



Shipowners Mutual Syndicate

Shipowners Mutual Syndicate Limited

Freight, Demurrage and Defence Terms and Conditions

Commencing 21st November 2008

Managers: Shipowners Mutual Syndicate Limited

Address: 1 King William Street,
London EC4N 7AF

Telephone: 0044 78 9487 8059

E-mail: info@smsmutual.com

Website: www.smsmutual.com

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Freight, Demurrage and Defence Liability

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PART I - Introduction

1 Introductory

- (1) All contracts of insurance effected by the Association incorporate all the provisions of these Rules, save insofar as those provisions are varied by any special terms which may have been agreed pursuant to the powers of the Association as set out in the Constitution.
- (2) A person by whom or on whose behalf an application is made for the insurance or reinsurance by the Association of any vessel shall be deemed to have agreed not only on his own behalf but also on behalf of himself, any and all Co-Assureds and his or their successors and each of them that both he and they will in every respect be subject to and bound by any contract of insurance with the Association, including the provisions of these Rules incorporated as aforesaid.

The provisions of these Rules govern a contract of insurance between the relevant Member (or Joint Member) and the Association alone: for the avoidance of any doubt membership of the Association does not create any contractual or other legal relationship between any one Member and any other.

- (3) These Rules and all contracts between a Member and the Association relating to the insurance afforded by the Association or otherwise shall be subject to the Constitution.
- (4) These Rules and all contracts between a Member and the Association relating to the insurance afforded by the Association or otherwise shall be governed by Panama law, and, subject to the arbitration provisions set out in Rule 52 thereof, shall constitute an irrevocable submission by the Association and its Members and Co-Assureds to the jurisdiction of the Panama courts.
- (5) In the event of any conflict between the English text of these Rules and any text thereof written in any other language the English text shall prevail.
- (6) If any provision of these Rules is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall, nevertheless, continue in full force without being impaired or invalidated in any way.
- (7) These Rules shall apply generally for entire Policy Year periods.

PROVIDED THAT:-

The Committee may amend these Rules during a Policy Year by not less than one calendar month's notice to Members whenever necessary or expedient to deal with matters of interpretation and of law (whether conventional, statutory or Court made), which were not incorporated into these Rules at the beginning of the Policy Year in question.

(NOTE: the definitions of "Association", "Member", "Co-Assured", "Managers", "Committee", "Vessel" and other terms used in these Rules are set out in Rule 53).

PART II - Risks Covered and Claims Handling

2 Disputes Covered

The Association insures each of its Members in the manner and to the extent provided in Rule 3 in connection with claims, disputes or proceedings which arise:

- (a) out of events occurring during the period of insurance of any insured vessel entered by him and
- (b) in respect of the Member's interest, whether actual or prospective, in the insured vessel and which relate to the matters enumerated below, namely:-
 - (i) freight, deadfreight, demurrage, detention or any other matter arising out of the trading of the insured vessel generally;
 - (ii) detention, salvage, general average contributions and charges (except where the insured vessel is a salvage tug or other craft specially designed, converted, or maintained for use in salvage operations and the claim arises as a result of or during any salvage operations or attempted salvage operations; but the Committee in its absolute discretion may allow claims of this type to be covered);
 - (iii) a policy of insurance, other than with the Association, the West of England Ship Owners' Mutual Insurance Association (London) Limited or the West of England Mutual War Risks Association Limited;
 - (iv) damage sustained by the insured vessel;
 - (v) representation at official inquiries and protection against any interference by a public body, authority, company or corporation in matters connected with the business of ship owning;
 - (vi) any contract for the building, purchase, sale, conversion or repair of the insured vessel (including any guarantee in connection with such contract) only if the contract was made at the beginning of or during the period of insurance or the Managers agree in writing that claims, disputes or proceedings arising from the particular contract will be covered;
 - (vii) any mortgage of the insured vessel or contract for such mortgage;
 - (viii) any other contract in relation to the insured vessel;
 - (ix) any other matter which the Committee determines falls within the scope of the Freight, Demurrage and Defence Class.

3 Extent of Cover

Subject to any special terms which may be agreed a Member is entitled:

- (a) to recover from the Association the costs and expenses incurred in connection with any of the claims, disputes and proceedings described in Rule 2, (including costs and expenses payable to other parties to such proceedings under any judgement or order therein), but only if the Committee has determined that the case merits the support of the Association and has not withdrawn that support;
- (b) to receive legal advice from the Association in connection with any of the claims, disputes and proceedings described in Rule 2 or the possibility thereof;
- (c) to recover from the Association the costs and expenses incurred in obtaining advice in connection with the claims, disputes and proceedings aforesaid or the possibility thereof from lawyers,

surveyors, representatives and other persons (other than employees of the Member or of the Association or Managers), where the Managers have consented to the obtaining of such advice.

PROVIDED THAT:

- (A) No costs or expenses shall be recoverable from the Association unless:
 - a) they have been incurred with the prior consent in writing of the Managers; or
 - b) they have been incurred by the Association on behalf of the Member in accordance with Rule 9 (Employment of Lawyers and others); or
 - c) the Committee shall determine that they were reasonably incurred and ought in all the circumstances to be borne by the Association, and
 - d) they are not excluded by any proviso, warranty, condition, exemption, limitation, deductible or other term contained in these Rules or in the terms of entry, and
 - e) they were incurred by the Member in the capacity in which the Member has entered the insured vessel in the Association.
- (B) Unless a higher figure is agreed by the Managers in writing, there shall be no recovery from the Association in excess of US\$ 10 million in the aggregate in respect of any one case (as defined in Rule 53), including where such case relates to the building of an insured vessel.
There is no cover for any claim, dispute or proceeding with or against the Association, its directors, the Managers or their employees or agents.

4 Omnibus Rule

Notwithstanding anything to the contrary contained in these Rules, the Committee may determine that the Association shall pay a Member any amount, whether or not the full amount claimed, in respect of losses, liabilities, costs or expenses incidental to the business of owning, operating or managing vessels, which in the opinion of the Committee fall within the scope of the Association's business.

PROVIDED THAT: the Committee need not give any reasons for its decision.

5 Discretion of Committee

- (1) The Committee may determine whether any particular case merits the support of the Association, and without prejudice to the generality of the foregoing the Committee shall in exercising its discretion be entitled to take into account the consideration whether or not to support a Member in respect of any particular case is in the interest of the Membership.
- (2) The Committee may at any and all times impose such terms as a condition of supporting a Member in any particular case as it thinks fit.
- (3) The Committee may at any time withdraw the Association's support from a Member in any particular case if it considers that such case ought to be settled or otherwise discontinued, and the Association shall not be liable for any costs and expenses incurred in connection with such case after the time of such withdrawal of support.

6 Obligation to Sue and Labour

- (1) Upon the occurrence of any casualty, dispute, event or matter liable to give rise to a claim by a Member upon the Association, it shall be the duty of the Member and his agents to take and continue to take all such steps as may be reasonable for the purpose of averting or minimising any expense or liability in respect whereof he may be insured by the Association.
- (2) The duty imposed on a Member and his agents hereunder shall be to take such steps as could reasonably be expected to be taken by a competent and prudent uninsured owner in the same or similar circumstances and no account shall be taken of any circumstances peculiar to the Member such as his lack of means or inability to provide the requisite funds for any reasons whatsoever.
- (3) If a Member commits any breach of this obligation, the Committee may determine to reject any claim by him against the Association arising out of the casualty, dispute, event or matter, or reduce the sum payable by the Association in respect thereof by such amount as it may determine.

7 Notification of Claims, Admission of Liability, etc.

- (1) A Member must:
 - (a) promptly notify the Managers in writing of every casualty, event or matter which is liable to give rise to a claim upon the Association and of every event or matter (including any legal or arbitration proceedings commenced against the Member) which is liable to cause the Member to incur liabilities, costs or expenses for which he may be insured by the Association;
 - (b) promptly notify the Managers of every survey or inspection of any object or document or any opportunity to survey in connection with a matter referred to under (a);
 - (c) at all times promptly notify the Managers of any information, documents or reports in his or his servants' or agents' possession, power or knowledge relevant to such casualty, event or matter as is referred to under (a);
 - (d) whenever so requested by the Managers, promptly produce to the Managers and/or allow the Managers or their agents to inspect, copy or photograph, all relevant documents of whatsoever nature in his or his servants' or agents' possession or power;
 - (e) permit the Managers or their agents to interview any servant, agent or other person who may have been employed by the Member at the material time or at any time thereafter or whom the Managers may consider likely to have any direct or indirect knowledge of the matter or who may have been under a duty at any time to report to the Member in connection therewith.
- (2) A Member shall not settle or admit liability for any claim for which he may be insured by the Association, nor submit to judgement in respect of such a claim, nor enter into any arrangement with a judgement creditor for the discharge or payment of any such claim or for the provision of funds to discharge the judgement debt without prior written consent of the Managers.
- (3) If a Member commits any breach of his obligations referred to in (1) or (2) above the Committee may determine to reject any claim by the Member against the Association arising out of the casualty, event or matter, or reduce the sum otherwise payable by the Association in respect thereof by such amount as it may determine.

