



**The  
London  
P&I Club**

## **CLASS 5**

### **THE PROTECTING AND INDEMNITY RULES 2021/2022**

**PROMPT NOTICE OF ANY CLAIM OR CIRCUMSTANCES THAT MIGHT GIVE RISE TO A CLAIM SHOULD BE GIVEN TO  
THE MANAGERS, A. BILBROUGH & CO. LTD**

**The London P&I Club is the trading name of The London Steam-Ship Owners' Mutual Insurance Association Limited and its subsidiary  
The London P&I Insurance Company (Europe) Limited.**

The London Steam-Ship Owners' Mutual Insurance Association Limited. Registered in England No 10341.

Registered Office: 50 Leaman Street, London, E1 8HQ.

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

The London P&I Insurance Company (Europe) Limited, a private limited liability company registered in Cyprus, No HE410091.

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## CLASS 5

### THE PROTECTING AND INDEMNITY RULES

#### 2021/2022

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#### RULE 1 – INTRODUCTORY

**1.1** In these Rules, unless the context requires otherwise:

“Annual Call”	means an annual call levied pursuant to Rule 32.2;
“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 Principal Assured, a Co-assured, an Other Assured and persons with Fixed Premium Entries;
“Board”	means the board of Directors for the time being of the Association;
“Brexit Event”	has the meaning given in Rule 1.14;
“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 10, 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 5, the Protecting and Indemnity 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 23.1 and “Co-assured” shall be construed accordingly;
“Consortium Agreement”, “Consortium Claim” and “Consortium Ship”	have the meanings given in Rule 11.6.1;
“Convention Limit”	has the meaning given in Rule 33.1.1;

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“Directors”	means the directors 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 in Rule 1.6;
“Group General Excess Loss Contract”	has the meaning given in Rule 33.1.1;
“Group Reinsurance Limit”	has the meaning given in Rule 33.1.1;
“Himalaya Clause”	means a clause stipulating that the servant, agent, or independent contractor employed by the contracting party shall be entitled to the protection and benefit of every right, exemption, limitation, immunity or defence available to that contracting party and that the contracting party is contracting not only on his own behalf but as agent or trustee for such persons;
“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;
“Knock for Knock”	means a provision or provisions stipulating that: <ul style="list-style-type: none"> <li>(a) each party to a contract shall be similarly responsible for loss of or damage to, and/or death of or injury to, any of its own property or personnel, and/or the property or personnel of its contractors and/or of its and their subcontractors and/or of other third parties, and that</li> <li>(b) such responsibility shall be without recourse to the other party and arise notwithstanding any fault or neglect of any party, and that</li> <li>(c) each party shall, in respect of those losses, damages or other liabilities for which it has assumed responsibility, correspondingly indemnify the other against any liability that that party shall incur in relation thereto.</li> </ul>
“Managers”	means the managers from time to time of the Association;
“Member”	means an Assured who is a member of the London Steam-Ship Owners’ Mutual Insurance Association Limited (a company limited by guarantee registered in England under number 10341), in accordance with the Companies Act 2006 and the Articles of Association of such company;
“Members’ Committee”	means the Members’ Committee for the time being of the Association’s group;

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“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 23.2;
“Overspill Call”	has the meaning given in Rule 33.1.1;
“Overspill Claim”	has the meaning given in Rule 33.1.1;
“Overspill Claim Date”	has the meaning given in Rule 33.1.1;
“Overspill Reserve”	has the meaning given in Rule 33.1.1;
“Policy Year”	has the meaning given in Rule 2.2;
“Pooling Agreement”	has the meaning given in Rule 33.1.1;
“Principal Assured”	means the Assured who is named as Principal Assured in the Certificate of Entry (or any amendment thereto);
“Release Call”	means a release call charged pursuant to Rule 36.1;
“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, (b) a fixed platform or fixed rig and (c) a wing-in ground craft), used or intended to be used for any purpose whatsoever in navigation or otherwise on, under, over or in water or any part thereof or any proportion of the tonnage thereof or any share therein; and
“Subsidiary”	means any Subsidiary (within the meaning of section 1159 of the Companies Act 2006) of The London Steam-Ship Owners’ Mutual Insurance Association Limited (a company limited by guarantee registered in England under number 10341) providing insurance in its Protecting and Indemnity Class to Members; and
“Supplementary Call”	means a supplementary call levied pursuant to Rule 32.3.
In addition, in these Rules:	<p>words importing the singular number only shall include the plural number and vice versa;</p> <p>words importing the masculine gender only shall include the feminine gender;</p> <p>words importing persons shall include individuals, corporations, partnerships and firms (whether or not having a separate legal personality); and</p>

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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 31.1.1) 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 Board 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 Board from time to time, or any convention, direct action law, statute or regulation.
- 1.4** All insurance afforded by a Subsidiary within its Protecting and Indemnity Class and all contracts relating thereto shall be deemed to incorporate the provisions of these Rules, save in so far as those provisions are varied as follows:
- 1.4.1** unless the context requires otherwise, all references in these Rules to “the Articles” shall be to the Articles of Association (or foreign equivalent) of the relevant Subsidiary;
  - 1.4.2** unless the context requires otherwise, all references in these Rules to “the Association” shall be to that Subsidiary;
  - 1.4.3** unless the context requires otherwise, all references in these Rules to “the Rules” shall be to these Rules as varied by this Rule 1.4; and
  - 1.4.4** in Rule 1.2, the final sentence shall be replaced with the following: “Without prejudice to the generality of the foregoing, the provisions of the Articles relating to Assureds and/or to Co-assureds shall be binding on all Assureds and Co-assureds notwithstanding that they are not members of that Subsidiary.
- 1.5** 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.
- 1.5.1** In the case of additional risks that may be covered by the Association and, in the case of Assureds with a Fixed Premium Entry, the risks set out in Rule 9, the Association may reinsure in whole or in part such risks and where such reinsurance is arranged:

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- 1.5.1.1 the Assured shall be entitled to recover only the net amount actually recovered under such reinsurance arrangements, together with that portion (if any) of the risk or risks retained by the Association; and
  - 1.5.1.2 the Managers shall be at liberty in their sole discretion to delay making payment to the Assured until after recovery under such reinsurance.
- 1.6 Notwithstanding the Articles and these Rules, an Assured may be insured within this Class on special terms that he is liable to pay a fixed premium to the Association (a "Fixed Premium Entry") and/or upon such special terms as to the nature and extent of the risks covered, as to policy terms and conditions and otherwise howsoever as the Board may think fit, and may accept as such entries reinsurance from other insurers.
- 1.7 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 so 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 (or the corresponding Class of a Subsidiary) of any interest in them shall have terminated under these Rules (or the Rules of the corresponding Class of a Subsidiary),
  - 1.7.1 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 Board in accordance with Rules 32 and 33; and
  - 1.7.2 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;
  - 1.7.3 PROVIDED that no person shall by virtue of being an Assured with a Fixed Premium Entry be entitled to be a Member; and
  - 1.7.4 PROVIDED that no person shall become a member of a Subsidiary following the acceptance by the Association or a Subsidiary of an application made by or on behalf of such person for insurance of that person's insurable interest in any Ship.
- 1.8 All the Members for the time being in this Class shall form one separate Class of the Association. The Board and Managers of the Association shall be the Board and Managers of this Class.
- 1.9 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,

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Other Assureds and Fixed Premium Entries, shall be understood to include formerly entered Ships, former Assureds, former Co-assureds, former Other Assureds and former Fixed Premium Entries.

- 1.10** 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.
- 1.11** 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.
- 1.12** The business of this Class shall, subject to the Articles, be conducted according to these Rules and shall be managed by the Board 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 Board may delegate any of its powers to sub-committees consisting of such member or members of the Board or such other persons in each case as it thinks fit.
- 1.13** Without prejudice to the generality of Rule 1.12, the Board 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 Board 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 Board may determine. The Board 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.
- 1.14** This Rule 1.14 shall only apply following the withdrawal from the European Union by the United Kingdom, including where a transition agreement has been effected ("Brexit Event").
- 1.14.1** Subject to Rule 1.14.2 and to the extent that the Association as a consequence of a Brexit Event is:
- 1.14.1.1** not permitted by applicable law or regulation to perform any contract of insurance (including in respect of this or any other prior Policy Year) within this Class (or any part thereof); and/or
- 1.14.1.2** would become exposed to any legal or regulatory sanction as a consequence of performing such a contract (or any part thereof),
- such contract or such part that cannot be performed (per Rules 1.14.1.1 or 1.14.1.2) may instead be performed by a Subsidiary.
- 1.14.2** If and from such time as Rule 1.14.1 applies:
- 1.14.2.1** The Association shall no longer be obliged to perform the contract or such part that cannot be performed (per Rules 1.14.1.1 or 1.14.1.2) and which is instead performed by a Subsidiary and shall have no liability whatsoever for such non-performance.

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- 1.14.2.2** The Subsidiary will only perform the contract to the extent to which the Association would have been obliged to do so.
- 1.14.2.3** Accordingly, the contract will be performed as if only one of the Association and such Subsidiary were a party to it, including (but not limited to) the following respects:
- 1.14.2.3.1** All limits of cover and insurance, aggregate limits of cover and insurance (including the overall aggregate limit) and excesses; and
- 1.14.2.3.2** The Assured's obligations in respect of Calls and premiums and otherwise will be discharged by making payment to the Association or such Subsidiary, as the Association directs.

#### RULE 2 – CALLS AND PREMIUMS

- 2.1** The funds necessary for the purposes described in Rule 32 shall be determined by the Board with reference to each successive period of 12 months commencing at noon GMT on 20th February each calendar year and such funds shall be contributed mutually by Assureds (without prejudice to Rule 23) 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.

#### RULE 3 – RIGHT TO RECOVER AND SUBROGATION

- 3.1** If any Assured shall incur liabilities, costs or expenses 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 liabilities, costs and expenses 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 liabilities, costs or expenses 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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**3.2** The Association shall be subrogated to all rights and claims which an Assured may have against any person in relation to any matter and/or claim giving rise to a right of recovery by that Assured against the Association or in relation to any matter and/or claim in respect of and/or as a result of which the Association incurs or may incur liability under any security the Association provides on behalf of an Assured. Each Assured shall notify the Association of any such rights or claims immediately upon becoming aware of the same and shall do all such things and execute all such documents as the Association may require in relation to such rights and claims, including the execution of any assignment of such rights or claims in favour of the Association. Until any such assignment, an Assured shall hold all such rights and claims on trust for the benefit of the Association to the extent of any right of recovery by that Assured from the Association from the time of the relevant incident. All of the foregoing provisions of this Rule shall be without limitation of and without prejudice to any right of subrogation which the Association may have by operation of law.

#### **RULE 4 – UNREASONABLE CONDUCT**

**4.1** The Members' 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 Members' Committee in its sole discretion would have expected an uninsured person acting reasonably in similar circumstances to have taken.

#### **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 and that every material representation as to a matter of expectation is made in good faith. 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.

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- 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 Board 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 Board 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.

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

- 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.

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

- 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 32 and 33, 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**

- 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 Members' Committee in its sole discretion may otherwise determine, there shall be no recovery in respect of any liability, costs or expenses 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

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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 (other than of Overspill Calls) shall be allowed;
- 8.9.2** exclude cover for any liability, costs or expenses 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 liability, costs or expenses 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.

#### **RULE 9 – RISKS COVERED**

**9.1 SUBJECT TO ANY SPECIAL TERMS WHICH MAY BE AGREED IN WRITING AND TO THE PROVISIONS OF RULES 1.5, 23 AND 24, AN ASSURED IS INSURED IN RESPECT OF EACH SHIP ENTERED BY HIM IN THIS CLASS AGAINST THE RISKS SET OUT IN RULES 9.2 – 9.28, PROVIDED that such risks arise:**

- 9.1.1** in respect of the Assured's interest in such Ship; and
- 9.1.2** in connection with the 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.

**9.2 LIABILITY TO PERSONS OTHER THAN SEAMEN**

**9.2.1** Liability to pay damages or compensation for personal injury, illness or death of any person (other than a seaman of an entered Ship, a person engaged to handle the cargo of an entered Ship or a passenger on board an entered Ship) and hospital, medical, funeral and other expenses necessarily incurred in relation to such injury, illness or death,

**9.2.2 PERSONS ENGAGED TO HANDLE CARGO**

Liability to pay damages or compensation for personal injury, illness or death of any person engaged to handle the cargo of an entered Ship,

PROVIDED that:

- 9.2.2.1** cover under Rule 9.2.2 is limited to liabilities arising out of a negligent act or omission on board or in relation to an entered Ship or in relation to the handling of her cargo from the time of receipt of that cargo from the shipper or pre-carrier at the port of shipment until delivery of that cargo to the consignee or onward carrier at the port of discharge;

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**9.2.2.2** where the liability arises under the terms of any contract or indemnity and would not have arisen but for those terms, such liability is not covered under Rule 9.2 but may be recoverable under Rule 9.16 or 9.17;

**9.2.2.3** where the liability is in respect of a person on another Ship, and arises out of a collision between that Ship and the entered Ship, such liability is not covered under Rule 9.2 but may be recoverable under Rule 9.13.

