**C** An overspill call shall not be levied in respect of any vessel entered on the overspill claim date with an overall limit of cover equal to or less than the Group Reinsurance Limit.

**D** The Association shall not levy on any Member in respect of the entry of any one vessel an overspill call or calls in respect of any one overspill claim exceeding in the aggregate two point five per cent (2.5%) of the Convention Limit of that vessel.



- E** If at any time after the levying of an overspill call upon the Members entered in the Association in any policy year, it shall appear to the Board that the whole of such overspill call is unlikely to be required to meet the overspill claim in respect of which such overspill call was levied, the Board may decide to dispose of any excess which in the opinion of the Board is not so required in one or both of the following ways:
- a by transferring the excess or any part thereof to the overspill reserve (in accordance with Rule 57); or
  - b by returning the excess or any part thereof to those Members who have paid that overspill call in proportion to the payments made by them.

## **6** Closing of policy years for overspill calls

- A** If at any time prior to the expiry of a period of thirty-six months from the commencement of a policy year (the 'relevant policy year'), any of the parties to the Pooling Agreement sends a notice (an 'overspill notice') in accordance with the Pooling Agreement that an incident or occurrence has occurred in the relevant policy year which has given or at any time may give rise to an overspill claim, the Board shall as soon as practicable declare that the relevant policy year shall remain open for the purpose of levying an overspill call or calls in respect of that claim and the relevant policy year shall not be closed for the purpose of making an overspill call or calls in respect of that claim until such date as the Board shall determine.
- B** If at the expiry of the period of thirty-six months provided for in Rules 53.6.A, no overspill notice as therein provided for has been sent, the relevant policy year shall be closed automatically for the purpose of levying overspill calls only, whether or not closed for any other purposes, such closure to have effect from the date falling thirty-six months after the commencement of the relevant policy year.
- C** If at any time after the policy year has been closed in accordance with the provisions of Rules 53.6.A and 53.6.B, it appears to the Board that an incident or occurrence which occurred during such closed policy year may then or at any time in the future give rise to an overspill claim, the Board shall as soon as practicable declare that the earliest subsequent open policy year (not being a policy year in respect of which the Board has already made a declaration in accordance with Rule 53.6.A and 53.6.C) shall remain open for the purpose of levying an overspill call or calls in respect of that claim and such open policy year shall not be closed for the purpose of making an overspill call or calls in respect of that claim until such date as the Board shall determine.

**D** A policy year shall not be closed for the purpose of levying overspill calls save in accordance with this Rule 53.6.

## **7 Security for overspill calls on termination or cesser**

**A** If

- a the Board makes a declaration in accordance with 53.6.A or 53.6.C that a policy year shall remain open for the purpose of levying an overspill call or calls, and
- b a Member who is liable to pay any such overspill call or calls as may be levied by the Association in accordance with Rule 53.5 ceases or has ceased to be insured by the Association for any reason, or the Board determines that the insurance of any such Member may cease the Board may require such Member to provide to the Association by such date as the Board may determine (the 'due date') a guarantee or other security in respect of the Member's estimated future liability for such overspill call or calls, such guarantee or other security to be in such form and amount (the 'guarantee amount') and upon such terms as the Board in its discretion may deem to be appropriate in the circumstances.

**B** Unless and until such guarantee or other security as is required by the Board has been provided by the Member, the Member shall not be entitled to recovery from the Association of any claims whatsoever and whensoever arising in respect of any and all vessels entered in the Association for any Policy Year by him or on his behalf.

**C** If such guarantee or other security is not provided by the Member to the Association by the due date, a sum equal to the guarantee amount shall be due and payable by the Member to the Association on the due date, and shall be retained by the Association as a security deposit on such terms as the Board in its discretion may deem to be appropriate in the circumstances.

**D** The provision of a guarantee or other security as required by the Board (including a payment in accordance with Rule 53.7.C) shall in no way restrict or limit the Member's liability to pay such overspill call or calls as may be levied by the Association in accordance with Rule 53.5.

## **RULE 54 PAYMENT OF CALLS**

**1** Every call shall be payable in such instalments and on such dates as the Board or the Managers may specify.



- 2** The Managers may require any Member to pay all or any part of any call payable by him in such currency or currencies as the Managers may specify.
- 3** As soon as reasonably practical after the Board has decided to levy and collect any calls, the Managers shall give notice in writing to each Member concerned
  - A** of the nature of the call;
  - B** of the amount or amounts payable by such Member in respect of each vessel entered by him;
  - C** of the currency or currencies in which the call is payable;
  - D** of the date on which the call 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.
- 4** No claim of any kind whatsoever by a Member against the Association shall constitute any set-off against the calls and other sums due to the Association or shall entitle him to withhold or delay payment of the sum specified in a notice given pursuant to paragraph 3 of this Rule.
- 5** Interest at the rate of 5% per annum over the New York Prime Rate applicable on the date that the debt became due shall be payable by each Member on any calls or other sums due from him to the Association as from the due date of payment. Any interest payable as aforesaid shall accrue from day to day.
- 6** If any call or other payment due from a Member to the Association (other than an overspill call) 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 which, as the Board may decide, calls may be levied in accordance with Rules 50, 51 and 52, or the reserves may be applied in accordance with Rules 57 and 58.

## **RULE 55 RELEASES**

- 1** If a Member ceases to be insured under Rules 46 and 47 or his insurance is cancelled under Rules 48 and 49, the Managers may on or at any time after the date of cessation or cancellation, as the case may be, assess the amount which the Managers in their sole discretion consider to represent the estimated liability of the Member for further calls (other than overspill calls).