8 Time Bar

- (1) Without prejudice to the duty of prompt notification contained in Rule 7, if a Member:
 - (a) fails to notify the Managers of any casualty, event or matter referred to in Rule 7 within one year after he has knowledge thereof (or in the opinion of the Committee ought to have known thereof), or
 - (b) fails to submit a claim to the Managers for reimbursement of any loss, damage, liabilities, costs or expenses within one year after discharging the same (in the case of an agreed settlement, after he receives the Managers' approval for the settlement in accordance with Rule 7(2)), the Member's claim against the Association shall be extinguished and the Association shall be under no further liability in respect thereof unless the Committee shall otherwise determine.
- (2) Without prejudice to paragraph (1) of this Rule, no claim shall in any event be recoverable from the Association unless written notice thereof has been given to the Managers within three years from the time of the casualty or other event or matter giving rise to the claim.

9 Employment of Lawyers and other Persons

- (1) Without prejudice to any other provisions of these Rules and without waiving any of the Association's rights hereunder, the Managers may at any and all times appoint and employ on behalf of a Member upon such terms as they may think fit lawyers, surveyors or other persons (whether or not lawyers, surveyors or other persons have already been appointed or employed by the Member) for the purpose of dealing with any matter liable to give rise to a claim by the Member upon the Association, including, but not limited to, investigating, or advising upon any such matter and taking or defending legal or other proceedings in connection therewith. The Managers may also at any time discontinue such employment as they may think fit.
- (2) The costs and expenses incurred in connection with a particular case shall only be recoverable from the Association on condition that all lawyers, surveyors and other persons employed in the case are appointed with the prior consent of the Managers, or by the Managers under paragraph (1) of this Rule.
- (3) All lawyers, surveyors and other persons appointed by the Managers on behalf of a Member or appointed by a Member with the prior consent of the Managers shall at all times be and be deemed to be appointed and employed on the terms:
 - (i) that (without prejudice to their right to retire from the matter on any other grounds) they shall be entitled to retire from the matter if either the Managers or the Member so requests or if such person considers that a conflict of interest has arisen or may arise between the Member and the Association so that he ought to retire from the matter;
 - (ii) that they have been instructed by the Member at all times (both while so acting and after having retired from the matter) to give advice and to report to the Managers in connection with the matter without prior reference to the Member;
 - (iii) that they are to produce to the Managers without prior reference to the Member any documents or information in their possession or power relating to such matter, as if such person had been appointed to act and had at all times been acting on behalf of the Association and notwithstanding that any such advice, reports, documents or information would otherwise be the subject of legal or any other form of privilege.

10 Powers of the Managers relating to the Handling and Settlement of Claims

- (1) The Managers shall have the right if they so decide:
 - (a) to control or direct the conduct of any claim or legal or other proceedings relating to any liability, loss, damage, costs or expenses in respect whereof a Member is or may be insured in whole or in part;
 - (b) to require the Member to take any step in connection with the handling of such claim or proceedings which the Managers may think appropriate;
 - (c) to require the Member to settle, compromise or otherwise dispose of such claim or proceedings in such manner and upon such terms as the Managers see fit.
- (2) If a Member does not settle, compromise, dispose of or take steps in connection with the handling of a claim or proceedings as required by the Managers in accordance with paragraph (1) of this Rule, any eventual recovery by the Member from the Association in respect of such claim or proceedings shall be limited to the amount he would have recovered if he had acted as required by the Managers.
- (3) Where the Association has provided bail or other security in accordance with Rule 49 (Bail) and the Member fails to comply with a requirement made or direction given under this Rule, the Association by giving to the Member fourteen days' written notice to this effect shall (unless in the meantime the Association has been released from its liability in respect of such bail or other security) be entitled in the name of the Member to defend, settle or otherwise deal with such claim or potential claim against him and the Member shall on demand indemnify the Association against any loss, damage, liabilities, costs and expenses incurred by the Association as a result of exercising its rights under this Rule; except insofar as such loss, damage, liabilities, costs and expenses, if incurred by the Member, would be recoverable under his insurance with the Association.

Part III - Deductibles, Limitations, Exclusions and Warranties

11 Deductibles and Party and Party Costs

- (1) Each claim covered under Rule 3 shall be subject to a deductible of US\$ 5,000 and 25% of the claim in excess of the amount of US\$ 5,000, provided that the total deductible shall not exceed US\$ 50,000 except where the claim relates to a contract for the building of an insured vessel where the total deductible shall not exceed US\$ 50,000.
- (2) Whenever, in accordance with Rule 9, any lawyer, surveyor or other third party is appointed and employed by the Managers on behalf of the Member or appointed and employed by the Member with the prior consent of the Managers, the Members shall on the Managers' request pay to the Association US\$ 5,000 on account of the deductible which shall be repayable to the Member without interest to the extent that the Member's payment on account exceeds the amounts payable by the Association to such third parties.
- (3) The Member shall account to the Association for all costs, expenses and disbursements recovered by any order, award or settlement in every case supported by the Association. If any claims, disputes or proceedings are settled or compromised for a lump sum, the Association shall be entitled to recover from the Member such reasonable sum as the Association may in its sole discretion determine as being attributable to costs.

12 Less than Full Tonnage Entered

If less than the full gross tonnage of a vessel is entered in the Association, the Member concerned shall, unless the entry of the vessel has been accepted on special terms which otherwise provide, be entitled only to recover such proportion of his claim as the entered tonnage bears to the full gross tonnage.

Where by virtue of these Rules or any special terms which may have been agreed a limit is set to the Association's liability in respect of any or all claims insured by the Association the foregoing provisions shall likewise apply to such limit and the Association's liability in respect thereof shall be reduced accordingly.

13 Payment First by the Member

The insurance afforded to a Member is indemnity only and not liability.

Unless the Committee in its discretion otherwise determines it shall be a condition precedent of a Member's right to recover from the funds of the Association in respect of any loss, damage, liabilities, costs or expenses that he shall first have discharged or paid the same otherwise than from money advanced expressly or impliedly for that purpose whether by way of loan or otherwise.

14 No Liability until Calls and other Sums Paid

Without prejudice to anything elsewhere contained in these Rules it shall be a condition precedent of a Member's right to recover from the funds of the Association in respect of any costs or expenses that all such Calls and other amounts whatsoever as shall have become due from the Member to the Association (whether in respect of this Class or any other Class) shall have been paid in full by the Member or by some assignee or other person on his behalf.

PROVIDED THAT:

The Committee may waive the above condition, but in such event the Association shall be entitled to set off any amount due from a Member against any amount due to him from the Association.

15 Exclusion of Sums Insurable under other Insurances

Unless otherwise agreed in writing or the Committee otherwise determines, there is no cover for any costs or expenses in connection with an insured vessel:

- (i) which would be recoverable from Hull underwriters if the insured vessel were at all times fully insured under Hull Policies on the terms of the Lloyd's Marine Policy with the Institute Time Clauses (Hulls) 1.10.83 attached, or
- (ii) which would be recoverable from the Association if the insured vessel were entered for insurance in any other Class of the Association at full gross tonnage and for its ordinary cover, regardless of any limitation therein or any deductible applicable thereto, or
- (iii) which would be excluded from the insurances mentioned in paragraphs (i) and (ii) above by reason of clauses 23, 24, 25 or 26 of the Institute Time Clauses (Hulls) 1.10.83 or Rule 14 of the Class 1 Rules of the said Association respectively, or
- (iv) which would be excluded from the insurances mentioned in paragraphs (i) and (ii) above by reason of any deductible, franchise or deduction of a similar nature in those insurances (other than a deductible of 1% of the insured value in the case of the Hull Policies), or
- (v) which would be recoverable from any other insurers in respect of loss of the following: hire, freight, employment or use of the insured vessel.
"Fully insured" in paragraph (i) of this Rule means insured at such insured value as the Committee determines represents the market value of the insured vessel, disregarding any charter or other engagement to which she may be committed.

16 Association Not Liable for Interest

In no case shall a Member be allowed interest on any claim he may have against the Association.