#### **9.2.3 PASSENGERS (PERSONS HOLDING PASSAGE TICKETS)**

Liability to pay damages or compensation:

- (i) for personal injury, illness or death of any passenger and hospital, medical or funeral expenses incurred in relation to such injury, illness or death;
- (ii) to or in respect of passengers on board an entered Ship arising as a consequence of a casualty to that Ship, including the cost of forwarding passengers to destination or return to port of embarkation and of maintenance of passengers ashore;
- (iii) for loss of or damage to the effects of any passenger;

PROVIDED that:

**9.2.3.1** the terms of the passage ticket or other contract between the passenger and the Assured have been approved by the Association in writing and cover for the liabilities set out in this Rule has been agreed between the Assured and the Association in writing on such terms as the Association may require;

**9.2.3.2** there shall be no recovery from the Association under this Rule in respect of liabilities for personal injury or death, or loss of or damage to property, delay or any other consequential loss sustained by any passenger by reason of carriage by air, except where such liability occurs either:

- (i) during repatriation by air of injured or sick passengers or of passengers following a casualty to the entered Ship; or
- (ii) subject always to Rule 9.2.3.3, during an excursion from the entered Ship;

**9.2.3.3** there shall be no recovery from the Association in respect of the contractual liability of an Assured to a passenger whilst on an excursion from the entered Ship in circumstances where either:

- (i) that contract has been separately entered into by the passenger for the excursion, whether or not with the Assured; or
- (ii) the Assured has waived any or all of his rights of recourse against any sub-contractor or other third party in respect of the excursion;

**9.2.3.4** in the context of Rule 9.2.3 (ii), "casualty" shall mean an incident involving either (i) a collision, stranding, explosion, fire, or any other cause affecting the physical condition of the entered Ship 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.

### **9.3 INJURY AND DEATH – SEAMEN**

**9.3.1** Liability to pay damages or compensation for personal injury or death of any seaman of an entered Ship and hospital, medical, funeral and other expenses necessarily incurred in

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relation to such injury or death, including expenses of repatriating the seaman and sending abroad and/or awaiting a substitute to replace him,

**9.3.1.1** PROVIDED that where the liability arises or the costs or expenses are incurred under the terms of a crewing agreement, collective agreement or other contract of service or employment and would not have arisen but for those terms, such liability is only covered to the extent that those terms shall have been previously approved by the Association in writing.

**9.3.1.2** PROVIDED that, subject to Rule 9.3.1.1, where the liability arises or the costs or expenses are incurred while a seaman is on leave, the seaman shall be deemed to have been serving at the material time on the Ship on which he last served prior to his injury or death.

#### **9.4 ILLNESS – SEAMEN**

**9.4.1** Liability to pay damages or compensation for illness or industrial disease of a seaman of an entered Ship and hospital, medical, funeral and other expenses necessarily incurred in relation to such illness or industrial disease including expenses of repatriating the seaman and sending abroad and/or awaiting a substitute to replace him.

**9.4.1.1** The PROVISOS in Rules 9.3.1.1 and 9.3.1.2 shall apply to recovery under Rule 9.4.

#### **9.5 WAGES AND SHIPWRECK UNEMPLOYMENT INDEMNITY**

**9.5.1** Liability to pay wages to a seaman of an entered Ship:

**9.5.1.1** during medical or hospital treatment abroad or during repatriation consequent upon injury or illness;

**9.5.1.2** in the case of a seaman engaged abroad as a substitute, while awaiting and during repatriation.

**9.5.2** Liability to compensate a seaman who is on board or proceeding to or from an entered Ship for the loss of his employment caused by the actual or constructive total loss of that Ship or to pay his wages in consequence of the actual or constructive total loss of that Ship.

**9.5.3** The PROVISO in Rule 9.3.1.1 shall apply to recovery under Rule 9.5.

#### **9.6 REPATRIATION AND SUBSTITUTES**

**9.6.1** The expense of repatriating a seaman of an entered Ship in unforeseen circumstances and, where applicable, the expense of sending abroad and/or awaiting a substitute to replace him other than under Rule 9.3 or 9.4 where:

**9.6.1.1** the Assured is under statutory obligation to repatriate him;

**9.6.1.2** the Assured is obliged to repatriate him under the terms of a crewing agreement, collective agreement or other contract of service or employment previously approved by the Association in writing;

**9.6.1.3** the seaman's presence is necessarily required to attend his spouse, child or parent who has died or become dangerously ill during the course of the voyage;

**9.6.1.4** the repatriation and/or substitution is necessary for the safety of the crew, entered Ship or her cargo;

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**9.6.2.1** PROVIDED that there shall be no recovery under Rule 9.6 in respect of expenses which arise out of or are the consequence of:

**9.6.2.1.1** the termination of any agreement, whether the termination is in accordance with the terms of that agreement or by mutual consent of the parties to it; or

**9.6.2.1.2** breach by the Assured of any agreement or other contract of service or employment; or

**9.6.2.1.3** sale of the entered Ship; or

**9.6.2.1.4** any other voluntary disposition by the Assured of the entered Ship.

#### 9.7 DIVERSION

**9.7.1** Expenses of diversion of an entered Ship to the extent that those expenses:

**9.7.1.1** represent the net loss to the Assured (over and above such expenses as would have been incurred but for the diversion) in respect of the cost of bunkers, insurance, wages, stores, provisions and port charges; and

**9.7.1.2** are reasonably incurred for the sole purpose of securing treatment for an injured or sick person or while awaiting a substitute for such person or for the purpose of landing stowaways, refugees or persons saved at sea, or for the purposes of attempting to save life at sea.

#### 9.8 SPOUSES AND CHILDREN

**9.8.1** Hospital, medical, funeral, repatriation and other expenses necessarily incurred in relation to the injury, illness or death of any seaman's spouse or child travelling on board an entered Ship.

**9.8.2** Repatriation expenses of a spouse or child travelling on board an entered Ship in the event of the seaman's repatriation or if the spouse's presence is necessarily required to attend a child who has become dangerously ill during the course of the voyage.

#### 9.9 STOWAWAYS, DESERTERS AND REFUGEES

**9.9.1** Expenses, other than under Rule 9.7, incurred by the Assured in discharging his obligations towards or making necessary arrangements for stowaways, deserters, refugees and persons saved at sea but only to the extent that either the Assured is legally liable for them or they are incurred with the prior approval of the Association in writing.

**9.9.2** The cost of employing shore watchmen approved by the Association, or the cost of maintaining crew members, stowaways or refugees ashore in safe custody, in circumstances where a detainment notice is served by the appropriate Authorities;

**9.9.3** PROVIDED that there shall be no recovery from the Association under Rule 9.9.2 unless the Assured can satisfy the Association that proper steps were taken to guard against desertion and landing without permission of the proper authority.

#### 9.10 LIFE SALVAGE

**9.10.1** Sums legally due to third parties who have saved or attempted to save the life of any person on an entered Ship to the extent that such payments are not recoverable under the hull policies of the entered Ship or from cargo owners or underwriters.



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**9.10.2** Such sums as an Assured shall have paid to other vessels which have stood-by or in any way assisted an entered Ship or persons on that Ship, and as shall be determined by the Members' Committee in its sole discretion to have been reasonable; the Members' Committee in its sole discretion may also allow recovery of expenses incurred by a sister-Ship in assisting an entered Ship in these same circumstances.

#### 9.11 EFFECTS OF SEAMEN AND OTHERS

**9.11.1** Liability for loss of or damage to the effects belonging to or in the charge of any seaman, passenger or other person on board an entered Ship,

PROVIDED that:

**9.11.1.1** unless previously agreed by the Association in writing, there shall be no recovery in respect of cash, negotiable instruments, valuables or objects of a rare or precious nature including rare or precious metals or stones;

**9.11.1.2** where the liability arises under the terms of a contract and would not have arisen but for those terms, such liability is only covered to the extent that those terms shall have been previously approved by the Association in writing;

**9.11.1.3** there shall be no recovery in respect of loss of or damage to property, delay or any other consequential loss sustained by any passenger by reason of carriage by air, except where such liability occurs during repatriation by air of injured or sick passengers, or following a casualty to the entered Ship.

#### 9.12 QUARANTINE

**9.12.1** Additional expenses incurred by the Assured as a direct consequence of an outbreak of infectious disease on an entered Ship, including quarantine and disinfection expenses and the net loss to the Assured (over and above such expenses as would have been incurred but for such outbreak) in respect of bunkers, insurance, wages, stores, provisions and port charges;

**9.12.2** PROVIDED that, unless the Members' Committee in its sole discretion shall otherwise determine, in the case of an entered Ship, which is not already under contract, being ordered or chartered to proceed to a port where it is known or should be reasonably anticipated that such Ship will, as a result, be subject to quarantine there or elsewhere, there shall be no recovery of expenses arising at, or consequent upon the ship having been at such port.

#### 9.13 COLLISION WITH OTHER VESSELS

**9.13.1** The liabilities set out in Rule 9.13.1.1 – 9.13.1.4 to pay damages to any other person as a consequence of a collision between an entered Ship and any other Ship to the extent that such liabilities are not covered by the hull policies of the entered Ship or would not be covered under the usual form of Lloyd's Policy with the Institute Time Clauses Hulls including the Three-Fourths Collision Liability Clause attached (under which the entered Ship is deemed by Rule 12 to be insured) namely:

**9.13.1.1** One-fourth of the liability arising out of the collision, other than the liabilities set out in Rule 9.13.1.2 hereof which shall be recoverable in full; or where the

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Association shall have previously agreed in writing (which may include the requirement of an increased Call) four-fourths of such liability.

- 9.13.1.2** Four-fourths liability arising out of the collision for or relating to:
- 9.13.1.2.1** the raising, removal, destruction, lighting or marking of obstructions, wrecks, cargoes or any other thing;
  - 9.13.1.2.2** any real or personal property except other Ships with which the entered Ship is in collision and property on such other Ships;
  - 9.13.1.2.3** pollution or contamination of any real or personal property, or the threat thereof, except other Ships with which the entered Ship is in collision and property on such other Ships;
  - 9.13.1.2.4** the cargo or other property on the entered Ship or general average contributions, special charges or salvage paid by the owners of that cargo or property;
  - 9.13.1.2.5** loss of life, personal injury or illness, repatriation or substitute expenses.
- 9.13.1.3** That part of the Assured's remaining three-fourths liability, which exceeds the greater of three-fourths of the actual insured value in the hull policies of the entered Ship or three-fourths of whatever value the Members' Committee in its sole discretion may determine as the appropriate full value for which the entered Ship is deemed to be insured under Rule 12.
- 9.13.1.4** The Assured's liability which exceeds the greater of the actual insured value in the hull policies of the entered Ship or whatever value the Members' Committee in its sole discretion may determine as the appropriate full value for which the entered Ship is deemed to be insured under Rule 12,
- 9.13.1.4.1** PROVIDED that the terms on which the Ship is entered specifically exclude recovery of those liabilities defined in Rule 9.13.1.1;
- 9.13.2** PROVIDED that:
- 9.13.2.1** an Assured shall not be entitled to recover under Rule 9.13 any franchise or deductible borne by him under the hull policies of the entered Ship;
  - 9.13.2.2** if the entered Ship shall come into collision with another Ship belonging wholly or in part to the Assured, he shall be entitled to recover the same amounts from the Association, and the Association shall have the same rights, as if such other Ship belonged wholly to a different owner;
  - 9.13.2.3** if both the Ships in collision are to blame, then where the liability of either or both becomes limited by law, or is treated by agreement as if so limited, claims under Rule 9.13 shall be settled upon the principle of single liability, but in all other cases claims under Rule 9.13 shall be settled upon the principle of cross liabilities, as if the owner of each Ship had been compelled to pay the owner of the other Ship such proportion of the latter's damages as may have been properly allowed in

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ascertaining the balance or sum payable by or to the Assured in consequence of the collision.

#### 9.14 PROPERTY NOT ON BOARD AN ENTERED SHIP

**9.14.1** Liability to pay damages or compensation for any loss of or damage to or loss of use of or infringement of rights in connection with any property whether on land or water and whether fixed or movable,

PROVIDED that there shall be no recovery under Rule 9.14 in respect of liability:

**9.14.1.1** arising under the terms of any contract or indemnity which would not have arisen but for those terms and for which recovery, if any, shall only be under Rule 9.16 or 9.17;

**9.14.1.2** against which cover is available (or would have been available but for the operation of any proviso, warranty, condition, exception, deductible or other like term) under Rule 9.11, 9.13, 9.15, 9.18, 9.19 or 9.22.

**9.14.2** Where there would be a valid claim for damage to any property but for such property belonging to the Assured he shall nevertheless be entitled to recovery under Rule 9.14 corresponding with the liability which he would have incurred if such property had belonged to another person, subject to determination by the Members' Committee in its sole discretion of the appropriate law (including any right to limit liability) which shall be deemed to apply for the purpose of evaluating such notional liability, and in any event only for the excess of any amount recoverable by the Assured under any other insurance on the said property.

#### 9.15 POLLUTION

**9.15.1** Liabilities, costs and expenses set out in Rule 9.15.1.1 – 9.15.1.4 to the extent that they are the result of the discharge or escape from an entered Ship of oil or any other polluting substance, or the threat of such discharge or escape, namely:

**9.15.1.1** liability for loss, damage or contamination;

**9.15.1.2** liability of an Assured as a party to any agreement previously approved by the Association in writing, and the costs and expenses incurred by an Assured in performing his obligations under such agreements;

**9.15.1.3** the costs of measures reasonably taken (or taken in compliance with any order or direction given by any government or authority) for the purpose of avoiding the threat of or minimising pollution, and liability incurred as a result of such measures;

**9.15.1.4** liability of an Assured to pay special compensation to a salvor of an entered Ship in respect of work done or measures taken to prevent or minimise damage to the environment, but only to the extent that such liability is imposed on the Assured pursuant to Article 14 of the International Convention on Salvage 1989, or is assumed by the Assured under the terms of a standard form of salvage agreement approved by the Association, or the Lloyd's Open Form of Salvage Agreement.