- 2** In assessing the estimated liability of the Member for further calls as aforesaid, the Managers may also take into account any contingencies and other special considerations which in the opinion of the Managers are relevant for this purpose (including matters such as inflation and currency fluctuations).
- 3** The Member shall be under no liability for any calls (other than overspill calls) which the Board may decide to levy after the date of such assessment but shall have no right to share in any return of calls or other payments which the Board may thereafter decide to make in accordance with Rule 58 paragraph 3.

## **RULE 56 LAID-UP RETURNS**

If an insured vessel shall be laid-up in any safe port for a period of thirty or more consecutive days after finally mooring there (such period being computed from the day of arrival to the day of departure, one only being included) the Member concerned shall be allowed a return of calls (other than overspill calls) payable in respect of such vessel for the period of lay-up. Unless otherwise agreed by the Managers in writing the return of calls shall be calculated at the rate of 40% of the total calls payable for risks covered under Rules 2,3 or 4, and at 15% of calls payable for risks covered under Rule 6. For the purpose of this Rule a vessel shall not be treated as laid-up if she has either crew members (other than for her maintenance or security) or cargo on board, unless the Board shall in its discretion otherwise determine. No claim for laid-up returns relating to any policy year shall be recoverable from the Association unless written notice thereof has been given to the Association within three months of the end of the policy year concerned.

## **RULE 57 RESERVES**

- 1** The Board may, in its discretion, establish and maintain such reserve funds or other accounts for such contingencies or purposes as it thinks fit.
- 2** Without prejudice to the generality of paragraph 1 of this Rule,
- A** the Board may, in its discretion, establish and maintain reserves or other accounts to provide a source of funds which can be applied for any general purposes of the Association including the following: to stabilise the level of additional calls and to eliminate or reduce the need to levy additional calls in respect of any policy year, past, present or future; to eliminate or reduce the deficiency which has occurred or may be thought likely to occur in respect of any closed policy year; to protect the Association against any actual or potential losses on exchange, or in connection with its investments, realised or unrealised; but excluding application towards meeting any overspill claim or claims.



- B** the Board may, in its discretion, establish and maintain a reserve to provide a source of funds which may be applied towards meeting any overspill claim or claims.
- 3** The Board may apply the sums standing to the credit of any reserve for any of the purposes for which the reserve was maintained even though the sum be paid in respect of any different policy year or years from that in which the funds originated. The Board may also apply the sums standing to the credit of any reserve (other than an overspill reserve) for any other or different purposes whenever the Board considers this to be in the interests of the Association or its Members. The Board may also at any time transfer sums from one reserve (other than an overspill reserve) to another.
- 4** The funds required to establish such reserves or accounts may be raised in any of the following ways:
- A** the Board, when deciding on the rate of any mutual or additional calls for any policy year, may resolve that any specified amount or proportion of such calls shall be transferred to and applied for the purpose of any such reserve or account.
- B** the Board may on the closing of any policy year or at any time or times thereafter resolve that any specified amount or proportion of the funds standing to the credit of that policy year shall be transferred to and applied for the purposes of any such reserves or account.
- C** the Board may transfer to an overspill reserve any balance of overspill call not required to satisfy the claim or claims in respect of which it was levied, as contemplated in Rule 53.5.

## **RULE 58 CLOSING OF POLICY YEARS**

- 1** The Board shall with effect from such date after the end of each policy year as it thinks fit declare that such policy year shall be closed and no further additional calls may be levied after that date in respect of that policy year, save for the purpose of levying one or more overspill calls as provided in Rule 53.
- 2** The Board may declare that any policy year is closed notwithstanding that it is known or anticipated that there are in existence or may in the future arise claims, expenses or outgoings in respect of such policy year which have not yet accrued or whose validity, extent or amount have yet to be established.
- 3** If upon the closing of any policy year it shall appear to the Board that the whole of the calls and other receipts in respect of such policy year (and of all transfers from reserves and provisions made for the credit of or in respect of that policy

year) is unlikely to be required to meet the claims, expenses and outgoings arising in respect of that policy year (as referred to in Rule 50), then the Board may decide to dispose of any excess which in their opinion is not so required in one or any of the following ways:

- A** By transferring the excess or any part thereof to the reserves of the Association in accordance with Rule 57.
  - B** By applying the excess or any part thereof to meet any deficiency which has occurred or may be thought likely to occur in any closed policy year or years.
  - C** By returning the excess or any part thereof to the Members entered for such policy year in accordance with paragraph 6 of this Rule.
- 4** If at any time or times after a policy year shall have been closed it shall appear to the Board that the claims, expenses and outgoings arising in respect of that policy year (as referred to in Rule 50) exceed or are likely to exceed the totality of the calls and other receipts in respect of such policy year (and of all transfers from reserves and provisions made for the credit of or in respect of such policy year) then the Board may decide to provide for such deficiency in any one or more of the following ways:
- A** By transferring funds from the reserves or other accounts of the Association.
  - B** By transferring funds standing to the credit of any different closed policy year.
  - C** By levying mutual or additional calls in respect of an open policy year with the intention of applying a part thereof to meet any such deficiency.
- 5** At any time after any policy year shall have been closed 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 them. 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.
- 6** Any amount which the Board may decide to return to the Members in accordance with paragraph 3 of this Rule shall be returned to the Members entered in respect of such policy year in proportion to the calls paid by them in respect of such policy year (after taking into account any returns or rebates applicable thereto under their terms of entry or under any other provision of these Rules) save that no return shall be made to any Member whose entry ceased in the course of such policy year by reason of Rule 46 or 48 or whose liability for calls in respect of such policy year has been assessed under the provisions of Rule 55.