17 Premium Tax and other Excise Taxes

The Member shall pay on demand to the Association or its order the amount of any premium tax or other excise tax or similar charge or fee for which the Association determines in its discretion it or the Member has or may become liable and shall indemnify and hold harmless the Association in respect of any loss, damage, liability, cost or expense which the Association may incur in respect of such premium tax or other excise tax, charge or fee.

18 Double Insurance

- (1) Unless the Committee otherwise determines, the Association shall not be liable for any loss, damage, liabilities, costs or expenses in respect of an insured vessel which are recoverable under any other insurance or which would have been so recoverable:

- (i) apart from any terms in such other insurance excluding or limiting liability on the ground of double insurance; and
 - (ii) if the insured vessel had not been entered in the Association with cover against the risks set out in these Rules.
- (2) In no case shall the Association be liable for any costs or expenses in connection with any franchise, deductible or deduction of a similar nature borne by a Member under such other insurance.

19 Liability Excluded if Adventure Illegal, Hazardous or Improper

No claim shall be recoverable from the Association if it arises out of or is consequent upon an insured vessel carrying contraband, blockade running or being employed in an unlawful trade, or if the Committee having regard to all the circumstances shall be of the opinion that the carriage, trade, voyage or any other activity on board or in connection with the insured vessel, was imprudent, unsafe, unduly hazardous or improper.

19a Sanctions, Prohibitions and Adverse Action

- (1) Unless the Committee otherwise determines, there is no cover in respect of an insured vessel being employed by the Member in a carriage, trade or on a voyage which thereby in any way howsoever exposes the Club to the risk of violating, or to being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation or other competent authority.
- (2) The Association shall in no circumstances have a liability to a Member in respect of that part of any liabilities, costs and expenses which is not recovered by the Association from parties to the Pooling Agreement, and/or under the Group Excess Loss Reinsurance Contract or any other reinsurer because of a shortfall in recovery from such parties or reinsurers thereunder by reason of a sanction, prohibition or adverse action against them by a state or international organisation or other competent authority or the risk thereof if payment were to be made by such parties or reinsurers. For the purposes of this Rule 19A “shortfall” includes but is not limited to any failure or delay in recovery by the Association by reason of such parties or reinsurers making payment into a designated account in compliance with the requirements of any state or international organisation or other competent authority.
- (3) Notwithstanding the express or implied terms of any other provision of these Rules, on becoming aware of any prima facie evidence of any conduct by a Member which exposes or might expose the Club to the risk of violating, or to being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation or other competent authority the Association shall be entitled to terminate its insurance of the Member immediately and without notice, whereupon that Member shall immediately cease to be insured by the Association and the period of insurance shall immediately terminate in respect of any and all vessels entered by him.

20 Costs in Connection with Bail Not Covered

No costs, expenses or charges incurred by a Member in connection with the provision of bail or other security, whether by the Association or not, to obtain the release of or prevent the arrest or attachment of an insured

vessel or any other property or assets whatsoever of that Member shall be recoverable from the Association.

21 Rules Subject to Marine Insurance Act 1906 and Insurance Act 2015

- (1) Subject to Rules 21(2) and 21(3), these Rules and all contracts of insurance made by the Association shall be subject to and incorporate the provisions of the Marine Insurance Act 1906 and the Insurance Act 2015 of the United Kingdom, and any statutory modifications thereof, except insofar as such Act or modification may have been excluded by these Rules or by any term of such contracts.
- (2) The following provisions of the Insurance Act 2015 (“the Act”) shall be excluded from the Rules and any contract of insurance made by the Association as follows:
 - (a) Section 8 of the Act shall be excluded. As a result any breach of the duty of fair presentation shall entitle the Association to avoid the policy, regardless of whether the breach of the duty of fair presentation be innocent, deliberate or reckless.
 - (b) Section 10 of the Act shall be excluded. As a result all warranties in these Rules or any contract of insurance must be strictly complied with and if the Member or any insured fails to comply with any warranty the Association shall be discharged from liability from the date of the breach, regardless of whether the breach is subsequently remedied.
 - (c) Section 11 of the Act shall be excluded. As a result the rules and all terms of any contract of insurance made by the Association, including terms which tend to reduce the risk of loss of a particular kind, loss at a particular location and/or loss at a particular time, must be strictly complied with and if the Member or any insured fails to comply with any such term, the Association’s liability may be excluded, limited or discharged in accordance with these rules notwithstanding that the breach could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.
 - (d) Section 13 of the Act shall be excluded. As a result the Association shall be entitled to exercise its right to terminate the contract of insurance in respect of the Member and all insureds in the event that a fraudulent claim is submitted by or on behalf of the Member and/or any insured and/or any affiliated or associated company of the Member.
 - (e) Without prejudice to Rule 47, no contract of insurance made by the Association shall be subject to, nor shall the Association be in breach of, any implied term that the Association shall pay any sums due in respect of a claim within a reasonable time save where the breach is deliberate or reckless and Section 13A of the Act is excluded to this extent.
 - (f) Section 14 of the Act shall be excluded. As a result, all contracts of insurance made by the Association shall be deemed to be contracts of the utmost good faith, and any breach of the duty of the utmost good faith shall entitle the Association to avoid the contract of insurance.
 - (g) The provisions of the Marine Insurance Act 1906 which are omitted by the Act shall cease to apply as shall, save to the extent that the Act is excluded by these Rules, any such provisions which are incompatible with the Act.
- (3) Further in relation to the Act:
 - (a) The applicant and any agent shall make to the Managers a fair presentation of the risk by providing the Managers with all material particulars and information together with any additional particulars and information as the Managers may require.
 - (b) The applicant and any agent shall ensure that every material representation as to a matter

of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.

- (c) In accordance with sub-Rule 21(2)(a) above, Section 8 of the Insurance Act 2015 is excluded. Any breach of sub-Rule 21(3)(a) or (b) shall entitle the Association to avoid the contract of insurance, regardless of whether the breach is innocent, deliberate or reckless.
- (d) The Member shall disclose any change in any material information relating to an entry including, but not limited to, any change of: management, flag, classification society, government authority responsible for ship certification for the trade in question, nationality of crew, trading or operating area or nature of trade or operation. Upon such disclosure, or upon their discovery of a failure to disclose, the Managers may amend the Member's premium rating or terms of entry, or terminate the entry in respect of such ship with effect from the time of disclosure or failure to disclose.
- (e) The Association shall not be liable for any loss, damage, liabilities, costs or expenses caused by the wilful misconduct of the Member or his manager.

22 Disclosure if Entry Continued

A Member who desires to continue the entry for insurance of an insured vessel (whether or not a notice has been or is to be given pursuant to Rule 27) shall immediately prior to the 30 days before the commencement of the next ensuing Policy Year be under the same duty to the Association as regards disclosure of material circumstances as if he were an applicant desiring to enter a vessel for insurance in the Association.

Part IV - Entry For and Cesser of Insurance

23 Eligibility for Insurance or Reinsurance

- (1) The Managers on behalf of the Association may enter into a contract of insurance in respect of any vessel with any of the following persons: the registered owner, owners in partnership, owners holding separate shares in severalty, part owner, mortgagee, trustee, charterer, operator, manager or builder of that vessel, any other person interested in or in possession of the vessel, or any other person who in the opinion of the Managers should be regarded and treated as any of the persons above mentioned.

For the purposes of this paragraph, a vessel shall include an unidentified vessel which the person entering into a contract of insurance with the Association has agreed to employ or operate under a charter or similar contract, provided that such vessel shall be entered as a named vessel as soon as it is identified.

- (2) Subject to the Constitution and save insofar as expressly prohibited by these Rules, the Managers may enter into contracts of reinsurance on behalf of the Association whereby the Association agrees to reinsure the risks arising in connection with any one or more vessels insured by another Association or insurer or else agrees to reinsure the whole or any part or proportion of the insurance business of any other Association or insurer. The consideration payable to the Association and the terms and conditions on which the reinsurance is accepted by the Association shall be such as are agreed between the Managers and such other Association or insurer. Save where otherwise agreed in writing the other Association or insurer shall be in every respect subject to and bound by the provisions of these Rules, and his contract with the Association shall for all purposes take effect as though he were the owner of any vessel or vessels in connection with which the relevant risks may arise and had as owner entered the vessel or vessels in the Association for insurance.
- (3) The Association or the Managers on its behalf may effect the reinsurance or ceding of any risks insured by the Association (including any risk which may fall on the Association by reason of a reinsurance agreement referred to in paragraph (2) of this Rule) with such reinsurers and on such terms as the Managers shall consider appropriate.
- (4) Subject to the Constitution and save insofar as expressly prohibited by these Rules the Committee may agree to enter into arrangements on behalf of the Members of this Class of the Association whereby the Members of this Class of the Association agree to indemnify by way of reinsurance or otherwise any other one or more of the other Classes of the Association in respect of all or any part of the risks insured by such Class on such terms as the Committee shall determine.

