



The London P&I Club

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CLASS 8, THE FREIGHT DEMURRAGE AND DEFENCE CLASS

NOTICE IS HEREBY GIVEN that a SEPARATE MEETING of the MEMBERS OF CLASS 8, THE FREIGHT DEMURRAGE AND DEFENCE CLASS, of the Association will be held at the REGISTERED OFFICE of the Association, 50 LEMAN STREET, LONDON, E1 8HQ at 12:20 p.m. on WEDNESDAY, 27th JANUARY 2016, 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 at the Meeting, will be submitted for adoption with or without modification and with effect from noon G.M.T. on the 20th day of February 2016.

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

RULE 1 INTRODUCTORY

...

- 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 Committee 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 Committee from time to time, or any convention, direct action law, statute or regulation; ~~and all such contracts and these Rules shall, save as otherwise provided in Rule 43, be governed by English law and shall be subject to the provisions of the Marine Insurance Act 1906 and any statutory modifications thereof~~

[Explanation: the proposed amendment is one of a number triggered by the Insurance Act 2015 (referred to in the Association's Circular dated 18 November 2015); the deleted text will now form part of the proposed new Rule 42.1.]

RULE 5 APPLICATION FOR INSURANCE AND CONDITIONS

...

- ~~**5.2** 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.~~

- 5.2.1 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. 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.**

[Explanation: The proposed amendments align the duty of disclosure provisions of the Rules with the relevant provisions of the Insurance Act 2015.]

RULE 14 MONEYS RECOVERED FOR ASSUREDS

- 14.1 All moneys recovered for any Assured shall be paid to him without deduction of any commission or other sum except unpaid Calls or other sums due by him to the Association,**
- 14.1.1 PROVIDED that insofar as costs or charges or disbursements ('costs') are covered by this Class, the Association shall be entitled to any sum which the Assured recovers in respect of such costs or charges or disbursements pursuant to any award, judgment or settlement agreement. Where for any reason no sum is recovered in respect of costs or the sum so recovered is less than the total costs covered by this Class, the Assured shall suffer such deduction or make such payment of such other or such additional amount as the Committee may in its sole discretion determine to represent a fair recovery of costs for the Association from the principal amount recovered by the Assured. If any claims, disputes or proceedings have been settled or compromised for a lump sum which includes costs recoverable from any other party, or without any provision as to the payment of such costs, then in either of such events the Assured shall suffer such deduction or make such payment in respect of such costs as the Committee may in its sole discretion determine.**
- 14.1.2 The provisions of Rule 14.1.1 shall apply whenever the Association has provided support for any claims, disputes or proceedings, in whole or in part, and shall continue to apply notwithstanding withdrawal of support, or cesser or termination of entry.**

[Explanation: The proposed amendments address the Association's entitlement in respect of costs or charges or disbursements in cases where a recovery in respect of the principal claim only proves possible.]

RULE 35 RELEASE CALLS

- 35.1 Subject to the provisions of this Rule 35, 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.**
- 35.2 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 Committee shall from time to time determine.
- 35.3** 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.
- 35.4** 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 35.2 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 35.5. 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.
- 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.
- 35.5.1** 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:
- 35.5.1.1** enforceable in London;
- 35.5.1.2** acceptable to the Association; and
- 35.5.1.3** for an amount equal to the debited Release Call(s);
- [Explanation: the proposed amendment to Rule 35.5.1 provides a period of 30 days (unless otherwise agreed) for the Assured to provide a bank guarantee in lieu of a Release Call.]*

RULE 40 NOTICES

- 40.1** 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, ~~telex~~, facsimile or by Electronic Means all of which shall be addressed to the Assured at any address identified by him to the Association expressly or impliedly as his place of business,
- ...
- 40.3** If posted, any such notice or other document as referred to in Rules 40.1, 40.1.1 and 40.2 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 ~~telex~~ or 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.

[Explanation: the proposed amendments reflect current methods of communication between the Association and Assureds.]

RULE 42 JURISDICTION AND LAW

- ~~42.1~~ 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.~~
- ~~42.2~~ Save for the matters referred to in Rule 42.1 and subject to Rule 33.4 of Class 5, 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 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
- 42.1** 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, upon its entry into force, 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 an terms of such contracts.
- 42.1.1** Upon its entry into force, 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 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.
- 42.2** Subject to Rule 33.4 of Class 5 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.

42.3 In respect of any monies whatsoever which the Association considers are due to it, such as but not 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 42.2 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 42 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.

[Explanation: the proposed amendments to Rule 42.1 update the governance of the Rules by English law to reflect the imminent entry into force of the Insurance Act 2015. The proposed new Rule 42.1.1 incorporates the agreement amongst the relevant International Group Clubs to contract out of certain aspects of the Insurance Act 2015, notified by way of the Association's Circular of 18 November 2015. The proposed amendments to Rule 42.2 update arrangements for the resolution of all types of dispute. These include, for example, provision for the referral of any difference to arbitration conducted on LMAA terms; the amendments also clarify the options available to the Association with regard to pursuit of legal action to, inter alia, recover or secure Sums Due.]

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

11 January 2016

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