



The London P&I Club

## **CLASS 8 – FD&D RULES 2016-17**

**Prompt notice of any claim or  
threatened claim should be  
given to the Managers,  
A. Bilbrough & Co.Ltd.**

Each Assured agrees and consents to the Association and the Managers processing and transferring to territories outside of the European Economic Area any personal data provided by each Assured or relating to each Assured for the purposes of enabling the Association and the Managers to comply with their obligations under these Rules and to otherwise provide any insurance afforded by the Association.

Whilst the Association and the Managers will, wherever possible, take all reasonable steps to ensure that adequate protection is afforded to any such personal data so transferred, it is acknowledged by each Assured that certain jurisdictions to which it is transferred may not provide adequate levels of protection for the processing of that personal data.

"Personal Data" has the meaning set out in section 1 of the Data Protection Act 1998.

"Process" has the meaning set out in section 1 of the Data Protection Act 1998 and the expression "processing" shall be construed accordingly.

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## **CLASS 8**

# **THE FREIGHT, DEMURRAGE AND DEFENCE RULES**

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### **RULE 1 INTRODUCTORY**

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- 1.1** In these Rules, unless the context requires otherwise:
- “Annual Call” means an annual call levied pursuant to Rule 31.2;
  - “the Articles” means the Articles of Association of the Association in force from time to time;
  - “the Association” means The London Steam-Ship Owners’ Mutual Insurance Association Limited, a company limited by guarantee registered in England under number 10341;
  - “Assured” means a person whose application for insurance within this Class of any interest in a Ship has been accepted by the Association and includes, for the avoidance of doubt, a Co-assured, an Other Assured and persons with Fixed Premium Entries;
  - “Call” means a call levied pursuant to these Rules;
  - “Certificate of Entry” means a certificate issued by the Association pursuant to Rule 6;
  - “Charterer” means any Assured who has an interest in a Ship other than as an owner or disponent owner; and, subject to the terms and conditions as agreed by the Managers in writing and as provided for in the Certificate of Entry, may include inter alia an Assured engaged in time charters, voyage charters, space charters, slot charters, slot swaps, slot contracts, freight forwarding contracts, contracts of affreightment, shipping and/or trading and/or receiving cargo, and pool operations. For the purposes of Rule 9, the term ‘entered ship’ shall be deemed to mean any Ship on which cargo has been, is, or is yet to be carried.
  - “Class” means a class of the Association and “this Class” means Class 8, the Freight, Demurrage and Defence Class of the Association;
  - “Co-assureds” means Assureds whose application for insurance of their respective interests in the same Ship has been accepted by the Association pursuant to Rule 22.1 and “Co-assured” shall be construed accordingly;
  - “Committee” means the committee for the time being of the Association;
  - “Electronic Form” has the meaning given in section 1168(3) of the Companies Act 2006;
  - “Electronic Means” has the meaning given in section 1168(4) of the Companies Act 2006;
  - “Endorsement Slip” means an endorsement slip issued by the Association pursuant to Rule 6.2;
  - “Fixed Premium Entry” has the meaning given to it in Rule 1.5;
  - “in writing” means written, printed, lithographed, Electronic Form, or visibly expressed in all or any of those or any other modes of representing or reproducing words;
  - “Managers” means the managers from time to time of the Association;
  - “Member” means an Assured who is a member of the Association in accordance with the Companies Act 2006 and the Articles;
  - “Other Assured” means a person to whom the benefit of an Assured’s insurance is agreed to be extended by the Association pursuant to Rule 22.3;
  - “Policy Year” has the meaning given in Rule 2.2;
  - “Release Call” means a release call charged pursuant to Rule 35.1;
  - “Rules” means the rules of this Class in force from time to time and “Rule” shall be construed accordingly;
  - “Ship” means any ship, boat, hydrofoil, hovercraft or other description of vessel or structure (including a lighter, barge or similar vessel or structure under construction howsoever propelled, but excluding (a) a unit or vessel constructed or adapted for the purpose of carrying out drilling operations in connection with oil and gas exploration or production and (b) a fixed platform or fixed rig) used or intended to be used for any purpose whatsoever in navigation or otherwise on, under, over or in water or any part thereof or any proportion of the tonnage thereof or any share therein; and
  - “Supplementary Call” means a supplementary call levied pursuant to Rule 31.3.
- In addition, in these Rules:
- words importing the singular number only shall include the plural number and vice versa;
  - words importing the masculine gender only shall include the feminine gender;
  - words importing persons shall include individuals, corporations, partnerships and firms (whether or not having a separate legal personality); and
  - the headings in these Rules are for convenience only and shall not affect their interpretation.

- 1.2** These Rules and all contracts entered into by the Association relating to any insurance afforded by the Association within this Class (which shall hereinafter be understood to include also any reinsurance which may be afforded by the Association within this Class in accordance with Rule 30.1.1) shall be subject to the Articles, and words as defined in the Articles shall have the same meaning in these Rules unless the context requires otherwise or unless they are defined differently in these Rules. Without prejudice to the generality of the foregoing, the provisions of the Articles relating to Co-assureds shall be binding on all Co-assureds notwithstanding that not all Co-assureds are Members.
- 1.3** All insurance afforded by the Association within this Class and all contracts relating thereto shall be deemed to incorporate the provisions of these Rules, save insofar as those provisions are varied by any special terms which have been agreed pursuant to these Rules or amended pursuant to the powers of the Committee as set out in the Articles or these Rules, and all insurance afforded by the Association is by way of indemnity save insofar as the liabilities, costs and expenses of or attributable to an Assured are discharged by the Association whether on behalf of the Assured or in consequence of the direct liability of the Association pursuant to a demand made or liability being established under any guarantee, certificate or undertaking given pursuant to the grant of authority by the Committee from time to time, or any convention, direct action law, statute or regulation;
- 1.4** The standard insurance afforded by the Association within this Class is set out in Rule 9, but additional risks may be covered and whatever insurance is afforded by the Association within this Class shall always be subject to the provisos, warranties, conditions, exceptions, limitations and other terms set out in the Articles and the remainder of these Rules.
- 1.5** An Assured may be insured on terms that he is liable to pay a fixed premium to the Association (a "Fixed Premium Entry").
- 1.6** On acceptance by the Association of an application from any person for insurance within this Class of any interest in a Ship, that Ship shall thereupon be entered in this Class in respect of the interest of such person who (if not already) shall become a Member in this Class (and any such application shall constitute such person's agreement to become or continue as a Member in accordance with the provisions of the Companies Act 2006), and shall so continue until such time as all entries of Ships by that Assured for insurance within this Class of any interest in them shall have terminated under these Rules,
- 1.6.1** PROVIDED that a person whose only interest in a Ship is insurance or reinsurance which he has afforded in respect of the same and which the Association has agreed wholly or partly to reinsure within this Class, shall not thereby become a Member in this Class nor shall such Ship be entered unless the premium payable to the Association for such reinsurance shall be by way of Calls determined by the Committee in accordance with Rules 31 and 32; and
- 1.6.2** PROVIDED that no person shall by virtue of being an Other Assured be entitled to be a Member and no more than one Co-assured in respect of such entry shall be entitled to be a Member and the Association shall have the right to designate one Co-assured in respect of an entry as a Member in this Class; and
- 1.6.3** PROVIDED that, no person shall by virtue of being an Assured with a Fixed Premium Entry be entitled to be a Member in respect of such Fixed Premium Entry.
- 1.7** All the Members for the time being in this Class shall form one separate Class of the Association. The Committee and Managers of the Association shall be the Committee and Managers of this Class.
- 1.8** References to entered Ships, Assureds, Co-assureds, Other Assureds, Fixed Premium Entries, insurance and reinsurance afforded by the Association (howsoever the same may be expressed) shall hereinafter be understood as relating exclusively to this Class unless otherwise expressly stated and where appropriate to the context references to entered Ships, Assureds, Co-assureds, Other Assureds and Fixed Premium Entries shall be understood to include formerly entered Ships, former Assureds, former Co-assureds, former Other Assureds and Fixed Premium Entries.
- 1.9** A person by whom or on whose behalf an application has been made and accepted by the Association for insurance shall be deemed to have agreed not only on his own behalf but also on behalf of his successors and assigns and each of them that both he and they will in every respect be subject to and bound by any such resulting contract of insurance with the Association, including the provisions of these Rules incorporated as aforesaid.
- 1.10** In the event of any conflict between the English text of these Rules and any text thereof written in any other language the English text shall prevail.
- 1.11** The business of this Class shall, subject to the Articles, be conducted according to these Rules and shall be managed by the Committee which may, subject to the Articles, exercise all powers

of the Association and do on behalf of the Association all acts as may be exercised and done by the Association. The Committee may delegate any of its powers to sub-committees consisting of such member or members of the Committee or such other persons in each case as it thinks fit.