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**9.15.1.5** PROVIDED that, unless the Members' Committee in its sole discretion shall otherwise determine, there shall be no recovery under this Rule:

**9.15.1.5.1** in respect of any liabilities, costs and expenses which but for the terms of a charter or contract of employment entered into for the employment of the entered Ship would have been allowable in general average adjusted on terms no less favourable than under the unamended York-Antwerp Rules and would have been recoverable from other parties to the contract;

**9.15.1.5.2** in respect of any liability for loss, damage, contamination, costs and expenses arising as a consequence of the discharge or escape, or the threat of discharge or escape, or the presence, of any substance, material, product or waste, determined or deemed to be hazardous, in any dump, site, storage or disposal facility, whether or not such substance, material, product or waste was previously carried on an entered Ship as cargo, fuel or stores;

**9.15.1.6** An Assured insured in respect of a Ship which is a 'Relevant Ship' as defined in the Small Tanker Oil Pollution Indemnification Agreement 2006 (as amended 2017) ("STOPIA") shall, by virtue of entry with and through the agency of the Association, and unless the Association otherwise agrees in writing, become a party to STOPIA for the period of entry of that Ship in the Association. In the event that an Assured exercises his rights under STOPIA to withdraw from that agreement, and unless the Managers have agreed in writing, or unless the Members' Committee in its sole discretion otherwise determines, there shall be no cover under Rule 9.15 in respect of such Ship so long as that Assured is not a party to STOPIA.

**9.15.1.7** An Assured insured in respect of a Ship which is a 'Relevant Ship' as defined in the Tanker Oil Pollution Indemnification Agreement 2006 (as amended 2017) ("TOPIA") shall, by virtue of entry with and through the agency of the Association, and unless the Association otherwise agrees in writing, become a party to TOPIA for the period of entry of that Ship in the Association. In the event that an Assured exercises his rights under TOPIA to withdraw from that agreement, and unless the Managers have agreed in writing, or unless the Members' Committee in its sole discretion otherwise determines, there shall be no cover under Rule 9.15 in respect of such Ship so long as that Assured is not a party to TOPIA.

## 9.16 TOWAGE

**9.16.1** Liabilities arising out of towage of an entered Ship PROVIDED that there shall be no right of recovery for liabilities, costs and expenses incurred under or pursuant to the terms of a contract other than:

**9.16.1.1** under or pursuant to the terms of any contract for customary towage of an entered Ship, namely:

- (i) towage of an entered Ship for the purpose of entering or leaving port or manoeuvring within the port during the ordinary course of trading; or
- (ii) towage of an entered Ship which is habitually towed in the ordinary course

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of trading from port to port or from place to place, which has been so declared to the Association in writing PROVIDED that such liabilities shall only be covered by the Association to the extent that the Assured is not insured against such liabilities under the hull policies on the entered Ship.

- 9.16.1.2** under or pursuant to the terms of any other contract for the towage of an entered Ship, PROVIDED that the terms of the towage contract have been previously approved and cover agreed by the Association in writing, upon such terms as the Association may require.
- 9.16.1.3** For the purpose of 9.16.1.2, the Association will approve contracts for towage of an entered Ship on terms not less favourable to the entered Ship than:
- (i) Lloyd's Open Form of Salvage Agreement (whether or not incorporating SCOPIC); or
  - (ii) a contract that contains a Himalaya Clause and an enforceable term that the parties to the towage contract, and any parties on whose behalf they contract, shall be responsible for any loss of or damage to or wreck removal of their own ship, cargo or property and for loss of life or personal injury thereon, without any recourse whatsoever against the other and will indemnify the other against any such liability.
- 9.16.2** Liabilities arising out of the towage by an entered Ship of a vessel or other floating structure PROVIDED that there shall be no recovery for liability for loss or of damage to or wreck removal of a vessel or other floating structure towed by an entered Ship or the cargo or other property on such tow (together with costs and expenses associated therewith) save insofar as either:
- 9.16.2.1** the entered Ship was specially designed or converted for the purposes of towage and was declared to the Association as intended to be used for towing at the time of entry or at the time of conversion; and the terms of the towage contract have been previously approved and cover agreed by the Association in writing, upon such terms as the Association may require; or
- 9.16.2.2** the Members' Committee in its sole discretion shall determine that in the particular circumstances of the case it was reasonable for the entered Ship to undertake such towage.
- 9.16.2.3** For the purposes of 9.16.2.1, the following contracts are approved:
- (i) the United Kingdom, Netherlands, Scandinavian and German standard towage conditions; or
  - (ii) 'Towcon' and 'Towhire'; or
  - (iii) Lloyd's Standard Form of Salvage Agreement (whether or not incorporating SCOPIC).
- 9.16.2.4** For the purposes of 9.16.2.1, the following contracts may be approved from time to time by the Association:
- (i) contracts incorporating a Himalaya Clause and an enforceable term as between the owner of the entered Ship on the one part, and the owner of

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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 ship, cargo or other property and for loss of life or personal injury on his own ship, without any recourse whatsoever against the other, or

- (ii) other contracts where a term or terms of the contract complying with (i) above is or is likely to be unenforceable in whole or in part, where the contract does not impose on the owners of the entered Ship any liability to any person arising out of any act, neglect or default of the owner of the tow or any other person; and the contract limits the liability of the owner of the entered Ship under the contract or otherwise to the maximum extent possible by law.

**9.16.3** There shall be no recovery in respect of liabilities, costs and expenses arising out of towage of or by an entered Ship otherwise than in accordance with this Rule 9.16 and cover hereunder is in any event limited to the risks covered under Rule 9 (excluding this Rule 9.16) to the extent that such risks are applicable to the Assured's' entry in the Association.

#### 9.17 INDEMNITIES AND CONTRACTS FOR OTHER SERVICES

**9.17.1** Liability arising under the terms of an indemnity or contract relating to facilities or services provided or to be provided to or in connection with an entered Ship, other than under Rule 9.16 and only to the extent that either:

**9.17.1.1** the terms have previously been approved by the Association in writing, and subject to payment by the Assured of whatever increased Call or additional premium may be required by the Association; or

**9.17.1.2** the Members' Committee in its sole discretion may determine that the Assured should be reimbursed.

#### 9.18 WRECK REMOVAL

**9.18.1** Costs and expenses reasonably incurred by the Assured under a contract approved by the Association, in the raising, removal, destruction, lighting or marking of the wreck of an entered Ship or any cargo, equipment or other property which is or was carried on board an entered Ship where such is a hazard or obstruction to navigation or to the extent that such measures are compulsory by law, or if (with the approval of the Association in writing) the Assured has declined to take such measures, his liability to any other person for such costs and expenses.

**9.18.2** Liability for costs and expenses as in Rule 9.18.1 under the terms of use of port facilities, but only to the extent that such terms shall have previously been approved by the Association in writing, for which the Association may require an increased Call or additional premium.

**9.18.3** Liability resulting from any raising, removal or destruction of the wreck undertaken by the Assured as specified in Rule 9.18.1.

**9.18.4** Liability resulting from the presence of the wreck, but if measures as specified in Rule 9.18.1 have not been undertaken by the Assured, only to the extent that such inaction has had the approval of the Association in writing,

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#### 9.18.5 PROVIDED that:

- 9.18.5.1** subject to the next following provision, all cover under Rule 9.18 shall cease 3 years after termination of the Ship's entry save in respect of costs and expenses incurred prior to that time or claims which are already by then the subject of formally instituted proceedings against the Assured and of which the Assured shall have promptly notified the Association in writing;
- 9.18.5.2** cover may be continued beyond the cesser of the immediately preceding provision but only if requested by the Assured within the 3 years period referred to therein and agreed by the Association in writing, for which the Association may require an additional premium;
- 9.18.5.3** from any claim under Rule 9.18.1 – 9.18.3 there shall be deducted the value of the wreck and its equipment including all bunkers, stores and materials saved and if the Association shall have reimbursed, advanced or incurred a liability to any other party whatsoever for the costs and expenses of raising and removal of the wreck and/or its equipment including bunkers, stores and materials, then the Association shall be entitled to reimbursement by the Assured of the value of the wreck and its equipment, including all bunkers, stores and materials saved;
- 9.18.5.4** there shall be no recovery under Rule 9.18 if the Assured, without the consent of the Association in writing, shall have transferred his interest in the wreck prior to the raising, removal, destruction, lighting or marking of the wreck or prior to the incident giving rise to liability; tendering of notice of abandonment to hull underwriters shall not require the Association's consent but prompt advice whether or not the same has been accepted must nonetheless be given by the Assured to the Association;
- 9.18.5.5.** a claim under Rules 9.18.1 – 9.18.4 shall be covered only in circumstances where an entered Ship becomes a wreck as a result of a fortuitous incident caused by collision, stranding, explosion, fire or similar cause, and no claim shall be recoverable in the event that an entered Ship becomes a wreck due to dereliction or neglect of the Assured.

#### 9.19 CARGO

- 9.19.1** Liabilities, costs and expenses set out in Rule 9.19.1.1 – 9.19.1.4 in respect of cargo intended to be or being or having been carried in an entered Ship, extending from the time of receipt for shipment on quay or wharf until final delivery from quay or wharf, namely:
  - 9.19.1.1** liability (other than in respect of a contract of through carriage entered into by the Assured) for loss, shortage, damage or other responsibility;
  - 9.19.1.2** the additional costs (over and above those which would have been incurred in any event under the contract of carriage) incurred by the Assured in discharging or disposing of damaged or worthless cargo, originally loaded in sound condition, but only to the extent that the Assured both has to incur such costs to enable the entered Ship to complete discharge and continue trading and has no right to recover such costs from any other person;

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**9.19.1.3** the costs of discharging, re-loading and re-stowing cargo necessarily incurred to continue the safe prosecution of the voyage but only to the extent that the Assured has no right to recover such costs from any other person by way of general average or otherwise;

**9.19.1.4** liability for loss, shortage, damage or other responsibility in respect of any contract of through carriage of cargo partly to be performed by the entered Ship and including transit by land, water or air to or from the entered Ship and intermediate storage necessary to perform such contract, but only to the extent that the terms of such contract shall have been approved by the Association in writing, for which the Association may require an increased Call;

**9.19.2** PROVIDED that:

**9.19.2.1** unless the Association shall have previously agreed or arranged cover on special terms (which may include the requirement of an increased Call or additional premium) or unless the Members' Committee in its sole discretion shall otherwise determine, there shall be no recovery in respect of liabilities, costs or expenses which would not have been incurred by the Assured if the contract of carriage had been subject to the Hague Rules or the Hague Visby Rules, except and to the extent that such are overridden by other rules, conventions or provisions of national or international law which may mandatorily apply;

**9.19.2.2** if any means of transport or other facilities are used in connection with carriage, storage or handling of cargo outside the dock area where the entered Ship is to load or has discharged, there shall be no recovery of any amounts recoverable by the Assured from the owners or operators of such other means of transport or other facilities or which would have been recoverable if all available rights of recourse had been maintained by the Assured against such owners or operators;

**9.19.2.3** there shall be no recovery in the case of deviation from the contractually agreed voyage if as a result of such deviation the Assured is denied any defences or rights of limitation which would otherwise have been available to him to exclude or reduce liability unless either:

**9.19.2.3.1** the Assured has notified the Association of the deviation before it occurs or immediately upon receiving information that it has occurred and the Association has agreed or arranged cover on special terms (which may include the requirement of an additional premium), or:

**9.19.2.3.2** the Members' Committee in its sole discretion shall determine that the Assured had reasonable grounds for believing that no deviation was being or had been made or that the deviation was permitted under the terms of the contract of carriage;

**9.19.2.4** unless the Members' Committee in its sole discretion shall otherwise determine, there shall be no recovery in respect of:

**9.19.2.4.1** any bill of lading, waybill or other document containing or evidencing the contract of carriage issued with an incorrect date or, with the



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- knowledge of the Assured or the master of the entered Ship, with an incorrect description of the cargo or its quantity or its condition or a misstatement of the port of loading or the port of discharge;
- 9.19.2.4.2** delivery of cargo carried under a negotiable bill of lading or similar document of title (including an electronic bill of lading) without production (or the equivalent thereof in the case of an electronic bill of lading) of that bill of lading or document by the person to whom delivery is made except where cargo has been carried on an entered Ship:
- a) under the terms of a non-negotiable bill of lading, waybill or other non-negotiable document (and has been properly delivered as required by that document) and liability arises under the terms of a negotiable bill of lading or other similar document of title issued on behalf of a party other than the Assured providing for carriage partly by a means of transport other than the entered Ship; or
  - b) under the terms of an approved electronic trading system and has been properly delivered to the person so entitled in accordance therewith;
- 9.19.2.4.3** delivery of cargo without production of the relevant non-negotiable bill of lading, waybill or other document containing or evidencing the contract of carriage where production of such document is required by the express terms of that document or the law to which such document, or the contract of carriage contained in or evidenced by it, is subject, except where the Assured is required by any other law to which he is subject to deliver or relinquish custody or control of the cargo without production of such document;
- 9.19.2.4.4** discharge of cargo at a port or place other than that stated in the contract of carriage;
- 9.19.2.4.5** carriage of cargo to the port or place of discharge stated in the contract of carriage from another port or storage or other charges;
- 9.19.2.4.6** late arrival or non-arrival of the entered Ship at a port or place of loading, or failure to load or delay in loading any particular cargo other than such liabilities, costs and expenses arising under a bill of lading already issued;
- 9.19.2.4.7** the carriage on deck of cargo for which the bill of lading does not state that such cargo is being so carried and does not purport to exclude the Assured's liability altogether, save that in the case of cargo customarily carried or suitable for carriage on deck incorporation of an appropriate liberty clause for on-deck carriage shall be sufficient;
- 9.19.2.4.8** any liability howsoever described arising from the mistaken or illegal exercise of a lien over cargo on board the entered Ship;

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**9.19.2.4.9** any liability howsoever described arising from withdrawal or temporary interruption in services performed under a time charterparty where such actions have been taken in order to enforce payment of hire;

**9.19.2.4.10** refusal to issue bills of lading in an attempt to recover any sums due to the Assured under a charterparty;

**9.19.2.4.11** any liabilities, losses, costs and expenses arising from the use of any electronic trading system, other than an electronic trading system approved by the Association, to the extent that such liabilities, losses, costs and expenses would not (save insofar as the Association in its sole discretion otherwise determines) have arisen under a paper trading system.