24 Application for Entry

Any person who desires to enter a vessel for insurance in the Association shall make application for such entry in such form as may from time to time be required by the Managers.

The Managers shall be entitled in their absolute discretion to refuse any application for the entry of a vessel for insurance in the Association, whether or not the applicant is a Member of the Association.

Applications for the entry of a vessel or vessels may be made in respect of vessels which form part of a particular and specified fleet for the purposes of such entry and if the Association accepts such an application, the Association will treat such entries as belonging to such a fleet notwithstanding that the beneficial ownership of

such vessels may be different from one another, and all Members and Joint Members within each such fleet shall be jointly and severally liable to perform all the obligations of any one of them towards the Association, including without limitation the liability to pay all Calls and other sums due to the Association in respect of any and all vessels within that fleet entry. Any failure by a Member or Joint Member in the same fleet to perform any obligation whatsoever towards the Association shall be deemed to be a failure of all Members and Joint Members within such fleet. In the case of a failure to pay Calls or any other sums whatsoever due from such Member to the Association, the Association shall be entitled to give notice to all or any of such Members or Joint Members under Rule 32.

25 Entered Tonnage: Basic Rate of Contribution

Before an application is accepted for the entry of a vessel the applicant and the Managers shall agree the entered tonnage and Basic Rate of Contribution for the vessel concerned. In deciding upon the Basic Rate of Contribution of any vessel the Managers may take into account all matters which they may consider relevant including (without prejudice to the generality of the foregoing) the degree of risk estimated to be involved in the proposed insurance.

26 Certificate of Entry and Endorsement Slip

- (1) As soon as reasonably practical after accepting an application for the entry of a vessel for insurance in the Association the Managers on behalf of the Association shall issue to the applicant a Certificate of Entry in such form as may from time to time be prescribed by the Managers but so that such Certificate of Entry shall state the date of the commencement of the period of insurance and the terms and conditions on which the vessel has been accepted for insurance.
- (2) If at any time or from time to time the Managers on behalf of the Association and a Member shall agree to vary the terms relating to an insured vessel, the Managers shall, as soon as reasonably practical thereafter, issue to the Member an Endorsement Slip stating the terms of such variation and the date from which such variation is to be effective.
- (3) Every Certificate of Entry and every Endorsement Slip issued as aforesaid shall be conclusive evidence and binding for all purposes as to the commencement of the period of insurance, as to the terms and conditions on which the vessel has been entered for insurance, and as to the terms of any variation and the date from which such variation is to be effective; provided that in the event that any Certificate of Entry or any Endorsement Slip shall have been defaced or lost or in the opinion of the Managers contains any error or omission the Managers may on behalf of the Association issue a new Certificate of Entry or a new Endorsement Slip which shall be conclusive evidence and binding as aforesaid.

27 Duration and Termination of Cover

The cover afforded by the Association shall begin at the time stated in the Certificate of Entry for the commencement of the cover and continue until the end of the then current Policy Year at noon on 20 February next unless otherwise agreed at the time of entry. Thereafter, subject to a cesser of insurance or to the exercise by the Club of any right to terminate an entry as provided elsewhere in these Rules, the cover shall continue from Policy Year to Policy Year unless:

- (1) notice shall have been given in writing by either the Member to the Managers or the Managers to the Member not later than noon on 20 January in any year, that the insurance specified in the notice is to cease, in either of which events the insurance shall cease at the end of the then current Policy Year; or
- (2) the Managers shall have informed the Member orally or in writing at any time before the start of a Policy Year at noon on any 20 February that the terms of the insurance offered to it by the Club for that Policy Year are to be changed for the next Policy Year, including but not limited to premium or deductibles and whether such terms are generally or specifically applicable, in which event, unless terms are agreed between the Member and the Managers by the start of that Policy Year at noon on 20 February immediately following such notice, the insurance shall thereupon cease; or
- (3) the Managers by 30 days' notice in writing to a Member at any time terminate the entry in respect of any vessel.

An entered ship shall not be withdrawn from the Club at any other time or in any other manner except with the consent of the Managers.

If before the end of any Policy Year these Rules shall have been altered in any respect which affects the terms and conditions of the contract of insurance between a Member and the Association, then such alteration shall be binding upon the Member and for all purposes take effect as from the commencement of the next Policy Year.

28 Inception of Membership

If the Managers on behalf of the Association accept an application for the entry of a vessel for insurance in the Association from a person who is not already a Member of the Association, then unless he is to be a Co-Assured that person may, if agreed with the Association or the Managers on its behalf, as from the commencement of the period of insurance of that vessel, be and become a Member or Joint Member of the Association and his name shall be entered in the Register of Members of the Association.

29 Joint Entries

Where a Certificate of Entry for an insured vessel records as parties insured thereunder more persons than one whether jointly or separately interested, any such persons who are not Members of the Association are hereinafter referred to as "Co-Assured" or "Co-Assureds". Where such persons are Members of the Association in respect of such vessel they are hereinafter referred to as "Joint Member" or "Joint Members" and in such circumstances:

- (i) the Managers shall not be bound to issue on behalf of the Association more than one Certificate of Entry in respect of each insured vessel or more than one Endorsement Slip and delivery of such Certificate of Entry or Endorsement Slip, as the case may be, to one of several jointly insured Members shall be sufficient delivery to each and all of such persons;
- (ii) the Joint Members and each of them shall be jointly and severally liable to pay all Calls and other sums due to the Association in respect of such entry and the receipt of any one of such Joint Members for any sums payable by the Association in respect of such entry shall be a sufficient

- discharge of the Association for the same;
- (iii) failure by any Joint Member or any Co-Assured who is named in the same Certificate of Entry to disclose material information within his knowledge shall be deemed to have been the failure of all the Joint Members and/or all Co-Assureds;
 - (iv) conduct of any Joint Member or any Co-Assured who is named in the same Certificate of Entry which would have entitled the Association to decline to indemnify him shall be deemed the conduct of all the Joint Members and/or all Co-Assureds;
 - (v) unless the Managers have otherwise agreed in writing, the contents of any communication from or on behalf of the Association to any Joint Member and/or Co-Assured shall be deemed to be within the knowledge of all the Joint Members and/or Co-Assureds and any communication from any Joint Member and/or Co-Assured to the Association, the Managers or their agents shall be deemed to have been made with the full approval and authority of all the Joint Members and/or Co-Assureds;
 - (vi) the Association shall in no case be liable for any costs or expenses incurred in connection with any dispute or proceedings between the Joint Members and/or Co-Assureds or any of them;
 - (vii) any limitation of the Association's liability to a Member, whether in these Rules or in an agreed special term, shall be construed as a limitation on the aggregate amount payable to all Joint Members and/or Co-Assureds. In such cases the claim of the registered owner of the insured vessel shall be preferred to the claims of the other Joint Members and/or any Co-Assureds, which shall rank *pari passu* among themselves as to any balance; provided that in such cases the Committee may take into account the possibility of further claims against the Association being made by the Joint Members and/or Co-Assureds or any of them, and may withhold such sums from distribution as it thinks fit in order to meet those claims.

30 Assignment

- (1) No insurance given by the Association and no interest under these Rules or under any contract between the Association and any Member may be assigned without the written consent of the Managers who shall have the right in their discretion to give or refuse such consent without stating any reason or to give such consent upon any such terms or conditions as they may think fit. Any purported assignment made without such consent or without there being due compliance with any such terms and conditions as the Managers may impose shall, unless the Managers in their absolute discretion otherwise determine, be void and of no effect.
- (2) Whether or not the Managers shall expressly so stipulate as a condition for giving their consent to any assignment, the Association shall be entitled in settling any claim presented by the assignee to deduct or retain such amount as the Managers may then estimate to be sufficient to discharge any liabilities of the assignor to the Association, whether existing at the time of the assignment or having accrued or being likely to accrue thereafter.
- (3) Where the Managers consent to an assignment, they shall, after any conditions which they have imposed have been complied with, and upon receipt of due notice of assignment, issue on behalf of the Association an Endorsement Slip giving particulars of the assignment, including the time from which it is to take effect; and that Endorsement Slip shall be conclusive evidence of those particulars.