- 1.12** Without prejudice to the generality of Rule 1.11, the Committee may from time to time appoint any person, firm or corporation to be the Manager or Managers of the Association for such period and upon such terms as it thinks fit, and may vest in such Manager or Managers such of the powers vested in the Committee as it may think fit, and such powers may be exercisable for such period and upon such conditions and subject to such restrictions and generally upon such terms as the Committee may determine. The Committee may make such arrangements as it thinks fit for the management of the Association's affairs in the United Kingdom or abroad, and may for this purpose appoint local boards, attorneys and agents, and delegate to them such powers as it may deem requisite or expedient.

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## **RULE 2 CALLS AND PREMIUMS**

- 2.1** The funds necessary for the purposes described in Rule 31 shall be determined by the Committee with reference to each successive period of 12 months commencing noon GMT 20th February each calendar year and such funds shall be contributed mutually by Assureds by way of Calls determined in accordance with these Rules or as may otherwise have been agreed in writing.
- 2.2** Each successive 12 month period described in Rule 2.1 shall hereinafter be referred to as a "Policy Year" but notwithstanding any such references to separate Policy Years, or the issuing of fresh Certificates of Entry for each new Policy Year in accordance with Rule 6.3, an Assured's rights and obligations shall be determined within the total continuity of the period of, and with regard to, all entries of Ships by him during that period.
- 2.3** Assureds whose application for a Fixed Premium Entry has been accepted by the Association in accordance with Rule 1(5) shall be liable to pay a fixed premium to the Association of such amount and at such times as is determined by the Association.

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## **RULE 3 RIGHT TO RECOVER**

- 3.1** If any Assured shall incur legal costs, charges or disbursements for which he is insured, he shall be entitled to recovery from the Association out of the funds of this Class, PROVIDED that:
- 3.1.1** actual payment (out of monies belonging to him absolutely and not by way of loan or otherwise) by the Assured of the full amount of such legal costs, charges and disbursements shall be a condition precedent to his right of recovery;
- 3.1.2** any Assured who fails to pay promptly any amount due by him to the Association on account of Calls or otherwise shall thereupon without further notice cease to have any rights of recovery, notwithstanding that the legal costs, charges or disbursements in relation to which such rights of recovery would otherwise have been exercisable may have been incurred by the Assured at a time when all amounts due to the Association may have been paid by the Assured in full, or may have been incurred during periods of cover or in respect of an entered Ship for which all amounts so due may similarly have been paid.

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## **RULE 4 UNREASONABLE CONDUCT**

- 4.1** The Committee may reject or reduce any recovery by an Assured where in its sole discretion it determines that the Assured has not at any time (whether before, at the time of, during or after any casualty, event or matter liable to give rise to a claim upon the Association) taken such steps to protect his interests as the Committee in its sole discretion would have expected an uninsured person acting reasonably in similar circumstances to have taken.

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## **RULE 5 APPLICATION FOR INSURANCE AND CONDITIONS**

- 5.1** Any application for insurance shall be on such form and in such medium as may from time to time be prescribed by the Association and the applicant shall at the time of the application and at all times thereafter provide all material particulars and information and any further particulars and information requested by the Association. The Association shall be entitled to receive and process applications for insurance which are submitted by Electronic Means or by any other means agreed by the Association.

- 5.2.1** The Assured must make a fair presentation of the risk to the Association by providing the Association with all material facts and must ensure that every material representation as to a matter of fact is both complete and accurate. This duty exists not only prior to the conclusion of the contract of insurance but also at the time of any variation thereof and on renewal.
- 5.2.2** The Assured must disclose to the Association in writing any material changes to those facts during the period of this insurance. Upon such disclosure, or failure to disclose, the Association may terminate the Assured's entry or amend the Assured's premium rating and/or terms of entry with effect from the time of disclosure or failure to disclose.
- 5.2.3** A material fact or a material change to those facts is a fact which may influence an underwriter's judgement in his or her assessment of a risk, including its terms and pricing. If the Assured is in any doubt as to whether a fact is material the Association recommends that the Assured should disclose it.
- 5.3** The Association shall in its sole discretion be entitled to refuse any application for insurance without stating reasons, whether or not the applicant is already an Assured.
- 5.4** The Association may accept separate applications for insurance in respect of different interests in the same Ship without any obligation to disclose any one to any other.
- 5.5** Notwithstanding and without prejudice to any other provision of these Rules or the Articles relating to the amendment of these Rules, these Rules may, on such notice as the Committee may in its sole discretion decide, be amended at any time (including with effect from any time during the course of any current or future Policy Year) to such extent as the Committee may in its sole discretion determine is necessary as a result of the implementation of or any change in, or potential or proposed implementation of or any change in, any sanction, prohibition, restriction, legislation, regulation or requirement to obtain any licence, consent, permission or approval, by any government, state, international organisation, regulatory or competent authority, official body or the like.

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#### **RULE 6 CERTIFICATES OF ENTRY AND ENDORSEMENT SLIPS**

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- 6.1** After accepting an application for insurance the Association shall issue a Certificate of Entry of the Ship concerned setting out:
- 6.1.1** the date of commencement of risk;
- 6.1.2** the Annual Call Rate, or such other basis of contribution as may be applicable;
- 6.1.3** the gross tonnage, or where not determined gross registered tonnage, of the entered Ship and, if less, the tonnage entered in accordance with Rule 7.1;
- 6.1.4** the names of all Assureds and their respective interests in the entered Ship;
- 6.1.5** any special terms of entry, including any special deductibles.
- 6.2** If at any time it is mutually agreed to vary the terms of any insurance the Association shall at its option issue an Endorsement Slip detailing such variation and the date from which the same is to be effective.
- 6.3** Fresh Certificates of Entry shall be issued setting out the terms effective from noon GMT each successive 20th February for all Ships whose entries are then continuing.

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#### **RULE 7 LESS THAN FULL TONNAGE ENTERED**

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- 7.1** Application for insurance of any interest in a Ship may be for less than her full gross tonnage, or where not determined gross registered tonnage, in which event, if accepted by the Association, she shall be entered for the reduced tonnage on which Calls shall be payable in accordance with Rules 31 and 32, and any recovery from the Association shall only be in that proportion which the entered tonnage bears to the Ship's full gross tonnage, or where not determined gross registered tonnage.
- 7.2** Where by these Rules or any special terms a limit is set to all or part of the insurance afforded by the Association, such limit shall also be reduced proportionately as in Rule 7.1.

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#### **RULE 8 CLASSIFICATION, INSPECTIONS OF SHIPS AND STATUTORY REQUIREMENTS**

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- 8.1** Unless otherwise previously agreed by the Association in writing, every entered Ship shall be fully classed throughout her period of entry with a classification society approved by the Association, regardless of any separate inspections which the Association may have required. The Association shall be given 30 days' notice preceding any proposed change of classification society.

