



The London P&I Club

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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 London Steam-Ship Owners' Mutual Insurance Association Ltd ("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 2017, 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 2017.

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

RULE 1 INTRODUCTORY

1.1 In these Rules, unless the context requires otherwise:

...

"Board" means the board of Directors for the time being of the Association;

~~"Committee" means the committee for the time being of the Association;~~

"Consortium Agreement", "Consortium Claim" and "Consortium Ship" have the meanings given in Rule 11.6.2.

"Directors" means the directors for the time being of the Association;

"Members' Committee" means the Members' committee for the time being of the Association;

...

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~~**Board** 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~~**Board** from time to time, or any convention, direct action law, statute or regulation.

...

- 1.5 ~~As~~ **Notwithstanding the Articles and these Rules, an** Assured may be insured ~~on~~ **within this Class on special** terms that he is liable to pay a fixed premium to the Association (a "Fixed Premium Entry"); **and/or upon such special terms as to the nature and extent of the risks covered, as to policy terms and conditions and otherwise howsoever as the Board may think fit, and may accept as such entries re-insurance from other insurers.**

[Explanation: the proposed amendment clarifies the scope of the cover that the Association may provide.]

...

- 1.6.1 PROVIDED that a person whose only interest in a Ship is insurance or reinsurance which he has afforded in respect of the same and which the Association has agreed wholly or partly to reinsure within this Class, shall not thereby become a Member in this Class nor shall such Ship be entered unless the premium payable to the Association for such reinsurance shall be by way of Calls determined by the ~~Committee~~**Board** in accordance with Rules 32 and 33; and

...

- 1.7 All the Members for the time being in this Class shall form one separate Class of the Association. The ~~Committee~~**Board** and Managers of the Association shall be the ~~Committee~~**Board** and Managers of this Class.

...

- 1.11 The business of this Class shall, subject to the Articles, be conducted according to these Rules and shall be managed by the ~~Committee~~**Board** which may, subject to the Articles, exercise all powers of the Association and do on behalf of the Association all acts as may be exercised and done by the Association. The ~~Committee~~**Board** may delegate any of its powers to sub-committees consisting of such member or members of the ~~Committee~~**Board** or such other persons in each case as it thinks fit.

- 1.12 Without prejudice to the generality of Rule 1.11, the ~~Committee~~**Board** may from time to time appoint any person, firm or corporation to be the Manager or Managers of the Association for such period and upon such terms as it thinks fit, and may vest in such Manager or Managers such of the powers vested in the ~~Committee~~**Board** as it may think fit, and such powers may be exercisable for such period and upon such conditions and subject to such restrictions and generally upon such terms as the ~~Committee~~**Board** may determine. The ~~Committee~~**Board** may make such arrangements as it thinks fit for the management of the Association's affairs in the United Kingdom or abroad, and may for this purpose appoint local boards, attorneys and agents, and delegate to them such powers as it may deem requisite or expedient.

RULE 2 CALLS AND PREMIUM

- 2.1 The funds necessary for the purposes described in Rule 32 shall be determined by the ~~Committee~~**Board** 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,

RULE 4 UNREASONABLE CONDUCT

- 4.1 The **Members'** Committee may reject or reduce any recovery by an Assured where in its sole discretion it determines that the Assured has not at any time (whether before, at the time of, during or after any casualty, event or matter liable to give rise to a claim upon the Association) taken such steps to protect his interests as the **Members'** Committee in its sole discretion would have expected an uninsured person acting reasonably in similar circumstances to have taken.

RULE 5 APPLICATION FOR INSURANCE AND CONDITIONS

...

- 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 **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.

[Explanation: the proposed amendment reflects the entry into force of the Insurance Act 2015 and clarifies that the Assured's duty to make a fair representation applies both to matters of fact and expectation.]

...

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 ~~Committee~~**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 ~~Committee~~**Board** may in its sole discretion determine is necessary 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, international organisation, regulatory or competent authority, official body or the like.

RULE 8 CLASSIFICATION, INSPECTIONS OF SHIPS AND STATUTORY REQUIREMENTS

...

8.8 Save to the extent that the **Members'** Committee in its sole discretion may otherwise determine, there shall be no recovery in respect of any liability, costs or expenses arising during a period when any of the foregoing requirements have not been fulfilled. However, where the entry of a Ship is in the name of an Assured who is a charterer (other than a demise charterer), the rights of recovery of such charterer shall not be dependent upon fulfilment of the requirements of Rules 8.2, 8.3 and 8.4.

RULE 9 RISKS COVERED

9.1 Subject to any special terms which may be agreed in writing and to the provisions of Rules 1.5, 23 and 24, an Assured is insured in respect of each Ship entered by him in this Class against the risks set out in Rules 9.2 - 9.28, PROVIDED that such risks arise:

[Explanation: the proposed amendment reflects the clarification of the scope of the cover that may be provided under Rule 1.5.]

...

9.6 Repatriation and Substitutes:

9.6.1 The expense of repatriating a seaman of an entered Ship in unforeseen circumstances and, where applicable, the expense of sending abroad and/or awaiting a substitute to replace him other than under Rule 9.3 or 9.4 where:

9.6.1.1 the Assured is under statutory obligation to repatriate him;

9.6.1.2 the Assured is obliged to repatriate him under the terms of a crewing agreement, collective agreement or other contract of service or employment previously approved by the Association in writing;

9.6.1.3 the seaman's presence is necessarily required to attend his spouse, child or parent who has died or become dangerously ill during the course of the voyage;

9.6.1.4 the repatriation and/or substitution is necessary for the safety of the crew, entered Ship or her cargo;

9.6.2.1 PROVIDED that there shall be no recovery under Rule 9.6 in respect of expenses which arise out of or are the consequence of:

9.6.2.1.1 the termination of any agreement, whether the termination is in accordance with the terms of that agreement or by mutual consent of the parties to it; or

9.6.2.1.2 breach by the Assured of any agreement or other contract of service or employment; or

9.6.2.1.3 sale of the entered Ship; or

9.6.2.1.4 any other voluntary disposition by the Assured of the entered Ship.

~~9.6.2.2 SAVE to the extent they are payable by the Assured under that part of a statutory enactment or provision which gives effect to or is equivalent to Guideline B2.5 of Regulation 2.5 of the 2006 Maritime Labour Convention or any equivalent enactment in which event the Assured shall (subject to the provisions of Rule 16.2.4) be entitled to recovery whether the circumstances were unforeseen or not.~~

[Explanation: The proposed amendment reflects that cover in respect of the new Maritime Labour Convention (MLC) requirements will provided by way of the new MLC Extension Clause.]

...

9.10 Life Salvage:

...

9.10.2 Such sums as an Assured shall have paid to other vessels which have stood-by or in any way assisted an entered Ship or persons on that Ship, and as shall be determined by the **Members'** Committee in its sole discretion to have been reasonable; the **Members'** Committee in its sole discretion may also allow recovery of expenses incurred by a sister-Ship in assisting an entered Ship in these same circumstances.

...

9.13 Collision with Other Vessels:

...

9.13.1.3 That part of the Assured's remaining three-fourths liability, which exceeds the greater of three-fourths of the actual insured value in the hull policies of the entered Ship or three-fourths of whatever value the **Members'** Committee in its sole discretion may determine as the appropriate full value for which the entered Ship is deemed to be insured under Rule 12.

9.13.1.4 The Assured's liability which exceeds the greater of the actual insured value in the hull policies of the entered Ship or whatever value the **Members'** Committee in its sole discretion may determine as the appropriate full value for which the entered Ship is deemed to be insured under Rule 12,

9.14 Property not on board an Entered Ship:

...

9.14.2 Where there would be a valid claim for damage to any property but for such property belonging to the Assured he shall nevertheless be entitled to recovery under Rule 9.14 corresponding with the liability which he would have incurred if such property had belonged to another person, subject to determination by the **Members'** Committee in its sole discretion of the appropriate law (including any right to limit liability) which shall be deemed to apply for the purpose of evaluating such notional liability, and in any event only for the excess of any amount recoverable by the Assured under any other insurance on the said property.

9.15 Pollution:

...

9.15.1.5 PROVIDED that, unless the **Members'** 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 **on terms no less favourable than** under the ~~unamended~~ York-Antwerp Rules 1994 **or the York Antwerp Rules 2016** and would have been recoverable from other parties to the contract;

[Explanation: the proposed amendment reflects the recent adoption of the latest version of the York-Antwerp Rules.]

