16 July 1999

TO ALL MEMBERS

Dear Sirs

ENGLISH CIVIL PROCEDURE REFORMS

On 26 April 1999, new Civil Procedure Rules came into effect which govern all new and existing civil litigation in England and Wales (but not Scotland and Northern Ireland which remain separate and distinct). These so-called 'Woolf Reforms' - named after the judge who introduced these changes - represent a fundamental change in the way in which English civil litigation will be conducted. Although the reforms apply to all new litigation commenced after 26 April 1999, transitional arrangements have been put in place for ongoing cases which were already before the Courts prior to that date. These provide that when a new step is to be taken in a pre-existing case, that step should be taken in accordance with the new Rules.

Although the reforms are aimed at the wider English civil justice system, the Admiralty jurisdiction of the High Court and the Commercial Court are expected to implement the essence of the Woolf Reforms such that all litigation with which Members are involved in these jurisdictions will be affected. Personal injury claims which may be subject to the jurisdiction of the Courts of England and Wales will certainly be affected: a claim, for example, by a stevedore who injures himself while working on a vessel in an English or Welsh port would be subject to the Woolf changes. The reforms may also be expected to affect cargo claims in England or Wales.

The overriding objective of the new Rules is to enable the Court to deal with cases more effectively and efficiently and to reduce the costs and delays inherent in the current system. To achieve this objective, the reforms encourage greater disclosure of information between the parties prior to litigation being commenced in an effort to promote settlement as it is the intention of the reforms that parties will only resort to court action as a last resort. Not surprisingly, therefore, Alternative Dispute Resolution ("ADR"), such as mediation, is actively encouraged and facilitated. If litigation is commenced, claims will be allocated to one of three case management tracks. The Court will allocate the claim to a track largely depending on the financial value of the claim: Small Claims Track (usually for claims up to £5,000); The Fast Track (usually up to £15,000); and The Multi-Track (usually in excess of £15,000). Depending on which track a claim is allocated to, the procedure up to trial and the costs implications will vary although most Members will clearly find themselves in The Multi-Track. The duties of case management have also now been put firmly in the hands of the judges rather than the parties. Even much of the old legalistic terminology has been changed to be more "user friendly".

P.T.O.

The shift in the management of a case from the parties and the lawyers to the Court is a most significant change. Judges now have much wider duties and powers to manage litigation and they will effectively take over the administration of a case in Court. The Court will supervise the parties' conduct much more closely, the idea being that cases will need to be progressed and will not be allowed to fester in the system. Judges will take a tough line with parties (or their legal advisers) who are seen to be delaying. The Court, for example, will be able to impose sanctions for breach of its timetables or orders and which can extend to a Judge being able to strike out a claim entirely of his own initiative.

This emphasis on progressing cases and not allowing them to fester is illustrated in the case of a cargo claim in which the Courts will not now allow a case to lie dormant once a "protective writ" (as it used to be called) has been issued to protect the Hague/Hague-Visby one year time bar. Previously, the practice of issuing such writs had led to the situation where the time bar had been protected but the case then lay dormant for months, or even years, while negotiations between the parties and/or the gathering of evidence continued. The close supervision by the Courts and the strict and short timetables imposed will now ensure that these cases are progressed. Although this will apply to all new claims brought before the Courts, the Courts have not given up on the backlog of older cases which were brought before 26 April 1999 but in which no steps have been taken; the Courts have ruled that unless such existing cases come before the Court by 26 April 2000, they will be automatically stayed.

Given therefore that a key objective is to speed up the litigation process, the reforms call for claims to be brought and in turn dealt with promptly. All claims should be started on a Claim Form (the new term for what was previously called a "Writ of Summons") which is issued by the Court and contains a concise statement of the nature of the claim, a statement of the value of the claim and specifies the remedy that the Claimant seeks. Full details of the claim, known as Particulars of Claim, may either be served with the Claim Form or within 14 days thereafter. An Acknowledgement of Service will then need to be served within 14 days and a Defence within 28 days of receipt of the Particulars of Claim, unless the parties agree to an extension. If the Defendant wants an extension of over 28 days then he must apply to the Court. These documents, previously referred to as "Pleadings", are now referred to as the "Statement of Case".

Personal injury claims are in a slightly different category, not least because they are one of only two areas in respect of which the Courts have so far issued a Pre-Action Protocol. The Protocols are in essence guides to good practice which aim to encourage more pre-action contact between the parties so that the parties are put in an informed position at an early stage where they may be able to settle cases fairly and without litigation. The Personal Injury Protocol provides that the Claimant may notify the Defendant as soon as he knows that a claim is likely to be made. The Claimant must then send the proposed Defendant two copies of a detailed letter of claim (one copy of which should be sent by the Defendant to his insurer). The Defendant has 21 days to acknowledge receipt and supply details of his insurers. If the Defendant does so, he will have three months from the date of receipt of the letter of claim to investigate the incident and state whether liability is admitted or denied. If the Defendant does not reply within the initial 21 day period, then the Claimant is entitled to commence litigation in the normal manner and the Defendant will be faced with the shorter and stricter Court timetable.