For the purposes of this Rule 9.19.2.4.11,

(a) an electronic trading system is any system which replaces or is intended to replace paper documents used for the sale of goods and/or their carriage by sea or partly by sea and other means of transport and which:

- (i) are documents of title, or
- (ii) entitle the holder to delivery or possession of the goods referred to in such documents, or
- (iii) evidence a contract of carriage under which the rights and obligations of either of the contracting parties may be transferred to a third party.

(b) a “document” shall mean anything in which information of any description is recorded including, but not limited to, computer or other electronically generated information.

**9.19.2.5** there shall be no recovery in excess of US\$2,500 per unit, piece or package where an ad valorem bill of lading, waybill or other document containing or evidencing the contract of carriage has been issued in which a unit value of more than US\$2,500 (or the equivalent in any other currency) is declared and/or inserted by reference to a unit, piece, or package or by reference to an overall or aggregated value or otherwise where the effect of such a declaration and/or insertion is to deprive the Assured of any right or rights of limitation to which he would otherwise have been entitled and which causes him to incur a greater liability than he would have done but for such declaration and/or insertion to the extent that such liability thereby exceeds US\$2,500 (or the equivalent in any other currency) in respect of any such unit, piece or package, unless this has been promptly notified to the Association by the Assured and the Association has agreed or arranged cover on special terms, which may include the requirement that an additional premium be paid;

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**9.19.2.6** there shall be no recovery in respect of cash, bullion, bonds, negotiable instruments, plate, valuables or objects of a rare or precious nature including rare or precious metals or stones, whether carried as cargo or as passengers' baggage or as crew's effects and whether the value is declared or not, unless the spaces, apparatus and means used for the carriage and the instructions given for the safe custody thereof, have been approved by the Association in writing prior to any such carriage and any directions made by the Association have been complied with;

**9.19.2.7** where cargo on board the entered Ship is the property of the Assured he shall nevertheless be entitled to recovery under Rule 9.19, and the Association shall have the same rights, as if such cargo belonged to a third party and that third party had entered into a contract of carriage with the Assured.

#### **9.20 IRRECOVERABLE GENERAL AVERAGE CONTRIBUTIONS**

**9.20.1** General average (excluding Ship's sacrifice items), special charges or salvage chargeable to any other party to the marine adventure for which the Assured may become liable or be unable to recover from such party solely by reason of a breach of the contract of carriage, PROVIDED that:

**9.20.1.1** the Assured shall have notified the Association in writing within 12 months both of the casualty out of which a claim under Rule 9.20 might arise, and of the reference of the matter to adjusters;

**9.20.1.2** the Provisos in Rule 9.19.2.1 – 9.19.2.7 shall apply to recovery under Rule 9.20.

#### **9.21 SHIP'S PROPORTION OF GENERAL AVERAGE**

**9.21.1** Ship's proportion of general average, special charges or salvage not recoverable under hull policies by reason of the value for which an entered Ship is assessed for contribution to general average, special charges or salvage exceeding the greater of the actual insured value in the hull policies or whatever value the Members' Committee in its sole discretion may determine as the appropriate full value for which the entered Ship is deemed to be insured under Rule 12.1,

**9.21.1.1** PROVIDED that the Assured shall have notified the Association in writing within 12 months both of the casualty out of which a claim under Rule 9.21 might arise, and of the reference of the matter to Adjusters.

#### **9.22 PROPERTY OTHER THAN CARGO ON BOARD AN ENTERED SHIP**

**9.22.1** Liability for loss of or damage to any containers, equipment, bunkers or other property on board the entered Ship other than cargo and the effects of any person aboard, PROVIDED that:

**9.22.1.1** there shall be no recovery in respect of any property which forms part of the entered Ship or which is owned, hired, leased or borrowed by the Assured or by any company associated with or under the same management as the Assured;

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**9.22.1.2** where the liability arises under the terms of any contract or indemnity and would not have arisen but for those terms, such liability is not covered under Rule 9.22 but may be recoverable under Rule 9.16 or 9.17.

#### 9.23 FINES

**9.23.1** Fines imposed by any court, tribunal or authority upon the Assured (or upon a third party whom the Assured is legally obliged to reimburse) in respect of an entered Ship for or in respect of the following:

**9.23.1.1** breach of any immigration law or regulations relating to crew members or their spouses and children or stowaways, PROVIDED that there shall be no recovery from the Association unless the Assured can satisfy the Association that proper steps were taken to guard against desertion and landing without permission of the proper authority;

**9.23.1.2** short-delivery or over-delivery of cargo or failure to comply with any law or regulation relating to declaration or documentation of cargo (other than fines or penalties arising from the smuggling of goods or cargo or any attempt thereat), but only when the entered Ship is covered for cargo risks under Rule 9.19 in which case such fines shall be aggregated with cargo claims for the purposes of applying the cargo deductible to the same, and fines under Rule 9.23.1.2 shall not be subject to any other deductible;

**9.23.1.3** the accidental discharge or escape of oil or any polluting substance or threat thereof, but as regards oil only where the entered Ship is covered for pollution risks under Rule 9.15;

**9.23.2** All other fines shall be recoverable only to such extent as the Members' Committee in its sole discretion may determine and provided that:

**9.23.2.1** the Assured has satisfied the Members' Committee that he took such steps as appear to the Members' Committee to have been reasonable to avoid the event giving rise to the fine or penalty; and

**9.23.2.2** any fine imposed not on an Assured but on the master or crew members of the entered Ship or on any other servant or agent of the Assured shall only be recoverable in circumstances either where the Assured has been compelled by law to pay or reimburse such fine or where the Members' Committee shall determine that it was reasonable for the Assured to have paid or reimbursed the same.

#### 9.24 CONFISCATION

**9.24.1** Confiscation of an entered Ship by a legally empowered court, tribunal or authority for breach of any customs law or regulation,

**9.24.1.1** PROVIDED that:

**9.24.1.1.1** recovery under Rule 9.24.1 shall be to such extent as the Members' Committee in its sole discretion shall decide but shall in any event be limited to the market value of the vessel, free of commitment, at the time of confiscation;

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**9.24.1.1.2** no claim shall be considered by the Members' Committee in respect of any confiscation which has not remained in effect for a continuous period of 183 days from such time as the Assured shall have notified the Association in writing of the confiscation, and if at any time before or after the expiry of the said period terms become available for the return of the vessel on payment of a monetary penalty, the Members' Committee may require the Assured to accept such terms and make the necessary payment which alone shall then be the subject of recovery from the Association;

**9.24.1.1.3** the Assured has satisfied the Members' Committee that he took such steps as appear to the Members' Committee to have been reasonable to prevent the event giving rise to the confiscation;

#### **9.25 OFFICIAL INQUIRIES**

**9.25.1** The costs incurred to defend the interest of an Assured in an inquiry conducted by the lawful authority of any country but only to the extent that such inquiry relates to any risk against which the Assured is insured within this Class and with the previous approval of the Association in writing.

#### **9.26 SPECIAL DIRECTION OF THE MEMBERS' COMMITTEE**

**9.26.1** Loss, costs and expenses incurred in compliance with the Members' Committee's special direction (confirmed to the Assured by the Association in writing under express reference to this Rule 9.26 and subject to any special terms which the Members' Committee may require) in any circumstances where the Members' Committee shall in its sole discretion determine that it is in the interests of the Assureds of this Class generally that the direction should be given.

#### **9.27 SUE AND LABOUR AND LEGAL COSTS**

**9.27.1** Extraordinary costs and expenses (other than under Rule 9.26) reasonably incurred after any casualty, event or matter for the purpose of avoiding or minimising any liabilities, costs or expenses against which the Assured is insured within this Class, but only to the extent either that such extraordinary costs and expenses have been incurred with the approval of the Association or that the Members' Committee in its sole discretion shall determine that the same should be recovered.

**9.27.2** Legal costs and expenses arising solely from any liabilities, costs or expenses against which and during such time the Assured is insured within this Class, but only to the extent either that such legal costs and expenses have been incurred with the written approval of the Association or that the Members' Committee in its sole discretion shall determine that the same should be recovered.

**9.27.3** PROVIDED that:

**9.27.3.1** the operation of Rule 9.27 shall require account to be taken of any relevant deductible in evaluating the liabilities, costs and expenses for which the Assured is insured within this Class and for the avoiding or minimising of which the extraordinary or legal costs and expenses shall have been incurred;

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**9.27.3.2** losses, costs and expenses relating to ransom shall not be recoverable unless and to the extent that the Members' Committee in its discretion shall otherwise decide.

#### 9.28 OMNIBUS RULE

**9.28.1** Liabilities, losses, costs and expenses incidental to the business of owning, operating or managing Ships which and to such extent as the Members' Committee in its sole discretion shall consider fall within the scope of this Class,

**9.28.1.1** PROVIDED that there shall be no recovery which is expressly excluded by other provisions of these Rules, save to the extent that those members of the Members' Committee present when the claim is being considered are unanimous that such exclusion should be overridden in the particular circumstances of the case.

#### 9.29 SPECIAL COVER FOR SALVORS

**9.29.1** Without prejudice to Rule 1.4, an Assured may be insured against liabilities, costs and expenses arising in connection with that Assured's business as a salvor. Such insurance and the terms and conditions thereof shall be offered at the sole discretion of the Association, but may cover liabilities, costs and expenses:

**9.29.1.1** arising in relation to the Assured's interest in and the operation of an entered Ship;

**9.29.1.2** caused by events (including oil pollution) occurring during salvage operations or attempts of salvage, performed by the Assured or a sub-contractor of his,

**9.29.2** PROVIDED that:

**9.29.2.1** the Assured shall have no right of recovery unless he has first complied with all such terms and conditions as the Association may have required, as well as with the Rules of this Class;

**9.29.2.2** where liabilities, costs and expenses would, but for the provisions of this Rule 9.29, fall to be covered by any other part of Rule 9, the terms and conditions of that part shall apply to a claim under this Rule, save that such liabilities, costs and expenses need not relate to an entered Ship;

**9.29.2.3** the Assured and any company in the same or related or associated ownership or management shall, upon cover under this Rule 9.29 being offered and thereafter within 30 days before each renewal thereof, apply to enter in this Class every Ship then owned or operated by it or which is used or intended to be used in connection with salvage operations. Acceptance of such applications shall be in all respects at the sole discretion of the Association.

#### RULE 10 – SPECIAL COVER FOR CHARTERERS

**10.1** Without prejudice to the generality of Rule 1.5, an Assured may be insured by the Association as a Charterer against the following risks, on such terms and conditions as may be agreed by the Managers in writing:

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- 10.1.1** the liability of the charterer, together with costs and expenses incidental thereto, for risks set out in Rule 9;
- 10.1.2** the liability of the charterer to contribute to general average, salvage or other charges in respect of the charterer's interest in hire, freight, bunkers or other property on board the entered Ship other than cargo and containers;
- 10.1.3** where the cargo on board the entered Ship is the property of the charterer, the liability of the charterer as the owner thereof in respect of the risks set out in Rule 9;
- 10.1.4** Notwithstanding the provisions of Rules 12 and 13:
  - 10.1.4.1** the liability of the charterer to the owner or disponent owner, together with costs and expenses incidental thereto, for loss of or physical damage to the entered Ship;
  - 10.1.4.2** the liability of the charterer to the owner or disponent owner, together with costs and expenses incidental thereto, for loss of use, hire or demurrage arising from loss of or physical damage to the entered Ship as provided in Rule 10.1.4.1;
  - 10.1.4.3** the liability of the charterer, together with costs and expenses incidental thereto, as would be covered under Rule 9 and this Rule 10, but for the exclusion of war risks as set out in Rule 15;
  - 10.1.4.4** loss of or damage to bunkers of the charterer on board the entered Ship;
- 10.1.5** such other additional risks as the Managers may agree.