...

9.15.1.6 An Assured insured in respect of a Ship which is a 'Relevant Ship' as defined in the Small Tanker Oil Pollution Indemnification Agreement 2006, **as amended** (STOPIA 2006) 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 2006 for the period of entry of that Ship in the Association. In the event that an Assured exercises his rights under STOPIA 2006 to withdraw from that agreement, and unless the Managers have agreed in writing, or unless the **Members'** Committee in its sole discretion otherwise determines, there shall be no cover under Rule 9.15 in respect of such Ship so long as that Assured is not a party to STOPIA 2006.

- 9.15.1.7** An Assured insured in respect of a Ship which is a 'Relevant Ship' as defined in the Tanker Oil Pollution Indemnification Agreement 2006, **as amended** (TOPIA 2006) 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 TOPIA 2006 for the period of entry of that Ship in the Association. In the event that an Assured exercises his rights under TOPIA 2006 to withdraw from that agreement, and unless the Managers have agreed in writing, or unless the **Members'** Committee in its sole discretion otherwise determines, there shall be no cover under Rule 9.15 in respect of such Ship so long as that Assured is not a party to TOPIA 2006.

[Explanation: The proposed amendments reflect amendments to STOPIA and TOPIA following their initial 10 year review, including the introduction of a sanctions risks clause in each Agreement.]

9.16 Towage:

- 9.16.1 Towage of an entered Ship:** ~~Liabilities set out in Rule 9.16.1.1 – 9.16.1.4 subject to the terms of any relevant contract having been previously approved by the Association in writing, and payment by the Assured of what ever increased Call or additional premium may be required by the Association, namely:~~

- 9.16.1.1** ~~Liabilities~~ under the terms of any contract for customary towage of an entered Ship, by which shall be meant towage either: **namely:**

- ~~9.16.1.1.1~~ **(i) towage** of any entered Ship for the purpose of entering or leaving port or manoeuvring within the port during the ordinary course of trading; or

- ~~9.16.1.1.2~~ **(ii) towage** of an entered Ship which is habitually towed or pushed in the ordinary course of trading from port to port or from place to place, and which has been so declared to the Association in writing,–

- 9.16.1.2** **PROVIDED that** liability under the terms of a contract for towage of an entered Ship other than customary towage under Rule 9.16.1; **such liabilities shall only be covered by the Association to the extent that the Assured is not insured against such liabilities under the hull policies on the entered Ship.**

- 9.16.1.2.1** ~~Liabilities~~ under the terms of any other contract for the towage of an entered Ship, **PROVIDED that the terms of the towage contract have been previously approved and cover agreed by the Managers in writing, upon such terms as the Managers may require. For the purpose of this Rule, the Managers will approve contracts for towage of an entered Ship on terms not less favourable to the entered Ship than:**

- (i) Lloyd's Open Form of Salvage Agreement (1980, 1990, 1995, 2000 or 2011, whether or not incorporating SCOPIC); or**

- (ii) a contract that contains a term that the parties to the towage contract, and any parties on whose behalf they contract, shall be responsible for any loss of or damage to or wreck removal of their own ship, cargo or property and for loss of life or personal injury thereon, without any recourse whatsoever against the other and will indemnify the other against any such liability.**

9.16.2 Towage by an entered Ship:

- 9.16.2.1** **Liabilities arising out of the towage by an entered Ship of another ship or object, PROVIDED that:**

- (i) the resulting from towage under contract or otherwise by an entered Ship was specially designed or converted for the purposes of towage and was which has been declared to the Association as intended to be used for towing at the time of entry or at the time of conversion; and**

(ii) the terms of the towage contract have been previously approved and cover agreed by the Managers in writing, upon such terms as the Managers may require; or

(iii) ~~resulting from towage under contract or otherwise by an entered Ship not within Rule 9.16.1.3 but only if the **Members'** Committee in its sole discretion shall determine that in the particular circumstances of the case it was reasonable for the entered Ship to undertake such towage.~~

~~9.16.1.3 liability resulting from towage under contract or otherwise by an entered Ship specially designed or converted for the purposes of towage and which has been declared to the Association as intended to be used for towing;~~

~~9.16.1.4 liability resulting from towage under contract or otherwise by an entered Ship not within Rule 9.16.1.3 but only if the Committee in its sole discretion shall determine that in the particular circumstances of the case it was reasonable to undertake such towage.~~

[Explanation: the proposed amendment serves to achieve consistency with the Pooling Agreement.]

...

9.17 Indemnities and Contracts for other Services:

...

9.17.1.2 the **Members'** Committee in its sole discretion may determine that the Assured should be reimbursed.

9.19 Cargo:

...

9.19.2.1 unless the Association shall have previously agreed or arranged cover on special terms (which may include the requirement of an increased Call or additional premium) or unless the **Members'** Committee in its sole discretion shall otherwise determine, there shall be no recovery in respect of liabilities, costs or expenses which would not have been incurred by the Assured if the contract of carriage had been subject to the Hague Rules or the Hague Visby Rules, except and to the extent that such are over-ridden by other rules, conventions or provisions of national or international law which may mandatorily apply;

...

9.19.2.3.2 the **Members'** Committee in its sole discretion shall determine that the Assured had reasonable grounds for believing that no deviation was being or had been made or that the deviation was permitted under the terms of the contract of carriage;

9.19.2.4 unless the **Members'** Committee in its sole discretion shall otherwise determine, there shall be no recovery in respect of:

9.19.2.4.1 any bill of lading, waybill or other document containing or evidencing the contract of carriage issued with an incorrect date or, with the knowledge of the Assured or the master of the entered Ship, with an incorrect description of the cargo or its quantity or its condition or a misstatement of the port of loading or the port of discharge;

9.21 Ship's Proportion of General Average:

9.21.1 Ship's proportion of general average, special charges or salvage not recoverable under hull policies by reason of the value for which an entered Ship is assessed for contribution to general average, special charges or salvage exceeding the greater of the actual insured value in the hull policies or whatever value the **Members'** Committee in its sole discretion may determine as the appropriate full value for which the entered Ship is deemed to be insured under Rule 12.1,

9.23 Fines:

...

9.23.1.4 the accidental discharge or escape of oil or any polluting substance or threat thereof, but as regards oil only where the entered Ship is covered for pollution risks under Rule 9.15;

9.23.2 All other fines shall be recoverable only to such extent as the **Members'** Committee in its sole discretion may determine and provided that:

9.23.2.1 the Assured has satisfied the **Members'** Committee that he took such steps as appear to the **Members'** Committee to have been reasonable to avoid the event giving rise to the fine or penalty; and

9.23.2.2 any fine imposed not on an Assured but on the master or crew members of the entered Ship or on any other servant or agent of the Assured shall only be recoverable in circumstances either where the Assured has been compelled by law to pay or reimburse such fine or where the **Members'** Committee shall determine that it was reasonable for the Assured to have paid or reimbursed the same.

9.24 Confiscation:

...

9.24.1.1.1 recovery under Rule 9.24.1 shall be to such extent as the **Members'** 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 **Members'** 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 **Members'** 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 **Members'** Committee that he took such steps as appear to the **Members'** Committee to have been reasonable to prevent the event giving rise to the confiscation;

...

9.26 Special Direction of the Members' Committee:

9.26.1 Loss, costs and expenses incurred in compliance with the **Members'** Committee's special direction (confirmed to the Assured by the Association in writing under express reference to this Rule 9.26 and subject to any special terms which the **Members'** Committee may require) in any circumstances where the **Members'** Committee shall in its sole discretion determine that it is in the interests of the Assureds of this Class generally that the direction should be given.

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, but only to the extent either that such extraordinary costs and expenses have been incurred with the approval of the Association or that the **Members'** Committee in its sole discretion shall determine that the same should be recovered.

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 approval of the Association or that the **Members'** 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.

9.28 Omnibus Rule:

9.28.1 Liabilities, losses, costs and expenses incidental to the business of owning, operating or managing Ships which and to such extent as the **Members'** Committee in its sole discretion shall consider fall within the scope of this Class,

- 9.28.1.1 PROVIDED that there shall be no recovery which is expressly excluded by other provisions of these Rules, save to the extent that those members of the **Members'** Committee present when the claim is being considered are unanimous that such exclusion should be over-ridden in the particular circumstances of the case.