## RULE 59 INVESTMENT

- 1** The funds of the Association may be invested under the direction of the Board by means of the purchase of such stocks, shares, bonds, debentures or other securities or the purchase of such currencies, commodities, or other real or personal property, or by means of being deposited in such accounts or by means of being loaned on such terms and in such manner as the Board may think fit. The funds of the Association may also be invested by such other method as the Board may approve including investments in and loans to any holding, subsidiary or associated company of the Association on such terms and in such manner as the Board may think fit.
- 2** The Board may direct that all or any of the funds standing to the credit of any policy year or of any reserve or account shall be pooled and invested either as one fund or two or more separate funds.
- 3** If any funds shall have been so pooled and invested the Board may apportion as they think fit the income arising on the pooled investments among and between the different policy years, reserves and accounts from which the fund or funds so invested originated. The Board may similarly apportion capital gains and losses on exchange realised and unrealised.
- 4** Without prejudice to paragraph 3 of this Rule, the Board may direct that after the closing of any policy year that year shall not be credited with any share of the apportionments made under that paragraph and that its share shall instead be credited to any reserve or account maintained by the Association.

## PART 8

# ▶ ADMINISTRATIVE PROCEDURES

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# Rules 2016

## ▶ PART 8: ADMINISTRATIVE PROCEDURES

### RULE 60 REGULATIONS

- 1 The Board shall have power in its discretion to make Regulations in respect of any matter within these Rules.
- 2 When the Board makes a Regulation under any power given it by these Rules, the Association shall give notice of it to all Members concerned but omission to give notice to or the non-receipt of it by any Member shall not invalidate any Regulation either generally or in relation to that Member.
- 3 A Regulation shall come into force at the time specified in the notice (which time may not be earlier than ten days after the date of the notice), and if its effect is to alter the terms and conditions of insurance in respect of any vessel such alteration shall take effect as from that time.
- 4 On the passing of any such Regulation, it shall be deemed to be incorporated in these Rules, and every Member shall conform to it insofar as it may apply to the voyages performed by the vessels entered by him or on his behalf in the Association or to the trades in which they may be engaged. If any Member shall commit a breach of any Regulation, the Board may reject or reduce any claim by the Member to the extent to which it would not have arisen if he had complied with the Regulation and further impose such terms upon him as it may think fit, as a condition of the continuance of the entry of the Member's vessel or vessels in the Association.
- 5 No Regulation shall operate to prejudice the accrued rights of any Member; save as aforesaid, every Regulation shall be binding on all Members, whether or not they were Members at the time of notification of such Regulation, in the same manner as if it were incorporated in these Rules.
- 6 Whenever a power of making Regulations is given to the Board by these Rules, the Board shall also have power to vary, revoke or suspend any such Regulation and to restrict, extend or otherwise apply the provisions of any Regulation (in whole or in part) to insured vessels of any particular class, type or flag.

### RULE 61 NOTICES

- 1 Any notice or other document required by these Rules to be served on a Member may be served as the Managers may in their discretion decide either personally, or by sending it through the post in a prepaid letter or by facsimile or electronic mail to him:

- A** at his address as recorded by the Managers;
  - B** at any other address of which he has given notice to the Managers as his address for service; or
  - C** at any place of business of a broker or agent through whom any insured vessel has been entered by the Member in the Association.
- 2** Every notice or other document served as aforesaid shall, if posted, be deemed to be served on the seventh day following the date of postage; if sent by facsimile or electronic mail on the day of despatch. In any case proof of posting shall be sufficient proof of service by mail and the Managers' logs and records of any electronic communication sent or received by the Managers shall be sufficient proof of service by other means.

## **RULE 62 MEMBERSHIP OF NATIONAL AND INTERNATIONAL ORGANISATIONS**

The Board may cause the Association in its own right or in respect of such of the Members of the Association as are eligible, to become a member of or affiliated to any national or international society or organisation concerned with advancing the rights of shipowners and for this purpose may authorise the payment by the Association to those bodies of such subscriptions or grants as the Board may think fit, either out of the general funds of the Association or by means of such special contributions to be levied from the Members concerned as the Board may determine.

## **RULE 63 SETTLEMENT OF CLAIMS**

- 1** The Board shall meet as often as may be required for the settlement of claims on the Association and any other matters relating to the business of the Association, but the Board shall have power from time to time to authorise the Managers to effect payment of such claims, without prior reference to the Board, of such types and up to such sums as the Board may determine.
- 2** Where a Member's claim is settled in a currency other than the currency of the original payment, then that payment shall be converted to the settlement currency at the rate of exchange prevailing on the day the original payment was made
- 3** Payment of a claim by the Association to a Member's broker, manager or to any other agent of the Member shall fully discharge the Association's liability to the Member.



## RULE 64 DELEGATION

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 the Managers or any agent of the Managers to whom it shall have been delegated.

## RULE 65 DISPUTES PROCEDURES

- 1 If any difference or dispute shall arise between a Member or joint Member and the Association out of or in connection with these Rules or arising out of any contract with the Association or as to the rights or obligations of the Association or the Member or joint Member thereunder or in connection therewith or as to any other matter whatsoever, such difference or dispute shall in the first instance be referred to and adjudicated by the Board. Such reference and adjudication shall be on written submission only, but this reference and adjudication may be waived at the discretion of the Board.
- 2 If a Member or joint Member concerned in such difference or dispute does not accept the decision of the Board following such reference and adjudication or if adjudication is waived at the discretion of the Board it shall be referred to arbitration in London, one arbitrator to be appointed by the Association, one by the Member or joint Member, and a third to be appointed by the arbitrators. The submission to arbitration and all the proceedings therein shall be subject to the provisions of the English Arbitration Act 1996 and any statutory modification or re-enactment thereof.
- 3 No Member or joint Member may bring or maintain any action, suit or other legal proceedings against the Association in connection with any such difference or dispute unless he has first obtained an arbitration award in accordance with this Rule.
- 4 The dispute procedures set out above shall apply equally to any person or entity claiming to be a company affiliated to a Member or joint Member or claiming additional insured or Co-assured status in relation to any insured vessel.