#### RULE 11 – LIMITATIONS ON COVER

- 11.1** Unless the Members' Committee in its sole discretion shall otherwise determine, when an Assured is entitled to limit any liability for which he is insured, there shall be no recovery in respect of such liability for more than that limited amount.
- 11.2** An Assured who is not the registered owner, demise charterer or charterer of an entered Ship shall be deemed to be entitled to all the limitations of liability which would apply as if he were the registered owner, demise charterer or charterer of the entered Ship and as if such registered owner, demise charterer or charterer were entitled to limit liability, and recovery in respect of the liability concerned shall not exceed the lowest amount to which the registered owner, demise charterer or charterer may be entitled to limit liability.
- 11.3** Save as provided in Rule 11.5 and subject thereto, recovery shall be limited to a maximum of US\$1,000,000,000 (U.S. Dollars One Billion) for any one occurrence in respect of any one entered Ship in respect of oil pollution liability, including fines, costs and expenses and clean-up and damages payable to any other person as may arise in respect of oil pollution liability, whether under Rule 9.15 (Pollution) or Rule 9.13 (Collision) or any other sections of Rule 9 or any other Rule or combination thereof,
  - 11.3.1** PROVIDED that where an entered Ship gives or attempts to give salvage or other assistance to another Ship following a casualty, any oil pollution liability incurred by that entered Ship in consequence thereof shall be aggregated with any oil pollution liability incurred by any other Ships similarly assisting in connection with the same casualty which are insured in

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respect of oil pollution liability either by the Association or by any other association which participates in the Pooling Agreement and/or the Group General Excess Loss Contract, and recovery in respect of the oil pollution liability of any entered Ship assisting as aforesaid shall be limited to such proportion of a maximum of US\$1,000,000,000 (U.S. Dollars One Billion) as that Ship's oil pollution liability bears to the aggregate of the oil pollution liabilities of all the similarly assisting Ships;

**11.3.2** PROVIDED that where a Ship is separately entered by an Assured who is the owner, demise charterer, manager or operator with the Association or any other association which participates in the Pooling Agreement and/or the Group General Excess Loss Contract, the maximum recovery in respect of all claims for oil pollution liability following any one occurrence brought against the owner, demise charterer, manager or operator of an entered Ship or against the Association or any other association shall be limited to US\$1,000,000,000 (U.S. Dollars One Billion). The liability of the Association in respect of such claims shall be limited to that proportion of US\$1,000,000,000 (U.S. Dollars One Billion) that each claim recoverable from the Association bears to the aggregate of the claims recoverable against the Association and such other associations if any;

**11.3.3** PROVIDED that if the total amount of claims against an Assured for oil pollution liability following any one occurrence exceeds US\$1,000,000,000 (U.S. Dollars One Billion) the Association will not be liable to make any payment in respect of the amount by which any such claims exceed the aforesaid limit of cover.

**11.4** Save as provided in Rule 11.5 and subject thereto,

**11.4.1** Unless otherwise limited to a lesser sum, the Association's aggregate liability arising in respect of any one entered ship shall not exceed

- (1) in respect of liability to Passengers US\$2,000,000,000 for any one occurrence; and
- (2) in respect of liability to Passengers and Seamen US\$3,000,000,000 for any one occurrence,

Provided always that:

**11.4.2** Where a Ship is separately entered by an Assured who is the owner, demise charterer, manager or operator with the Association or any other association which participates in the Pooling Agreement and/or the Group General Excess Loss Contract,

**11.4.2.1** the aggregate of claims in respect of liability to Passengers recoverable from the Association and/or such other insurers shall not exceed US\$2,000,000,000 for any one occurrence and the liability of the Association shall be limited to such proportion of that sum as the claim recoverable by such persons from the Association bears to the aggregate of all such claims otherwise recoverable from the Association and all such insurers;

**11.4.2.2** the aggregate of all claims in respect of liability to Passengers and Seamen recoverable from the Association and/or such other insurers shall not exceed US\$3,000,000,000 for any one occurrence and the liability of the Association shall be limited:



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- (i) where claims in respect of liability to Passengers have been limited to US\$2,000,000,000 in accordance with Rule 11.4.2.1 to such proportion of the balance of US\$1,000,000,000 as the claims recoverable by such persons in respect of liability to Seamen bears to the aggregate of all such claims otherwise recoverable from the Association and all such insurers; and
- (ii) in all other cases, to such proportion of US\$3,000,000,000 as the claims recoverable by such persons in respect of liability to Passengers and Seamen bears to the aggregate of all such claims otherwise recoverable from the Association and all such insurers.

**11.4.2.3** Where liabilities to Passengers include liabilities arising under a non-war certificate issued by the Association in compliance with either Article IV bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol thereto of 2002 or regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (“Certified Liabilities”) and all liabilities to Passengers exceed or may exceed in the aggregate the limit of cover specified in the provisions of this Rule 11.4:

- (i) The Association may in its sole discretion, until the Certified Liabilities, or such part of the Certified Liabilities as the Association may decide, have been discharged, defer payment of a claim in respect of other liabilities to Passengers or any part thereof; and
- (ii) If and to the extent any Certified Liabilities discharged by the Association exceed the said limit any payment by the Association in respect thereof shall be by way of loan and the Assured shall indemnify the Association in respect of such payment.

For the purposes of this Rule 11.4 and the provisos thereto, and without prejudice to anything else contained in these Rules, a “Passenger” shall mean a person carried onboard 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 “Seaman” shall mean any other person onboard a ship who is not a Passenger.

**11.5** Unless otherwise provided for in the Certificate of Entry recovery by:

**11.5.1** an Assured, whose interest in an entered Ship is that of a charterer other than a charterer Co-assured with an Assured who is the registered owner or demise charterer of the Ship, and any Co-assured(s) of such charterer shall be limited for all liabilities in the aggregate to a maximum of US\$350,000,000 (U.S. Dollars Three Hundred and Fifty Million),

**11.5.2** PROVIDED that where a Ship entered by a charterer gives or attempts to give salvage or other assistance to another Ship following a casualty, any oil pollution liability incurred by that entered Ship in consequence thereof shall be aggregated with any oil pollution liability incurred by any other ships entered by charterers similarly assisting in connection with the same casualty which are insured in respect of oil pollution liability either by the Association

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or by any other association which participates in the Pooling Agreement and/or the Group General Excess Loss Contract, and recovery in respect of the oil pollution liability of any entered Ship assisting as aforesaid shall be limited to such proportion of a maximum of US\$350,000,000 (U.S. Dollars Three Hundred and Fifty Million) as that Ship's oil pollution liability bears to the aggregate of the oil pollution liabilities of all the similarly assisting Ships.

- 11.5.3** an Assured whose interest in an entered Ship is that of a charterer Co-assured with an Assured who is the registered owner or demise charterer of the Ship shall be limited for all liabilities in the aggregate to a maximum of US\$350,000,000 (U.S. Dollars Three Hundred and Fifty Million).

#### 11.6. Consortium Claims

##### 11.6.1 Definitions

In this Rule 11.6 the following words and expressions shall have the following meanings, unless the context requires otherwise:

“Consortium Agreement” means any arrangement which shall have been approved in writing by the Managers under which an Assured agrees with other parties to the reciprocal exchange or sharing of cargo space on an entered Ship and Consortium Ships.

“Consortium Claim” means liabilities, costs and expenses covered under and subject to the Rules of this Class, arising out of the carriage of cargo on a Consortium Ship operating under a Consortium Agreement, pursuant to which the entered Ship is also employed. For the purpose of a Consortium Claim under this Rule 11.6, the Consortium Ship shall be treated as an entered Ship on behalf of the Assured as a charterer.

“Consortium Ship” means a ship or space thereon, not being the entered Ship, employed to carry cargo under a Consortium Agreement.

- 11.6.2** Where an Assured has entered a Ship in the Association as an owner and also has an entry in the Association of a Ship as a charterer, both of which are employed by the Assured pursuant to the Consortium Agreement at the time the event giving rise to a Consortium Claim occurs, the Consortium Claim shall for the purpose of these Rules be treated as a claim arising in respect of the entry of the Assured as an owner;

- 11.6.3** Where an Assured employs more than one Ship pursuant to the Consortium Agreement at the time the event giving rise to a Consortium Claim occurs:

**11.6.3.1** where all such Ships are entered in the Association, they shall be deemed to be an entry of one entered Ship;

**11.6.3.2** where an Assured has an entry in respect of such Ships in the Association and in any other association which is party to the Pooling Agreement, each such Ship shall be deemed to be a part entry of one Ship in the Association and such other association and in the absence of agreement to the contrary between the Association and such other association, the Consortium Claim shall, subject to Rule 11.6.4, be prorated equally between them.

- 11.6.4** The liability of the Association in respect of Consortium Claims arising from the carriage of

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cargo on one Consortium Ship in respect of all Ships entered by an Assured in the Association and in any other association which is party to the Pooling Agreement shall be limited to US\$350,000,000 in the aggregate for any one occurrence;

**11.6.4.1** PROVIDED that where such Consortium Claims are recoverable from the Association and one or more associations which are parties to the Pooling Agreement, the liability of the Association shall be limited to that proportion of US\$350,000,000 as its proportion of the Consortium Claims bears to their total.

**11.7** Any Overspill Claim incurred by the Association shall not be recoverable from the Association in excess of the amounts specified in Rule 33.2.

#### **RULE 12 – OTHER INSURANCES**

**12.1** Subject to Rule 12.2 every entered Ship shall be deemed to be insured throughout her period of entry by the usual form of Lloyd’s 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 Members’ Committee in its sole discretion may determine as representing at the relevant time her full market value, free of commitment.

**12.2** Unless and to the extent that the Members’ 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 liability, costs or expenses for which the entered Ship is deemed to be insured under Rule 12.1 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.

#### **RULE 13 – EXCLUSION OF DAMAGE TO ENTERED SHIP, LOSS OF HIRE, SANCTIONS, ETC.**

**13.1** There shall be no recovery by an Assured in respect of any Ship entered by him for:

**13.1.1** 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, save only as may be recoverable under Rule 9.24;

**13.1.2** freight, demurrage, hire or detention except by way of the Assured’s liability towards a third party for loss of or damage to cargo;

**13.1.3** salvage or services in the nature of salvage (other than under Rule 9.10 and 9.15.1.4);

**13.1.4** cancellation or wrongful termination of a charter or other engagement;

**13.1.5** bad debts or other losses arising out of the insolvency of any person, including insolvency of agents;

**13.1.6** loss, damage or expense 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 a voyage;

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- 13.1.7** 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;
- 13.2** PROVIDED that any recovery which would otherwise be excluded under Rules 13.1.1 to 13.1.7 may be allowed if the relevant matters shall have been the direct result either of compliance by the Assured with a special direction of the Members' Committee in accordance with Rule 9.26 or of suing and labouring undertaken by the Assured with the approval of the Association in accordance with Rule 9.27.1.
- 13.3** There shall be no recovery by an Assured in respect of any Ship entered by him for any liability, loss, damage, cost or expense 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 Members' Committee in its sole discretion determines may materially affect the Association in any way whatsoever.

#### **RULE 14 – ILLEGAL, HAZARDOUS OR IMPROPER ADVENTURES**

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

#### **RULE 15 – LIABILITY EXCLUDED FOR WAR RISKS AND NUCLEAR RISKS**

- 15.1** There shall be no recovery in respect of any liabilities, costs or expenses (whether or not a contributory cause of the same being incurred was any neglect on the part of the Assured or the Assured's servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or costs or expenses are incurred, shall have been caused, whether directly or indirectly, by:
- 15.1.1** war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power, or any act of terrorism,  
PROVIDED that in the event of any dispute as to whether or not any act constitutes an act of terrorism the decision of the Members' Committee shall be final;
- 15.1.2** capture, seizure, arrest, restraint or detainment (barratry and piracy excepted), and the consequences thereof or any attempt thereat;
- 15.1.3** mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war,  
PROVIDED that the exclusion in Rule 15.1.3 shall not apply to:

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- (i) liabilities, costs or expenses which arise solely by reason of the transport of any such weapons whether on board the entered Ship or not;
- (ii) the use of any such weapons, either as a result of government order or with the agreement of the Association in writing, where the reason for such use is the avoidance or mitigation of liabilities, costs or expenses which would otherwise be recoverable under Rule 9.

**15.2** There shall be no recovery in respect of any liabilities, costs or expenses (whether or not a contributory cause of the same being incurred was any neglect on the part of the Assured or the Assured's servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or costs or expenses are incurred, shall have been caused, whether directly or indirectly, by:

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

PROVIDED that the exclusions in Rule 15.2.1, Rule 15.2.2, Rule 15.2.3 and Rule 15.2.4 shall not apply to 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 Ship.

**15.3** The Association may provide special cover to an Assureds against any or all of the risks set out in Rule 9 notwithstanding that those liabilities, costs or expenses would otherwise be excluded by Rule 15.1 or 15.2, subject to such limits and to such terms and conditions as the Association may from time to time determine.