RULE 10 SPECIAL COVER FOR CHARTERERS

- 10.1 ~~AA~~ **Without prejudice to the generality of Rule 1.5, an** Assured may be insured by the Association as a Charterer against the following risks, on such terms and conditions as may be agreed by the Managers in writing:

[Explanation: the proposed amendment reflects the clarification of the scope of the cover that may be provided at Rule 1.5.]

RULE 11 LIMITATIONS OF COVER

- 11.1 Unless the **Members'** Committee in its sole discretion shall otherwise determine, 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.

...

- 11.4.2.3 Where liabilities to Passengers include liabilities arising under a non-war certificate issued by the Association in compliance with either Article IV bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol thereto of 2002 or regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents ("Certified Liabilities") and all liabilities to Passengers exceed or may exceed in the aggregate the limit of cover specified in the provisions of this Rule 11.4:

- (i) The Association may in its sole discretion, until the Certified Liabilities, or such ~~apart~~ part of the Certified Liabilities as the Association may decide, have been discharged, defer payment of a claim in respect of other liabilities to Passengers or any part thereof; and
- (ii) If and to the extent any Certified Liabilities discharged by the Association exceed the said limit any payment by the Association in respect thereof shall be by way of loan and the Assured shall indemnify the Association in respect of such payment.

For the purposes of this Rule 11.4 and the provisos thereto, and without prejudice to anything else contained in these Rules, a "Passenger" shall mean a person carried onboard a vessel under a contract of carriage or who, with the consent of the carrier, is accompanying a vehicle or live animals covered by a contract for the carriage of goods and a "Seaman" shall mean any other person onboard a ship who is not a Passenger.

...

- 11.6 **Consortium Claims:**

- 11.6.1 **Definitions:**

In this Rule 11.6 the following words and expressions shall have the following meanings, unless the context requires otherwise:

"Consortium Agreement" means any arrangement which shall have been approved in writing by the Managers under which an Assured agrees with other parties to the reciprocal exchange or sharing of cargo space on an entered Ship and Consortium Ships.

"Consortium Claim" means liabilities, costs and expenses covered under and subject to the Rules of this Class, arising out of the carriage of cargo on a Consortium Ship operating under a Consortium Agreement, pursuant to which the entered Ship is also employed. For the purpose of a Consortium Claim under this Rule 11.6, the Consortium Ship shall be treated as an entered Ship on behalf of the Assured as a charterer.

"Consortium Ship" means a ship or space thereon, not being the entered Ship, employed to carry cargo under a Consortium Agreement.

- 11.6.2 Where an Assured has entered a Ship in the Association as an owner and also has an entry in the Association of a Ship as a charterer, both of which are employed by the Assured pursuant to the Consortium Agreement at the time the event giving rise to a Consortium Claim occurs, the Consortium Claim shall for the purpose of these Rules be treated as a claim arising in respect of the entry of the Assured as an owner;
- 11.6.3 Where an Assured employs more than one Ship pursuant to the Consortium Agreement at the time the event giving rise to a Consortium Claim occurs:
- 11.6.3.1 where all such Ships are entered in the Association, they shall be deemed to be an entry of one entered Ship;
- 11.6.3.2 where an Assured has an entry in respect of such Ships in the Association and in any other association which is party to the Pooling Agreement, each such Ship shall be deemed to be a part entry of one Ship in the Association and such other association and in the absence of agreement to the contrary between the Association and such other association, the Consortium Claim shall, subject to Rule 11.6.4, be prorated equally between them.
- 11.6.4 The liability of the Association in respect of Consortium Claims arising from the carriage of cargo on one Consortium Ship in respect of all Ships entered by an Assured in the Association and in any other association which is party to the Pooling Agreement shall be limited to US\$350,000,000 in the aggregate for any one occurrence;
- 11.6.4.1 PROVIDED that where such Consortium Claims are recoverable from the Association and one or more associations which are parties to the Pooling Agreement, the liability of the Association shall be limited to that proportion of US\$350,000,000 as its proportion of the Consortium Claims bears to their total.
- ~~11.6.1 Save as provided in Rule 11.6.2 and subject thereto, unless otherwise provided for in the Certificate of Entry, recovery by any Assured in respect of liabilities, costs and expenses arising out of carriage of cargo on a consortium ship (being a ship other than an entered Ship employed under a consortium agreement between the operator of that ship and the Assured for reciprocal sharing of cargo space on an entered Ship and the consortium ship and which agreement has been notified to and approved by the Association in writing), provided always that an entered Ship is employed pursuant to the consortium agreement at the time the event giving rise thereto occurs, and provided further that any liabilities, costs and expenses arising out of carriage of cargo on a consortium ship shall be deemed to have arisen in connection with the operation of an entered Ship employed pursuant to the said consortium agreement, shall be limited in respect of all entered Ships of the Assured employed under that said consortium agreement in the aggregate to a maximum of US\$350,000,000 (US Dollars Three Hundred and Fifty Million).~~
- ~~11.6.2 Where the Assured has one or more Ships employed pursuant to the said consortium agreement at the time the event giving rise to such liabilities, costs and expenses occurs and the Assured has an entry in respect of those Ships in one or more association which participates in the Pooling Agreement, then, in the event that the liabilities, costs and expenses aforesaid incurred by all such associations exceed in aggregate the amount specified in Rule 11.6.1, the Assured shall only be entitled to recover from the Association that proportion of the said amount as the liabilities, costs and expenses incurred by the Association in respect of the entered Ships bears to the liabilities, expenses and costs incurred by all the associations.~~

[Explanation: the proposed amendments serve to better align the Rule with the Pooling Agreement.]

RULE 12 OTHER INSURANCES

- 12.1 Subject to Rule 12.2 every entered Ship shall be deemed to be insured throughout her period of entry by the usual form of Lloyds Policy with the Institute Time Clauses Hulls 1/10/83 including the Three-Fourths Collision Liability Clause attached, or by other equally wide insurances (which may include excess liability policies), for such value as the **Members'**

Committee in its sole discretion may determine as representing at the relevant time her full market value, free of commitment.

- 12.2** Unless and to the extent that the **Members'** Committee in its sole discretion otherwise decides, or the Association agrees in writing as a term of entry, there shall be no recovery for any liability, costs or expenses for which the entered Ship is deemed to be insured under Rule 12.1 or which the Assured is entitled (or but for the entry of the Ship concerned, would be entitled) to recover under any other insurance or otherwise howsoever.

RULE 13 EXCLUSION OF DAMAGE TO ENTERED SHIP, LOSS OF HIRE, SANCTIONS, ETC.

...

- 13.2** PROVIDED that any recovery which would otherwise be excluded under Rules 13.1.1 to 13.1.7 may be allowed if the relevant matters shall have been the direct result either of compliance by the Assured with a special direction of the **Members'** Committee in accordance with Rule 9.26 or of suing and labouring undertaken by the Assured with the approval of the Association in accordance with Rule 9.27.1.
- 13.3** There shall be no recovery by an Assured in respect of any Ship entered by him for any liability, loss, damage, cost or expense where the provision of cover or any payment in respect thereof exposes or may expose the Association or the Managers to being or becoming or to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state, international organisation or other authority which sanction, prohibition or adverse action the **Members'** Committee in its sole discretion determines may materially affect the Association in any way whatsoever.

RULE 14 ILLEGAL, HAZARDOUS OR IMPROPER ADVENTURES

...

- 14.1.2** any carriage, trade or voyage of, or any other activity on board or in connection with the entered Ship which the **Members'** Committee shall in its sole discretion determine to be imprudent, unsafe, unduly hazardous or improper.

RULE 15 LIABILITY EXCLUDED FOR WAR RISKS AND NUCLEAR RISKS

- 15.1** ~~Unless the Association shall have previously agreed or arranged cover in writing on special terms (which may include the requirement of an increased Call or additional premium);~~ 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, whether directly or indirectly, 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 **Members'** 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** (i) 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** (ii) 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** **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, whether directly or indirectly, by:

- ~~15.1.4.1~~ **15.2.1** ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- ~~15.1.4.2~~ **15.2.2** the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- ~~15.1.4.3~~ **15.2.3** any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- ~~15.1.4.4~~ **15.2.4** the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter;

PROVIDED that the exclusions in Rule 15.2.1, Rule 15.2.2, Rule 15.2.3 and Rule 15.2.4 shall not apply to 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 there-under) as cargo in an insured Ship,

- ~~15.2~~ **15.3** The Association may provide special cover to ~~an~~ **the** Assured 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 15.1 or 15.2**, subject to such limits and to such terms and conditions as the Association may from time to time determine.