## RULE 66 DEFINITIONS

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

**Association** means The Shipowners' Mutual Protection and Indemnity Association (Luxembourg).

**Basic Rate of Contribution**, in relation to an insured vessel, means the amount which constitutes the basis upon which calls are payable to the Association in respect of that vessel pursuant to Rule 37.



**Board** means the Board of Directors for the time being of the Association.

**Call** means any sum payable to the Association in respect of an insured vessel pursuant to Rules 3, 4 and 50 to 55.

**Cargo** (other than passengers' effects and vehicles) means materials or goods of any kind transported for reward.

**Casualty**, within the context of Rule 2 Section 2B, means an incident involving either (i) collision, stranding, explosion, fire or any other cause affecting the physical condition of the vessel so as to render it incapable of safe navigation to its intended destination, or (ii) a threat to the life, health or safety of passengers.

**Casualty**, within the context of Rule 2 Section 12 Proviso Di, means a fortuitous incident caused by collision, stranding, explosion, fire or similar cause, but excludes any wreck caused by dereliction or neglect.

**Closed Policy Year** means a policy year which has been closed in accordance with Rule 58.

**Constitution** means the Constitution for the time being of the Association.

**Convention Limit** in respect of a vessel, the limit of liability of the shipowner of that vessel for claims (other than claims for loss of life or personal injury) at the overspill claim date, calculated in accordance with Article 6 paragraph 1(b) of the International Convention on Limitation of Liability for Maritime Claims 1976 (the 'Convention') and converted from Special Drawing Rights into United States Dollars at the rate of exchange conclusively certified by the Board as being the rate prevailing on the overspill claim date, provided that,

- a where a vessel is entered for a proportion (the 'relevant proportion') of its tonnage only, the Convention limit shall be the relevant proportion of the limit of liability calculated and converted as aforesaid, and
- b each vessel shall be deemed to be a seagoing ship to which the Convention applies, notwithstanding any provision in the Convention to the contrary.

**Entered Tonnage** means the tonnage agreed between the Association and an applicant for insurance of a vessel at the time of acceptance of that vessel for the purpose of calculating the basic rate of contribution and, in certain cases, the limits of the Association's liability in connection with that vessel.

**Fines** includes civil penalties, penal damages, and other impositions similar in nature to fines.



**Gross Tonnage** means the gross tonnage of a vessel as measured in accordance with the International Convention on Tonnage Measurement of Ships, 1969 and certified or stated in the International Tonnage certificate (1969) or other official document relating to the registration of such vessel. In case of doubt the tonnage under the said Convention shall prevail.

**Group Reinsurance Limit** means the amount of the smallest claim (other than any claim arising in respect of oil pollution) incurred by any party to the Pooling Agreement which would exhaust the largest limit for any type of claim (other than any claim arising in respect of oil pollution) from time to time imposed in the Group general excess loss contract provided that, for the purpose of this definition, all claims incurred by any party to the Pooling Agreement under the entry of any one vessel arising from any one incident or occurrence including any claim in respect of liability for the removal or non-removal of any wreck shall be treated as if they were one claim.

**Hague Rules** means the provisions of the 'International Convention for the Unification of certain Rules of law relating to Bills of Lading' signed at Brussels, on 25th August 1924.

**Hague-Visby Rules** means the Hague Rules as amended by the Protocol to amend the said Convention signed at Brussels on 23rd February 1968.

**Illegal fishing**, within the context of Rule 31 encompasses the use of the vessel in contravention of any law, rule, regulation, requirement, protocol or article, (including but not limited to those of any coastal state, the flag state of the vessel and all applicable treaties and conventions) intended for the management, protection or conservation of marine living resources.

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

**Insured and Insurance** shall include reinsured and reinsurance.

**Insured Vessel** means a vessel which has been entered in the Association for insurance.

**ISM Code (International Safety Management)** means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as incorporated in Chapter IX of the International Convention for the Safety of Life at Sea 1974 as amended.

**Managers** means the Managers for the time being of the Association.

**Member** means a Member of the Association including a former Member of the Association, and may also include entities who have taken out a contract of reinsurance with the Association in accordance with Rule 42.

**Noon** means noon GMT.

**Oil** means oil of any description whatsoever including any mixture containing oils.

**Overspill Call** means a call levied by the Association pursuant to Rule 53 for the purpose of providing funds to pay all or part of an overspill claim.

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

**Overspill Claim Date**, in relation to any overspill call, means the time and date on which there occurred the incident or occurrence giving rise to the overspill claim in respect of which the overspill call is made or, if the policy year in which such event occurred has been closed in accordance with the provisions of Rule 53.6.A and 53.6.B noon GMT on 20th August of the policy year in respect of which the Board makes a declaration under Rule 53.6.C.

**Overspill Reserve** means a reserve established by the Association pursuant to Rule 57.2.B to provide a source of funds which may be applied towards meeting an overspill claim or claims.

**Passenger** means any person carried or intended to be or having been carried in the insured vessel under a contract of carriage for reward, not being a person engaged or employed in any capacity in connection with the business or operation of the insured vessel.