31 Cesser of Insurance on Certain Specified Events

- (1) A Member shall cease to be insured by the Association and the period of insurance shall terminate in respect of any and all vessels entered by him upon the happening of any of the following events:
- (a) If the Member is an individual:
 - (i) upon his death, or
 - (ii) if a receiving order shall be made against him, or
 - (iii) if he shall become bankrupt or make any composition or arrangement with his creditors, or
 - (iv) if he shall become incapable by reason of mental disorder or criminal conviction of managing and administering his property and affairs, or
 - (v) if under any system of law other than Panama law, there occurs an event in relation to that individual which has a similar effect to any of the above.
 - (b) If the Member is a corporation:
 - (i) upon the passing of any resolution for voluntary winding up, or
 - (ii) upon an order being made for compulsory winding up, or
 - (iii) upon dissolution, or
 - (iv) upon the appointment of an administrator, receiver, trustee, custodian, liquidator or other similar official for its or for substantially all of its assets, or
 - (v) upon crystallisation of, and/or possession being taken of any of its assets comprised in or subject to a floating charge, by or on behalf of the holder of such charge, or
 - (vi) if under any system of law other than Panama law, there occurs an event in relation to that corporation which has a similar effect to any of the above.

Termination shall be deemed to take place when the event occurred or, where relevant, upon the making of the first court order, but if there is no such method of determination the effective date and time shall be such date and time as when the Managers notify the Member that they have reasonable grounds for believing that any of the above situations or conditions have occurred.

The provisions of this Rule 31(1) shall also apply to any Co-Assured as if he had been a Member.

- (2) A Member shall cease to be insured by the Association and the period of insurance shall terminate in respect of any vessel entered by him upon the happening of any of the following events affecting such vessel:
- (i) if he shall part with or assign the whole or any part of his interest in the insured vessel whether by Bill of Sale or other formal document or otherwise or shall cease to have an interest in the insured vessel or shall part with or transfer the entire control or possession of the insured vessel, whether by demise charter or otherwise;
 - (ii) if the insured vessel shall be mortgaged or otherwise hypothecated without an undertaking or guarantee having been given to the Association in a form and by such person as may be approved by the Managers in writing, to pay all Calls and other sums due or to become due in respect of the insured vessel;
 - (iii) if any person having given an undertaking or guarantee under the preceding paragraph (2)(ii) fails to discharge his liability thereunder upon demand by the Managers;

- (iv) if the management of the insured vessel is transferred or the flag of the insured vessel is changed. Where a vessel is entered for insurance through an agent (not being an insurance broker) such agent shall for the purpose of this paragraph (2)(iv) of this Rule be deemed to be the manager of the insured vessel unless at the time of the vessel's entry for insurance the Managers were furnished in writing with the name of the management of the vessel to be insured;
- (v) if the insured vessel shall become an actual total loss or shall be agreed by Hull Underwriters as constituting a constructive total loss or a compromised total loss (whether or not subject to production to Hull Underwriters of further evidence concerning the casualty), or shall become a commercial total loss, except as regards liabilities, costs and expenses arising out of the casualty which gave rise to the loss of the vessel;
- (vi) if the insured vessel shall be missing for ten days from the date she was last heard of or from her being posted at Lloyd's as missing, whichever shall be the earlier.

PROVIDED THAT:

Where a Member ceases to be insured by reason of any of the events set out in this Rule 31 paragraph (2)(i)-(2)(vi), the Managers may on behalf of the Association agree in writing to extend the period of insurance on such terms as they think fit.

32 Termination of Insurance for Non-Payment

- (1) If a Member (whether as a Member of this or any other Class) has failed to pay on the due date for payment any sum due to the Association or to any other person on its behalf, he shall be deemed to have failed to pay any further sums (including but not limited to instalments determined under Rule 40(1)) whose date for payment to the Association or to any other person has been notified by the Association, and all such sums and further sums shall be deemed to be immediately due and payable by the Member to the Association. The Association may at any time thereafter at its sole discretion:
 - (i) declare any or all of such sums and further sums to be immediately due and payable; and/or
 - (ii) serve a notice on the Member (the "Final Demand Notice") requiring him to pay the whole or part of any or all such sums and further sums (the "Demanded Sums") on or before the date specified in the Final Demand Notice (the "Deadline") which shall refer to one or more of the consequences of non-payment set out in paragraph (2) of this Rule.
- (2) If the Member fails to pay the Demanded Sums in full on or before the Deadline:
 - (i) that Member shall immediately cease to be insured by the Association and the period of insurance shall immediately terminate in respect of any and all vessels entered by him and
 - (ii) the Association shall immediately cease to be liable and shall not thereafter become liable to that Member for any loss, damage, liabilities, costs or expenses whatsoever in respect of any or all vessels at any time entered by him, irrespective of whether insurance of such vessels terminated by reason of this or any other Rule or at any previous time for any other reason, or whether the events giving rise to such loss, damage, costs, expenses or liabilities occurred before or after termination and whether any claim by the Member against the Association was made before or after the Deadline.

PROVIDED THAT:-

- (i) such Final Demand Notice shall not be invalidated by reason that the sums specified therein as being due to the Association is greater or lesser than the sum actually due;
- (ii) in determining what sums are due to the Association under this or any other Rule or otherwise no account shall be taken of any amount due or alleged to be due by the Association to the Member and no set-off of any kind whatsoever shall be allowed against such sums (even if previously allowed) unless specifically agreed in writing by the Managers on behalf of the Association and referred to in such Final Demand Notice;
- (iii) at the written request of the Member the Committee may determine to reinstate the Member and to extend the period of insurance in respect of any and all vessels entered by him on such terms as the Committee thinks fit and the Committee may further determine that the Association shall be liable to the Member for any liabilities, costs or expenses in respect of any and all vessels at any time entered by or for the Member to such extent and upon such terms as the Committee thinks fit.

33 No Waiver

Without prejudice to the generality of Rule 47, no act, omission, course of dealing, forbearance, delay or indulgence of any kind by or on behalf of the Association nor the granting of time, nor the acceptance by the Association (whether express or implied) of liability for, or the recognition of, any claim, and whether occurring before or after any of the events or termination or notice provisions contained in Rules 31 and 32 shall derogate from the effect of such Rules or be treated as any waiver of any of the Association's rights thereunder.

34 Liability of Association on Cesser of Insurance

When a Member ceases to be insured otherwise than under Rule 32 (Termination of Insurance for Non-payment), such cesser shall not prejudice any claim of the Member against the Association for costs or expenses and liabilities arising out of events occurring before the date of cessation.

35 End of Membership

For the avoidance of any doubt, the obligations of a Member to the Association shall continue and shall be deemed to be cumulative from initial acceptance as a Member throughout each Policy Year of membership until not only has that Member ceased to be a Member, because for any reason the periods of insurance of all vessels entered by him for insurance in the Association have ended, but also he has discharged all the obligations, whenever arising, in respect of his membership in full.

Part V - Calls and Finance

36 Liability for Calls

Members who have vessels entered for insurance in the Association in respect of any Policy Year shall, unless otherwise agreed in writing, provide by way of Mutual Calls, Supplementary Calls, Releases and contributions to a Solvency Margin and Guarantee Fund all funds which the Committee determines are required:

- (i) To meet such of the general expenses of the Association as the Committee may from time to time determine shall be charged against the insurance business of this Class in respect of such Policy Year;
- (ii) To meet the claims, expenses and outgoings (whether incurred, accrued or anticipated) of the insurance business of this Class in respect of such Policy Year (including without prejudice to the generality of the foregoing, 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 this Class by virtue of any reinsurance or pooling agreement concluded between the Association and such other insurer);
- (iii) For such transfers to the reserves or other accounts of the Association (as referred to in Rule 42) and for subsequent application for the purposes of such reserves or other accounts or otherwise as the Committee determine;
- (iv) For such transfers as the Committee may determine to meet any deficiency which has occurred or may be thought likely to occur in any closed Policy Year or Years;
- (v) To meet such proportion as the Committee may determine appropriate of the claims, expenses and outgoings (whether incurred, accrued or anticipated) of any one or more of the other Classes of the Association;
- (vi) To be set aside in order to establish and/or maintain an adequate Solvency Margin and Guarantee Fund in respect of any Policy Year.

37 Mutual Calls

- (1) In such amounts and on such dates during and after the end of each Policy Year as the Committee shall determine, and subject to Rule 39 (reduction of Calls for vessels insured for part of a year) and to any special terms agreed with the Association, each Member shall pay to the Association a Mutual Call for that Policy Year in respect of each of his vessels insured during that Policy Year, including (without limitation) the Member's Basic Rate of Contribution together with such contribution as the Committee may determine to the premiums payable by the Association for that Policy Year under the General Excess Loss Reinsurance Contracts and other reinsurance effected collectively by the parties to the Pooling Agreement.
- (2) If at any time before any Policy Year is closed it shall appear to the Committee that the whole of the product of the Mutual Call is not required, the Committee may resolve to declare a Mutual Call Return, expressed as a percentage of the Mutual Call, payable to the Members in such amounts and on such dates as the Committee shall determine. If the full Mutual Call has not already been paid the Mutual Call Return may be offset by a Member against his obligation to pay the balance.

