



# THE LONDON

STEAM-SHIP OWNERS'  
MUTUAL INSURANCE ASSOCIATION LIMITED

All correspondence should be addressed to the Managers

A. BILBROUGH & CO. LTD  
50 Leman Street London E1 8HQ  
Telephone: 020 7772 8000  
Facsimile: 020 7772 8200  
E-mail: london@a-bilbrough.com  
[www.lssso.com](http://www.lssso.com)

## CLASS 5, THE PROTECTING AND INDEMNITY CLASS

NOTICE IS HEREBY GIVEN that a SEPARATE MEETING of the MEMBERS OF CLASS 5, THE PROTECTING AND INDEMNITY CLASS, of the Association will be held at the REGISTERED OFFICE of the Association, 50 LEMAN STREET, LONDON, E1 8HQ at 12 noon on WEDNESDAY, 26th JANUARY 2005, or as soon thereafter as the meeting of the Committee called for that day is finished, for the purpose of amending the Rules.

The following amendments together with such further amendments, if any, as may be proposed will be submitted for adoption with or without modification and with effect from noon G.M.T. on the 20th day of February 2005.

*[New wording is in bold. The explanatory notes in italics will not appear in the actual Rules.]*

### RULE 5 APPLICATION FOR INSURANCE AND CONDITIONS

- 5.1 It is a condition of entry of a Ship for insurance in this Class that the person making application ~~for, or on whose behalf such application is made, for such entry and who in accordance with Rule 1.5 becomes or continues as a Member as a result of~~ such entry shall agree to become and shall become a member (or, if already a member, shall continue as such) of The London Steam-Ship Owners' Mutual Insurance Association (Bermuda) Limited (herein referred to as "LSSO (Bermuda)", a company incorporated in Bermuda without share capital with which the Association reinsures risks of this Class): **PROVIDED that no person shall by virtue of being an Other Assured be entitled to be a member of LSSO (Bermuda) and no more than one Co-assured in respect of such entry shall be entitled to be a member of LSSO (Bermuda) and the Association shall have the right to designate one Co-assured in respect of an entry as a member of LSSO (Bermuda).**
- 5.2 An application ~~by any person~~ for entry or renewal of entry of a Ship in this Class ~~shall~~ **by or on behalf of any person who in accordance with Rule 1.5 becomes or continues as a Member as a result of such entry shall incorporate or be deemed to incorporate** and be treated as comprising an application to become or continue as a member of LSSO (Bermuda) on the terms of and subject to the ~~incorporating Act~~ **Bermuda Companies Act 1981 (as amended), Incorporating Act (as amended)** and Bye-laws of LSSO (Bermuda), and subject to the Rules of Reinsurance Class I of LSSO (Bermuda), being the Rules applicable to members of LSSO (Bermuda) who have entries in this Class of the Association which are reinsured by the Association with LSSO (Bermuda).
- 5.3 A person by whom or on whose behalf an application has been made and accepted by the Association for insurance in this Class **and who in accordance with Rule 1.5 becomes or continues as a Member as a result of such entry** shall be deemed to have agreed to become a member of LSSO (Bermuda) and to be bound by the terms of the said ~~incorporating~~ **Incorporating** Act, Bye-laws and Rules of **Reinsurance Class I of** LSSO (Bermuda) and the Managers shall be empowered to sign on behalf of such person any documents required to be signed by such person in order to become or continue as a member of LSSO (Bermuda).

**5.4 As a term of entry of any Ship for insurance in this Class each Assured shall be bound by and comply with the terms of the Incorporating Act and Bye-laws of LSSO (Bermuda) and the Rules of Reinsurance Class I of LSSO (Bermuda).**

~~5.4.5.5~~ The condition stated in Rule 5.1 and the provisions stated in Rules 5.2, ~~and 5.3~~ **and 5.4** shall apply for each Policy Year if, but only if, risks of this Class shall be reinsured by LSSO (Bermuda) for the Association for that Policy Year or any part thereof. For this purpose it shall be assumed that any agreement between the Association and LSSO (Bermuda) for reinsurance of risks of this Class by LSSO (Bermuda), which is current when an application for insurance or renewal of insurance in this Class is received by the Association, will remain in force notwithstanding that such agreement may be capable of being terminated at or before the commencement of the next Policy Year provided that this assumption shall not be made if at such time it shall have been agreed that such reinsurance will terminate at or prior to the commencement of the next Policy Year.

~~5.5.5.6~~ 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 Communication or by any other means agreed by the Association.

