



## CLASS 8 (FD&D)

### 2023/24 RULE CHANGES

#### RULE 1 – INTRODUCTORY

(...)

**1.14** This Rule 1.14 shall only apply following ~~applies in connection with~~ the withdrawal from the European Union by the United Kingdom, ~~including where a transition agreement has been effected~~ **(and in connection with any transitional arrangements relating to the performance after such withdrawal of contracts of insurance within any jurisdiction within the European Union or the European Economic Area (such withdrawal from the European Union and the withdrawal or termination of any such transitional arrangements relating to the performance of contracts of insurance being, in each case, a “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.

*[Explanation: the amendments update and reflect the application of Brexit to the Rules].*

#### **RULE 5 – APPLICATION FOR INSURANCE, AND CONDITIONS FAIR REPRESENTATION OF RISK AND CHANGE OR ALTERATION OF RISK**

**5.1** Any application of 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 with are submitted by

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Electronic Means or by any other means agreed by the Association.

- 5.2.1** The Assured must make a fair presentation of the risk **covered by** ~~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 change to those facts during the period of this insurance.
- 5.2.3** Upon such disclosure or failure to disclose, the Association may with effect from ~~the time of disclosure or failure to disclose~~ **the commencement of the Policy Year (or from such other date as the Association in its sole discretion may decide)**:
- 5.2.3.1** terminate the Assured's entry; or
- 5.2.3.2** amend the Assured's premium rating and/or terms **and conditions** of ~~cover of entry~~, or
- 5.2.3.3** **exclude cover for any liability, costs or expenses to the extent (as the Association in its sole discretion may decide) such liability, costs or expenses were caused or increased by such material change.**
- 5.2.4** 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 **covered by the Association**, including its terms and pricing. If the Assured is in any **reasonable** doubt as to whether a fact **(or a material change to such fact)** is material, the Association recommends that the Assured should disclose it.

(...)

- 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 **where there occurs or may occur a material change in the risks to the Association for any reason whatsoever including** ~~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,

*[Explanation: The amendments to Rule 5.2 clarify the Association's rights in case of a material change in the risks insured for a particular entry during the Policy Year. The amendment to Rule 5.5 enables amendments to the Rules to be made where in the*

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*Board's sole discretion there occurs or may occur a material change in the risks to the Association, in addition to those resulting from the implementation of sanctions & other prohibitions by any national, supranational & international bodies].*

#### 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.

*[Explanation: The change removes a superfluous term].*

#### RULE 30 – REINSURANCES

(...)

- 30.2** 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 potential violation of applicable law, including, but not limited to, the prohibitions and requirements of any economic, financial, or trade sanctions administered by a state, international or supranational organisation or other authority (or the risk thereof) or the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state, international or supranational organisation or other authority if payment were to be made by such parties or reinsurers **and, if for any reason whatsoever the Association discharges the liabilities of the Assured or makes any payment to the Assured in respect of which it suffers such a shortfall in recovery, the Assured shall indemnify and hold the Association harmless to the extent thereof.** 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 supranational 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.

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*[Explanation: The amendment addresses a scenario in which there is a change in any applicable sanctions regime between the time of the Association's obligation to pay being triggered and its recovery from re-insurers or pooling partners and where such change limits or prevents such recovery].*

#### RULE 35 – RELEASE CALLS

(...)

**35.5** Whether or not any request shall have been made in accordance with Rule 35.4, and notwithstanding the acceptance or otherwise by the Assured pursuant to that Rule, upon or at any time after the termination of entry of any Ship, a Release Call in respect of any Supplementary Call in the relevant amounts chargeable in accordance with Rule 35.2 for all open Policy Years during which such Ship shall have been entered may be imposed by the Association upon any Assured who would otherwise be liable to pay any such Call. Debit notes for such Release Calls may be rendered without previous notice and shall be due and payable immediately.

**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 **cash deposit or 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.

*[Explanation: The amendment clarifies the existing practise that security for any future Supplementary Call can be provided by way of a cash deposit].*