38 Supplementary Calls

- (1) At any time or times during or after the end of a Policy Year but not after such Policy Year has been closed, the Association may levy one or more Supplementary Calls for that Policy Year in respect of each vessel insured during that Policy Year. Such Call shall comprise a percentage determined by the Committee to be applied to the Mutual Calls for that Policy Year.
- (2) The Committee or the Managers may at any time take any necessary steps to enable such persons to become aware of their financial commitments for the relevant Policy Year by indicating an estimate of the percentage of any Supplementary Call or Calls to be levied. If any such estimate shall be given to any such person it shall be without prejudice to the right of the Association to levy the Supplementary Calls for the relevant Policy Year in accordance with these Rules at a greater or lesser percentage than so indicated and neither the Association, the Committee nor the Managers shall under any circumstances be under any liability whatsoever or howsoever arising as a result of any estimate so given or in respect of any error, omission or inaccuracy contained therein.

39 Reduction of Calls for Vessels Insured for Part of a Year

- (1) Where the period of insurance of a vessel commences during the course of a Policy Year, the Mutual and Supplementary Calls, Solvency Margin and Guarantee Fund Contribution and any Release in respect of that vessel for that Policy Year shall be reduced pro rata, that is to say by the same proportion as the period between the commencement of the Policy Year and the commencement of the period of insurance bears to the whole Policy Year.
- (2) Where the period of insurance of a vessel ends during the course of a Policy Year by reason of one of the events in Rule 31 (Cesser of Insurance on Certain Specified Events) and the Member gives the Managers notice in writing of that event within one month of its occurrence, the Mutual and Supplementary Calls, Solvency Margin and Guarantee Fund Contribution and any Release in respect of that vessel for that Policy Year shall be reduced pro rata, that is to say by the same proportion as the period between the end of the period of insurance and the end of the Policy Year bears to the whole Policy Year.
- (3) Save as aforesaid, a Member shall remain liable to pay Mutual and Supplementary Calls, Solvency Margin and Guarantee Fund Contribution and any Release for the whole Policy Year in full, notwithstanding the cesser of insurance of a vessel during the course of that Policy Year.

40 Payment of Calls and other Sums Due to the Association

- (1) Calls and other sums due to the Association shall be paid on demand or in such instalments and on such dates as are determined by the Committee or the Managers.
- (2) The Association shall have a lien on an insured vessel for all Calls and other sums due to it under these Rules in respect of that vessel. Such lien shall extend to any and all other insured vessels which are part of the same fleet as that vessel in accordance with Rule 24 and shall be in addition to, and in no way construed as a waiver or amendment of, any other contractual or maritime lien which the Association may expressly or impliedly possess in respect of such insured vessel or vessels.
- (3) The Association shall be entitled to set off any Calls or other sums due from a Member to the Association against any amounts for which the Association may be liable to such Member. No claim

by a Member against the Association shall afford that Member any right to make any set off against Calls or other sums due to the Association, nor shall it entitle a Member to withhold or delay payment of any such amounts.

- (4) The currency of payment of any amounts due to the Association shall be determined by the Managers.
- (5) If any Call or other sum due to the Association from a Member is not paid and is considered to have become irrecoverable, the sums required to make good any resulting shortfall or deficiency in the funds of the Association shall become general expenses of the Association for which Calls may be levied or reserves applied in accordance with these Rules.
- (6)
 - (a) The Committee may at any time by means of Bye-Laws determine the rate of interest which shall be payable on any Calls or other sums due to the Association as from the due date of payment or such later date as may be specified.
 - (b) The Managers may on behalf of the Association charge interest on Calls and other sums due at the rate specified in the Bye-Laws.

41 Releases

- (1) If a Member ceases to be insured in respect of an insured vessel for any reason whatsoever, the Managers may at any time after termination of insurance of that vessel calculate and notify such Member of the estimated amount of his liability for further Calls which the Association may levy in respect of such vessel, according to the Release formula determined from time to time by the Committee, together with the amount of all other sums due by such Member to the Association.
- (2) In determining the Release formula to be used for estimating the amount of liability of Members for further Calls the Committee may take into account any contingencies and other special considerations which it may determine are relevant for this purpose (including but not limited to matters such as inflation and currency fluctuations).
- (3) The amounts calculated and notified by the Managers under paragraph (1) of this Rule shall be a Release and shall be payable by such Member on such date or dates as the Managers may require, in either case without deduction.
- (4) When a Member has paid his Release in full in accordance with paragraph (3) of this Rule he shall be under no further liability for any further Calls which the Association may levy after the date of such notification and shall have no right to share in any return of an excess or any part thereof which the Committee may thereafter determine in accordance with Rule 43(4).
- (5) The Managers may, at any time prior to payment of a Release in full in accordance with paragraph (3) of this Rule, recalculate such Release in accordance with the Release formula referred to in paragraph (1) of this Rule and notify the relevant Member thereof, whereupon such Member shall become liable to pay such recalculated Release in accordance with this paragraph (5), credit being given against such recalculated Release for any part or instalments of a Release paid to the Association in respect of such vessel.
- (6) Until a Member has paid his Release in full in accordance with paragraph (3) of this Rule, he shall remain liable to pay all Calls levied in respect of such vessel after the date of such notification, credit being given against such further Calls for any part or instalments of a Release paid to the Association in respect of such vessel.

- (7) A Member shall have no right to dispute any Release save that, after payment thereof in full to the Association or after payment of all instalments required by the Managers, the Member shall be entitled to claim repayment thereof in whole or in part using the procedure set out in Rule 52.

42 Reserves

- (1) The Association may establish and maintain such reserve funds or other accounts for such contingencies or purposes (to the benefit of the Association in all or any of its Classes) as the Committee may determine.
- (2) Without prejudice to the generality of paragraph (1) of this Rule, the Association may establish and maintain reserves or other accounts to provide a source of funds available to be applied for any purposes of the Association, including (but not limited to) the following:
 - (i) To eliminate or reduce the amount of Supplementary Calls in respect of any past, present or future Policy Year;
 - (ii) To eliminate or reduce any deficiency which has occurred or may be thought likely to occur in respect of any closed Policy Year;
 - (iii) To protect the Association against any actual or potential losses on exchange or interest rate differentials, or in connection with any realised or unrealised investments;
 - (iv) To provide against direct or indirect fiscal or other obligations incurred in jurisdictions where the Association may be providing or be deemed to be providing insurance to Members or insured vessels.
- (3) In addition, the Association shall create a reserve from the proceeds of any Calls made pursuant to Rule 45 in order to establish and maintain an adequate Solvency Margin and/or Guarantee Fund.
- (4) The Committee may determine the application of the sums standing to the credit of any reserve for any of the purposes for which the reserve was maintained even though the sum be paid in respect of any different Policy Year or Years from that from which the funds originated. The sums standing to the credit of any reserve may be applied for any other or different purposes whenever the Committee determines this to be in the interests of the Association or its Members. The Committee may also at any time transfer sums from one reserve to another.
- (5) The funds required to establish such reserves or accounts may be raised in either or both of the following ways:
 - (i) the Committee, when determining the rate of any Mutual or Supplementary Calls for any Policy Year, may determine that any specified amount or proportion of such Calls shall be transferred to and applied for the purpose of any such reserve or account;
 - (ii) the Committee may on the closing of any Policy Year or at any time or times thereafter determine that any specified amount or proportion of the funds standing to the credit of that Policy Year shall be transferred to and applied for the purposes of any such reserve or account.

43 Closing of Policy Years

- (1) The Committee shall with effect from such date after the end of each Policy Year as it thinks fit determine that such Policy Year shall be closed.
- (2) After any Policy Year shall have been closed no further Supplementary Calls may be levied in respect

of that Policy Year.