- 8.2** Any occurrence known or likely to have caused damage to the entered Ship in respect of which the classification society might reasonably be expected to make recommendations as to repairs or other action to be taken, must be promptly called to the attention of the classification society.
- 8.3** All the rules, recommendations and requirements of the classification society relating to the entered Ship must, within the time or times specified by the classification society, be complied with.
- 8.4** The Association shall have the right to inspect any records or information relating to the classification of an entered Ship during any period of entry and if required, the Assured shall authorise the classification society to make available all such records and information to the Association.
- 8.5** Without derogation from and in addition to Rules 8.1 - 8.4, the Association may but shall not be obliged to require any Ship to be submitted to inspection of her condition and structure or any part thereof and her safety management (including the Ship's managers and/or operators) by an inspector nominated by the Association at any time or within any period of time as may be specified by the Association.
- 8.6** Any deficiencies noted and/or any recommendations made as to repair or remedy as a result of any inspection undertaken in accordance with Rule 8.5 shall be corrected and/or carried out forthwith or within such period of time as may be specified by the Association. Notwithstanding anything herein, no action, lack of action or omission by the Association with regard to any inspection, noting of deficiency, recommendation, or lack thereof by the Association or its nominated inspector under this Rule 8 shall constitute an approval, disapproval, warranty, undertaking, certification, or assumption of responsibility of any kind by the Association regarding the Assured, his Ship(s) or management, nor shall any such action, lack of action or omission by the Association relieve the Assured of any of his responsibilities or obligations under the Rules.
- 8.7** The Assured shall ensure compliance with all the statutory requirements of the state of the Ship's flag relating to the construction, adaptation, condition, fitment, equipment, manning, safety management and ship security of the entered Ship and ensure at all times the maintenance of the validity of such statutory certificates as are required to be issued by or on behalf of the state of the Ship's flag.
- 8.8** Save to the extent that the Committee in its sole discretion may otherwise determine, there shall be no recovery in respect of any legal costs, charges or disbursements arising during a period when any of the foregoing requirements have not been fulfilled. However, where the entry of a Ship is in the name of an Assured who is a charterer (other than a demise charterer), the rights of recovery of such charterer shall not be dependent upon fulfilment of the requirements of Rules 8.2, 8.3 and 8.4.
- 8.9** Without prejudice to Rule 8.8, the Association may:
- 8.9.1** immediately terminate any contract of insurance in respect of any Assured's interest in an entered Ship or Ships (together with the entry of that Ship or Ships in respect of that interest) after deficiencies or failures have been noted under Rule 8.6, in which case a pro rata return of Calls shall be allowed;
- 8.9.2** exclude cover for any legal costs, charges or disbursements arising out of any accident or occurrence which is caused in whole or in part by any deficiency in or condition of the entered Ship and/or her safety management (including the Ship's managers and/or operators) in respect of which an inspector has made any recommendations under Rule 8.6;
- 8.9.3** from a specified date exclude cover for any legal costs, charges or disbursements arising out of any accident or occurrence, caused in whole or in part by any deficiency in or condition of the entered Ship and/or her safety management (including the Ship's managers and/or operators) in respect of which an inspector has made any recommendations, unless by that date the Assured has submitted the entered Ship for a further inspection and the recommended repairs have been effected to the satisfaction of the Association.

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## **RULE 9 RISKS COVERED**

- 9.1** Subject to any special terms which may be agreed in writing and to the provisions of Rules 22 and 23, an Assured is insured in respect of each Ship entered by him in this Class for legal costs, charges or disbursements incurred in relation to the claims or matters set out in Rules 9.2.1 - 9.2.16,  
**PROVIDED** that such legal costs, charges or disbursements arise:
- 9.1.1** in respect of the Assured's interest in such Ship; and
- 9.1.2** in connection with the building, purchase, sale, ownership, management, chartering or operation of such Ship by or on behalf of the Assured; and

- 9.1.3 out of events occurring during the period of entry of such Ship; and
- 9.1.4 are incurred with the prior approval of the Association.
- 9.2 Legal or other proceedings in relation to the following claims or matters:
- 9.2.1 hire, off-hire, freight, dead freight, passage money, general and particular average contributions or charges;
- 9.2.2 demurrage, damages for detention or dispatch money;
- 9.2.3 breach of any charterparty, bill of lading or other contract;
- 9.2.4 detention from any cause by any department of state, or public or local body or authority or other person or persons in authority; and if in such cases an entered Ship be, by order of the Committee, allowed to remain under detention for the purpose of testing the legality of such detention, the Assured shall be indemnified for his actual loss, by payment of such sum as the Committee in its sole discretion shall consider fair and reasonable, to the extent that such loss shall not be otherwise recovered;
- 9.2.5 supply of inferior or wrongly described bunkers, equipment or other necessities;
- 9.2.6 improper loading, lightering, stowage, trimming or discharge of cargo;
- 9.2.7 overcharges in accounts;
- 9.2.8 amounts due from or to underwriters on Ship, cargo, freight and other interests;
- 9.2.9 salvage and towage services rendered by any entered Ship;
- 9.2.10 representation of Assureds at official investigations, coroners inquests or other enquiries;
- 9.2.11 claims by or against masters, officers, crew or passengers;
- 9.2.12 claims arising in connection with building, conversion, alteration, repair, purchase, sale or mortgage;
- 9.2.13 claims by or against revenue or customs authorities;
- 9.2.14 claims for damages or loss sustained by an Assured which are not covered by the policies on hull and machinery provided that if such claims (apart from detention) are not so covered by reason of any deductible, franchise and/or other uninsured proportion of the damages or loss borne by the Assured as a result of the terms of those policies the Committee may in its sole discretion refuse to cover the Assured in respect thereof either wholly or in part;
- 9.2.15 information and legal advice on matters of general concern to shipowners;
- 9.2.16 any matter which, in the sole discretion of the Committee, is within the scope of this Class and is not excluded by these Rules.

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## **RULE 10 LIMITATIONS ON COVER**

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- 10.1 The cover afforded by this Class is limited except as to the indemnity provided by Rule 9.2.4 to the payment of legal costs, charges and disbursements incidental to or in anticipation of legal or other proceedings.
- 10.2 While an Assured has complete freedom to litigate or arbitrate disputes involving his vessels entered in the Association it is a condition precedent to his right to recover, in whole or in part, out of the funds of this Class that at all times the Association shall have sole discretion as to:
  - 10.2.1 the claims in respect of which it may support an Assured;
  - 10.2.2 the conduct thereof (and the exercise of any right to recover costs therein);
  - 10.2.3 the extent of such support and conduct both in terms of progress through the appropriate legal or arbitral process and/or of the Assured's monetary recovery out of the funds of this Class;
  - 10.2.4 the discontinuance or settlement of claims or the discontinuance of support in connection with claims which it has previously agreed to support;
 and the Committee shall be entitled when exercising its sole discretion to take into account, inter alia, the merits of the claim or matter, the interests of the other Assureds of this Class, the amount of the costs and expenses incurred or expected to be incurred in respect of the claim and its effect on the financial position of this Class.
- 10.3 The Committee may in its sole discretion determine for each Policy Year the figures above and/or below which claims will be reimbursed in full; but otherwise, unless the Association agrees in writing to provide full cover without deductibles as a term of entry, deductibles shall apply to each claim and there shall be no recovery in respect of 25% of all legal costs, charges and disbursements.
- 10.4 The Association shall not be responsible for damages resulting from the arrest of any vessel, nor for the exercise of a lien on cargo, nor for any other security measure taken although such vessel may have been arrested or such lien may have been exercised, or such other security measure taken upon the advice of the Association, its correspondents, lawyers or lawyers acting for the Assured.



- 10.5** Notwithstanding Rules 10.1, 10.2, 10.3 and 10.4, the cover afforded by this Class under Rule 9 to the Assured for legal costs, charges or disbursements shall be limited in the aggregate to USD7,500,000 for any single claim, dispute, proceeding or series thereof. The Committee may in its sole discretion decide whether or not any claims, disputes or proceedings shall be considered to be a series thereof.

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## **RULE 11 OTHER INSURANCES**

- 11.1** Every entered Ship shall be insured by entry of her entered tonnage in Class 5 of the Association for protecting and indemnity risks and, subject to Rule 11.2, shall be deemed to be insured throughout her period of entry by the usual form of Lloyds Policy with the Institute Time Clauses Hulls 1/10/83 including the Three-Fourths Collision Liability Clause attached, or by other equally wide insurances (which may include excess liability policies), for such value as the Committee may in its sole discretion determine as representing at the relevant time her full market value, free of commitment.
- 11.2** Unless and to the extent that the Committee in its sole discretion otherwise decides, or the Association agrees in writing as a term of entry, there shall be no recovery for any legal costs, charges or disbursements for which the entered Ship is deemed to be insured under Rule 11.1 or which the Assured is entitled (or but for the entry of the Ship concerned, would be entitled) to recover under any other insurance or otherwise howsoever.