[Explanation: the proposed amendments reformat the existing war and nuclear exclusions for the purpose of clarity.]

RULE 16 GUARANTEES, CERTIFICATES AND UNDERTAKINGS

- 16.1** Notwithstanding the exclusions in Rule 15.4 and the provisos in Rule 9.1, the Association will discharge on behalf of the Assured liabilities, costs, and expenses arising under a demand made pursuant to the issue by the Association on behalf of the Assured of:

...

- 16.1.5** a certificate issued by the Association in compliance with Article 12 of the International Convention on the Removal of Wrecks 2007, **or**
- 16.1.6** **a non-war certificate issued by the Association in compliance with either Article IV bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol thereto of 2002 or regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 giving effect thereto, or-**
- 16.1.7** **a certificate issued by the Association in respect of the requirements under Regulation 2.5.2, Standard A2.5.2 and Regulation 4.2, Standard A4.2.1 Paragraph 1(b) of the Maritime Labour Convention 2006, as amended,**
PROVIDED ALWAYS that:
- 16.1.68** The Assured shall indemnify the Association to the extent that any payment under any such guarantee, certificate or undertaking in discharge of the said liabilities, costs and expenses is or would have been recoverable in whole or in part under a standard P&I war risk policy had the Assured complied with the terms and conditions thereof, and
 - 16.1.68.1** The Assured agrees that:
 - 16.1.68.2** any payment by the Association under any such guarantee, certificate or undertaking in discharge of the said liabilities, costs and expenses shall, to the extent of any amount recovered under any policy of insurance or extension to the cover provided by the Association, be by way of loan; and
 - 16.1.68.3** there shall be assigned to the Association to the extent and on the terms that it determines in its sole discretion to be practicable all the rights of the Assured under any other insurance and against any third party.
- 16.2** Notwithstanding the provisions of Rule 3.1, the Association shall discharge or pay on the Assured's behalf directly to a seaman or dependent thereof a legal liability which an Assured

has failed to discharge to such seaman or dependent: ~~(a) to pay damages or compensation for injury, illness or death of the seaman that would have been recoverable by the Assured under Rule 9.3 and/or Rule 9.4;~~ or

~~(b) to pay the expenses of repatriating the seaman under that part of a statutory enactment or provision which gives effect to or is equivalent to Guideline B2.5 of Regulation 2.5 of the 2006 Maritime Labour Convention or any equivalent enactment;~~

PROVIDED ALWAYS that:

- 16.2.1 there shall be no recovery under Rule 16.2 ~~(a)~~ unless the seaman or dependent has no enforceable right of recovery against any other party and would otherwise be uncompensated,
- 16.2.2 the amount payable by the Association shall not be subject to set off of any amount due to the Association from the Assured and, subject to Rule 16.2.3 below, the amount payable by the Association shall under no circumstances exceed the amount which the Assured would have been able to recover from the Association under the Rules and his terms of entry,
- 16.2.3 where the Association is under no liability to the Assured by virtue of cesser under Rule 3.1.2 by reason of non payment of amounts due to the Association, the Association shall nevertheless discharge or pay a claim under Rule 16.2 to the extent only that it arises from an event occurring during the period of the contract of insurance,
- 16.2.4 any discharge or payment by the Association in accordance with ~~Rule 9.6.2.2 and/or~~ Rule 16.2 shall be made as agent only of the Assured, and the Assured shall be liable to reimburse the Association for the full amount of such payment,
- 16.2.5 ~~notwithstanding the provisos in Rule 9.1 and Rule 16.2.3, the expenses referred to in Rule 16.2(b) shall include such expenses as are referred to in Rule 16.2(b) as are required to be paid by the Association in accordance with the terms of any undertaking in writing given by or on behalf of the Association to any state of a Ship's flag.~~

[Explanation: The proposed amendments reflect the provision by the Association of the financial security now required under the MLC.]

RULE 17 EXCLUSION OF RISKS ARISING FROM SALVAGE AND SPECIALIST OPERATIONS, DRILLING VESSELS AND WASTE DISPOSAL AND SUB-SEA ACTIVITIES

...

- 17.1.4 incurred in respect of an **entered Ship carrying** ~~drilling vessel or barge or any other vessel or barge employed to carry out drilling or production operations in connection with oil or gas exploration or production, including any accommodation unit moored or positioned on site as an integral part of any such operations, to the extent that such liabilities, costs or expenses arise out of or during drilling or production operations;~~
- 17.1.4.1 for the purposes of Rule 17.1.4, an **entered Ship vessel** shall be deemed to be carrying out production operations if (inter alia) it is a storage tanker or other vessel engaged in the storage of oil, and either:
 - 17.1.4.2 the oil is transferred directly from a producing well to the storage vessel; or
 - 17.1.4.3 the storage vessel has oil and gas separation equipment on board and gas is being separated from oil whilst on board the storage vessel other than by natural venting;
- 17.1.4.4 **in respect of any entered Ship employed to carry out production operations in connection with oil or gas production, the exclusion shall apply from the time that a connection, whether directly or indirectly, has been established between the entered Ship and the well pursuant to a contract under which the entered Ship is employed, until such time that the entered Ship is finally disconnected from the well in accordance with that contract;**

[Explanation: the proposed amendments serve to achieve consistency with the Pooling Agreement.]

RULE 18 OBLIGATION OF THE ASSURED IN RESPECT OF CLAIMS

...

18.3 If an Assured commits any breach of his obligations under Rule 18 the **Members'** Committee may in its sole discretion reject or reduce any recovery to which such breach may appear to the **Members'** 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.

RULE 19 TIME-BAR

19.1 Without derogation from and in addition to the obligation under Rule 18.1.1 to give prompt notice, if an Assured fails to notify the Association in writing of any claim against him as therein described within one year after he has knowledge of such claim, any right of the Assured to recover in respect thereof shall be extinguished, unless the **Members'** Committee in its sole discretion shall otherwise determine.

RULE 21 POWERS OF THE ASSOCIATION RELATING TO THE HANDLING AND SETTLEMENT OF CLAIMS

21.1 The Association shall at all times have the right to:

...

21.1.2 direct or control the conduct of any claim or legal or other proceedings against an Assured relating to any potential liability for which an Assured is or may be insured by the Association in whole or in part, or would have been insured but for the existence of any deductible, other insurance or retention, or in respect of which the Association has provided security, including ~~direction~~ that such claim or proceedings should be settled, compromised, or otherwise disposed of in such manner and upon such terms as the Association may require;-

21.1.3 require the Assured to provide or execute any documents to enable it to effect such direction or control under Rule 21.1.2.

21.2 If an Assured fails to co-operate or to comply with any requirement or direction as aforesaid, the **Members'** Committee may in its sole discretion reject or reduce any recovery to which such failure may appear to the **Members'** Committee to be relevant.

[Explanation: the proposed amendment clarifies the Association's powers relating to the handling and settlement of claims.]

RULE 22 SETTLEMENT OF CLAIMS

22.1 The **Members'** Committee shall meet as often as may be required for the purposes of settling and determining claims or any other matters relating to the business of the Association.

22.2 The **Members'** Committee shall in its sole discretion have power from time to time to authorise the Managers to effect both settlement and payment of any claims, without prior reference to the **Members'** Committee, of such types and up to such sums as the **Members'** Committee may in its sole discretion determine.

22.3 No member of the **Members'** Committee may vote upon any claim in which he is in any way interested.

22.4 Where under any Rule the **Members'** Committee shall have exercised its sole discretion in settling or determining claims or any other matters relating to the business of the Association, the **Members'** Committee shall not be obliged to give reasons for any decision.

RULE 27 PERIOD OF INSURANCE, TERMINATION BY CONTRACTUAL NOTICE AND NOVATION

...