- (3) The Committee may determine that any Policy Year is closed notwithstanding that it is known or anticipated that there are in existence or may in the future arise claims, expenses or outgoings in respect of such Policy Year which have not yet accrued or whose validity, extent or amount have yet to be established.
- (4) If upon the closing of any Policy Year it shall appear to the Committee 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) are unlikely to be required to meet the claims, expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 36), then the Committee may determine to dispose of any excess which in their opinion is not so required in one or any of the following ways:
 - (i) by transferring the excess or any part thereof to the reserves of the Association in accordance with Rule 42;
 - (ii) by applying the excess or any part thereof to meet any deficiency which has occurred or may be thought likely to occur in any closed Policy Year or Years;
 - (iii) by returning the excess or any part thereof to the Members entered for such Policy Year in accordance with paragraph (7) of this Rule.
- (5) If at any time or times after a Policy Year shall have been closed it shall appear to the Committee that the claims, expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 36) 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 Committee may determine to provide for such deficiency in any one or more of the following ways:
 - (i) by transferring funds from the reserves or other accounts of the Association;
 - (ii) by transferring funds standing to the credit of any different closed Policy Year;
 - (iii) by Mutual or Supplementary Calls in respect of an open Policy Year with the intention (as permitted by Rule 36) of applying a part thereof to meet any such deficiency.
- (6) At any time after any Policy Year shall have been closed the Committee may determine to amalgamate the accounts of any two or more closed Policy Years and to pool the amounts standing to the credit of the same. If the Committee shall so determine then the two or more closed Policy Years concerned shall for all purposes be treated as though they constituted a single closed Policy Year.
- (7) Any amount which the Committee may determine to return to the Members in accordance with paragraph (4)(iii) of this Rule shall be returned to the Members entered in respect of such Policy Year in proportion to the Calls paid by them in respect of such Policy Year (after taking into account any returns or rebates applicable thereto under their terms of entry or under any other provision of these Rules) save that no return shall be made to any Member whose entry ceased in the course of such Policy Year by reason of Rule 31 (Cesser of insurance on Certain Specified Events) or 32 (non-payment) or whose liability for Calls in respect of such Policy Year has been assessed under the provisions of Rule 41 (releases).

44 Investment

- (1) The funds of the Association may be invested as determined by the Committee 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 or by means of being loaned on such terms and in such manner as the Committee determines. The funds of the Association may also be invested by such other method as the Committee may determine including investments in and loans to any holding subsidiary or associated company of the Association or any one or more of the Classes of the Association on such terms and in such manner as the Committee determines.

- (2) The Committee may determine that 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 either as one fund or as two or more separate funds.
- (3) If any funds shall have been so pooled and invested the Committee may determine the apportionment of the income arising on the pooled investments among and between the different Policy Years, reserves and accounts from which the fund or funds so invested originated. The Committee may similarly determine the apportionment of the capital gains and losses and gains and losses on exchange realised and unrealised.
- (4) Without prejudice to paragraph (3) of this Rule, the Committee may determine that after the closing of any Policy Year 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 or account maintained by the Association.

45 Solvency Margin and Guarantee Fund

A Member shall pay on demand such sums as the Association may by any Government legislation or Regulation be required to set aside in order to establish and/or maintain an adequate Solvency Margin and/or Guarantee Fund. A Member shall contribute to such sums in proportion to his Basic Rate of Contribution payable in respect of the relevant Policy Years.

Part VI – Miscellaneous

46 Delegation of Authority and Settlement of Claims on the Association, etc.

- (1) All actions taken by the Committee and/or the Managers under these Rules are deemed to be taken for and on behalf of the Association.
- (2) The Committee shall meet as often as required to consider claims on the Association and any other matters relating to the business of the Association.
- (3) The Committee shall under no circumstances be obliged to permit a Member (whether or not he is also a Director) or his representatives to be present when considering a claim by the Association against him or by him on the Association and, unless the Committee otherwise determines, all representations and submissions to the Committee by or on behalf of a Member in connection with such a claim shall be made in writing.
- (4) Whenever any power, duty or discretion is conferred or imposed upon the Managers by virtue of agreement between them and the Association or by these Rules, such power, duty or discretion may, subject to any terms, conditions or restrictions contained therein, be exercised by the Managers or by any servant or agent of the Managers to whom the same shall have been delegated or sub-delegated.
- (5) The Committee may also confer any of its powers, duties or discretions to any Sub-Committee or section of the Committee in accordance with the provisions as regards delegation contained in the Constitution in which event such power, duties or discretion shall be exercisable by such Sub-Committee or Section.
- (6) Wherever in these Rules provision is made for any question or matter to be determined by the Committee or the Managers, the Committee or the Managers (as the case may be) shall have absolute discretion in making such determination.

47 Forbearance

No act, omission, course of dealing, forbearance, delay or indulgence by the Association in enforcing any of these Rules or any of the terms or conditions of its contracts with Members nor any granting of time by the Association shall prejudice or affect the rights and remedies of the Association under these Rules or under such contracts, and no such matter shall be treated as any evidence of waiver of the Association's rights thereunder, nor shall any waiver of a breach by a Member of such Rules or contracts operate as a waiver of any subsequent breach thereof. The Association shall at all times and without notice be entitled to insist on the strict application of these Rules and on the strict enforcement of its contracts with Members.

48 Bye-Laws

- (1) Without prejudice to any power given to the Committee by any of these Rules (other than this Rule 48) to make Bye-Laws the Committee shall have the power under this Rule 48 to make any Bye-Law generally in connection with any matter covered by these Rules provided the object of the Bye-Law is only to clarify and not to alter the Rules.
- (2) When the Committee makes a Bye-Law under any power given it by the Rules including this Rule 48, the Association shall give notice thereof to all Members concerned but omission to give notice to

or the non-receipt thereof by any Member shall not invalidate any Bye-Law, either generally or in relation to that Member.

- (3) The Committee shall have power to approve Bye-Laws before the commencement of any Policy Year so as to enable such Bye-Laws to have immediate effect upon the commencement of the Policy Year provided that all notice requirements are observed and that the Bye-Laws do not purport to come into effect before the commencement of the Policy Year.
- (4) A Bye-Law shall come into force at the time specified in the notice (which time may not be earlier than ten days after the date of the notice), and if its effect is to alter the terms and conditions of insurance in respect of any vessel such alteration shall take effect as from that time.
- (5) No Bye-Law shall operate to prejudice the accrued rights of any Member. Save as aforesaid, every Bye-Law shall be binding on all Members whether or not they were Members at the time of notification of such Bye-Law, in the same manner as if it were incorporated in these Rules.
- (6) Wherever a power of making Bye-Laws is given to the Committee by the Rules the Committee may revoke or suspend any such Bye-Law and restrict, extend or otherwise apply the provisions of any Bye-Law (in whole or in part) to insured vessels of any particular class, type or flag.

49 Bail

- (1) The Association may agree to provide bail or security in connection with its business on such terms as it may consider necessary, including but not limited to bail or other security to obtain the release of, or to prevent the arrest or attachment of an insured vessel or any other vessel, property or assets (including freight or monies due) in the same or associated ownership or management as the insured vessel, or to obtain the release of or prevent the arrest of any seaman of such vessels.
- (2) If it does so agree, then subject to any variation of any of (a) to (g) below by specific agreement between the Association and the Member:-
 - (a) the Association shall be entitled to recover from the Member the expenses incurred in connection with providing such bail or security, except insofar as such expenses, if incurred by the Member, would be recoverable from the Association;
 - (b) the Association shall be entitled to a commission from the Member of 1% per annum on the amount of the bail or security provided, or such other sum as may be considered appropriate by the Managers;
 - (c) the Member shall upon the Association agreeing to provide the bail or security, give to the Association on request an undertaking in the form set out in the First Schedule (form B3). Whether or not the Member has given such undertaking, if the Association does provide bail or security, with or without the Member's authority, then the provision of such bail or security shall be upon the terms as between the Association and the Member that the terms and conditions contained in that form of undertaking shall be binding on the Member as if such undertaking had been duly given by him to the Association;
 - (d) the Member shall on such date or dates as the Association determines pay the Association the amount of any deductible which the Association determines may apply to any liability, loss, cost or expense in respect of which the bail or other security has been provided and in respect of which the Member may be insured;
 - (e) any payment by the Association under any such guarantee, undertaking or certificate shall, to the extent of any amount recoverable under any policy of insurance or extension to the

- cover provided by the Association, be by way of loan;
- (f) there shall be assigned to the Association to the extent and on the terms that it determines in its discretion to be practicable all the rights of the Member under any other insurance and against any third party;
 - (g) the Association shall in no circumstances provide cash deposits.