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## **RULE 12 EXCLUSION OF DAMAGE TO ENTERED SHIP, LOSS OF HIRE, SANCTIONS, ETC.**

- 12.1** Recovery by an Assured in respect of any Ship entered by him shall, except as to Rule 9.2.4, be limited to legal costs, charges and disbursements. Without derogation from the generality of the foregoing, there shall be no recovery for:
- 12.1.1** loss of or damage to such Ship, her stores or fuel, or to any equipment, containers, pallets or trailers which are used in connection with such Ship and which are owned or leased by the Assured or by any company associated with or under the same management as the Assured;
- 12.1.2** freight, demurrage, hire or detention;
- 12.1.3** salvage or services in the nature of salvage;
- 12.1.4** loss, damage or expense arising out of the cancellation or wrongful termination of a charter or other engagement;
- 12.1.5** bad debts or other losses arising out of the insolvency of any person, including insolvency of agents;
- 12.1.6** loss, damage or expense or legal costs, charges and disbursements in whole or in part arising out of or occasioned by the failure, inability or unwillingness of the Assured on financial grounds to pay and/or settle all or any financial obligations and demands and/or to discharge all or any items of expenditure whatsoever in connection with the proper prosecution and/or completion of the voyage;
- 12.1.7** interest on any claim or part thereof that he may make or bring against the Association under or in connection with these Rules, including any claim brought by way of legal or arbitration proceedings.
- 12.2** There shall be no recovery by an Assured in respect of any Ship entered by him for any legal costs, charges or disbursements where the provision of cover or any payment in respect thereof exposes or may expose the Association or the Managers to being or becoming or to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state, international organisation or other authority which sanction, prohibition or adverse action the Committee in its sole discretion determines may materially affect the Association in any way whatsoever.

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## **RULE 13 ILLEGAL, HAZARDOUS OR IMPROPER ADVENTURES**

- 13.1** There shall be no recovery in respect of any legal costs, charges or disbursements arising out of or in consequence of:
- 13.1.1** an entered Ship carrying contraband, blockade running or being employed in an unlawful trade;
- 13.1.2** any carriage, trade or voyage of, or any other activity on board or in connection with the entered Ship which the Committee shall in its sole discretion determine to be imprudent, unsafe, unduly hazardous or improper.

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## **RULE 14 MONEYS RECOVERED FOR ASSURED**

- 14.1** All moneys recovered for any Assured shall be paid to him without deduction of any commission or other sum except unpaid Calls or other sums due by him to the Association,

- 14.1.1** PROVIDED that insofar as costs or charges or disbursements ('costs') are covered by this Class, the Association shall be entitled to any sum which the Assured recovers in respect of such costs pursuant to any award, judgment or settlement agreement. Where for any reason no sum is recovered in respect of costs or the sum so recovered is less than the total costs covered by this Class, the Assured shall suffer such deduction or make such payment of such other or such additional amount as the Committee may in its sole discretion determine to represent a fair recovery of costs for the Association from the principal amount recovered by the Assured. If any claims, disputes or proceedings have been settled or compromised for a lump sum which includes costs recoverable from any other party, or without any provision as to the payment of such costs, then in either of such events the Assured shall suffer such deduction or make such payment in respect of such costs as the Committee may in its sole discretion determine.
- 14.1.2** The provisions of Rule 14.1.1 shall apply whenever the Association has provided support for any claims, disputes or proceedings, in whole or in part, and shall continue to apply notwithstanding withdrawal of support, or cesser or termination of entry.

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## **RULE 15 COLLISION CASES**

- 15.1** When an Assured seeks to recover damages for detention sustained in consequence of a collision, stranding or any other cause whatsoever, he must give the Association a written undertaking or guarantee, the wording of which is to be approved by the Association, for such proportion of the costs of any legal or other proceedings as the actual claim for damage to the Ship bears to the claim for detention, the amount of such claims respectively to be agreed and inserted in such undertaking or guarantee. In cases where other interests than those of this Class are concerned, this Class shall only be liable for such proportion of the costs recoverable from any other party as the claim with which this Class is concerned would, in the sole discretion of the Committee, bear to the total claim.

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## **RULE 16 OBLIGATION OF THE ASSURED IN RESPECT OF CLAIMS**

- 16.1** Where an Assured wishes to make recovery out of the funds of this Class he must promptly:
- 16.1.1** notify the Association of every casualty, dispute, event or claim against him which threatens to give rise to any legal costs, charges or disbursements for which he is insured, of all material developments in respect thereof, and in connection therewith;
- 16.1.2** disclose and produce all information, documents, reports or legal advices in or coming into his or his agents' (including lawyers') possession, power or knowledge relevant to any such casualty, event or claim either available at the time of notification or at any time.
- 16.2** An Assured must neither settle nor make any admission nor grant any waiver in respect of legal costs, charges or disbursements for which he is insured without prior consent from the Association in writing.

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## **RULE 17 FAILURE TO GIVE ADVICE**

- 17.1** If an Assured fails to comply with his obligations under Rule 16 or acts unreasonably or incurs any legal costs, charges or disbursements through his neglect or default in each case in connection with any casualty, dispute, event or claim the Committee may in its sole discretion reject or reduce any recovery or require the Assured to repay to the Association any legal costs, charges or disbursements which the Association may have incurred or paid or undertaken to pay in connection therewith.

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## **RULE 18 TIME-BAR**

- 18.1** Without derogation from and in addition to the obligation under Rule 16.1.1 to give prompt notice, if an Assured fails to notify the Association in writing of any claim against him as therein described within one year after he has knowledge of such casualty, dispute, disagreement, event or claim, the Assured shall have no right to recover in respect thereof, unless the Committee in its sole discretion shall otherwise determine.

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## **RULE 19 BAIL**

- 19.1** The Association may, but shall in no case be obliged to, provide on behalf of an Assured security to prevent arrest or obtain release from arrest or otherwise in respect of an entered Ship provided that the Assured shall have first arranged such counter-security (which expression may

in the Association's sole discretion include a deposit of cash with the Association) as the Association may require and shall indemnify the Association against all liabilities and expenses incurred by the Association in consequence of the security originally provided by the Association. In the event that the Assured does not indemnify the Association as aforesaid, the Association, without prejudice to its other rights, shall be entitled to retain any amounts which would otherwise be recoverable by such Assured, notwithstanding that the same may have no connection with the liability in respect of which the original security was provided and may relate to other periods of cover before or after that liability was incurred by the Assured or to another entered Ship. The provision of security by the Association shall be without prejudice to Rule 10.

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## **RULE 20 POWERS OF THE ASSOCIATION RELATING TO THE HANDLING AND SETTLEMENT OF CLAIMS**

- 20.1** Subject always to the overriding conditions precedent set out in Rule 10.2 the Association shall at all times have the right to:
  - 20.1.1** appoint and employ on an Assured's behalf lawyers, surveyors or other persons to co-operate with the Assured in investigating or dealing with any matter (including commencing or defending legal or other proceedings) which may result in legal costs, charges or disbursements for which the Assured is or may be insured by the Association or in respect of which the Association has provided security;
  - 20.1.2** direct the conduct of any claim or legal or other proceedings for or against an Assured relating to any potential matter giving rise to legal costs, charges or disbursements in relation to which an Assured is or may be insured by the Association in whole or in part, or in respect of which the Association has provided security, including direction that such claim or legal or other proceedings should be settled, compromised, or otherwise disposed of in such manner and upon such terms as the Association may require;
  - 20.1.2.1** PROVIDED that instead of contesting cases where the probable cost will, in its opinion, exceed the amount at stake, the Committee may in its sole discretion pay out of the funds of this Class the whole or any part of such claim.
- 20.2** If an Assured fails to co-operate or to comply with any requirement or direction as aforesaid, the Committee may in its sole discretion reject or reduce any recovery to which such failure may appear to the Committee to be relevant.

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## **RULE 21 SETTLEMENT OF CLAIMS**

- 21.1** The Committee shall meet as often as may be required for the purposes of settling and determining claims or any other matters relating to the business of the Association.
- 21.2** The Committee shall in its sole discretion have power from time to time to authorise the Managers to effect both settlement and payment of any claims, without prior reference to the Committee, of such types and up to such sums as the Committee may in its sole discretion determine.
- 21.3** No member of the Committee may vote upon any claim in which he is in any way interested.
- 21.4** Where under any Rule the Committee shall have exercised its sole discretion in settling or determining claims or any other matters relating to the business of the Association, the Committee shall not be obliged to give reasons for any decision.