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The practice in collision and salvage cases has not been substantially affected, since the "old" procedure has been largely replicated by the "new" Admiralty guidelines, although some new powers have been added. In particular, the Court now has jurisdiction to determine "the amount and form of security to be provided" and may at a later time reduce the amount of security provided. Also noteworthy is the change which means that a claimant may now re-arrest to obtain further security in contrast to the previous position and Article 3 of the Arrest Convention, 1952.

A further effect of the Woolf Reforms is on the process of Discovery (now called "Disclosure"). The reforms have sought to reduce the amount of documents that need to be disclosed while also providing more certainty as to which documents should be disclosed. The only documents that now need to be disclosed are those upon which you rely to support your case, those that support another party's case and those that adversely affect either your or another party's case. The Court may also require additional disclosure by any or all of the parties involved.

The party giving disclosure will also be required to make a "Disclosure Statement" confirming the position of the person making the statement, their authority to provide the statement and to undertake the required search for documentation, the extent of the search and, where applicable, justification for the search not being made. It should be emphasised that parties are only required to make a reasonable search for the necessary documentation although the requirements of the International Safety Management Code mean that it will be very difficult for a Member to avoid disclosing any relevant documentation that would need to be held in order to adhere to the Code.

In addition, "Disclosure Statements", "Witness Statements", the "Statement of Case" and any other documents upon which a party might wish to rely as evidence must incorporate a Statement of Truth. As the name suggests, this is a statement that the party putting forward the document, or the maker of the witness statement, believes the facts stated in the document are true. Again, bearing in mind the tight time limits, this will necessitate the procedural requirements of the Statement of Truth being dealt with in a timely fashion.

Expert reports will be directed to the Court rather than to the parties. There is to be increased use of joint experts and the Court will be able to direct that an expert be jointly instructed. Indeed, when instructing their own expert, parties will need to remember that such instructions are no longer privileged and can be ordered to be disclosed if there are reasons to suspect that they are inaccurate or incomplete. Additionally, written questions may be put to experts whether jointly instructed or instructed by the other side, the replies forming part of the expert report.

One of the main thrusts of the reforms is to reduce costs, although it remains to be seen whether this objective is achieved overall as the so-called "front-loading" of claims, which requires a great deal of activity and preparation at the outset, will lead to increases in costs in the early stages. As in so many other areas of the reforms, the Courts will have a greater say in the costs that are incurred. At various stages, estimates must be given of solicitors' fees, and which must be adhered to as any excess may not be recoverable if that party is successful. Although the general rule remains that the unsuccessful party will be ordered to pay the costs of the successful party, the Courts will now have regard to all the circumstances of the case including the conduct of the parties both before and after the

litigation is commenced. If the Court is not satisfied with a party's conduct of its case, or a party is unsuccessful in an application during the course of the litigation, the Court may penalise that party (or its legal advisers) in costs. Such a penalty will increasingly be dealt with on the spot and will need to be paid within 14 days of the hearing.

Additionally, both claimants and defendants are now entitled to make offers (called "Part 36 offers") to settle a case once litigation has commenced. Where a party does not accept such an offer but then fails to recover more at trial, the Court is likely to penalise that party by way of costs.

A brief mention should be made about the effect that the Woolf Reforms will have on the practice of London arbitration. Some commentators have predicted a "flight to arbitration" until the effects of the reforms on the Courts are better known. The vast majority of claims arising out of charterparty disputes or disputes concerning sale and purchase contracts are referred to arbitration and only come before the Courts on appeal. While the 1996 Arbitration Act made it more difficult to appeal an arbitration award (and this remains unchanged), what will be interesting to observe is the effect that the Woolf Reforms will have on the practice of London arbitration. Many of the principles embodied in the 1996 Arbitration Act are echoed in the civil justice reforms and, although this Act has been in force for a few years now, there is a perception that it has not brought about the promised changes in London arbitration, which appears to many users still to be too slow and too expensive. It remains to be seen whether there will be a spill over of these new practices to London arbitration as parties and practitioners become used to the Court reforms.

In summary, the Woolf Reforms are designed to make the process of claims resolution quicker, less expensive and more accessible although only time will tell whether these objectives are achieved. What is certain is that the so-called "front-loading" of claims, where much more information is required at the outset and within a short and strict timetable, will mean that preparation will be the key to successfully advancing, or defending, a claim subject to these Rules and may also enhance the prospects of an earlier settlement than at present. Once litigation has been commenced, active case management will reward those parties who are adequately prepared and punish parties who are not. Investigations must therefore start from the moment that a Member wishes to bring or is notified of a claim under these new Rules. Members are in fact advised to put in place a system so that they are able to collect and organise the relevant documentation quickly and, perhaps most importantly, are urged to contact the Association at the earliest possible opportunity when claims arise.

Yours faithfully
A BILBROUGH & CO LTD
(MANAGERS)