### RULE 16 – GUARANTEES, CERTIFICATES AND UNDERTAKINGS

**16.1** Notwithstanding the exclusions in Rule 15 and the provisos in Rule 9.1, the Association will discharge on behalf of the Assured liabilities, costs, and expenses arising under a demand made pursuant to the issue by the Association on behalf of the Assured of:

- 16.1.1** a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777, or
- 16.1.2** a certificate issued by the Association in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereof, or
- 16.1.3** an undertaking given by the Association to the International Oil Pollution Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement 2006 (as amended 2017) ("STOPIA"), or, except where such liabilities, costs and expenses

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arise from or are caused by an act of terrorism, the Tanker Oil Pollution Indemnification Agreement 2006 (as amended 2017) ("TOPIA"), or

- 16.1.4** a certificate issued by the Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, or
- 16.1.5** a certificate issued by the Association in compliance with Article 12 of the International Convention on the Removal of Wrecks 2007, or
- 16.1.6** a non-war certificate issued by the Association in compliance with either Article IV bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol thereto of 2002 or regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 giving effect thereto, or
- 16.1.7** a certificate issued by the Association in respect of the requirements under Regulation 2.5.2, Standard A2.5.2 and Regulation 4.2, Standard A4.2.1 Paragraph 1(b) of the Maritime Labour Convention 2006, as amended,

PROVIDED ALWAYS that:

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

- 16.2** Notwithstanding the provisions of Rule 3.1, the Association shall discharge or pay on the Assured's behalf directly to a seaman or dependent thereof a legal liability which an Assured has failed to discharge to such seaman or dependent to pay damages or compensation for injury, illness or death of the seaman that would have been recoverable by the Assured under Rule 9.3 and/or Rule 9.4,

PROVIDED ALWAYS that:

- 16.2.1** there shall be no recovery under Rule 16.2 unless the seaman or dependent has no enforceable right of recovery against any other party and would otherwise be uncompensated,
- 16.2.2** the amount payable by the Association shall not be subject to set off of any amount due to the Association from the Assured and, subject to Rule 16.2.3 below, the amount payable by the Association shall under no circumstances exceed the amount which the Assured would have been able to recover from the Association under the Rules and his terms of entry,

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- 16.2.3** where the Association is under no liability to the Assured by virtue of cesser under Rule 3.1.2 by reason of non-payment of amounts due to the Association, the Association shall nevertheless discharge or pay a claim under Rule 16.2 to the extent only that it arises from an event occurring during the period of the contract of insurance,
- 16.2.4** any discharge or payment by the Association in accordance with Rule 16.2 shall be made as agent only of the Assured, and the Assured shall be liable to reimburse the Association for the full amount of such payment.

#### RULE 17 – EXCLUSION OF CERTAIN SPECIALIST RISKS

- 17.1** Unless previously agreed in writing by a special agreement between the Assured and the Association there shall be no recovery in respect of liabilities, costs and expenses:
- 17.1.1** arising from the operation of a semi-submersible heavy lift Ship or other Ship designed exclusively for the carriage of heavy lift cargo where the claim arises in connection with the cargo or, notwithstanding Rule 9.18.1, the wreck removal of that cargo;
- 17.1.2** arising out of salvage operations (including wreck removal) conducted by an entered Ship or provided by the Assured, other than for the purpose of saving or attempting to save life at sea;
- 17.1.3** incurred by an Assured during the course of performing dredging, blasting, pile-driving, well intervention, cable or pipelaying, construction, installation or maintenance work, core sampling, depositing of spoil, power generation, decommissioning and such other operations as the Association may from time to time determine in writing to the extent that such liabilities, costs and expenses arise as a consequence of:
- 17.1.3.1** 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;
- 17.1.3.2** the failure to perform such specialist operations by the Assured or the fitness for purpose and quality of the Assured's work, products or services, including any deficiency in the Assured's work, products or services;
- 17.1.3.3** any loss of or damage to the contract work;
- 17.1.3.4** PROVIDED that this exclusion shall not apply to liabilities, costs and expenses incurred by an Assured in respect of loss of life, injury or illness of crew and other personnel on board the entered Ship, and the removal of the wreck of the entered Ship, the discharge or escape of oil from the entered Ship or the threat thereof; but only to the extent that such liabilities, costs and expenses are covered elsewhere in accordance with these Rules;
- 17.1.4** incurred in respect of an entered Ship carrying out drilling or production operations in connection with oil or gas exploration or production to the extent that such liabilities, costs or expenses arise out of or during drilling or production operations;
- 17.1.4.1** for the purposes of Rule 17.1.4, an entered Ship 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:

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- 17.1.4.2** the oil is transferred directly from a producing well to the storage vessel; or
- 17.1.4.3** 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;
- 17.1.4.4** in respect of any entered Ship employed to carry out production operations in connection with oil or gas production, the exclusion shall apply from the time that a connection, whether directly or indirectly, has been established between the entered Ship and the well pursuant to a contract under which the entered Ship is employed, until such time that the entered Ship is finally disconnected from the well in accordance with that contract;
- 17.1.5** incurred by an Assured in connection with any claim arising out of:
  - 17.1.5.1** waste incineration or disposal operations carried out by the entered Ship (other than any such operations carried out as an incidental part of other commercial activities, not being specialist operations); or
  - 17.1.5.2** the operation by the Assured of submarines, mini-submarines or diving bells; or
  - 17.1.5.3** the activities of professional or commercial divers where the Assured is responsible for such activities, other than:
    - 17.1.5.3.1** activities arising out of salvage operations being conducted by an entered Ship where the divers form part of the crew of that entered Ship (or of diving bells or other similar equipment or craft operating from the entered Ship) and where the Assured, the owner of that entered Ship, is responsible for the activities of such divers; and
    - 17.1.5.3.2** incidental diving operations carried out in relation to the inspection, repair or maintenance of the entered Ship or in relation to damage caused by the entered Ship; and
    - 17.1.5.3.3** recreational diving activities;
- 17.1.6** in respect of any of the following persons:
  - 17.1.6.1** personnel (other than marine crew) on board the entered Ship (being an accommodation Ship) employed otherwise than by the Assured where either (i) such Ship is moored or anchored within 500 metres from any oil or gas production or exploration facility; or (ii) there has not been a contractual allocation of risks as between the Assured and the employer of any such personnel which has been previously approved by the Association in writing;
  - 17.1.6.2** hotel and restaurant guests and other visitors and catering crew of the entered Ship when the entered Ship 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 18 – OBLIGATION OF THE ASSURED IN RESPECT OF CLAIMS

- 18.1** An Assured must promptly:

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- 18.1.1** notify the Association of every casualty, event and claim against him which threatens to give rise to any liability, costs or expenses for which he is insured, or would have been insured but for the existence of any deductible, other insurance or retention, of all material developments in respect thereof, and of every survey or opportunity for survey (including survey of the condition of the entered Ship) in connection therewith;
- 18.1.2** 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.
- 18.2** An Assured must neither settle nor make any admission nor grant any waiver in respect of liabilities, costs or expenses for which he is insured without prior consent from the Association in writing.
- 18.3** If an Assured commits any breach of his obligations under Rule 18 the Members' Committee may in its sole discretion reject or reduce any recovery to which such breach may appear to the Members' Committee to be relevant or require the Assured to repay to the Association any amounts in respect of liabilities, costs or expenses which the Association may have incurred or paid or undertaken to pay in connection therewith.

#### **RULE 19 – TIME-BAR**

- 19.1** Without derogation from and in addition to the obligation under Rule 18.1.1 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 claim, any right of the Assured to recover in respect thereof shall be extinguished, unless the Members' Committee in its sole discretion shall otherwise determine.

#### **RULE 20 – BAIL**

- 20.1** 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 and if it does such Assured shall upon first demand made at any time by the Association in writing arrange 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 (with or without such counter-security having been required or arranged) 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 arrange such counter-security as may have been required or 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 the Association's liability to the Assured for the claim in question.

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#### **RULE 21 – POWERS OF THE ASSOCIATION RELATING TO THE HANDLING AND SETTLEMENT OF CLAIMS**

**21.1** The Association shall at all times have the right to:

**21.1.1** appoint and employ on an Assured's behalf lawyers, surveyors or other persons to cooperate with the Assured in investigating or dealing with (including commencing or defending legal or other proceedings) any matter which may result in liability, costs or expenses for which the Assured is or may be insured by the Association, or would have been insured but for the existence of any deductible, other insurance or retention, or in respect of which the Association has provided security;

**21.1.2** direct the conduct of any claim or legal or other proceedings against an Assured relating to any potential liability for which an Assured is or may be insured by the Association in whole or in part, or would have been insured but for the existence of any deductible, other insurance or retention, or in respect of which the Association has provided security, including direction that such claim or proceedings should be settled, compromised, or otherwise disposed of in such manner and upon such terms as the Association may require;

**21.1.3** with the approval of the Members' Committee, control the conduct of any claim or legal or other proceedings against an Assured relating to any potential liability for which an Assured is or may be insured by the Association in whole or in part, or would have been insured but for the existence of any deductible, other insurance or retention, or in respect of which the Association has provided security, including the settlement, compromise or other disposal of such claim or proceedings in such manner and upon such terms as the Association may require;

**21.1.4** require the Assured to provide or execute any documents to enable it to give effect to its powers under Rule 21.

**21.2** Without prejudice to any of the Association's rights and remedies under these Rules and at law, if an Assured fails to cooperate or to comply with any of the provisions under Rule 21, the Members' Committee may in its sole discretion reject or reduce any recovery to which such failure may appear to the Members' Committee to be relevant.

#### **RULE 22 – SETTLEMENT OF CLAIMS**

**22.1** The Members' 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.

**22.2** The Members' 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 Members' Committee, of such types and up to such sums as the Members' Committee may in its sole discretion determine.

**22.3** No member of the Members' Committee may vote upon any claim in which he is in any way interested.

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**22.4** Where under any Rule the Members' Committee shall have exercised its sole discretion in settling or determining claims or any other matters relating to the business of the Association, the Members' Committee shall not be obliged to give reasons for any decision.

#### **RULE 23 – COVER FOR CO-ASSUREDS AND OTHER ASSUREDS**

**23.1** The Association may accept an application for insurance as a Co-assured of other interests in the same Ship than the interest of the Principal Assured PROVIDED that:

**23.1.1** The cover afforded to such Co-assureds shall extend only to risks, liabilities and expenses arising out of operations and/or activities customarily carried on by or at the risk and responsibility of shipowners and which are within the scope of the cover afforded by the Rules and any special terms set out in the Certificate of Entry.

**23.1.2** Each Co-assured shall have an independent right of recovery from the Association although the Association may in its sole discretion reject or reduce any multiple recovery by Co-assureds in respect of the same loss.

**23.1.3** The Principal Assured and all Co-Assureds and Other Assureds under the same entry each warrant that the Co-assured is in relation to the entered Ship:

**23.1.3.1** interested in its operation, management or manning; or

**23.1.3.2** the holding company or the beneficial owner of the Principal Assured or any person insured as Co-assured and interested in its operation, management or manning; or

**23.1.3.3** a mortgagee of the ship or a financial institution (or its subsidiary or affiliate) as the owner leasing the entered Ship to the Principal Assured; or

**23.1.3.4** not a charterer of the ship other than as a bareboat charterer under Rule 23.1.3.1.

**23.1.4** Co-assureds shall be jointly and severally liable with the Principal Assured to pay all amounts due to the Association whether pursuant to these Rules, the Articles or otherwise.

**23.2** The Association may accept an application for insurance as an Other Assured as follows:

**23.2.1** a contractor (including a charterer) who has entered into a contract with the Principal Assured for the provision of services by or to the entered Ship, and any subcontractor of the contractor PROVIDED that:

**23.2.1.1** the contract has been approved by the Association; and

**23.2.1.2** the contract includes a Knock for Knock agreement; and

**23.2.1.3** the Other Assured shall only be covered for liabilities, costs and expenses which are to be borne by the Principal Assured under the terms of the contract and would, if borne by that Assured, be recoverable by that Assured from the Association.

**23.2.2** a charterer affiliated to or associated with the Principal Assured PROVIDED that:

**23.2.2.1** such charterer shall only be covered for the risks, liabilities, costs and expenses for which that Assured has cover;

**23.2.2.2** for the purposes of this Rule 23.2.2 a charterer shall only be affiliated to or associated with that Assured if:

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- 23.2.2.2.1** both that Assured and the charterer have the same parent or
- 23.2.2.2.2** one of that Assured and charterer is the parent of the other and
- 23.2.2.2.3** a parent is a company which owns at least 50% of the shares in and voting rights of another or owns a minority of the shares in the other and the ability to procure that it is managed and operated in accordance with its wishes.

**23.2.3** other persons or companies (for misdirected arrow claims) PROVIDED that:

- 23.2.3.1** the cover afforded to the Other Assured shall extend insofar only as that Other Assured may be found liable to pay in the first instance for loss or damage which is properly the responsibility of the Principal Assured;
- 23.2.3.2** nothing in the cover afforded hereunder shall be construed as extending cover in respect of any amount which would not have been recoverable from the Association by the Principal Assured had the claim in respect of such loss or damage been made or enforced against him;
- 23.2.3.3** once the Association has made indemnification under such cover it shall not be under any further liability and shall not make any further payment to any person or company whatsoever, including the Principal Assured in respect of that loss or damage; and
- 23.2.3.4** the Principal Assured and all Co-assureds and Other Assureds under the same entry each warrant that it is not a charterer of the whole or any part of the entered Ship.