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## **RULE 22 CO-ASSURED AND OTHER ASSURED**

- 22.1** The Association may accept an application for insurance of interests in the same Ship in the names or on behalf of more than one person as Co-assureds who shall each have an independent right of recovery from the Association subject always to the proviso in Rule 9.1 and to the provisions of Rule 22.2.
- 22.2** The Association may in its sole discretion reject or reduce any multiple recovery by Co-assureds in respect of the same loss.
- 22.3** The Association may, subject to the proviso in Rule 9.1, agree that the benefit of an Assured's insurance shall be extended to persons or companies as Other Assureds which shall be signified in the relevant Certificate of Entry or by endorsement thereto,  
PROVIDED that:
  - 22.3.1** any such extension of the benefit of an Assured's insurance shall be confined to those legal costs, charges and disbursements incurred by the beneficiary which the Assured would similarly have incurred, if the third-party claim had been pursued against him and in respect of which he

- would have been entitled to recover in accordance with the terms of entry of the Ship concerned;
- 22.3.2** for each separate Ship, each separate claim or matter as set out in Rule 9, recovery under the Assured's insurance and any such extension of the benefit thereof shall not in aggregate exceed what would have been recoverable by the Assured if he alone could have and had incurred legal costs, charges and disbursements as postulated in Rule 22.3.1 and payment by the Association to the Assured or any such beneficiaries in that amount shall preclude any further recovery whatsoever; and
- 22.3.3** the benefit of an Assured's insurance shall not be extended to third party persons or companies which are not referred to in the relevant Certificate of Entry or by endorsement thereto, whether by name, class, description or otherwise, notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 22.4** In relation to Co-assureds and Other Assureds, unless otherwise agreed by the Association in writing:
- 22.4.1** the Association shall not be bound to issue any Certificate of Entry or any Endorsement Slip to more than one Assured delivery of which to whom shall be sufficient delivery to all;
- 22.4.2** Co-assureds shall be jointly and severally liable to pay all amounts due to the Association whether pursuant to these Rules, the Articles or otherwise;
- 22.4.3** payment to any one Assured of any sums payable by the Association shall be a sufficient discharge of the Association for the same;
- 22.4.4** failure by one Assured to provide particulars and information within his knowledge (or which could with reasonable diligence be ascertained by him) shall be deemed to have been the failure of all;
- 22.4.5** conduct of one Assured which would entitle the Association to reject or reduce recovery shall be deemed to have been the conduct of all and the knowledge (including deemed knowledge) of one Assured shall be deemed to be the knowledge (including deemed knowledge) of all;
- 22.4.6** any provision of these Rules which would entitle the Association to reject or reduce recovery in respect of one Assured shall be deemed to apply to all;
- 22.4.7** any communication from the Association to one Co-assured shall be deemed to have been communicated to all its other Co-assureds and any communication from the Association to a Member shall be deemed to have been communicated to all of its Other Assureds;
- 22.4.8** any communication from one Assured to the Association shall be deemed to have been made with the full approval and authority of all;
- 22.4.9** the Association shall be entitled to pay all sums to one Assured on behalf of all Co-assureds and Other Assureds; and
- 22.4.10** no Assured shall be entitled to recover from the Association in respect of any dispute or claim arising between themselves in respect of an entry.

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## **RULE 23 AFFILIATES AND ASSOCIATES**

- 23.1** Should a claim in respect whereof an Assured is insured by the Association be made or enforced through a person or company (other than a Co-assured or Other Assured in relation to that Assured) affiliated or associated with such Assured, the Association may if so requested by the Assured indemnify such person or company against any loss which as a consequence thereof such person or company shall have incurred in that capacity provided always that nothing herein contained shall be construed as extending any amount which would not have been recoverable from the Association by the Assured had such claim been made or enforced against him. Once the Association has made such indemnification it shall not be under any further liability and shall not make any further payment to any person or company whatsoever, including the Assured, in respect of that claim.

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## **RULE 24 FLEET ENTRIES**

- 24.1** Applications for insurance may be made and accepted in respect of Ships of which the beneficial ownership is separate on terms that the Ships concerned shall be deemed (for these insurance purposes only) to form part of a specified fleet whereby the Association shall deal with the entries of such Ships in combination and not individually, in consideration for which all Assureds within each such fleet entry shall accept joint and several liability to pay all amounts due to the Association by way of Calls or otherwise in respect of all Ships within that fleet entry.

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**RULE 25 ASSIGNMENT**

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- 25.1** No insurance afforded by the Association may be assigned with-out the written consent of the Association, which shall in its sole discretion be entitled to refuse consent or to give consent only upon specified terms or conditions, in either case without stating reasons, and any purported assignments made without such consent shall be void and of no effect.
- 25.2** Where the written consent of the Association is given to any proposed assignment, such consent and such assignment shall be on terms that on and from the assignment the assignee shall become and be with the assignor jointly and severally liable for the payment of all Calls and/or other amounts due to the Association and for the performance of the assignor's other obligations hereunder.
- 25.3** In particular, but without prejudice to the generality of the foregoing, from any amount payable by the Association to the assignee there may be deducted such amount as the Association may then estimate as sufficient to discharge any past or future liabilities whatsoever of the assignor to the Association, whether arising before or after the assignment.

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**RULE 26 PERIOD OF INSURANCE, TERMINATION BY CONTRACTUAL NOTICE AND NOVATION**

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- 26.1** Unless otherwise agreed by the Association in writing or unless terminated earlier in accordance with these Rules, any contract of insurance in respect of any Assured's interest in an entered Ship (together with the entry of that Ship in respect of that interest) shall, unless such contract is for a fixed period (in which case such contract shall, subject as otherwise provided in these Rules, cease at the end of such fixed period), commence at the time stated in the Certificate of Entry relating to such contract and shall continue until the expiry of the then current Policy Year and thereafter from Policy Year to Policy Year.
- 26.2** Any contract of insurance:
- 26.2.1** (other than a contract for a fixed premium) in respect of any Assured's interest in an entered Ship (together with the entry of that Ship in respect of that interest) may be terminated by the Assured only at noon GMT on 20th February of any year with not less than 30 days' written notice to the Association;
- 26.2.2** in respect of any Assured's interest in an entered Ship (together with the entry of that Ship in respect of that interest) may be terminated by the Association at any time with not less than 7 days' written notice to the Assured or, in the event that the Assured declares or manifests an intention not to pay Calls or any other amount due to the Association, whether such Calls or any other amount due to the Association be then currently due and payable or payable in the future, with immediate effect upon written notice to the Assured.
- 26.3** In the event of any sale, disposal or transfer by the Association of the whole or any part of the undertaking, property, assets or liabilities of the Association to any third party carrying on the whole or any part of the business of the Association in succession to the Association (the "Transferee"), any contract of insurance in respect of any Assured's interest in an entered Ship (together with the entry of that Ship in respect of that interest) may, subject to the approval of the Committee (provided such approval was decided upon at a meeting of the Committee at which not less than two thirds of the Committee members present and entitled to vote voted in favour of the resolution to give such approval, or is the subject of a written resolution signed by all members of the Committee), be:
- 26.3.1** novated, in whole or in part, to the Transferee on such terms as the Committee may in its sole discretion deem necessary for the purpose of implementing or giving effect to any such sale, disposal or transfer; and/or
- 26.3.2** terminated by the Association in accordance with Rule 26.2.2 and replaced with a new contract of insurance between each Assured and the Transferee on the same terms mutatis mutandis as that Assured's original contract of insurance with the Association.

For the purpose of giving effect to this Rule 26.3, the Assured hereby consents to any novation, termination and entry into a replacement contract of insurance as referred to in Rules 26.3.1 and 26.3.2 and appoints the Association (acting through one or more members of the Committee or the Managers) as agent for and on its behalf and in its name to enter into and execute any such novation, termination and replacement contract of insurance.

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**RULE 27 TERMINATION UPON SALE, LOSS, ETC.**

- 27.1** Unless otherwise agreed by the Association in writing, any contract of insurance in respect of any Assured's interest in an entered Ship shall terminate (together with the entry of that Ship in respect of that interest) upon the happening of any of the following events:
- 27.1.1** the Assured parting with or assigning his interest in the Ship whether by bill of sale or other formal document or in any other way whatsoever;
- 27.1.2** the Ship is a total loss or is accepted by the hull underwriters as being a constructive, compromised or arranged total loss, save as regards the liabilities, costs and expenses resulting directly from the casualty which has given rise to such total loss or which are incurred as a result of measures taken with the Association's approval for the purpose of avoiding or minimising any such liabilities;
- 27.1.3** the Ship being missing for ten days from the date she was last heard of or from her being posted at Lloyd's as missing, whichever shall be the earlier.
- 27.2** The Association may terminate any contract of insurance in respect of any Assured's interest in an entered Ship (together with the entry of that Ship) upon there being any change in the management or operation of the entered Ship.