27.3 In the event of any sale, disposal or transfer by the Association of the whole or any part of the undertaking, property, assets or liabilities of the Association to any third party carrying

on the whole or any part of the business of the Association in succession to the Association (the "Transferee"), any contract of insurance in respect of any Assured's interest in an entered Ship (together with the entry of that Ship in respect of that interest) may, subject to the approval of the **CommitteeBoard** (provided such approval was decided upon at a meeting of the **CommitteeBoard** at which not less than two thirds of the **CommitteeBoard** members present and entitled to vote voted in favour of the resolution to give such approval, or is the subject of a written resolution signed by all members of the **CommitteeBoard**, be:

27.3.1 novated, in whole or in part, to the Transferee on such terms as the **CommitteeBoard** may in its sole discretion deem necessary for the purpose of implementing or giving effect to any such sale, disposal or transfer; and/or

27.3.2 terminated by the Association in accordance with Rule 27.2.2 and replaced with a new contract of insurance between each Assured and the Transferee on the same terms mutatis mutandis as that Assured's original contract of insurance with the Association.

For the purpose of giving effect to this Rule 27.3, the Assured hereby consents to any novation, termination and entry into a replacement contract of insurance as referred to in Rules 27.3.1 and 27.3.2 and appoints the Association (acting through one or more members of the **CommitteeBoard** or the Managers) as agent for and on its behalf and in its name to enter into and execute any such novation, termination and replacement contract of insurance.

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 a Fixed Premium Entry or as may be otherwise specifically agreed) provide in accordance with the provisions of Rule 32 by way of Annual Calls or Annual and Supplementary Calls, all funds which in the sole discretion of the **CommitteeBoard** 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 **CommitteeBoard** 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 **CommitteeBoard** 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 **CommitteeBoard** may determine;

...

32.3 Further towards such funds, if determined as aforesaid by the **CommitteeBoard** to be required in accordance with Rule 32.1 for any Policy Year, the **CommitteeBoard** 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.

...

32.5 The **CommitteeBoard** 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.

RULE 34 CLOSING OF POLICY YEARS

- 34.1** With effect from such date as the **CommitteeBoard** shall in its sole discretion determine after the end of each Policy Year, but no sooner than 36 months from its commencement, the **CommitteeBoard** shall declare the same closed for Supplementary Calls, after which no further Supplementary Calls shall be levied in respect thereof.
- 34.2** The **CommitteeBoard** may declare any Policy Year closed for Supplementary Calls notwithstanding that it is known or anticipated that there are in existence or may in the future arise liabilities, costs or expenses recoverable in respect of such Policy Year (apart from Overspill Claims) which have not yet accrued or the validity, extent or amount of which have yet to be established.
- 34.3** If upon the closing of any Policy Year it shall appear to the **CommitteeBoard** that the whole of the Calls (other than Overspill Calls) and other receipts in respect of such Policy Year (and of all transfers from reserves and provisions made for the credit of or in respect of that Policy Year), is unlikely to be required to meet the claims (other than Overspill Claims), expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 32), then the **CommitteeBoard** may decide to dispose of any excess which in their opinion is not so required in one or any of the following ways:
- ...
- 34.4** If upon the closing of any Policy Year it shall appear to the **CommitteeBoard** that the claims (other than Overspill Claims), expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 32) exceed or are likely to exceed the totality of the Calls (other than Overspill Calls) and other receipts in respect of such Policy Year (and of all transfers from reserves and provisions made for the credit of or in respect of such Policy Year), then the **CommitteeBoard** may decide to provide for such deficiency in any one or more of the following ways:
- ...
- 34.4.3** by levying Supplementary Call(s) in respect of any open Policy Year with the intention (as permitted by Rule 32) of applying a part thereof to meet any such deficiency.
- 34.5** At any time after any Policy Year shall have been closed the **CommitteeBoard** may resolve to amalgamate the accounts of two or more closed Policy Years and to pool the amounts standing to the credit of the same. If the **CommitteeBoard** shall so resolve then the two or more closed Policy Years concerned shall be treated as though they constituted a single closed Policy Year, provided that no such amalgamation shall apply for the purposes of Overspill Claims, Overspill Calls or Overspill Reserves.

RULE 35 PAYMENT OF CALLS AND PREMIUMS

- 35.1** Save as provided below in this Rule 35.1, Calls and (in relation to Fixed Premium Entries) fixed premiums shall be payable in such instalments and on such dates as the **CommitteeBoard** shall specify, and without set-off of any amount due or alleged to be due by the Association to any Assured on any ground or of any kind whatsoever including set-off which might otherwise have arisen by reason of the bankruptcy or winding up of an Assured (whether or not any set-off has been allowed by the Association at any time in the past) except to the extent that in requiring payment of the subject amount the Association itself shall have already allowed a set-off or credit in favour of the Assured. Upon the termination of an Assured's contract of insurance all Calls (including all instalments thereof falling due for payment after the time of such termination) or (in relation to Fixed Premium Entries) fixed premiums in respect of such contract and remaining unpaid at the time of such termination shall become immediately due and payable notwithstanding that the due date for payment in respect of any such Calls (including any instalment thereof) or fixed premiums falls after the time of such termination.
- ...
- 35.3** A copy of the resolution of the **CommitteeBoard** authorising any Call(s) certified by the Managers to be a true copy and a certificate signed by the Managers with the amount due

by an Assured in respect of such Call(s) shall be sufficient evidence of the Call(s) and the amount due by that Assured in respect thereof.

...

35.5 Without prejudice to any other provisions contained in these Rules the **CommitteeBoard** may in its sole discretion at any and all times determine the rate of interest which shall be payable to the Association on any Call(s) or other amounts due to the Association (including amounts due under Rule 36) as from the due date of payment or such later date as the **CommitteeBoard** may in its sole discretion consider fit.

35.6 If any Annual and/or Supplementary Call(s) or other payment due from an Assured or former Assured to the Association is not paid and if the Association decides that payment cannot be obtained, the sums required to make good any resulting shortfall or deficiency in the funds of the Association shall be deemed to be expenses of the Association for which, as the **CommitteeBoard** may in its sole discretion determine, Call(s) may be levied in accordance with Rule 32 or, as the case may be, reserves may be applied in accordance with Rules 34 and 38.

RULE 36 RELEASE CALLS

...

36.2 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 **CommitteeBoard** shall from time to time determine.

...

36.6 If while a Release Call which has become due and payable is unpaid (and, if payment of any future Supplementary Call is not guaranteed in accordance with Rule 36.5.1) the **CommitteeBoard** 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 Annual 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.

RULE 37 LAID-UP RETURNS

...

37.3 If an entered Ship commences or recommences trading after having been laid up in any safe port or place in circumstances qualifying for a return of Calls under Rule 37.1.2 for a period exceeding four consecutive months, the Assured must notify the Association in writing prior to such commencement or recommencement so that the Association may satisfy itself as to the entered Ship's condition by inspection or otherwise, and if such notification is not given the **CommitteeBoard** may in its sole discretion reject or reduce any recovery to which such failure may appear to the **CommitteeBoard** to be relevant.

RULE 38 RESERVES

38.1 The **CommitteeBoard** may in its sole discretion establish, maintain and apply such reserve funds or accounts, including without limitation a Calls Equalisation Account, for any or all of the following contingencies or purposes:

...

38.1.5 such other contingency or purpose beneficial to the Association as the **CommitteeBoard** may in its sole discretion determine.

38.2 Without prejudice to the generality of Rule 38.1, the **CommitteeBoard** may, in its sole discretion, establish an Overspill Reserve for the purpose described in, and in accordance with the provisions of, Rule 33.8.

38.3 The **CommitteeBoard** may in its sole discretion apply the whole or any part of any reserve fund or account (other than an Overspill Reserve established for the purpose described in

Rule 33.8) for any of the contingencies or purposes set out in Rule 38.1 above and in respect of any Policy Year irrespective of the purpose or purposes for which that reserve fund or account was established and irrespective of the Policy Year or Years from which the funds or account originated, provided that such application shall be considered by the **CommitteeBoard** to be beneficial to the Association. The **CommitteeBoard** may also in its sole discretion transfer sums from one reserve (other than an Overspill Reserve established for the purpose described in Rule 33.8) to another (other than any such Overspill Reserve) within the same Class, but shall not be entitled to use any reserve fund or account established from Calls or funds of one Class for the benefit of any other Class, nor to transfer such reserve fund or account between different Classes.