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

**Policy Year** means a year from noon on any 20th February to noon on the next following 20th February.

**Pooling Agreement** means the agreement between certain members of the International Group of P&I Associations dated 20th February 1999 whereby the parties thereto undertook to share in agreed proportions the burden of the



claims or outgoings (above an agreed retention) of the insurance business of each of them, and any amendment, variation or substitution of such agreement.

**Renewal Date** means 20th February of any year or such other date as has been agreed as the renewal date.

**Seafarer** means any person (including the Master and apprentices) engaged or employed in any capacity in connection with the business of any insured vessel, whether on board or proceeding to or from such vessel.

**Unlawful Trade** includes any trade where the provision of cover or the payment of any claim by the Association would risk exposing the Association to any sanctions, prohibitions or restrictions under UN Resolutions or the trade or economic sanctions, laws or regulations of the European Union, UK or United States of America.

**Vessel** (in the context of a vessel entered or proposed to be entered in the Association) means any ship, boat, hydrofoil, hovercraft or other description of vessel or other structure whether completed or under construction including a lighter, barge, or like vessel howsoever used or intended to be used for any purpose whatsoever in navigation or otherwise on, under, over or in water (including inland waters of any description), or any part thereof or any proportion of the tonnage thereof or any share therein but excluding (a) a unit or vessel constructed or adapted for the purpose of carrying out drilling operations in connection with oil or gas exploration or production, and (b) a fixed platform or fixed rig.

**In Writing** means written, printed or lithographed or visibly expressed in all or any of these or any other modes of representing or reproducing words.

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

# Rules 2016

## NOTES TO THE RULES

These Notes, including those appended to Rule 2 Sections 10C and 11 do not form part of the Rules or any Regulations made thereunder and are intended as guidance only to Members in relation to the practice of the Association. They do not constitute any waiver or variation of the requirements of the Rules or any such Regulations.

### 1 **Bail, Rule 14 paragraph 1**

Subject to agreement in writing in individual circumstances the undertaking which the Managers will normally require will be in the following form:

to

#### **The Shipowners' Mutual Protection and Indemnity Association (Luxembourg)**

Dear Sirs,

Vessel  
Voyage (or port, etc)  
Date  
Incident

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

SS/MV or in order to secure her release from arrest.

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

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

- 2** If at any time after the policy year has been closed in accordance with the provisions of Rules 53.6.A and 53.6.B, it appears to the Board that an incident or occurrence which occurred during such closed policy year may then or at any time in the future give rise to an overspill claim, the Board shall as soon as practicable declare that the earliest subsequent open policy year (not being a policy year in respect of which the Board has already made a declaration in accordance with Rule 53.6.A and 53.6.C) shall remain open for the purpose of levying an overspill call or calls in respect of that claim and such open policy year shall not be closed for the purpose of making an overspill call or calls in respect of that claim until such date as the Board shall determine.
- 3** To pay all your costs, expenses, charges and commission (as specified in your Rules) in connection with the provision of the bail or security.
- 4** Without prejudice to the foregoing in the event that, in breach of our obligation under Clause 1 above, we fail to provide the funds and you are obliged nevertheless to incur or, notwithstanding that you have no such obligation, you elect to incur any such liability, loss, damage, costs, expenses, charges or commission, then
- A** you shall be entitled to demand immediate repayment of the amount of any such liability, loss, damage, costs, expenses, charges or commission;
- B** in the event that, in breach of our obligations hereunder, such repayment is not immediately made, we will pay to you interest thereon or on any part thereof for the time being outstanding at the rate of 2% per annum above the offered rate between prime banks in the London Inter Bank Euro-dollar Market for three-month deposits (the rate being determined monthly on the first day of the appropriate month) until such repayment is made.
- 5** That this agreement shall be governed by English law and that, without prejudice to your right to institute proceedings in any other jurisdiction, the High Court of Justice in London shall have jurisdiction to hear and determine any action brought by you in connection herewith.

We further agree that, by providing any of the bail or security, the Association shall incur no obligation whatsoever to provide any further bail or security in connection with the above incident and that the Association may at any time in its absolute discretion cause the above bail or security to be cancelled or released.

If we are insured by the Association in respect of the above incident, we reserve our right to claim repayment of any sums we may pay hereunder which are properly recoverable in accordance with your Rules.

Yours faithfully,

## 2 Delivery of cargo without production of bills of lading/change of destination

A Member has no right of recovery from the Association of any claims that result from delivery of cargo without production of the bill of lading or discharge of cargo at a port or place other than in accordance with the contract of carriage.

If Members nevertheless wish to adopt either of these practices at their own risk they are advised to obtain an appropriate indemnity from charterers or cargo interests. In doing so they should understand that cover by the Association is not restored when an indemnity is obtained; the indemnity must fill the gap created in the cover by the Association and it is for Members to decide what constitutes sufficient security for these purposes.