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**RULE 28 TERMINATION UPON INSOLVENCY OR LIQUIDATION**

- 28.1** Any contract of insurance in respect of any Assured's interest in an entered Ship shall terminate (together with the entry of that Ship in respect of that interest) upon the happening of any of the following events:
- 28.1.1** where the Assured is an individual upon his death, or upon a receiving order being made against him, or upon his becoming bankrupt, or upon his making any composition or arrangement with his creditors generally, or upon his becoming incapable by reason of mental disorder of managing and administering his property and affairs;
- 28.1.2** where the Assured is a corporation, upon the occurrence of any of the following:
- 28.1.2.1** dissolution;
- 28.1.2.2** a resolution for voluntary winding-up being passed (other than for purposes of company or group reorganisation);
- 28.1.2.3** an order for compulsory winding-up being made;
- 28.1.2.4** possession being taken by or on behalf of the holder(s) of any debenture(s) secured by a floating charge of any property comprised in or subject to the charge;
- 28.1.2.5** any event analogous to or having an effect analogous to those set out in Rules 28.1.2.1 to 28.1.2.4 above under the applicable laws and proceedings of any jurisdiction;
- 28.1.2.6** any action being taken by the Assured intended to procure the occurrence of any or more of the events set out in Rules 28.1.2.1 to 28.1.2.5 above.
- 28.2** Where the Assured is a corporation, the Association may terminate any contract of insurance in respect of that Assured's interest in an entered Ship (together with the entry of that Ship in respect of that interest) upon the happening of any of the following events:
- 28.2.1** the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets;
- 28.2.2** the making of any general assignment, arrangement or composition with or for the benefit of creditors;
- 28.2.3** an order granting protection from creditors being made;
- 28.2.4** any event analogous to or having an effect analogous to those set out in Rules 28.2.1 to 28.2.3 above under the applicable laws and procedures of any jurisdiction;
- 28.2.5** any action being taken by the Assured intended to procure the occurrence of any or more of the events set out in Rules 28.2.1 to 28.2.4 above.

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**RULE 29 TERMINATION**

- 29.1** If not previously terminated under Rules 26-28, any contract of insurance in respect of any interest in an entered Ship of an Assured who under the proviso in Rule 3.1.2 has ceased to have any rights of recovery by reason of his failure to pay Calls or any other amount due to the Association shall formally terminate (together with the entry of that Ship in respect of that interest) at noon GMT on the next following 20th February unless in the meantime the Association has offered terms for reinstatement of the Assured's cover (which the Association shall in no way be obliged to do) and the same have been accepted by the Assured.
- 29.2** Where the contract of insurance and/or the entry of the entered Ship is terminated under any Rule, it is agreed that the Association is entitled to a lien over the previously entered Ship.

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## **RULE 30 REINSURANCES**

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**30.1** The Association may:

**30.1.1** accept reinsurance of risks insured by any other insurer or reinsurer to the extent that such risks might have been directly insured by the Association for the same persons and in respect of the same interests in the Ships concerned as by the original insurer. The terms of such reinsurance shall be as agreed between the Association and such insurer or reinsurer and such insurer or reinsurer shall, unless otherwise agreed by the Association, be bound by and be subject to these Rules as if he was an Assured and had entered a Ship in the Association for insurance;

**30.1.2** effect reinsurances of any risks insured or reinsured by the Association.

**30.2** The Assured shall not be entitled to recovery in respect of that part of any legal costs, charges or disbursements which is not recovered by the Association under any reinsurance(s) arranged by the Association because of a shortfall in recovery from reinsurers thereunder by reason of a sanction, prohibition or adverse action against them by a state, international organisation or other authority or the risk thereof if payment were to be made by such reinsurers. For the purposes of this Rule 30.2, "shortfall" includes any failure or delay in recovery by the Association by reason of reinsurers making payment into a designated account in compliance with the requirements of any state, international organisation or other authority. The provisions of this Rule 30.2 shall cease to apply in respect of any shortfall to the extent the same is subsequently recovered by the Association under any reinsurance(s) arranged by the Association.

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## **RULE 31 ANNUAL AND SUPPLEMENTARY CALLS**

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**31.1** The Assureds who have entered Ships for insurance in the Association in respect of any Policy Year (not being a year closed in accordance with Rule 33) shall (unless such entry is a Fixed Premium Entry or as may be otherwise specifically agreed) provide in accordance with the provisions of Rules 31 and 32 by way of Annual Calls or Annual and Supplementary Calls, all funds which in the sole discretion of the Committee are required to meet:

**31.1.1** 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, such excess (if any) of the claims and other outgoings in respect of any category of such business over the Calls payable to the Association in respect thereof as the Committee may charge in whole or in part to such Policy Year, and 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 or pooling agreement concluded between the Association and such other insurer;

**31.1.2** such of the general expenses of the Association as the Committee may from time to time charge against the insurance business of the Association in respect of such Policy Year;

**31.1.3** such transfers to the reserves or other accounts of the Association (as referred to in Rule 37) and for subsequent application for the purposes of such reserves or other accounts or otherwise as the Committee may determine;

**31.1.4** any deficiency (but also taking account of any surplus) which has occurred or may be thought likely to occur in any Policy Years;

**31.1.5** any sums which the Association may by any governmental or other similar legislation or regulation be required to set aside in order to establish and/or maintain an adequate solvency margin, guarantee fund and/or other fund or capital requirement in respect of any Policy Year.

**31.2** Towards such funds for each Policy Year Assureds shall pay an Annual Call, at the rate assessed in respect of each Assured by the Managers and shown in each Ship's Certificate of Entry for that Policy Year on the entered tonnage or on each Ship therein stated and pro rata for Ships entered for less than the whole Policy Year.

**31.3** Further towards such funds, if determined as aforesaid by the Committee to be required in accordance with Rule 31.1 for any Policy Year, the Committee may direct that a Supplementary Call(s) shall be paid, the amount(s) of which shall be stated as a uniform percentage of the Annual Call payable by each Assured for that Policy Year.

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## **RULE 32 GENERAL INCREASE OR REDUCTION IN CALLS**

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**32.1** The Committee may determine a general increase or reduction in annual call rates for the immediately following Policy Year which shall be notified to Assureds not later than the previous 31st December so as to apply with effect from the start of the immediately following Policy Year to all Ships whose entries are then continuing on the basis of which Annual Calls shall be assessed

in respect of each Assured by the Managers and shown in each Ship's Certificates of Entry for that Policy Year.

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**RULE 33 CLOSING OF POLICY YEARS**

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- 33.1** With effect from such date as the Committee shall in its sole discretion determine after the end of each Policy Year, but no sooner than 36 months from its commencement, the Committee shall declare the same closed for Supplementary Calls, after which no further Supplementary Calls shall be levied in respect thereof.
- 33.2** The Committee may declare any Policy Year closed for Supplementary Calls notwithstanding that it is known or anticipated that there are in existence or may in the future arise legal costs, charges or disbursements recoverable in respect of such Policy Year which have not yet accrued or the validity, extent or amount of which have yet to be established.
- 33.3** If upon the closing of any Policy Year it shall appear to the Committee that the whole of the Calls and other receipts in respect of such Policy Year (and of all transfers from reserves and provisions made for the credit of or in respect of that Policy Year), is unlikely to be required to meet the claims, expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 31), then the Committee may decide to dispose of any excess which in their opinion is not so required in one or any of the following ways:
- 33.3.1** by transferring the excess or any part thereof to the reserves of the Association in accordance with Rule 37;
- 33.3.2** 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;
- 33.3.3** by returning the excess or any part thereof to those Assureds entered in respect of such Policy Year (unless such entry is a Fixed Premium Entry) in proportion to the Annual Call payable by Assureds 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 Assured whose entry ceased in the course of such Policy Year by reason of Rule 28 or Rule 29 or whose liability for Calls in respect of such Policy Year has been assessed under the provisions of Rule 35.
- 33.4** If upon the closing of any Policy Year it shall appear to the Committee that the claims, expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 31) exceed or are likely to exceed the totality of the Calls and other receipts in respect of such Policy Year (and of all transfers from reserves and provisions made for the credit of or in respect of such Policy Year), then the Committee may decide to provide for such deficiency in any one or more of the following ways:
- 33.4.1** by transferring funds from the reserves or other accounts of the Association;
- 33.4.2** by transferring funds standing to the credit of any different closed Policy Year;
- 33.4.3** by levying a Supplementary Call(s) in respect of any open Policy Year with the intention (as permitted by Rule 31) of applying a part thereof to meet any such deficiency.
- 33.5** At any time after any Policy Year shall have been closed the Committee may resolve to amalgamate the accounts of two or more closed Policy Years and to pool the amounts standing to the credit of the same. If the Committee 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.