**23.3** In relation to Co-assureds and Other Assureds:

- 23.3.1** each Co-assured and each Other Assured shall be named as such together with its interest in relation to the entered Ship in the relevant Certificate of Entry or by endorsement thereto;
- 23.3.2** the benefit of the insurance of the Principal Assured 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;
- 23.3.3** the cover afforded shall always be subject to:
  - 23.3.3.1** the provisos in Rule 9.1, and
  - 23.3.3.2** the limitations on recoveries in Rule 11;
- 23.3.4** there shall be no waiver of subrogation and any contractual or other legal liability of any Assured, Co-assured or Other Assured to each other shall not be excluded or discharged by reason of being insured under the same Entry. Any payment by the Association to any Assured, Co-assured or Other Assured in respect to any liabilities, losses and expenses shall operate only as satisfaction not exclusion or discharge of the liability of any Assured, Co-assured or Other Assured to each other;
- 23.3.5** 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;

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- 23.3.6** payment to any one Assured of any sums payable by the Association shall be a sufficient discharge of the Association for the same;
- 23.3.7** 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;
- 23.3.8** conduct of one Assured which is sufficient to bar that Assured's right under this policy shall bar the rights of recovery of all and the knowledge (including deemed knowledge) of one Assured shall be deemed to be the knowledge (including deemed knowledge) of all;
- 23.3.9** 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;
- 23.3.10** any communication from the Association to one Co-assured or Other Assured shall be deemed to have been communicated to all its other Co-assureds and Other Assureds and any communication from the Association to the Principal Assured shall be deemed to have been communicated to all of its Co-assureds and Other Assureds;
- 23.3.11** any communication from one Assured to the Association shall be deemed to have been made with the full approval and authority of all;
- 23.3.12** the Association shall be entitled to pay all sums to one Assured on behalf of all Co-assureds and Other Assureds; and
- 23.3.13** no Assured shall be entitled to recover from the Association in respect of any dispute or claim arising with any other Assured in respect of an entry.

#### **RULE 24 – COVER FOR AFFILIATES AND ASSOCIATES NOT NAMED IN THE CERTIFICATE OF ENTRY**

- 24.1** Should a claim in respect whereof the Principal 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 Principal 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 to any amount which would not have been recoverable from the Association by the Principal 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 Principal Assured, in respect of that claim.
- 24.2** Conduct of the Principal Assured or affiliate or associate hereunder or any Co-assured or Other Assured which would entitle the Association to reject or reduce recovery shall be deemed to have been the conduct of all and shall bar the rights of recovery of all of said insured.

#### **RULE 25 – FLEET ENTRIES**

- 25.1** 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

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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.

#### **RULE 26 – ASSIGNMENT**

- 26.1** No insurance afforded by the Association may be assigned without 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.
- 26.2** 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.
- 26.3** 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.

#### **RULE 27 – PERIOD OF INSURANCE, TERMINATION BY CONTRACTUAL NOTICE AND NOVATION**

- 27.1** 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 commence at the time stated in the Certificate of Entry relating to such contract and 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), continue until the expiry of the then current Policy Year and thereafter from Policy Year to Policy Year.
- 27.2** Any contract of insurance:
- 27.2.1** (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;
- 27.2.2** 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.

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**27.3** 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 Board (provided such approval was decided upon at a meeting of the Board at which not less than two thirds of the Board 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 Board), be:

**27.3.1** novated, in whole or in part, to the Transferee on such terms as the Board may in its sole discretion deem necessary for the purpose of implementing or giving effect to any such sale, disposal or transfer; and/or

**27.3.2** terminated by the Association in accordance with Rule 27.2.2 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 27.3, the Assured hereby consents to any novation, termination and entry into a replacement contract of insurance as referred to in Rules 27.3.1 and 27.3.2 and appoints the Association (acting through one or more members of the Board 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.

#### **RULE 28 – TERMINATION UPON SALE, LOSS, ETC.**

**28.1** 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:

**28.1.1** 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;

**28.1.2** 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;

**28.1.3** 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.

**28.2** 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 29 – TERMINATION UPON INSOLVENCY OR LIQUIDATION

**29.1** 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:

**29.1.1** 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;

**29.1.2** where the Assured is a corporation, upon the occurrence of any of the following:

**29.1.2.1** dissolution;

**29.1.2.2** a resolution for voluntary winding-up being passed (other than for purposes of company or group reorganisation);

**29.1.2.3** an order for compulsory winding-up being made;

**29.1.2.4** 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;

**29.1.2.5** any event analogous to or having an effect analogous to those set out in Rules 29.1.2.1 to 29.1.2.4 above under the applicable laws and proceedings of any jurisdiction;

**29.1.2.6** any action being taken by the Assured intended to procure the occurrence of any or more of the events set out in Rules 29.1.2.1 to 29.1.2.5 above.

**29.2** 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:

**29.2.1** the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets;

**29.2.2** the making of any general assignment, arrangement or composition with or for the benefit of creditors;

**29.2.3** an order granting protection from creditors being made;

**29.2.4** any event analogous to or having an effect analogous to those set out in Rules 29.2.1 to 29.2.3 above under the applicable laws and procedures of any jurisdiction;

**29.2.5** any action being taken by the Assured intended to procure the occurrence of any or more of the events set out in Rules 29.2.1 to 29.2.4 above.

#### RULE 30 – TERMINATION

**30.1** If not previously terminated under Rules 27 – 29, 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)



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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.

- 30.2** 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.

#### **RULE 31 – REINSURANCES**

- 31.1** The Association may:

**31.1.1** 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;

**31.1.2** effect reinsurances of any risks insured or reinsured by the Association;

**31.1.3** towards either or both of the aforesaid purposes, continue to be a party to the Pooling Agreement dated 17th November 1992 or any amendment, variation or replacement thereof or addendum thereto, in which the group known as the International Group of Protection and Indemnity Associations currently participate, or to any other agreement of a similar nature or purpose.

- 31.2** The Assured shall not be entitled to recovery in respect of that part of any liability, loss, damage, cost or expense which is not recovered by the Association under the Pooling Agreement, Group General Excess Loss Contract or any reinsurance(s) arranged by the Association because of a shortfall in recovery from such parties or 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 parties or reinsurers. For the purposes of this Rule 31.2, "shortfall" includes any failure or delay in recovery by the Association by reason of such parties or 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 31.2 shall cease to apply in respect of any shortfall to the extent the same is subsequently recovered by the Association under the Pooling Agreement, Group General Excess Loss Contract or any reinsurance(s) arranged by the Association.

#### **RULE 32 – ANNUAL AND SUPPLEMENTARY CALLS**

- 32.1** 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 34) shall (unless such entry is a Fixed Premium Entry or as may be otherwise specifically agreed) provide in accordance with the provisions of Rule 32 by way of Annual Calls or Annual and Supplementary Calls, all funds which in the sole discretion of the Board are required to meet:

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- 32.1.1** 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 Board 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, but excluding Overspill Claims;
- 32.1.2** such of the general expenses of the Association as the Board may from time to time charge against the insurance business of the Association in respect of such Policy Year;
- 32.1.3** such transfers to the reserves or other accounts of the Association (as referred to in Rules 33.8 and 38) and for subsequent application for the purposes of such reserves or other accounts or otherwise as the Board may determine;
- 32.1.4** any deficiency (but also taking account of any surplus) which has occurred or may be thought likely to occur in any Policy Years;
- 32.1.5** 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.
- 32.2** 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 therein stated and pro rata for Ships entered for less than the whole Policy Year.
- 32.3** Further towards such funds, if determined as aforesaid by the Board to be required in accordance with Rule 32.1 for any Policy Year, the Board 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.
- 32.4** The Assureds shall also be liable to provide funds in accordance with Rule 33 by means of an Overspill Call(s) to meet any Overspill Claim.
- 32.5** The Board 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 Ships' Certificates of Entry for that Policy Year.

### RULE 33 – OVERSPILL CLAIMS/CALLS

#### 33.1 Interpretation

- 33.1.1** In these Rules the following words and expressions shall have the following meanings, unless the context requires otherwise:

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“Convention Limit”	<p>in respect of a Ship, the limit of liability of the owner of that Ship 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) (but applying 334 Units of Account to each ton up to 500 tons) 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 Association as being the rate prevailing on the Overspill Claim Date, provided that,</p> <p>(a) where a Ship 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</p> <p>(b) each Ship shall be deemed to be a seagoing Ship to which the Convention applies, notwithstanding any provision in the Convention to the contrary;</p>
“Group General Excess Loss Contract”	the excess of loss reinsurance policies effected by parties to the Pooling Agreement;
“Group Reinsurance Limit”	the amount of the smallest claim (other than any claim arising in respect of oil pollution) incurred by the Association or by any other party to the Pooling Agreement which would exhaust the largest limit for any type of claim (other than a claim arising in respect of oil pollution) from time to time imposed in the Group General Excess Loss Contract;
“Overspill Call”	a Call levied by the Association pursuant to Rule 33.5 for the purpose of providing funds to pay part of an Overspill Claim;
“Overspill Claim”	that part (if any) of a claim (other than a claim arising in respect of oil pollution) incurred by the Association or by any other party to the Pooling Agreement under the terms of entry of a Ship which exceeds or may exceed the Group Reinsurance Limit;
“Overspill Claim Date”	in relation to any Overspill Call, 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 incident or occurrence occurred has been closed in accordance with the provisions of Rules 33.6.1 and 33.6.2, noon GMT on 20th August of the Policy Year in respect of which the Association makes a declaration under Rule 33.6.3;
“Overspill Reserve”	a reserve established by the Association pursuant to Rule 33.8;

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“Pooling Agreement” the agreement, to which the Association is a party, between certain protection and indemnity associations dated 17th November 1992 and any addendum to, or variation or replacement of, the said agreement.

**33.1.2** All claims (other than claims arising in respect of oil pollution) incurred by the Association or by any other party to the Pooling Agreement under the entry of any one Ship arising from any one incident or occurrence including any claim in respect of liability for the removal or non-removal of any wreck shall be treated for the purposes of these Rules 33.1 – 33.8 as if they were one claim.

**33.1.3** 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.

#### **33.2** Recoverability of Overspill Claims

**33.2.1** Without prejudice to any other applicable limit, any Overspill Claim incurred by the Association shall not be recoverable from the Association in excess of the aggregate of:

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

**33.2.2** The aggregate amount referred to in Rule 33.2.1 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 33.2.1(a); or
  - (ii) the amount referred to in Rule 33.2.1(b); or
- (b) that it is unable to collect an amount equal to that part of the Overspill Claim referred to in Rule 33.2.1(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 33.2.1 shall be reinstated to that extent.

**33.2.3** In evidencing the matters referred to in Rule 33.2.2(b) the Association shall be required to show that:

- (a) it has levied Overspill Calls in respect of the Overspill Claim referred to in Rule 33.2.1 on all Assureds entered in the Association on the Overspill Claim Date in accordance with and in the maximum amounts permitted under Rule 33.5; and
- (b) it has levied those Overspill Calls in a timely manner, has not released or otherwise waived an Assured's obligation to pay those Calls and has taken all reasonable steps to recover those Calls.

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#### 33.3 Payment of Overspill Claims

**33.3.1** 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 sole discretion of the Association, have been effected to protect the Association against the risk of payments of Overspill Claims; and
- (c) from such proportion as the Association in its sole discretion determines of any sums standing to the credit of such Overspill Reserve as the Association may in its sole discretion have established; and
- (d) by levying one or more Overspill Calls in accordance with Rule 33.5, irrespective of whether the Association has sought to recover or has recovered all or any of the sums referred to in Rule 33.3.1(b) but provided the Association shall first have made a determination in accordance with Rule 33.3.1(c); and
- (e) from any interest accruing to the Association on any funds provided as aforesaid.

**33.3.2** The funds required to pay such proportion of any Overspill Claim incurred by any other party to the Pooling Agreement which the Association is liable to contribute under the terms of the Pooling Agreement shall be provided in the manner specified in Rules 33.3.1(a) – 33.3.1(e).

**33.3.3** To the extent that the Association intends to provide funds required to pay any Overspill Claim incurred by it in the manner specified in Rule 33.3.1(d), the Association shall only be required to pay such Overspill Claim as and when such funds are received by it, provided that it can show from time to time that, in seeking to collect such funds, it has taken the steps referred to in Rules 33.2.3(a) and 33.2.3(b).

#### 33.4 Overspill Claims – Expert Determinations

**33.4.1** Any of the issues referred to in Rule 33.4.2 on which the Association and an Assured 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.

**33.4.2** This Rule 33.4 shall apply to any issue of whether, for the purpose of applying any of Rules 33.2.2, 33.2.3 and 33.3.3 in relation to any Overspill Claim (“the relevant Overspill Claim”):

- (a) costs have been properly incurred in collecting or seeking to collect Overspill Calls; or
- (b) any Overspill Call or part thereof is economically recoverable; or
- (c) in seeking to collect the funds referred to in Rule 33.3.3, the Association has taken the steps referred to in that Rule.

**33.4.3** If the Panel has not been constituted at a time when an Assured wishes to refer an issue to it, the Association shall, on request by the Assured, give a direction for the constitution of the Panel as required under the Pooling Agreement.

**33.4.4** The Association may (and, on the direction of the Assured, shall) give such direction as is

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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.

- 33.4.5** The Panel shall in its discretion decide what information, documents, evidence and submissions it requires in order to determine an issue and how to obtain these, and the Association and the Assured shall cooperate fully with the Panel.
- 33.4.6** In determining any issue referred to it under this Rule 33.4 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.
- 33.4.7** In determining an issue the members of the Panel:
- (a) shall rely on their own knowledge and expertise; and
  - (b) may rely on any information, documents, evidence or submission provided to it by the Association or the Assured as the Panel sees fit.
- 33.4.8** If the three members of the Panel cannot agree on any matter, the view of the majority shall prevail.
- 33.4.9** The Panel shall not be required to give reasons for any determination.
- 33.4.10** The Panel's determination shall be final and binding upon the Association and the Assured (subject only to Rule 33.4.11) and there shall be no right of appeal from such determination.
- 33.4.11** If the Panel makes a determination on an issue referred to in Rules 33.4.2(b) or 33.4.2(c) the Association or the Assured may refer the issue back to the Panel notwithstanding Rule 33.4.10, if it considers that the position has materially changed since the Panel made its determination.
- 33.4.12** The costs of the Panel shall be paid by the Association.
- 33.4.13** Costs, indemnities and other sums payable to the Panel by the Association in relation to any Overspill Claim, whether the reference to the Panel has been made under this Rule 33.4 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 33.2.2(a).