~~5.6.5.7~~ If the application is accepted by the Association, all particulars and information given by the applicant shall form the basis of the contract of insurance and it shall be a condition precedent to any right of recovery in respect thereof that the same were all true and, save to the extent otherwise notified in writing to the Association, continued to be true, throughout the period of insurance, in each case so far as the applicant knew or could with reasonable diligence have ascertained. Without prejudice to the generality of the foregoing, it shall further be a condition precedent to any right of recovery in respect of any such contract of insurance that an Assured shall provide details of any change to any particulars and information previously furnished to the Association.

~~5.7.5.8~~ The Association shall in its absolute discretion be entitled to refuse any application for insurance without stating reasons, whether or not the applicant is already an Assured.

~~5.8.5.9~~ 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.

*[Explanation: The proposed changes to Rule 5 make it clear that only one co-assured per entered vessel may be a corporate member of LSSO(Bermuda), as is now the case with LSSO. LSSO(Bermuda) will be making equivalent changes to its Bye-Laws and Rules to those made to the Articles and Rules of LSSO last year.]*

## **RULE 9 RISKS COVERED**

### **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 standard Form of Salvage Agreement (LOF1995) and subsequent amendments thereto,

9.15.1.5 PROVIDED that, unless the 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 under the unamended York-Antwerp Rules 1994 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;
- 9.15.1.5.3 in respect of liabilities, costs and expenses in respect of an escape or discharge or threatened escape or discharge of oil arising out of any incident or occurrence to which the United States Oil Pollution Act of 1990 ("OPA 90") is applicable and which relates to a "tank vessel" (as defined in OPA 90) unless the Assured who has entered such a tank vessel has complied with the following terms and conditions:
- (a) the Assured shall agree before 20th February of the relevant Policy Year to make and shall make quarterly declarations in arrears, at the latest within two months of each quarter ending 20th May, 20th August, 20th November and 20th February, declaring whether or not any entered tank vessel has made a voyage carrying cargo to or from ports or places in the United States of America, including the exclusive economic zone (EEZ), to which OPA 90 applies, and, if any such voyages have been made, giving the date on which the cargo was loaded or discharged, the name of the United States port or location at which the cargo was loaded or discharged, and the type of the cargo carried, in accordance with the U.S. Voyage Quarterly Declaration form issued to the Assured by the Managers; and
- (b) if a voyage declared under (a) above involves the carriage of persistent oil (as defined in the U.S. Voyage Quarterly Declaration form) as cargo, the Assured shall pay, on or before the date stipulated in the debit note issued by the Managers, a surcharge as specified therein.

It is a condition precedent to cover in respect of liabilities, costs and expenses in respect of an escape or discharge or threatened escape or discharge of oil arising out of an incident or occurrence to which OPA 90 is applicable that the Assured has timeously and accurately complied with the above conditions concerning declarations.

- 9.15.1.6 A Member insured in respect of a Ship which is a 'Relevant Ship' as defined in the Small Tanker Oil Pollution Indemnification Agreement (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 a Member exercises his rights under STOPIA to withdraw from that agreement, and unless the Managers have agreed in writing, or unless the Committee otherwise determines, there shall be no cover under Rule 9.15 in respect of such Ship so long as that Member is not a party to STOPIA.**

*[Explanation: The proposed addition to Rule 9.15 reflects the anticipated introduction of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA), which the International Group has agreed shall come into effect upon the entry into force of the Protocol to the 1992 Fund Convention.]*

## **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 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;
- 9.24.1.1.2 no claim shall be considered by the 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 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 Committee that he took such steps as appear to the Committee to have been reasonable to prevent the event giving rise to the confiscation;** ~~the Committee in its sole discretion may refuse recovery to any extent~~

~~whatever in respect of confiscation in circumstances regarded by the Committee as involving any element of fault or privity on the part of the Assured.~~

[Explanation: The proposed changes to Rules 9.24.1.1.1 and 9.24.1.1.3 provide the Committee with discretion in connection with the amount recoverable and greater flexibility in relation to the conduct of the Assured.]

## **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.
- 9.27.2 Legal costs and expenses relating to any liabilities, costs or expenses against which the Assured is insured within this Class, but only to the extent either that such legal costs and expenses have been incurred with the prior approval of the Association in writing or that the Committee in its sole discretion shall determine that the same should be recovered,
- 9.27.3 PROVIDED that 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.

[Explanation: The proposed change to Rule 9.27.1 achieves greater consistency with Rules 4.1, 4.2 and 18.1.1.]