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**RULE 34 PAYMENT OF CALLS AND PREMIUMS**

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- 34.1** Save as provided below in this Rule 34.1, Calls and (in relation to Fixed Premium Entries) fixed premiums shall be payable in such instalments and on such dates as the Committee shall specify, and without set-off of any amount due or alleged to be due by the Association to any Assured on any ground or of any kind whatsoever including set-off which might otherwise have arisen by reason of the bankruptcy or winding up of the Assured (whether or not any set-off has been allowed by the Association at any time in the past) except to the extent that in requiring payment of the subject amount the Association itself shall have already allowed a set-off or credit in favour of the Assured. Upon the termination of an Assured's contract of insurance all Calls (including all instalments thereof falling due for payment after the time of such termination) or (in relation to Fixed Premium Entries) fixed premiums in respect of such contract and remaining unpaid at the time of such termination shall become immediately due and payable notwithstanding that the



- due date for payment in respect of any such Calls (including any instalment thereof) or fixed premiums falls after the time of such termination.
- 34.2** The Association may decline a request by any Assured or former Assured to pay all or any part of any Call(s) or fixed premiums payable by him in a currency other than U.S. dollars.
- 34.3** A copy of the resolution of the Committee authorising any Call(s) certified by the Managers to be a true copy and a certificate signed by the Managers with the amount due by an Assured in respect of such Call(s) shall be sufficient evidence of the Call(s) and the amount due by that Assured in respect thereof.
- 34.4** The amount or amounts specified in Rule 34.3 as being payable by an Assured or former Assured shall for all purposes (including the purposes of Rule 29) be and be deemed to be properly due as a debt from the Assured or former Assured to the Association at the time or times so specified and he shall have no right to question an assessment made pursuant to Rule 34.3 save that after payment thereof in full to the Association, he shall be entitled to claim repayment thereof in whole or in part by referring such matter to arbitration in accordance with Rule 42.
- 34.5** Without prejudice to any other provisions contained in these Rules the Committee may in its sole discretion at any and all times determine the rate of interest which shall be payable to the Association on any Call(s) or other amounts due to the Association (including amounts due under Rule 35) as from the due date of payment or such later date as the Committee may in its sole discretion consider fit.
- 34.6** If any Annual and/or Supplementary Call(s) or other payment due from an Assured or former Assured to the Association is not paid and if the Association 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 Committee may in its sole discretion determine, Call(s) may be levied in accordance with Rules 31 and 32, as the case may be, or reserves may be applied in accordance with Rules 33 and 37.
- 34.7** An Assured shall pay on demand to the Association the amount of any premium tax or other excise tax for which the Association determines it or the Assured has or may become liable and shall indemnify and hold harmless the Association in respect of any loss, damage, liability, cost or expense which the Association may incur in respect of such premium tax or other excise tax.

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## **RULE 35 RELEASE CALLS**

- 35.1** Subject to the provisions of this Rule 35, upon or at any time after the termination of entry of any Ship for any reason, a Release Call may be charged by the Association in lieu of any Supplementary Call for open Policy Years during which such Ship shall have been entered.
- 35.2** The amount of any Release Call which shall be so charged for any open Policy Year shall be such percentage of the Annual Call as the Committee shall from time to time determine.
- 35.3** Once paid, a Release Call shall not in any circumstances be returnable, notwithstanding any subsequent reduction in the amounts chargeable for the Policy Years concerned; nor shall the Assured have any right to share in any return of surplus for any such Policy Year in respect of a Ship for which any Release Call has been paid or is payable, but payment of a Release Call shall discharge an Assured from any future liability for any Supplementary Call in lieu of which such Release Call has been charged.
- 35.4** At any time after the termination of entry of any Ship, at the request in writing of any Assured who would otherwise be liable to pay any Supplementary Call in respect thereof, the Association may (but shall not be required to) assess and give notice to the Assured of the amount chargeable in accordance with Rule 35.2 by way of Release Call in respect of that Ship for all open Policy Years or such of them as may be specified in the request. If the Assured does not accept the amount so chargeable by way of Release Call within 30 days of the Association's notice, liability to pay any Supplementary Call (whether levied before, on or after the date of the Association's notice) will continue subject to the right of the Assured to make a further request which shall operate afresh as described above and to the right of the Association to impose a Release Call in accordance with Rule 35.5. If the Assured accepts the amount so chargeable by way of Release Call, debit notes will be issued and shall be due and payable by the Assured immediately.
- 35.5** Whether or not any request shall have been made in accordance with Rule 35.4, and notwithstanding the acceptance or otherwise by the Assured pursuant to that Rule, upon or at any time after the termination of entry of any Ship, a Release Call in respect of any Supplementary Call in the relevant amounts chargeable in accordance with Rule 35.2 for all open Policy Years during which such Ship shall have been entered may be imposed by the Association upon any

Assured who would otherwise be liable to pay any such Call. Debit notes for such Release Calls may be rendered without previous notice and shall be due and payable immediately.

- 35.5.1** PROVIDED that such debit notes (and the imposition of Release Calls thereby effected) shall be cancelled if within 30 days from the date of the debited Release Call (unless otherwise agreed by the Association in writing) the Association shall have received a bank guarantee which will pay on the written demand of the Association any future Supplementary Call in respect of the Ship concerned, for which the Assured shall remain liable in full. Such bank guarantee shall be:
- 35.5.1.1** enforceable in London;
  - 35.5.1.2** acceptable to the Association; and
  - 35.5.1.3** for an amount equal to the debited Release Call(s).
- 35.6** If, while a Release Call which has become due and payable is unpaid (and if payment of future Supplementary Calls is not guaranteed in accordance with Rule 35.5.1), the Committee determines in accordance with Rule 35.2 that a Release Call for any relevant Policy Year shall be charged at a higher percentage of the Annual Call or (as the case may be) a higher amount per gross ton, or where not determined gross registered ton, than the percentage or amount that was applicable at the time when the Release Call was notified pursuant to Rule 35.4 or imposed pursuant to Rule 35.5 (as the case may be), the Association may apply the increase to the outstanding Release Call and render a debit note for the appropriate additional higher amount, which shall be due and payable immediately, but the proviso in Rule 35.5.1 shall apply mutatis mutandis to any debit note issued pursuant to this Rule.
- 35.7** The Association may, at any time while a Release Call which has become due and payable is unpaid (and if payment of any future Supplementary Call is not guaranteed in accordance with Rule 35.5.1), cancel the Release Call by notice in writing to the Assured, whereupon the Assured shall be liable to pay all Supplementary Calls in respect of which the Release Call had been charged, whether levied before, on or after the date of cancellation.

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## **RULE 36 LAID-UP RETURNS**

- 36.1** Subject to any special terms or conditions which may have been agreed, an entered Ship safely laid up and so maintained in any safe port or place without cargo on board and free of time or voyage charterparty commitment for 90 or more consecutive days computed from the day of finally being laid up there to the day of departure, one only being included, shall be allowed a pro rata return of Calls for such period at 50% after deduction of such allowance for reinsurance, costs and expenses as the Association may from time to time determine.
- 36.2** The Association shall be entitled to reject any claim for a return of Calls made under this Rule in the event that the Assured does not give the Association prompt notice of the lay up of an entered Ship, together with details of the port or place at which the entered Ship is to be laid up, and in the event that the Assured has not given the Association notice in writing of any claim within 3 months of the entered Ship ceasing to be laid up.