- 38.4** Without prejudice to Rule 33.8 reserve funds or accounts may be raised by the **CommitteeBoard** resolving that there shall be transferred to and applied for the purposes of any such reserve funds or accounts a specified amount or proportion of:

...

RULE 39 INVESTMENTS

- 39.1** The funds of this Class may be invested under the direction of the **CommitteeBoard** by means of the purchase of such stocks, shares, bonds, debentures or other securities or the purchase of such currencies, commodities, or other real or personal property, or by means of being deposited in such accounts on such terms and in such manner as the **CommitteeBoard** may in its sole discretion determine. The funds of this Class may also be invested by such other method as the **CommitteeBoard** may approve.
- 39.2** Unless the **CommitteeBoard** decide otherwise, all or any of the funds standing to the credit of any Policy Year or of any reserve or account shall be pooled and invested as one fund.
- 39.3** If any funds shall have been so pooled and invested the **CommitteeBoard** may in its sole discretion apportion as they think fit the income arising on the pooled investments (including capital gains and losses and gains and losses on foreign exchange transactions) among and between the different Policy Years, reserves, funds and accounts from which the invested fund originated.
- 39.4** Without prejudice to Rule 39.3 above the **CommitteeBoard** may after the closing of any Policy Year in its sole discretion direct that year shall not be credited with any share of the apportionments made under that paragraph and that its share shall instead be credited to any reserve fund or account maintained by the Association.

RULE 40 PROVISION FOR EXPENSES

- 40.1** Towards the expenses attendant on carrying into effect the purposes and object of this Class the Association shall pay to the Managers out of the funds of this Class on the tonnage entered at the time of entry of each Ship and on every 20th February afterwards that such Ships remain entered an amount calculated at such rate per ton as the **CommitteeBoard** shall determine.

RULE 43 JURISDICTION AND LAW

...

- 43.1.1** ~~Upon its entry into force~~ The following provisions of the Insurance Act 2015 ("the Act") are excluded as follows:

[Explanation: the proposed amendment reflects the coming into force of the Insurance Act 2015 on 12 August 2016.]

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

3 January 2017

5:541



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 London Steam-Ship Owners' Mutual Insurance Association Ltd ("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 2017, 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 2017.

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

RULE 1 INTRODUCTORY

1.1 In these Rules, unless the context requires otherwise:

...

"Board" means the board of Directors for the time being of the Association;
~~"Committee Directors"~~ means the ~~committee~~ **directors** for the time being of the Association;
"Members' Committee" means the **Members' Committee** for the time being of the Association;

...

In addition, in these Rules:

words importing the singular number only shall include the plural number and vice versa;
words importing the masculine gender only shall include the feminine gender;
words importing persons shall include individuals, ~~corporations~~ **corporations**, partnerships and firms (whether or not having a separate legal personality); and
the headings in these Rules are for convenience only and shall not affect their interpretation.

...

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~~ **Board** 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~~ **Board** from time to time, or any convention, direct action law, statute or regulation.

...

1.5 ~~AN~~ **Notwithstanding the Articles and these Rules, an** Assured may be insured ~~on~~ **within this Class on special** terms that he is liable to pay a fixed premium to the Association (a "Fixed Premium Entry"); **and/or upon such special terms as to the nature and extent of the risks covered, as to policy terms and conditions and otherwise howsoever as the Board may think fit, and may accept as such entries re-insurance from other insurers.**

[Explanation: the proposed amendment clarifies the scope of the cover that the Association may provide.]

...

1.6.1 PROVIDED that a person whose only interest in a Ship is insurance or reinsurance which he has afforded in respect of the same and which the Association has agreed wholly or partly to reinsure within this Class, shall not thereby become a Member in this Class nor shall such Ship be entered unless the premium payable to the Association for such reinsurance shall be by way of Calls determined by the ~~Committee~~**Board** in accordance with Rules 31 and 32; and

...

1.7 All the Members for the time being in this Class shall form one separate Class of the Association. The ~~Committee~~**Board** and Managers of the Association shall be the ~~Committee~~**Board** and Managers of this Class.

...

1.11 The business of this Class shall, subject to the Articles, be conducted according to these Rules and shall be managed by the ~~Committee~~**Board** which may, subject to the Articles, exercise all powers of the Association and do on behalf of the Association all acts as may be exercised and done by the Association. The ~~Committee~~**Board** may delegate any of its powers to sub-committees consisting of such member or members of the ~~Committee~~**Board** or such other persons in each case as it thinks fit.

1.12 Without prejudice to the generality of Rule 1.11, the ~~Committee~~**Board** may from time to time appoint any person, firm or corporation to be the Manager or Managers of the Association for such period and upon such terms as it thinks fit, and may vest in such Manager or Managers such of the powers vested in the ~~Committee~~**Board** as it may think fit, and such powers may be exercisable for such period and upon such conditions and subject to such restrictions and generally upon such terms as the ~~Committee~~**Board** may determine. The ~~Committee~~**Board** may make such arrangements as it thinks fit for the management of the Association's affairs in the United Kingdom or abroad, and may for this purpose appoint local boards, attorneys and agents, and delegate to them such powers as it may deem requisite or expedient.

RULE 2 CALLS AND PREMIUM

2.1 The funds necessary for the purposes described in Rule 31 shall be determined by the ~~Committee~~**Board** 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 by way of Calls determined in accordance with these Rules or as may otherwise have been agreed in writing,

RULE 4 UNREASONABLE CONDUCT

4.1 The **Members'** Committee may reject or reduce any recovery by an Assured where in its sole discretion it determines that the Assured has not at any time (whether before, at the time of, during or after any casualty, event or matter liable to give rise to a claim upon the Association) taken such steps to protect his interests as the **Members'** Committee in its sole discretion would have expected an uninsured person acting reasonably in similar circumstances to have taken.

RULE 5 APPLICATION FOR INSURANCE AND CONDITIONS

...

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 **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.

[Explanation: the proposed amendment reflects the entry into force of the Insurance Act 2015 and clarifies that the Assured's duty to make a fair representation applies both to matters of fact and expectation.]

...

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 ~~Committee~~**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 ~~Committee~~**Board** may in its sole discretion determine is necessary 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, international organisation, regulatory or competent authority, official body or the like.

RULE 8 CLASSIFICATION, INSPECTIONS OF SHIPS AND STATUTORY REQUIREMENTS

...

8.8 Save to the extent that the **Members'** Committee in its sole discretion may otherwise determine, there shall be no recovery in respect of any legal costs, charges or disbursements arising during a period when any of the foregoing requirements have not been fulfilled. However, where the entry of a Ship is in the name of an Assured who is a charterer (other than a demise charterer), the rights of recovery of such charterer shall not be dependent upon fulfilment of the requirements of Rules 8.2, 8.3 and 8.4.

RULE 9 RISKS COVERED

9.1 Subject to any special terms which may be agreed in writing and to the provisions of Rules **1.5**, 22 and 23, an Assured is insured in respect of each Ship entered by him in this Class for legal costs, charges or disbursements incurred in relation to the claims or matters set out in Rules 9.2.1 - 9.2.16, PROVIDED that such legal costs, charges or disbursements arise:

[Explanation: the proposed amendment reflects the clarification of the scope of the cover that may be provided under Rule 1.5.]

...

9.2.4 detention from any cause by any department of state, or public or local body or authority or other person or persons in authority; and if in such cases an entered Ship be, by order of the **Members'** Committee, allowed to remain under detention for the purpose of testing the legality of such detention, the Assured shall be indemnified for his actual loss, by payment of such sum as the **Members'** Committee in its sole discretion shall consider fair and reasonable, to the extent that such loss shall not be otherwise recovered;

...

9.2.14 claims for damages or loss sustained by an Assured which are not covered by the policies on hull and machinery provided that if such claims (apart from detention) are not so covered by reason of any deductible, franchise and/or other uninsured proportion of the damages or loss borne by the Assured as a result of the terms of those policies the **Members'** Committee may in its sole discretion refuse to cover the Assured in respect thereof either wholly or in part;

...

9.2.16 any matter which, in the sole discretion of the **Members'** Committee, is within the scope of this Class and is not excluded by these Rules.

RULE 10 LIMITATIONS OF COVER

...