## **RULE 11 LIMITATIONS ON COVER**

- 11.1 Unless and to the extent that the Association agrees in writing as a term of entry, 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, **or** demise charterer, ~~manager or operator~~ 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 or demise charterer of the entered Ship and as if such registered owner or demise charterer were entitled to limit liability, and recovery in respect of the liability concerned shall not exceed that limited amount.
- 11.3 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 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 not exceed such proportion of the above US\$1,000,000,000 (U.S. Dollars One Billion) limit 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 Recovery by an Assured, whose interest in an entered Ship is that of a time, voyage, space or slot charterer other than a Co-assured, shall be limited as follows:

- 11.4.1 to the lesser of either the sum for which such Assured shall be deemed to be entitled to limit his liability under Rule 11.2 plus an additional US\$50,000,000 (U.S. Dollars Fifty Million), or US\$ 300,000,000 (U.S. Dollars Three Hundred Million);
- 11.4.2 but if his liability is in respect of oil pollution recovery shall be limited to US\$100,000,000 (U.S. Dollars One Hundred Million),
- 11.4.2.1 PROVIDED that where a Ship is separately entered for charterers' risks by more than one time, voyage, space or slot charterer with the Association or any other association which participates in the Pooling Agreement and the Group General Excess Loss Contract, the maximum recovery in respect of all claims for oil pollution liability following any one occurrence brought against any time charterer of such entered Ship or against the Association or against any other association shall be limited to US\$300,000,000 (U.S. Dollars Three Hundred Million). The liability of the Association in respect of such claims shall be limited to that proportion of US\$300,000,000 (U.S. Dollars Three Hundred Million) that each claim recoverable from the Association bears to the aggregate of the claims recoverable against the Association and such other associations if any.
- 11.5 Any Overspill Claim incurred by the Association shall not be recoverable from the Association in excess of the amounts specified in Rule 33.2.

*[Explanation: The proposed change to Rule 11.2 is intended to ensure that, in particular, managers' and operators' cover is limited to the amount to which the registered owner or demise charterer of the Ship would be entitled to limit their liability and, in this regard, account is taken of the provisions of Rules 23 and 24.]*

## **RULE 15 LIABILITY EXCLUDED FOR WAR RISKS**

- 15.1 Unless the Association shall have previously agreed or arranged cover in writing on special terms (which may include the requirement of a further Call or premium) and subject to the provisions of Rule 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 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,
    - 15.1.1.1 PROVIDED that in the event of any dispute as to whether or not any act constitutes an act of terrorism the decision of the 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:
    - 15.1.3.1 liabilities, costs or expenses which arise solely by reason of the transport of any such weapons whether on board the entered Ship or not;
    - 15.1.3.2 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 PROVIDED ALWAYS that:
  - 15.2.1 the exclusions in Rule 15.1 shall not apply to liabilities, costs and expenses of an Assured insofar only as they are discharged by the Association on behalf of the Assured pursuant to a demand made under:
    - 15.2.1.1 a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777;
    - 15.2.1.2 a certificate issued by the Association in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 and 1992 or any amendments thereof;
    - 15.2.1.3 **the undertaking contained within the Memorandum of Understanding between the International Group of P&I Clubs and the 1992 International Oil Pollution Compensation Fund with respect to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA)**  
to the extent that such liabilities, costs and expenses are not recovered by the Assured under any other policy of insurance or any extension to the cover, provided by the Association; and
  - 15.2.2 where any such guarantee, undertaking or certificate is provided by the Association on behalf of the Assured as guarantor or otherwise, the Assured agrees that any payment by the Association

thereunder in discharge of the said liabilities, costs and expenses shall, to the extent of any amount recovered under any other policy of insurance or extension to the cover, provided by the Association, be by way of loan and that there shall be assigned to the Association all the rights of the Assured under any other insurance and against any third party.

- 15.3 The Association may provide special cover to the 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 this Rule 15, subject to such limits and to such terms and conditions as the Association may from time to time determine.

*[Explanation: The proposed change by way of addition to Rule 15 reflects the anticipated introduction of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) and the effect of the related amendment to the Memorandum of Understanding between the International Group and the 1992 IOPC Fund, which provides that the 1992 Fund may bring indemnity claims in relation to STOPIA directly against the Clubs.]*

## **RULE 16 LIABILITY EXCLUDED FOR CERTAIN NUCLEAR RISKS**

**16.1** There shall be no recovery in respect of any liabilities, costs and expenses directly or indirectly caused by or contributed to by or arising from:

**16.1.1** ionising radiations from, or the radioactive, toxic, explosive or other hazardous or contaminating properties of:

**16.1.1.1** any nuclear fuel or any nuclear waste or the combustion of nuclear fuel; or

**16.1.1.2** any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or

**16.1.1.3** **any radioactive matter, or**

**16.1.2** any weapon ~~of war~~ **or device** employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter, other than liabilities, costs and expenses arising out of carriage of "excepted matter" (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulations made thereunder) as cargo in an insured vessel.