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## **RULE 37 RESERVES**

- 37.1** The Committee may in its sole discretion establish, maintain and apply such reserve funds or accounts, including without limitation a Calls Equalisation Account, for any or all of the following contingencies or purposes:
- 37.1.1** to stabilise the level of Supplementary Calls from one Policy Year to another;
  - 37.1.2** to eliminate the need to levy Supplementary Calls in respect of any Policy Year, whether past, present or future, or to reduce the need for or level of any such Calls;
  - 37.1.3** to eliminate or reduce any deficiency which may have occurred or is considered likely to occur in respect of any closed Policy Year;
  - 37.1.4** to protect the Association against any actual or prospective losses on foreign exchange transactions or on realised or unrealised investments; or
  - 37.1.5** such other contingency or purpose beneficial to the Association as the Committee may in its sole discretion determine.
- 37.2** The Committee may in its sole discretion apply the whole or any part of any reserve fund or account for any of the contingencies or purposes set out in Rule 37.1 above and in respect of any Policy Year irrespective of the purpose or purposes for which that reserve fund or account was established and irrespective of the Policy Year or Years from which the funds or account originated, provided that such application shall be considered by the Committee to be beneficial to the Association. The Committee may also in its sole discretion transfer sums from one reserve to another within the same Class, but shall not be entitled to use any reserve fund or account

established from Calls or funds of one Class for the benefit of any other Class, nor to transfer such reserve fund or account between different Classes.

**37.3** Reserve funds or accounts may be raised by the Committee resolving that there shall be transferred to and applied for the purposes of any such reserve funds or accounts a specified amount or proportion of:

**37.3.1** any Annual or Supplementary Calls, upon the rate of such Calls being decided; or

**37.3.2** any funds standing to the credit of a Policy Year upon such Policy Year being closed.

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## **RULE 38 INVESTMENTS**

**38.1** The funds of this Class may be invested under the direction of the Committee by means of the purchase of such stocks, shares, bonds, debentures or other securities or the purchase of such currencies, commodities, or other real or personal property, or by means of being deposited in such accounts on such terms and in such manner as the Committee may in its sole discretion determine. The funds of this Class may also be invested by such other method as the Committee may approve.

**38.2** Unless the Committee decides otherwise, 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 as one fund.

**38.3** If any funds shall have been so pooled and invested the Committee may in its sole discretion apportion as it thinks fit the income arising on the pooled investments (including capital gains and losses and gains and losses on foreign exchange transactions) among and between the different Policy Years, reserves, funds and accounts from which the invested funds originated.

**38.4** Without prejudice to Rule 38.3 above, the Committee may, after the closing of any Policy Year, in its sole discretion direct that such 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 fund or account maintained by the Association.

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## **RULE 39 PROVISION FOR EXPENSES**

**39.1** Towards the expenses attendant on carrying into effect the purposes and object of this Class the Association shall pay to the Managers out of the funds of this Class an amount as the Committee shall from time to time determine.

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## **RULE 40 NOTICES**

**40.1** Service of any notice or other document required under these Rules by the Association on an Assured may be sent through the post in a prepaid letter or by courier, facsimile or by Electronic Means all of which shall be addressed to the Assured at any address identified by him to the Association expressly or impliedly as his place of business,

**40.1.1** PROVIDED that if the entry of a Ship in the Association on behalf of an Assured is through a broker or other agent on behalf of an Assured or if the Association has been notified that a broker or other agent is to be involved in any manner whatsoever with the entry of the Ship, any such notice or other document may be addressed to that broker or agent and served at the address of any place of business of that broker or agent and such service shall be deemed to be service on the Assured. In these Rules “address” in relation to ‘Electronic Means’ has the meaning set out in paragraph 7(1) of Part 3 of Schedule 4 and paragraph 7(1) of Part 3 of Schedule 5 of the Companies Act 2006.

**40.2** Service of any notice or other document required under these Rules by an Assured on the Association may be by any of the methods described in Rule 40.1, sent to the address of the registered office of the Association.

**40.3** If posted, any such notice or other document as referred to in Rules 40.1, 40.1.1 and 40.2 shall be deemed to have been served 24 hours after the letter containing the same was put into the post, and in proving such service it shall be sufficient to prove that the letter containing the notice or document was properly addressed and put into the post as a prepaid letter. Any such notice or other document sent by courier shall be deemed to have been served at the time of delivery and any such notice or other document sent by facsimile or by Electronic Means shall be deemed to have been served at the time it was sent and in proving such service it shall be sufficient to prove that the notice or other document was duly despatched.

- 40.4** Every successor, legal personal representative, receiver, curator bonis or other legal curator, trustee in bankruptcy or liquidator of an Assured shall be bound by a notice or other document given as aforesaid if sent as aforesaid, notwithstanding that the Association may have notice of the Assured's death, mental disorder, bankruptcy, liquidation, incapacity or administration.

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#### **RULE 41 FORBEARANCE**

- 41.1** No act, omission, course of dealing, forbearance, delay or indulgence of any kind by the Association in enforcing any of these Rules or any contractual terms or conditions, shall be treated as any waiver of any of the Association's rights thereunder, the strict enforcement of which the Association shall at all times and without notice be entitled to insist upon notwithstanding any of the matters aforesaid.

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#### **RULE 42 JURISDICTION AND LAW**

- 42.1** These Rules and any contract of insurance entered into by the Association shall be governed by and construed in accordance with English law and shall be subject to the provisions of the Marine Insurance Act 1906 and, upon its entry into force, the Insurance Act 2015 and any statutory modifications thereof except insofar as such Acts or modification may have been excluded by these Rules or by an terms of such contracts.

- 42.1.1** Upon its entry into force, the following provisions of the Insurance Act 2015 ("the Act") are excluded as follows:

- (i) Section 8 and Section 14 of the Act are excluded. As a result any breach of the duty of fair presentation and/or the duty of good faith shall entitle the Association to avoid this insurance in all circumstances.
- (ii) Section 10 of the Act is excluded. As a result if the Assured fails to comply with any warranty in these Rules and/or any contract of insurance, 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 if the Assured fails to comply with any term of these Rules and/or the contract of insurance, 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 any contract of insurance in respect of the Assured in the event that a fraudulent claim is submitted by or on behalf of the Assured and/or any affiliated or associated company of the Assured.
- (v) Section 13A of the Act is excluded. Any contract of insurance between the Association and the Assured 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 a claim within a reasonable time save that the Association may not deliberately or recklessly fail to do so.

- 42.2** Subject to Rule 33.4 of Class 5 if any difference or dispute shall arise between an Assured (or any other person) and the Association out of or in connection with these Rules, or out of any contract between the Assured and the Association, or as to the rights or obligations of the Association or the Assured thereunder, or in connection therewith, or as to any other matter whatsoever, such difference or dispute shall be referred to arbitration in London in accordance with the Arbitration Act 1996 and any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Rule. The arbitration shall be conducted in accordance with the London Maritime Arbitrators' Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators and the arbitrators shall all be full members of the LMAA and/or Queen's Counsel practising at the Commercial Bar in London.

A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice

that it has done so within the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement. Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In any such arbitration, any matter decided or stated in any judgment or arbitration award (or in any reasons given by an arbitrator for making any award) relating to proceedings between the Assured and any third party shall be admissible in evidence.

No Assured 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.

**42.3** In respect of any monies whatsoever which the Association considers are due to it, such as but not limited to, outstanding Calls or fixed premiums ("Sums Due"), the Association may but shall not be obliged to commence and maintain proceedings to obtain payment in its sole discretion in the following ways:

- (i) in arbitration in London pursuant to Rule 42.2 above; or
- (ii) in the High Court of Justice of England and, if it does so, the Assured hereby submits to the jurisdiction of that Court in respect of any such action.

Nothing in this Rule 42 including paragraph 2 or in any other Rule or otherwise shall preclude the Association from taking any legal action of whatsoever nature in any jurisdiction at its sole discretion, and subject to and/or under the law of such jurisdiction, in order to pursue or enforce any of its rights whatsoever and howsoever arising including but not limited to:

- (a) Recovering Sums Due; and/or
- (b) Obtaining security for Sums Due; and/or
- (c) Preserving the assets of the Assured; and/or
- (d) Enforcement of its rights of lien whether arising by law or under these Rules.