10.2.4 the discontinuance or settlement of claims or the ~~discontinuation~~ **discontinuance** of support in connection with claims which it has previously agreed to support; and the **Members'** Committee shall be entitled when exercising its sole discretion to take into account, inter alia, the merits of the claim or matter, the interests of the other Assureds of this Class, the amount of the costs and expenses incurred or expected to be incurred in respect of the claim and its effect on the financial position of this Class.

10.3 The **Members'** Committee may in its sole discretion determine for each Policy Year the figures above and/or below which claims will be reimbursed in full; but otherwise, unless the Association agrees in writing to provide full cover without deductibles as a term of entry, deductibles shall apply to each claim and there shall be no recovery in respect of 25% of all legal costs, charges and disbursements.

...

10.5 Notwithstanding Rules 10.1, 10.2, 10.3 and 10.4, the cover afforded by this Class under Rule 9 to the Assured for legal costs, charges or disbursements shall be limited in the aggregate to USD7,500,000 for any single claim, dispute, proceeding or series thereof. The **Members'** Committee may in its sole discretion decide whether or not any claims, disputes or proceedings shall be considered to be a series thereof.

RULE 11 OTHER INSURANCES

11.1 Every entered Ship shall be insured by entry of her entered tonnage in Class 5 of the Association for protecting and indemnity risks and, subject to Rule 11.2, shall be deemed to be insured throughout her period of entry by the usual form of Lloyds Policy with the Institute Time Clauses Hulls 1/10/83 including the Three-Fourths Collision Liability Clause attached, or by other equally wide insurances (which may include excess liability policies), for such value as the **Members'** Committee may in its sole discretion determine as representing at the relevant time her full market value, free of commitment.

11.2 Unless and to the extent that the **Members'** Committee in its sole discretion otherwise decides, or the Association agrees in writing as a term of entry, there shall be no recovery for any legal costs, charges or disbursements for which the entered Ship is deemed to be insured under Rule 11.1 or which the Assured is entitled (or but for the entry of the Ship concerned, would be entitled) to recover under any other insurance or otherwise howsoever.

RULE 12 EXCLUSION OF DAMAGE TO ENTERED SHIP, LOSS OF HIRE, SANCTIONS, ETC.

...

12.2 There shall be no recovery by an Assured in respect of any Ship entered by him for any legal costs, charges or disbursements where the provision of cover or any payment in respect thereof exposes or may expose the Association or the Managers to being or becoming or to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state, international organisation or other authority which sanction, prohibition or adverse action the **Members'** Committee in its sole discretion determines may materially affect the Association in any way whatsoever.

RULE 13 ILLEGAL, HAZARDOUS OR IMPROPER ADVENTURES

...

13.1.2 any carriage, trade or voyage of, or any other activity on board or in connection with the entered Ship which the **Members'** Committee shall in its sole discretion determine to be imprudent, unsafe, unduly hazardous or improper.

RULE 14 MONEYS RECOVERED FOR ASSUREDS

...

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 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 **Members'** 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 **Members'** Committee may in its sole discretion determine.

RULE 15 COLLISION CASES

15.1 When an Assured seeks to recover damages for detention sustained in consequence of a collision, stranding or any other cause whatsoever, he must give the Association a written undertaking or guarantee, the wording of which is to be approved by the Association, for such proportion of the costs of any legal or other proceedings as the actual claim for damage to the Ship bears to the claim for detention, the amount of such claims respectively to be agreed and inserted in such undertaking or guarantee. In cases where other interests than those of this Class are concerned, this Class shall only be liable for such proportion of the costs recoverable from any other party as the claim with which this Class is concerned would, in the sole discretion of the **Members'** Committee, bear to the total claim.

...

RULE 17 FAILURE TO GIVE ADVICE

17.1 If an Assured fails to comply with his obligations under Rule 16 or acts unreasonably or incurs any legal costs, charges or disbursements through his neglect or default in each case in connection with any casualty, dispute, event or claim the **Members'** Committee may in its sole discretion reject or reduce any recovery or require the Assured to repay to the Association any legal costs, charges or disbursements which the Association may have incurred or paid or undertaken to pay in connection therewith.

RULE 18 TIME-BAR

18.1 Without derogation from and in addition to the obligation under Rule 16.1.1 to give prompt notice, if an Assured fails to notify the Association in writing of any claim against him as therein described within one year after he has knowledge of such casualty, dispute, disagreement, event or claim, the Assured shall have no right to recover in respect thereof, unless the **Members'** Committee in its sole discretion shall otherwise determine.

...

RULE 20 POWERS OF THE ASSOCIATION RELATING TO THE HANDLING AND SETTLEMENT OF CLAIMS

20.1 Subject always to the overriding conditions precedent set out in Rule 10.2, the Association shall at all times have the right to:

...

20.1.2 direct or control the conduct of any claim or legal or other proceedings for or against an Assured relating to any potential matter giving rise to legal costs, charges or disbursements in relation to which an Assured is or may be insured by the Association in whole or in part, or in respect of which the Association has provided security, including ~~direction~~ that such claim or legal or other proceedings should be settled, compromised, or otherwise disposed of in such manner and upon such terms as the Association may require; -

20.1.3 require the Assured to provide or execute any documents to enable it to effect such direction or control under Rule 20.1.2.

20.1.2.1 PROVIDED that instead of contesting cases where the probable cost will, in its opinion, exceed the amount at stake, the **Members'** Committee may in its sole discretion pay out of the funds of this Class the whole or any part of such claim.

- 20.2** If an Assured fails to co-operate or to comply with any requirement or direction as aforesaid, the **Members'** Committee may in its sole discretion reject or reduce any recovery to which such failure may appear to the **Members'** Committee to be relevant.

[Explanation: the proposed amendment clarifies the Association's powers relating to the handling and settlement of claims.]

RULE 21 SETTLEMENT OF CLAIMS

- 21.1** The **Members'** Committee shall meet as often as may be required for the purposes of settling and determining claims or any other matters relating to the business of the Association.
- 21.2** The **Members'** Committee shall in its sole discretion have power from time to time to authorise the Managers to effect both settlement and payment of any claims, without prior reference to the **Members'** Committee, of such types and up to such sums as the **Members'** Committee may in its sole discretion determine.
- 21.3** No member of the **Members'** Committee may vote upon any claim in which he is in any way interested.
- 21.4** Where under any Rule the **Members'** Committee shall have exercised its sole discretion in settling or determining claims or any other matters relating to the business of the Association, the **Members'** Committee shall not be obliged to give reasons for any decision.

RULE 26 PERIOD OF INSURANCE, TERMINATION BY CONTRACTUAL NOTICE AND NOVATION

...

- 26.3** In the event of any sale, disposal or transfer by the Association of the whole or any part of the undertaking, property, assets or liabilities of the Association to any third party carrying on the whole or any part of the business of the Association in succession to the Association (the "Transferee"), any contract of insurance in respect of any Assured's interest in an entered Ship (together with the entry of that Ship in respect of that interest) may, subject to the approval of the **CommitteeBoard** (provided such approval was decided upon at a meeting of the **CommitteeBoard** at which not less than two thirds of the **CommitteeBoard** members present and entitled to vote voted in favour of the resolution to give such approval, or is the subject of a written resolution signed by all members of the **CommitteeBoard**), be:
- 26.3.1** novated, in whole or in part, to the Transferee on such terms as the **CommitteeBoard** may in its sole discretion deem necessary for the purpose of implementing or giving effect to any such sale, disposal or transfer; and/or
- 26.3.2** terminated by the Association in accordance with Rule 26.2.2 and replaced with a new contract of insurance between each Assured and the Transferee on the same terms mutatis mutandis as that Assured's original contract of insurance with the Association.
- For the purpose of giving effect to this Rule 26.3, the Assured hereby consents to any novation, termination and entry into a replacement contract of insurance as referred to in Rules 26.3.1 and 26.3.2 and appoints the Association (acting through one or more members of the **CommitteeBoard** or the Managers) as agent for and on its behalf and in its name to enter into and execute any such novation, termination and replacement contract of insurance.