Forms of recommended indemnity wordings follow:

- A Standard form letter of indemnity to be given in return for delivering cargo without production of the original bill of lading**
- AA Standard form letter of indemnity to be given in return for delivering cargo without production of the original bill of lading incorporating a bank's agreement to join in the letter of indemnity**
- B Standard form letter of indemnity to be given in return for delivering cargo at a port other than that stated in the bill of lading**
- BB Standard form letter of indemnity to be given in return for delivering cargo at a port other than that stated in the bill of lading incorporating a bank's agreement to join in the letter of indemnity**
- C Standard form letter of indemnity to be given in return for delivering cargo at a port other than that stated in the bill of lading and without production of the original bill of lading**
- CC Standard form letter of indemnity to be given in return for delivering cargo at a port other than that stated in the bill of lading and without production of the original bill of lading incorporating a bank's agreement to join in the letter of indemnity**



**A Standard form letter of indemnity to be given in return for delivering cargo without production of the original bill of lading**

To: [insert name of Owners] [insert date]  
The Owners of the [insert name of ship]  
[insert address]

Dear Sirs

Ship: [insert name of ship]  
Voyage: [insert load and discharge ports as stated in the bill of lading]  
Cargo: [insert description of cargo]  
Bill of lading: [insert identification numbers, date and place of issue]

The above cargo was shipped on the above ship by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bill of lading is made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bill of lading] but the bill of lading has not arrived and we, [insert name of party requesting delivery], hereby request you to deliver the said cargo to [insert name of party to whom delivery is to be made] at [insert place where delivery is to be made] without production of the original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows:

- 1** To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of delivering the cargo in accordance with our request.
- 2** In the event of any proceedings being commenced against you or any of your servants or agents in connection with the delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
- 3** If, in connection with the delivery of the cargo as aforesaid, the ship, or any other property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.



- 4** If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.
- 5** As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or otherwise to cause all original bills of lading to be delivered to you, whereupon our liability hereunder shall cease.
- 6** The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
- 7** This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully  
For and on behalf of  
[insert name of Requestor]

The Requestor

.....

Signature

**AA Standard form letter of indemnity to be given in return for delivering cargo without production of the original bill of lading incorporating a bank's agreement to join in the letter of indemnity**

To: [insert name of Owners] [insert date]  
The Owners of the [insert name of ship]  
[insert address]

Dear Sirs

Ship: [insert name of ship]  
Voyage: [insert load and discharge ports as stated in the bill of lading]  
Cargo: [insert description of cargo]  
Bill of lading: [insert identification numbers, date and place of issue]

The above cargo was shipped on the above ship by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bill of lading is made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bill of lading] but the bill of lading has not arrived and we, [insert name of party requesting delivery], hereby request you to deliver the said cargo to [insert name of party to whom delivery is to be made] at [insert place where delivery is to be made] without production of the original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows:

- 1** To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of delivering the cargo in accordance with our request.
- 2** In the event of any proceedings being commenced against you or any of your servants or agents in connection with the delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
- 3** If, in connection with the delivery of the cargo as aforesaid, the ship, or any other property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.
- 4** If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.
- 5** As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or otherwise to cause all original bills of lading to be delivered to you, whereupon our liability hereunder shall cease.
- 6** The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.

**7** This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully  
For and on behalf of  
[insert name of Requestor]

The Requestor

.....

Signature

We, [insert name of the Bank], hereby agree to join in this Indemnity providing always that the Bank's liability:

**1** shall be restricted to payment of specified sums of money demanded in relation to the Indemnity (and shall not extend to the provision of bail or other security)

**2** shall be to make payment to you forthwith on your written on demand in the form of a signed letter certifying that the amount demanded is a sum due to paid to you under the terms of the Indemnity and has not been paid to you by the Requestor or is a sum which represents monetary compensation due to you in respect of the failure by the Requestor to fulfil its obligations to you under the Indemnity. For the avoidance of doubt the Bank hereby confirms that:

a such compensation shall include, but not be limited to, payment of any amount up to the amount stated in proviso 3 below in order to enable you to arrange the provision of security to release the ship (or any other ship in the same or associated ownership, management or control) from arrest or to prevent any such arrest or to prevent any interference in the use or trading of the ship as aforesaid, and

b in the event that the amount of compensation so paid is less than the amount stated in proviso 3 below, the liability of the Bank hereunder shall continue but shall be reduced by the amount of compensation paid.

**3** shall be limited to a sum or sums not exceeding in aggregate [insert currency and amount in figures and words]

**4** subject to proviso 5 below, shall terminate on [date six years from the date of the Indemnity] (the 'Termination Date'), except in respect of any demands for payment received by the Bank hereunder at the address indicated below on before that date.

- 5** shall be extended at your request from time to time for a period of two calendar years at a time provided that:
- a the Bank shall receive a written notice signed by you and stating that the Indemnity is required by you to remain in force for a further period of two years, and
  - b such notice is received by the Bank at the address indicated below on or before the then current Termination Date. Any such extension shall be for a period of two years from the then current Termination Date and, should the Bank for any reason be unwilling to extend the Termination Date, the Bank shall discharge its liability by the payment to you of the maximum sum payable hereunder (or such lesser sum as you may require).

However, in the event of the Bank receiving a written notice signed by you, on or before the then current Termination Date, stating that legal proceedings have been commenced against you as a result of your having delivered the said cargo as specified in the Indemnity, the Bank agrees that its liability hereunder will not terminate until receipt by the Bank of your signed written notice stating that all legal proceedings have been concluded and that any sum or sums payable to you by the Requestor and/or the Bank in connection therewith have been paid and received in full and final settlement of all liabilities arising under the Indemnity.

- 6** shall be governed by and construed in accordance with the law governing the Indemnity and the Bank agrees to submit to the jurisdiction of the court stated within the Indemnity.

It should be understood that, where appropriate, the Bank will only produce and deliver to you all original bills of lading should the same come into the Bank's possession, but the Bank agrees that, in that event, it shall do so.

The Bank agrees to promptly notify you in the event of any change in the full details of the office to which any demand or notice is to be addressed and which is stated below and it is agreed that you shall also promptly notify the Bank in the event of any change in your address as stated above.

