

## 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, 25th JANUARY 2012, 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 2012.

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

### **RULE 1 INTRODUCTORY**

- 1.4** The standard insurance afforded by the Association within this Class is set out in Rule 9, but additional risks may be covered ~~subject to Rule 2.1.1~~ 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.
- 1.4.1** In the case of additional risks that may be covered by the Association, the Association may reinsure in whole or in part such risks and where such reinsurance is arranged:
- 1.4.1.1** 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
- 1.4.1.2** the Managers shall be at liberty in their discretion to delay making payment to the Assured until after recovery under such reinsurance.

*[Explanation: The proposed change by way of deletion of the reference to Rule 2.1.1 will be necessary in the event the proposed change to Rule 2 (below) is approved.]*

### **RULE 2 MUTUAL CONTRIBUTION**

- 2.1** The funds necessary for the purposes described in Rule 32 shall be determined by the Committee 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;
- ~~**2.1.1** PROVIDED that applications for insurance (excluding insurance under any Pooling Agreement as referred to in Rule 31.1.3) on any basis other than mutual contribution or for risks other than set out in Rule 9 shall not be accepted by the Association to the extent that the~~

~~premiums payable in respect thereof in any such 12 month period as aforesaid would in aggregate exceed 10 per cent of the Annual Call for Assureds contributing mutually for that period.~~

- 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.

*[Explanation: The proposed change by way of deletion of Rule 2.1.1 is considered necessary in light of the Association's decision to offer Charterers' CSL cover and the good progress and anticipated further increase in that line of business, such that the current restriction on the writing of this business should be removed.]*

### **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.

- 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.

*[Explanation: The purpose of the proposed change to Rule 3.2 is to clarify that the Association's rights of subrogation in respect of a Member's rights against another party also apply in cases where the Association provides security on behalf of a Member, and that settlement of a claim by a Member is not a pre-condition to the Association's exercise of such subrogation right.]*

### **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 for a fixed premium or as may be otherwise specifically agreed) provide, in accordance with the provisions of Rule 32 by way of Annual or Supplementary 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, 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 Committee to be required in accordance with Rule 32.1 for any Policy Year, the Committee may direct that a Supplementary Call(s) shall be paid, the amount(s) of which shall be stated as a uniform percentage of the Annual Call payable by each Assured for that Policy Year.
- 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 Committee may determine a general increase or reduction in Annual Call rates for the immediately following Policy Year which shall be notified to Assureds not later than the previous 31st December so as to apply with effect from the start of the immediately following Policy Year to all Ships whose entries are then continuing on the basis of which Annual Calls shall be assessed in respect of each Assured by the Managers and shown in each Ships' Certificates of Entry for that Policy Year.

*[Explanation: :The purpose of the proposed change to Rule 32.1.4 is to extend the purposes for which funds are provided more logically to meeting deficiencies in any Policy year.]*

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

11 January 2012