50 Notices

- (1) Any notice, demand, order, direction, recommendation, request or other document (hereinafter referred to collectively as “notice or other document”) required by these Rules to be served on a Member may be served as the Managers may determine in any one or more of the following modes:
 - (a) personally, or
 - (b) by sending it through the post in a prepaid letter or by telegram, cable, radio telegraph, telefax, telex, courier or electronic mail addressed to him:
 - (i) at his address as appearing in the Register of Members;
 - (ii) at any other address of which he has given written notice to the Managers as his address for service; or
 - (iii) if a vessel to which the notice or other document relates, or another vessel entered by the Member whose period of insurance has not come to an end, was last entered for insurance, or her insurance was last renewed (whichever is the later), through a broker or other agent, at any place of business of that broker or agent.
- (2) Every notice or other document served as aforesaid shall, if posted, be deemed to be served on the day following the day of postage; if sent by telegram, cable or radio telegraph be deemed to be served on the day of handing in to the relevant office; if sent by telex or telefax, courier or electronic mail, on the day of despatch. In any case proof of posting, handing in or despatch shall be sufficient proof of service.
- (3) The successors of any Member served as aforesaid with any notice or other document shall be bound by that notice or other document whether or not the Association has notice of that person’s death, disability, lunacy, bankruptcy or liquidation.

51 Membership of National and International Organisations

The Committee may determine in respect of such of the Members of the Association as are eligible, that the Association may become a Member of or affiliated to any National or International Society or Organisation (anywhere in the world) and for this purpose may authorise the payment by the Association to those bodies of such subscriptions or grants as the Committee determines, either out of the general funds of the Association or by means of such special contributions to be levied from the Members concerned.

52 Jurisdiction

- (1) If any difference or dispute shall arise between a Member and the Association as to the rights or obligations of the Association or the Member or as to any other matter whatsoever, the resolution of such difference or dispute shall be governed by Panama law and procedure and shall, at the option of the Association, either be determined by the High Court of Justice of England and Wales or be

referred to the Arbitration in London of a sole legal Arbitrator. Such Arbitrator shall be a Queen's Counsel practising at the Commercial Bar or, if none is available, any other practising Queen's Counsel and the submission to Arbitration and all the proceedings therein shall be subject to the provisions of the Arbitration Act 1996 and any Statutory modification or re-enactment thereof. In any such Arbitration any matter decided or stated in any Judgement or Arbitration Award (or in any reasons given by an Arbitrator or Umpire for making any Award) relating to proceedings between the Member and any third party, shall be admissible in evidence.

- (2) No Member may bring or maintain any action, suit or other legal proceedings against the Association in connection with any difference or dispute unless he has first obtained an Arbitration Award in accordance with this Rule.
- (3) For the purpose of this Rule except paragraph (4) hereof the term "Member" shall also include a Joint Member, a former Member, a Co-Assured, a trustee, an assignee, a successor to the Member and any other companies in the same or associated ownership or management as the Member or any of the foregoing or the shareholders, managers, agents or employees of any of them or any other person or entity claiming any insurance or re-insurance benefit from or other remedy against the Association, whether under these Rules or under a Bye law, Certificate of Entry, insuring or re-insuring agreement of this Association by contract or otherwise and the term "the Association" shall include any subsidiary or associated company of the Association or their or its Directors, agents or employees.
- (4) The Member warrants its authority to bind to Arbitration the other entities and individuals included within the definition in paragraph (3) of this Rule. If any claim shall be made by any of them other than in Arbitration the Member shall procure that such claims be referred to Arbitration forthwith, pending which the Member shall not be entitled to proceed with any claim of its own against the Association connected with the same or any related subject matter; and the Association shall be entitled to recover from the Member any amounts agreed or adjudged to be due from the Association, and any costs incurred by it, in connection with any process other than Arbitration.
- (5) In any difference or dispute where the Member or Association as defined in paragraph (3) above includes more than one party they shall be deemed one party for the purposes of appointing an Arbitrator, receiving notices, and otherwise for all purposes in connection with the conduct of the Arbitration proceedings.
- (6) Any dispute or difference over the interpretation, effect or application of this Jurisdiction clause shall be decided exclusively by the High Court of Justice of England and Wales in London, in accordance with Panama law.
- (7) Nothing in these Rules shall affect or prejudice the right of the Association to take action in accordance with the law of any country or state to enforce a right in rem or exercise a lien on ships or to obtain security by seizure, attachment or arrest of assets for any amounts payable to the Association.

Part VII – Definitions

In these Rules unless the context or subject matter otherwise requires:

Association	Shipowners Mutual Syndicate Limited.
Basic Rate of Contribution	in relation to an insured vessel, means the amount, as agreed between the Member concerned and the Managers which constitutes the basis upon which Calls are payable to the Association in respect of that vessel.
Call	any sum payable to the Association in respect of an insured vessel pursuant to Rules 36 - 41 and 45.
Case	any claim or claims, dispute or disputes or proceedings which the Committee determines shall be treated as a case.
Class	any one or more or all of the categories of risks in respect of which the Association offers insurance and/or the Members entered for insurance of such risks, namely.
Closed Policy Year	a Policy Year which has been closed in accordance with Rule 43.
Co-Assured	a person who is named in a Certificate of Entry as a person capable of benefiting and/or accepting obligations from such Entry in addition to or in substitution for the named Member.
Commercial Total Loss	An insured vessel is a commercial total loss if, for whatever reason: (a) it is abandoned because its actual total loss appears to the Member on reasonable grounds to be unavoidable, or (b) it would cost more to repair (if damaged), to recover (if the Member has been deprived of its possession) or otherwise to preserve from actual total loss than its market value when repaired, recovered or preserved as the case may be.
Committee	the Board of Directors for the time being of the Association.
Constitution	the Constitution for the time being of the Association.
Costs and Expenses	costs and expenses charged or incurred by the Association or by lawyers, surveyors, representatives or other persons (excluding, however, all salaries and expenses of Member's employees and any office expenses of the Member) in connection with any claim, dispute or proceedings or the possibility thereof.
Entered Tonnage	the tonnage agreed between the Association and an applicant for insurance of a vessel at the time of acceptance of that vessel.

Event	for the purpose of determining whether a claim, dispute or proceedings arise out of events occurring during the period of insurance of a vessel, means: (a) where the claim, dispute or proceedings relate to a contract of towage or salvage of the vessel, the beginning of the towage or salvage services; (b) in all other cases, as the Association shall determine.
Gross Tonnage	the gross tonnage of a vessel calculated in accordance with the 1969 Tonnage Measurement Convention (or if no such tonnage has been fixed, then the gross registered tonnage) as certified in the Certificate of Registry of such vessel or, if no such certificate exists, in any other official document relating to the registration of such vessel.
Insured and Insurance	insured and insurance in respect of the risks covered by these Rules and shall include reinsured and reinsurance.
Insured Vessel	a vessel which has been entered for insurance in this Class of the Association, whether identified or not at the time of entry.
Managers	the Managers for the time being of the Association.
Member	a Member for the time being of the Association and includes a Joint Member when the context so admits.
Noon	noon G.M.T.
Period of Insurance	in relation to an insured vessel, means the period of time during which (according to the terms of any contract of insurance) the Association is at risk as regards the occurrence of events in relation to that vessel which may give rise to a liability on the part of the Association to indemnify the Member concerned.
Salvage Operations	operations in the nature of salvage to any property in danger whatsoever, whether or not a recognised subject of salvage under maritime law, or operations in connection with the raising, removal, destruction or rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such a vessel.
Special Terms	terms other than, or which vary terms of insurance set out in these Rules, agreed between the Managers on behalf of the Association and the assured pursuant to the powers of the Association as set out in the Constitution to accept vessels for insurance on special terms.
Successors	the heirs, executors, administrators, personal representatives, assignees (when permitted under these Rules), receiver, curator or other person authorised to act

on behalf of one who becomes incapable by reason of mental disorder of managing his property or affairs, trustee in bankruptcy, liquidator and other successors whatsoever.

These Rules the Rules of this Class of the Association and the Schedule thereto as originally framed or as from time to time altered, abrogated or added to, for the time being in force.

Vessel (in the context of a vessel entered or proposed to be entered in the Association) means any ship, boat hydrofoil, hovercraft or other description of vessel (including a lighter, barge or similar vessel howsoever propelled but excluding (a) a unit or vessel constructed or adapted for the purpose of carrying out drilling operations in connection with oil or gas exploration or production and (b) a fixed platform or fixed rig) used or intended to be used for any purpose whatsoever in navigation or otherwise on, under, over or in water or any part of such ship, boat, hydrofoil, hovercraft or other description of vessel or any proportion of the tonnage thereof or any share therein.

Writing, In written, printed or lithographed or visibly expressed in all or any of these or any other modes of representing or reproducing words.

Writing will include printing, typewriting, lithography, facsimile and any other mode or modes of representing or reproducing words in a visible form.

Words importing the singular number only will include the plural number and vice versa.

Words importing the masculine gender only will include the feminine gender.

Words importing Persons will include individuals, partnerships, corporations and associations.

The headings and sub-headings as set out in this policy are for convenience and ease of reference only and do not affect the construction of any Part, Section, Clause or Sub-Clause.