*[Explanation: The proposed change to Rules 16.1.1 and 16.1.2 are intended to achieve consistency with amendments to the Pooling Agreement, broadening the current exclusions and addressing the potential use of unconventional methods to deliver or contribute to the delivery of the excluded risks.]*

## **RULE 18 OBLIGATION OF THE ASSURED IN RESPECT OF CLAIMS**

**18.1** An Assured must promptly:

**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, 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 Committee may in its sole discretion reject or reduce any recovery to which such breach may appear to the 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.**

*[Explanation: The proposed changes to Rules 18.2 and 18.3 serve to strengthen the Association's position with respect to a Member's unilateral waiver of liabilities, costs or expenses and the entitlement of the Association to require a Member to repay amounts which the Association may have incurred or undertaken to pay.]*

## **RULE 32 ADVANCE, DEFERRED AND ADDITIONAL 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 for a fixed premium or as may be otherwise specifically agreed) provide in accordance with the provisions of Rule 32 by way of Advance, Deferred or Additional Calls, all funds which in the sole discretion of the Committee are required to meet:

**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 Committee may charge in whole or in part to such Policy Year, and any proportion of any claims, expenses or outgoings of any insurer other than the Association which has fallen or which may be thought likely to fall upon the Association by virtue of any reinsurance or pooling agreement concluded between the Association and such other insurer, but excluding Overspill Claims;
- 32.1.2 such of the general expenses of the Association as the Committee may from time to time charge against the insurance business of the Association in respect of such Policy Year;
  - 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 Committee 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 closed 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, ~~and/or~~ **guarantee fund and/or other fund or capital requirement** in respect of ~~such~~ **any** Policy Year.

[Explanation: The proposed amendment reflects the new enhanced capital requirement regime being introduced by the Association's regulator, the Financial Services Authority, in January 2005.]

### **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 Deferred and/or Additional Call for open Policy Years during which such Ship shall have been entered. An Assured's liability for **any** Overspill Calls 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 Advance Call as the Committee in its sole discretion 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 Deferred and/or Additional 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 Deferred and/or Additional 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 Deferred and/or Additional 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 time after the termination of entry of any Ship, a Release Call~~s~~ in respect of any Deferred and/or Additional 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 Calls thereby effected) shall be cancelled if the Association shall have received a bank guarantee which will pay on the written demand of the Association any future Deferred and/or Additional 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(s).

36.6 If while a Release Call which has become due and payable is unpaid (and, if payment of **any** future Deferred and/or Additional Calls is not guaranteed in accordance with Rule 36.5.1) the Committee 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 Advance 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 Deferred and/or Additional 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 ~~at~~ **any** Deferred and/or Additional Calls in respect of which the Release Call had been charged, whether levied before, on or after the date of cancellation.

[Explanation: The proposed change to Rule 36.1 expressly empowers the Association to re-charge a Release Call should the circumstances so require, while the remainder of the changes are logical improvements to the wording.]

#### **RULE 43 JURISDICTION AND LAW**

**43.1** The Association may but shall not be obliged to commence and maintain proceedings to obtain security for and/or payment of any amount outstanding in respect of Calls or otherwise 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. Without prejudice to the foregoing, the Association shall be entitled to commence and maintain proceedings in any other jurisdiction and subject to and/or under the law of any other jurisdiction to establish, exercise or enforce any right of lien and/or to obtain security for and/or payment of any amount outstanding in respect of Calls or otherwise.

**43.2** Save for the matters referred to in Rule 43.1 and subject to Rule 33.4, if any difference or dispute shall arise between an Assured 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 before a sole legal arbitrator and the submission to arbitration and all the proceedings therein shall be subject to the provisions of the Arbitration Acts 1950, ~~1979~~ and 1996 and any statutory modification or re-enactment thereof, and to English Law. In any such arbitration, any matter decided or stated in any judgment or arbitration award (or in any reasons given by an arbitrator or umpire 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.

[Explanation: The Arbitration Act 1979 has been repealed.]

By Order of the Committee,  
A. BILBROUGH & CO. LTD.  
(Managers)

31 December 2004