RULE 31 ANNUAL AND SUPPLEMENTARY CALLS

- 31.1** 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 33) shall (unless such entry is a Fixed Premium Entry or as may be otherwise specifically agreed) provide in accordance with the provisions of Rules 31 and 32 by way of Annual Calls or Annual and Supplementary Calls, all funds which in the sole discretion of the **CommitteeBoard** are required to meet:
- 31.1.1** 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 **CommitteeBoard** 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;

31.1.2 such of the general expenses of the Association as the **CommitteeBoard** may from time to time charge against the insurance business of the Association in respect of such Policy Year;

31.1.3 such transfers to the reserves or other accounts of the Association (as referred to in Rule 37) and for subsequent application for the purposes of such reserves or other accounts or otherwise as the **CommitteeBoard** may determine;

...

31.3 Further towards such funds, if determined as aforesaid by the **CommitteeBoard** to be required in accordance with Rule 31.1 for any Policy Year, the **CommitteeBoard** 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.

RULE 32 GENERAL INCREASE OR REDUCTION IN CALLS

32.1 The **CommitteeBoard** may determine a general increase or reduction in ~~annual call~~**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 Ship's Certificates of Entry for that Policy Year.

RULE 33 CLOSING OF POLICY YEARS

33.1 With effect from such date as the **CommitteeBoard** shall in its sole discretion determine after the end of each Policy Year, but no sooner than 36 months from its commencement, the **CommitteeBoard** shall declare the same closed for Supplementary Calls, after which no further Supplementary Calls shall be levied in respect thereof.

33.2 The **CommitteeBoard** may declare any Policy Year closed for Supplementary Calls notwithstanding that it is known or anticipated that there are in existence or may in the future arise legal costs, charges or disbursements recoverable in respect of such Policy Year which have not yet accrued or the validity, extent or amount of which have yet to be established.

33.3 If upon the closing of any Policy Year it shall appear to the **CommitteeBoard** that the whole of the Calls and other receipts in respect of such Policy Year (and of all transfers from reserves and provisions made for the credit of or in respect of that Policy Year), is unlikely to be required to meet the claims, expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 31), then the **CommitteeBoard** may decide to dispose of any excess which in their opinion is not so required in one or any of the following ways:

...

33.4 If upon the closing of any Policy Year it shall appear to the **CommitteeBoard** that the claims, expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 31) exceed or are likely to exceed the totality of the Calls and other receipts in respect of such Policy Year (and of all transfers from reserves and provisions made for the credit of or in respect of such Policy Year), then the **CommitteeBoard** may decide to provide for such deficiency in any one or more of the following ways:

...

33.5 At any time after any Policy Year shall have been closed the **CommitteeBoard** may resolve to amalgamate the accounts of two or more closed Policy Years and to pool the amounts standing to the credit of the same. If the **CommitteeBoard** shall so resolve then the two or more closed Policy Years concerned shall for all purposes be treated as though they constituted a single closed Policy Year.

RULE 34 PAYMENT OF CALLS AND PREMIUMS

34.1 Save as provided below in this Rule 34.1, Calls and (in relation to Fixed Premium Entries) fixed premiums shall be payable in such instalments and on such dates as the **CommitteeBoard** shall specify, and without set-off of any amount due or alleged to be due by the Association to any Assured on any ground or of any kind whatsoever including set-off which might otherwise have arisen by reason of the bankruptcy or winding up of the Assured (whether or not any set-off has been allowed by the Association at any time in the past) except to the extent that in requiring payment of the subject amount the Association itself shall have already allowed a set-off or credit in favour of the Assured. Upon the termination of an Assured's contract of insurance all Calls (including all instalments thereof falling due for payment after the time of such termination) or (in relation to Fixed Premium Entries) fixed premiums in respect of such contract and remaining unpaid at the time of such termination shall become immediately due and payable notwithstanding that the due date for payment in respect of any such Calls (including any instalment thereof) or fixed premiums falls after the time of such termination.

...

34.3 A copy of the resolution of the **CommitteeBoard** authorising any Call(s) certified by the Managers to be a true copy and a certificate signed by the Managers with the amount due by an Assured in respect of such Call(s) shall be sufficient evidence of the Call(s) and the amount due by that Assured in respect thereof.

...

34.5 Without prejudice to any other provisions contained in these Rules the **CommitteeBoard** may in its sole discretion at any and all times determine the rate of interest which shall be payable to the Association on any Call(s) or other amounts due to the Association (including amounts due under Rule 35) as from the due date of payment or such later date as the **CommitteeBoard** may in its sole discretion consider fit.

34.6 If any Annual and/or Supplementary Call(s) or other payment due from an Assured or former Assured to the Association is not paid and if the Association decides that payment cannot be obtained, the sums required to make good any resulting shortfall or deficiency in the funds of the Association shall be deemed to be expenses of the Association for which, as the **CommitteeBoard** may in its sole discretion determine, Call(s) may be levied in accordance with Rules 31 and 32, as the case may be, or reserves may be applied in accordance with Rules 33 and 37.

RULE 35 RELEASE CALLS

...

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 **CommitteeBoard** shall from time to time determine.

...

35.6 If, while a Release Call which has become due and payable is unpaid (and if payment of future Supplementary Calls is not guaranteed in accordance with Rule 35.5.1), the **CommitteeBoard** determines in accordance with Rule 35.2 that a Release Call for any relevant Policy Year shall be charged at a higher percentage of the Annual 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 35.4 or imposed pursuant to Rule 35.5 (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 35.5.1 shall apply mutatis mutandis to any debit note issued pursuant to this Rule.

RULE 37 RESERVES

37.1 The **CommitteeBoard** may in its sole discretion establish, maintain and apply such reserve funds or accounts, including without limitation a Calls Equalisation Account, for any or all of the following contingencies or purposes:

...

- 37.1.5** such other contingency or purpose beneficial to the Association as the ~~Committee~~**Board** may in its sole discretion determine.
- 37.2** The ~~Committee~~**Board** may in its sole discretion apply the whole or any part of any reserve fund or account for any of the contingencies or purposes set out in Rule 37.1 above and in respect of any Policy Year irrespective of the purpose or purposes for which that reserve fund or account was established and irrespective of the Policy Year or Years from which the funds or account originated, provided that such application shall be considered by the ~~Committee~~**Board** to be beneficial to the Association. The ~~Committee~~**Board** may also in its sole discretion transfer sums from one reserve to another within the same Class, but shall not be entitled to use any reserve fund or account established from Calls or funds of one Class for the benefit of any other Class, nor to transfer such reserve fund or account between different Classes.
- 37.3** Reserve funds or accounts may be raised by the ~~Committee~~**Board** resolving that there shall be transferred to and applied for the purposes of any such reserve funds or accounts a specified amount or proportion of:

RULE 38 INVESTMENTS

- 38.1** The funds of this Class may be invested under the direction of the ~~Committee~~**Board** by means of the purchase of such stocks, shares, bonds, debentures or other securities or the purchase of such currencies, commodities, or other real or personal property, or by means of being deposited in such accounts on such terms and in such manner as the ~~Committee~~**Board** may in its sole discretion determine. The funds of this Class may also be invested by such other method as the ~~Committee~~**Board** may approve.
- 38.2** Unless the ~~Committee~~**Board** decides otherwise, all or any of the funds standing to the credit of any Policy Year or of any reserve or account shall be pooled and invested as one fund.
- 38.3** If any funds shall have been so pooled and invested the ~~Committee~~**Board** may in its sole discretion apportion as it thinks fit the income arising on the pooled investments (including capital gains and losses and gains and losses on foreign exchange transactions) among and between the different Policy Years, reserves, funds and accounts from which the invested funds originated.
- 38.4** Without prejudice to Rule 38.3 above, the ~~Committee~~**Board** may, after the closing of any Policy Year, in its sole discretion direct that such year shall not be credited with any share of the ~~apportionments~~**apportionments** made under that paragraph and that its share shall instead be credited to any reserve fund or account maintained by the Association.

RULE 39 PROVISION FOR EXPENSES

- 39.1** Towards the expenses attendant on carrying into effect the purposes and object of this Class the Association shall pay to the Managers out of the funds of this Class an amount as the ~~Committee~~**Board** shall from time to time determine.

RULE 42 JURISDICTION AND LAW

...

- 42.1.1** ~~Upon its entry into force~~ The following provisions of the Insurance Act 2015 ("the Act") are excluded as follows:

[Explanation: the proposed amendment reflects the coming into force of the Insurance Act 2015 on 12 August 2016.]

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

3 January 2017

8:110