### 33.5 Levying of Overspill Calls

#### 33.5.1 If:

- (a) the Association shall at any time determine that funds are or may in future be required to pay part of an Overspill Claim (whether incurred by the Association or by any other party to the Pooling Agreement); and
- (b) the Association shall have made a declaration under Rules 33.6.1 or 33.6.3 that a Policy Year shall remain open for the purpose of levying an Overspill Call or Calls in respect of that Overspill Claim,

the Association in its sole 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 33.5.2.

#### 33.5.2 The Association shall levy any such Overspill Call:

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- (a) on all Assureds entered in the Association on the Overspill Claim Date in respect of Ships 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 33.6.3, any such Ship 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 Ship as the Association in its sole discretion shall decide.

**33.5.3** An Overspill Call shall not be levied in respect of any Ship entered on the Overspill Claim Date with an overall limit of cover equal to or less than the Group Reinsurance Limit.

**33.5.4** The Association shall not levy on any Assured in respect of the entry of any one Ship 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 Ship.

**33.5.5** If at any time after the levying of an Overspill Call upon the Assureds entered in the Association in any Policy Year, it shall appear to the Association that the whole of such Overspill Call is unlikely to be required to meet the Overspill Claim in respect of which such Overspill Call was levied, the Association may decide to dispose of any excess which in the opinion of the Association is not so required in one or both of the following ways:

- (a) by transferring the excess or any part thereof to the Overspill Reserve (in accordance with Rule 33.8); or
- (b) by returning the excess or any part thereof to those Assureds who have paid that Overspill Call in proportion to the payments made by them.

#### **33.6** Closing of Policy Years for Overspill Calls

**33.6.1** If at any time prior to the expiry of a period of 36 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 Association shall as soon as practicable declare that the relevant Policy Year shall remain open for the purpose of levying an Overspill Call or Calls in respect of that claim and the relevant Policy Year shall not be closed for the purpose of making an Overspill Call or Calls in respect of that claim until such date as the Association shall determine.

**33.6.2** If at the expiry of the period of 36 months provided for in Rule 33.6.1, no Overspill Notice as therein provided for has been sent, the relevant Policy Year shall be closed automatically for the purpose of levying Overspill Calls only, whether or not closed for any other purposes, such closure to have effect from the date falling 36 months after the commencement of the relevant Policy Year.

**33.6.3** If at any time after the Policy Year has been closed in accordance with the provisions of Rules 33.6.1 and 33.6.2, it appears to the Association that an incident or occurrence which occurred during such closed Policy Year may then or at any time in the future give rise to an Overspill Claim, the Association shall as soon as practicable declare that the earliest subsequent open Policy Year (not being a Policy Year in respect of which the Association

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has already made a declaration in accordance with Rule 33.6.1 and 33.6.3) shall remain open for the purpose of levying an Overspill Call or Calls in respect of that claim and such open Policy Year shall not be closed for the purpose of making an Overspill Call or Calls in respect of that claim until such date as the Association shall determine.

**33.6.4** A Policy Year shall not be closed for the purpose of levying Overspill Calls save in accordance with this Rule 33.6.

#### **33.7** Security for Overspill Calls on termination or cessor

##### **33.7.1** If:

- (a) the Association makes a declaration in accordance with Rule 33.6.1 or 33.6.3 that a Policy Year shall remain open for the purpose of levying an Overspill Call or Calls; and
- (b) an Assured who is liable to pay any such Overspill Call or Calls as may be levied by the Association in accordance with Rule 33.5 ceases or has ceased to be insured by the Association for any reason, or the Association determines that the insurance of any such Assured may cease,

the Association may require such Assured to provide to the Association by such date as the Association may determine (the "due date") a guarantee or other security in respect of the Assured's estimated future liability for such Overspill Call or Calls, such guarantee or other security to be in such form and amount (the "guarantee amount") and upon such terms as the Association in its sole discretion may deem to be appropriate in the circumstances.

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

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

**33.7.4** The provision of a guarantee or other security as required by the Association (including a payment in accordance with Rule 33.7.3) shall in no way restrict or limit the Assured's liability to pay such Overspill Call or Calls as may be levied by the Association in accordance with Rule 33.5.

#### **33.8** Overspill Reserve

**33.8.1** The Association may, in its sole discretion, establish and maintain a reserve (an "Overspill Reserve") to provide a source of funds which may be applied towards meeting any Overspill Claim or Claims.

**33.8.2** Funds to be applied to the Overspill Reserve may be raised in any of the following ways:

- (a) the Association, when deciding on the rate of any Annual Call for any Policy Year, may resolve that any specified amount or proportion of such Call shall be transferred to



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and applied for the purposes of the Overspill Reserve;

- (b) the Association 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 the Overspill Reserve;
- (c) the Association may transfer to the Overspill Reserve any balance of an Overspill Call not required to satisfy the Overspill Claim in respect of which it was levied, as contemplated in Rule 33.5.5(a).

#### RULE 34 – CLOSING OF POLICY YEARS

**34.1** With effect from such date as the Board shall in its sole discretion determine after the end of each Policy Year, but no sooner than 36 months from its commencement, the Board shall declare the same closed for Supplementary Calls, after which no further Supplementary Calls shall be levied in respect thereof.

**34.2** The Board 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 liabilities, costs or expenses recoverable in respect of such Policy Year (apart from Overspill Claims) which have not yet accrued or the validity, extent or amount of which have yet to be established.

**34.3** If upon the closing of any Policy Year it shall appear to the Board that the whole of the Calls (other than Overspill 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 (other than Overspill Claims), expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 32), 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:

**34.3.1** by transferring the excess or any part thereof to the reserves of the Association in accordance with Rules 33.8 or 38;

**34.3.2** 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;

**34.3.3** 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 29 or Rule 30 or whose liability for Calls in respect of such Policy Year has been assessed under the provisions of Rule 36.

**34.4** If upon the closing of any Policy Year it shall appear to the Board that the claims (other than Overspill Claims), expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 32) exceed or are likely to exceed the totality of the Calls (other than Overspill 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:

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- 34.4.1** by transferring funds from the reserves or other accounts of the Association;
  - 34.4.2** by transferring funds standing to the credit of any different closed Policy Year;
  - 34.4.3** by levying Supplementary Call(s) in respect of any open Policy Year with the intention (as permitted by Rule 32) of applying a part thereof to meet any such deficiency.
- 34.5** At any time after any Policy Year shall have been closed the Board 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 Board shall so resolve then the two or more closed Policy Years concerned shall be treated as though they constituted a single closed Policy Year, provided that no such amalgamation shall apply for the purposes of Overspill Claims, Overspill Calls or Overspill Reserves.

#### **RULE 35 – PAYMENT OF CALLS AND PREMIUMS**

- 35.1** Save as provided below in this Rule 35.1, Calls and (in relation to Fixed Premium Entries) fixed premiums shall be payable in such instalments and on such dates as the Board 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 an 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.
- 35.2** 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.
- 35.3** A copy of the resolution of the Board 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.
- 35.4** The amount or amounts specified in Rule 35.3 as being payable by an Assured or former Assured shall for all purposes (including the purposes of Rule 30) 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 35.3 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 43.
- 35.5** Without prejudice to any other provisions contained in these Rules the Board 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

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Rule 36) as from the due date of payment or such later date as the Board may in its sole discretion consider fit.

- 35.6** 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 Board may in its sole discretion determine, Call(s) may be levied in accordance with Rule 32 or, as the case may be, reserves may be applied in accordance with Rules 34 and 38.
- 35.7** 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.

#### **RULE 36 – RELEASE CALLS**

- 36.1** Subject to the provisions of this Rule 36, upon or at any time after the termination of entry of any Ship for any reason, a Release Call may be charged or re-charged by the Association in lieu of any Supplementary Call for open Policy Years during which such Ship shall have been entered. An Assured's liability for any Overspill Call shall not be affected by the charging or the payment of any Release Call.
- 36.2** 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 Board shall from time to time determine.
- 36.3** 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.
- 36.4** 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 36.2 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 any Release Call in accordance with Rule 36.5. 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.
- 36.5** Whether or not any request shall have been made in accordance with Rule 36.4, and notwithstanding the acceptance or otherwise by the Assured pursuant to that Rule, upon or at any

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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 36.2 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.

**36.5.1** PROVIDED that such debit notes (and the imposition of a Release Call 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:

**36.5.1.1** enforceable in London;

**36.5.1.2** acceptable to the Association; and

**36.5.1.3** for an amount equal to the debited Release Call.

**36.6** If 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 36.5.1) the Board determines in accordance with Rule 36.2 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 36.4 or imposed pursuant to Rule 36.5 (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 36.5.1 shall apply *mutatis mutandis* to any debit note issued pursuant to this Rule.

**36.7** 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 36.5.1) cancel the Release Call by notice in writing to the Assured whereupon the Assured shall be liable to pay any Supplementary Call in respect of which the Release Call had been charged, whether levied before, on or after the date of cancellation.

### RULE 37 – LAID-UP RETURNS

**37.1** 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 for 30 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 (other than of Overspill Calls) for such period at the following rates after deduction of such allowance for pool contributions, reinsurance, costs and expenses as the Association may from time to time determine:

**37.1.1** if the entered Ship so remains with crew on board, at the rate of 50 per cent of the Calls payable in respect of such entered Ship;

**37.1.2** if the entered Ship so remains without crew on board (other than for security or for maintenance necessary for the safety of the Ship), at the rate of 75 per cent of such Calls.

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- 37.2** 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.
- 37.3** If an entered Ship commences or recommences trading after having been laid up in any safe port or place in circumstances qualifying for a return of Calls under Rule 37.1.2 for a period exceeding four consecutive months, the Assured must notify the Association in writing prior to such commencement or recommencement so that the Association may satisfy itself as to the entered Ship's condition by inspection or otherwise, and if such notification is not given the Board may in its sole discretion reject or reduce any recovery to which such failure may appear to the Board to be relevant.

#### RULE 38 – RESERVES

- 38.1** The Board 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:
- 38.1.1** to stabilise the level of Supplementary Calls from one Policy Year to another;
  - 38.1.2** 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;
  - 38.1.3** to eliminate or reduce any deficiency which may have occurred or is considered likely to occur in respect of any closed Policy Year;
  - 38.1.4** to protect the Association against any actual or prospective losses on foreign exchange transactions or on realised or unrealised investments; or
  - 38.1.5** such other contingency or purpose beneficial to the Association as the Board may in its sole discretion determine.
- 38.2** Without prejudice to the generality of Rule 38.1, the Board may, in its sole discretion, establish an Overspill Reserve for the purpose described in, and in accordance with the provisions of, Rule 33.8.
- 38.3** The Board may in its sole discretion apply the whole or any part of any reserve fund or account (other than an Overspill Reserve established for the purpose described in Rule 33.8) for any of the contingencies or purposes set out in Rule 38.1 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 Board to be beneficial to the Association. The Board may also in its sole discretion transfer sums from one reserve (other than an Overspill Reserve established for the purpose described in Rule 33.8) to another (other than any such Overspill Reserve) 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.

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**38.4** Without prejudice to Rule 33.8 reserve funds or accounts may be raised by the Board 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:

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

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

#### **RULE 39 – INVESTMENTS**

**39.1** The funds of this Class 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 on such terms and in such manner as the Board may in its sole discretion determine. The funds of this Class may also be invested by such other method as the Board may approve.

**39.2** Unless the Board decide 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.

**39.3** If any funds shall have been so pooled and invested the Board may in its sole discretion apportion as they think 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 fund originated.

**39.4** Without prejudice to Rule 39.3 above the Board may after the closing of any Policy Year in its sole discretion direct 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 fund or account maintained by the Association.

#### **RULE 40 – PROVISION FOR EXPENSES**

**40.1** 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 on the tonnage entered at the time of entry of each Ship and on every 20th February afterwards that such Ships remain entered an amount calculated at such rate per ton as the Board shall determine.

#### **RULE 41 – NOTICES**

**41.1** 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 his address appearing in the register of Members of this Class or at any address identified by him to the Association expressly or impliedly as his place of business,

**41.1.1** 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.

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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.

- 41.2** Service of any notice or other document required under these Rules by an Assured on the Association shall be by any of the methods described in Rule 41.1, sent to the address of the registered office of the Association.
- 41.3** If posted, any such notice or other document as referred to in Rules 41.1, 41.1.1 and 41.2 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.
- 41.4** 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.

#### RULE 42 – FORBEARANCE

- 42.1** 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.

#### RULE 43 – JURISDICTION AND LAW

- 43.1** 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 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 any terms of such contracts.

**43.1.1** 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

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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.

**43.2** Subject to Rule 33.4, 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.

**43.3** In respect of any monies whatsoever which the Association considers are due to it, such as but not



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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 43.2 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 43 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.

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