Please quote the Bank's Indemnity Ref..... in all correspondence with the Bank and any demands for payment and notices hereunder.

Yours faithfully  
For and on behalf of  
[insert name of bank]  
[insert full details of the office to which any demand or notice is to be addressed]

.....  
Signature

**B Standard form letter of indemnity to be given in return for delivering cargo at a port other than that stated in the bill of lading**

To: [insert name of Owners] [insert date]  
The Owners of the [insert name of ship]  
[insert address]

Dear Sirs

Ship: [insert name of ship]  
Voyage: [insert load and discharge ports as stated in the bill of lading]  
Cargo: [insert description of cargo]  
Bill of lading: [insert identification numbers, date and place of issue]

The above cargo was shipped on the above ship by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bill of lading is made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bill of lading] but we, [insert name of party requesting substituted delivery], hereby request you to order the ship to proceed to and deliver the said cargo at [insert name of substitute port of delivery] against production of at least one original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows:

- 1** To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of the ship proceeding and giving delivery of the cargo against production of at least one original bill of lading in accordance with our request.
- 2** In the event of any proceedings being commenced against you or any of your servants or agents in connection with the ship proceeding and giving delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.

- 3** If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.
- 4** The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
- 5** This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully  
For and on behalf of  
[insert name of Requestor]

The Requestor

.....

Signature

**BB Standard form letter of indemnity to be given in return for delivering cargo at a port other than that stated in the bill of lading incorporating a bank's agreement to join in the letter of indemnity**

To: [insert name of Owners] [insert date]  
The Owners of the [insert name of ship]  
[insert address]

Dear Sirs

Ship: [insert name of ship]  
Voyage: [insert load and discharge ports as stated in the bill of lading]  
Cargo: [insert description of cargo]  
Bill of lading: [insert identification numbers, date and place of issue]

The above cargo was shipped on the above ship by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bill of lading is made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bill of lading] but we, [insert name of party requesting substituted delivery], hereby request you to order the ship to proceed to and deliver the said cargo at [insert name of substitute port or place of delivery] against production of at least one original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows:

- 1** To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of the ship proceeding and giving delivery of the cargo against production of at least one original bill of lading in accordance with our request.
- 2** In the event of any proceedings being commenced against you or any of your servants or agents in connection with the ship proceeding and giving delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
- 3** If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.
- 4** The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
- 5** This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully  
For and on behalf of  
[insert name of Requestor]

The Requestor

.....

Signature

We, [insert name of Bank], hereby agree to join in this Indemnity providing always that the Bank's liability:

- 1** shall be restricted to payment of specified sums of money demanded in relation to the Indemnity (and shall not extend to the provision of bail or other security)
- 2** shall be to make payment to you forthwith on your written demand in the form of a signed letter certifying that the amount demanded is a sum due to be paid to you under the terms of the Indemnity and has not been paid to you by the Requestor or is a sum which represents monetary compensation due to you in respect of the failure by the Requestor to fulfil its obligations to you under the Indemnity. For the avoidance of doubt the Bank hereby confirms that:
  - a such compensation shall include, but not to be limited to, payment of any amount up to the amount stated in proviso 3 below in order to enable you to arrange the provision of security to release the ship (or any other ship in the same or associated ownership, management or control) from arrest or to prevent any such arrest or to prevent any interference in the use or trading of the ship, or other ship as aforesaid, and
  - b in the event that the amount of compensation so paid is less than the amount stated in proviso 3 below, the liability of the Bank hereunder shall continue but shall be reduced by the amount of compensation paid.
- 3** shall be limited to a sum or sums not exceeding in aggregate [insert currency and amount in figures and words]
- 4** subject to proviso 5 below, shall terminate on [date six years from the date of the Indemnity] (the 'Termination Date'), except in respect of any demands for payment received by the Bank hereunder at the address indicated below on or before that date.
- 5** shall be extended at your request from time to time for a period of two calendar years at a time provided that:
  - a the Bank shall receive a written notice signed by you and stating that the Indemnity is required by you to remain in force for a further period of two years, and



b such notice is received by the Bank at the address indicated below on or before the then current Termination Date. Any such extension shall be for a period of two years from the then current Termination Date and, should the Bank for any reason be unwilling to extend the Termination Date, the Bank shall discharge its liability by the payment to you of the maximum sum payable hereunder (or such lesser sum as you may require).

However, in the event of the Bank receiving a written notice signed by you, on or before the then current Termination Date, stating that legal proceedings have been commenced against you as a result of your having delivered the said cargo as specified in the Indemnity, the Bank agrees that its liability hereunder will not terminate until receipt by the Bank of your signed written notice stating that all legal proceedings have been concluded and that any sum or sums payable to you by the Requestor and/or the Bank in connection therewith have been paid and received in full and final settlement of all liabilities arising under the Indemnity.

**6** shall be governed by and construed in accordance with the law governing the Indemnity and the Bank agrees to submit to the jurisdiction of the court stated within the Indemnity.

It should be understood that, where appropriate, the Bank will only produce and deliver to you all original bills of lading should the same come into the Bank's possession, but the Bank agrees that, in that event, it shall do so.

The Bank agrees to promptly notify you in the event of any change in the full details of the office to which any demand or notice is to be addressed and which is stated below and it is agreed that you shall also promptly notify the Bank in the event of any change in your address as stated above.

Please quote the Bank's Indemnity Ref..... in all correspondence with the Bank and any demands for payment and notices hereunder.

Yours faithfully  
For and on behalf of  
[insert name of bank]  
[insert full details of the office to which any demand or notice is to be addressed]

.....

Signature

**C Standard form letter of indemnity to be given in return for delivering cargo at a port other than that stated in the bill of lading and without production of the original bill of lading**

To: [insert name of Owners] [insert date]  
The Owners of the [insert name of ship]  
[insert address]

Dear Sirs

Ship: [insert name of ship]  
Voyage: [insert load and discharge ports as stated in the bill of lading]  
Cargo: [insert description of cargo]  
Bill of lading: [insert identification numbers, date and place of issue]

The above cargo was shipped on the above vessel by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bills of lading are made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bills of lading] but we, [insert name of party requesting substituted delivery], hereby request you to order the vessel to proceed to and deliver the said cargo at [insert name of substitute port or place of delivery] to [insert name of party to whom delivery is to be made] without production of the original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows:

- 1** To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of the ship proceeding and giving delivery of the cargo in accordance with our request.
- 2** In the event of any proceedings being commenced against you or any of your servants or agents in connection with the ship proceeding and giving delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
- 3** If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required

to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.

- 4 If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, facility, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.
- 5 As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or otherwise to cause all original bills of lading to be delivered to you.
- 6 The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
- 7 This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully  
For and on behalf of  
[insert name of Requestor]

The Requestor

.....

Signature

**CC Standard form letter of indemnity to be given in return for delivering cargo at a port other than that stated in the bill of lading and without production of the original bill of lading incorporating a bank's agreement to join in the letter of indemnity**

To: [insert name of Owners] [insert date]  
The Owners of the [insert name of ship]  
[insert address]

Dear Sirs

Ship: [insert name of ship]  
Voyage: [insert load and discharge ports as stated in the bill of lading]  
Cargo: [insert description of cargo]  
Bill of lading: [insert identification numbers, date and place of issue]

The above cargo was shipped on the above vessel by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bills of lading are made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bills of lading] but we, [insert name of party requesting substituted delivery], hereby request you to order the vessel to proceed to and deliver the said cargo at [insert name of substitute port or place of delivery] to [insert name of party to whom delivery is to be made] without production of the original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows:

- 1** To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of the ship proceeding and giving delivery of the cargo in accordance with our request.
- 2** In the event of any proceedings being commenced against you or any of your servants or agents in connection with the ship proceeding and giving delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
- 3** If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.
- 4** If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, facility, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.

- 5 As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or otherwise to cause all original bills of lading to be delivered to you.
- 6 The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
- 7 This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully  
For and on behalf of  
[insert name of Requestor]

The Requestor

.....

Signature

We, [insert name of the Bank], hereby agree to join in this Indemnity providing always that the Bank's liability:

- 1 shall be restricted to payment of specified sums of money demanded in relation to the Indemnity (and shall not extend to the provision of bail or other security)
- 2 shall be to make payment to you forthwith on your written demand in the form of a signed letter certifying that the amount demanded is a sum due to be paid to you under the terms of the Indemnity and has not been paid to you by the Requestor or is a sum which represents monetary compensation due to you in respect of the failure by the Requestor to fulfil its obligations to you under the Indemnity. For the avoidance of doubt the Bank hereby confirms that:
  - a such compensation shall include, but not be limited to, payment of any amount up to the amount stated in proviso 3 below in order to enable you to arrange the provision of security to release the ship (or any other ship in the same or associated ownership, management or control) from arrest or to prevent any such arrest or to prevent any interference in the use or trading of the ship, or other ship as aforesaid, and

- b in the event that the amount of compensation so paid is less than the amount stated in proviso 3 below, the liability of the Bank hereunder shall continue but shall be reduced by the amount of compensation paid.
- 3** shall be limited to a sum or sums not exceeding in aggregate [insert currency and amount in figures and words]
- 4** subject to proviso 5 below, shall terminate on [date six years from the date of the Indemnity] (the 'Termination Date'), except in respect of any demands for payment received by the Bank hereunder at the address indicated below on or before that date.
- 5** shall be extended at your request from time to time for a period of two calendar years at a time provided that:
  - a the Bank shall receive a written notice signed by you and stating that the Indemnity is required by you to remain in force for a further period of two years, and
  - b such notice is received by the Bank at the address indicated below on or before the then current Termination Date. Any such extension shall be for a period of two years from the then current Termination Date and, should the Bank for any reason be unwilling to extend the Termination Date, the Bank shall discharge its liability by the payment to you of the maximum sum payable hereunder (or such lesser sum as you may require).

However, in the event of the Bank receiving a written notice signed by you, on or before the then current Termination Date, stating that legal proceedings have been commenced against you as a result of your having delivered the said cargo as specified in the Indemnity, the Bank agrees that its liability hereunder will not terminate until receipt by the Bank of your signed written notice stating that all legal proceedings have been concluded and that any sum or sums payable to you by the Requestor and/or the Bank in connection therewith have been paid and received in full and final settlement of all liabilities arising under the Indemnity.

- 6** shall be governed by and construed in accordance with the law governing the Indemnity and the Bank agrees to submit to the jurisdiction of the court stated within the Indemnity.

It should be understood that, where appropriate, the Bank will only produce and deliver to you all original bills of lading should the same come into the Bank's possession, but the Bank agrees that, in that event, it shall do so.

The Bank agrees to promptly notify you in the event of any change in the full details of the office to which any demand or notice is to be addressed and which is stated below and it is agreed that you shall also promptly notify the Bank in the event of any change in your address as stated above.

Please quote the Bank's Indemnity Ref..... in all correspondence with the Bank and demands for payment and notices hereunder.

Yours faithfully

For and on behalf of

[insert name of bank]

[insert full details of the office to which any demand or notice is to be addressed]

.....

Signature





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