



BRITANNIA

P&I CLUB / TRUSTED SINCE 1855

RULES

2024/25*

CLASS 3

**PROTECTION
& INDEMNITY**

* POLICY YEAR

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Section I Introductory

RULE 1 ARTICLES OF ASSOCIATION

1 Articles of Association

These Rules are subject to the Articles of Association of The Britannia Steam Ship Insurance Association Europe or The Britannia Steam Ship Insurance Association Limited as applicable.

RULE 2 DEFINITIONS

2 Definitions

In these Rules the following terms shall have the meanings set out below if not inconsistent with the subject or context.

2.1 The Association

The Britannia Steam Ship Insurance Association Europe or The Britannia Steam Ship Insurance Association Limited as named in the *Certificate of Entry*.

2.2 Associated Company

A person or company affiliated or associated with a Member and to whom the benefit of the cover afforded by the Association to the Member is extended in accordance with Rule 18 *Associated Companies*.

2.3 The Board

The Directors for the time being of the Association or as the context may require those Directors present at a duly convened meeting of the Board at which a quorum is present.

2.4 Call Rate

In relation to any Entered Ship, the rate per ton of the Entered Tonnage at which an Estimated Total Call is payable to the Association in accordance with Rule 11.1 *Call Rate*.

2.5 Calls

Any monies payable to the Association in respect of an Entered Ship pursuant to Rule 11 *Calls*.

2.6 Certificate of Entry

A document and any endorsement thereto issued by the Association in accordance with these Rules and the Articles of Association which records the names and seniority of the Members interested in, and evidences the contract of insurance in respect of, an Entered Ship.

2.7 Charterer

Unless otherwise expressly indicated a Charterer shall be a person, not being the owner of the Ship, who has the employment of the Ship other than as a demise or bareboat charterer or operator.

2.8 Charterer's Entry

An entry effected by a Charterer and which does not insure any other person other than a Coassured and/or Associated Company.

2.9 This Class

Class 3 Protection and Indemnity.

2.10 Closed Policy Year

A Policy Year of the Association which the Board shall have declared to be closed in accordance with Rule 37.1 *Exceptional Calls*.

2.11 The Committee

The Representatives for the time being of the Association or as the context may require those Representatives present at a duly convened meeting of the Committee at which a quorum is present.

2.12 Consortium Agreement

Any arrangement under which a Member agrees with other parties to the reciprocal exchange or sharing of cargo space on the Entered Ship and Consortium Vessels. An exchange will be reciprocal if the intention of the parties is

that the space given and taken is broadly in balance.

2.13 Consortium Claim

A claim which arises out of the carriage of cargo on a Consortium Vessel which is eligible for pooling under the Pooling Agreement.

2.14 Consortium Vessel

A ship, feeder ship or space thereon, not being the Entered Ship, employed to carry cargo under a Consortium Agreement.

2.15 Contribution

An Estimated Total Call, Exceptional or Overspill Call or Fixed Premium levied by the Association pursuant to Rule 7 *Special Insurances* and Rule 11 *Calls*.

2.16 Convention Limit

The limit of liability of the owner of an Entered Ship for claims (other than claims for loss of life or personal injury) determined in accordance with Article 6.1(b) of the *International Convention on Limitation of Liability for Maritime Claims 1976* (but applying 334 SDRs to each ton up to 500 tons) and converted from Special Drawing Rights into United States Dollars at the rate of exchange conclusively certified by the Association as being the rate prevailing on the Overspill Claim Date. Any Entered Ship shall be deemed to be a seagoing ship to which the *Convention* applies, notwithstanding any provision in the *Convention* to the contrary; but if a tonnage less than the Full Tonnage of the Ship was entered in the Association, the Convention Limit shall be the proportion of the limit of liability, determined and converted as aforesaid, which the Entered Tonnage bears to the Full Tonnage of the Ship.

2.17 Entered Ship

A Ship which has been entered for insurance in this Class of the Association.

2.18 Entered Tonnage

The tonnage for which a Ship is entered and on which Contribution to the funds of the Association is calculated.

2.19 Fleet Entry

The entry of more than one Ship by one or more Members on the basis that those Ships will be treated together as a fleet for underwriting purposes.

2.20 Full Tonnage

The gross full tonnage of a Ship as measured in accordance with the *International Convention on Tonnage Measurement of Ships, 1969* and certified or stated in the Certificate of Registry or other official document relating to the registration of such Ship. In case of doubt the tonnage under the said *Convention* shall prevail. For the purposes of these Rules and the Articles of Association the gross tonnage of a Ship shall remain unchanged for each Policy Year and shall be stated in the *Certificate of Entry* of that Ship at the start of that Policy Year or at the time of entry of that Ship.

2.21 General Excess Loss Reinsurance Contract

The excess of loss reinsurance policies effected by parties to the Pooling Agreement.

2.22 The Hague Visby Rules

The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (The Hague Rules) signed at Brussels on 25 August 1924 as amended by the *Protocol* to that *Convention* signed at Brussels on 23 February 1968.

2.23 Hull Policies

Policies effected on the hull and machinery of a ship including any excess liability policy.

2.24 Insurance

Any insurance or reinsurance against the risks specified in these Rules.

2.25 Knock for Knock

A provision or provisions stipulating that

- 2.25.1 each party to a contract shall be similarly responsible for
- 2.25.1.1 loss of or damage to, and/or death of or injury to, any of its own property or personnel, and/or the property or personnel of its contractors and/or of its and their subcontractors and/or of other parties, and/or
 - 2.25.1.2 liability arising out of the ownership or operation of its own property, and that
- 2.25.2 such responsibility shall be without recourse to the other party and arise notwithstanding any fault or neglect of any party, and that
- 2.25.3 each party shall, in respect of those losses, damages or liabilities for which it has assumed responsibility, correspondingly indemnify the other against any liability that that party shall incur in relation thereto.
- 2.26 Limit of Liability**
The Association's Limit of Liability as set out in or provided in accordance with Rule 27 *Limitation of Liability*.
- 2.27 The Managers**
The Managers for the time being of the Association including, if the Managers are a firm, each partner of the Managers or, if the Managers are a limited or unlimited company, each director of the Managers.
- 2.28 MLC 2006**
Regulation 2.5.2, Standard A2.5.2, Regulation 4.2 and Standard A4.2.1(b) of the *Maritime Labour Convention 2006*, as amended, or domestic legislation by a State party implementing these Regulations and Standards.
- 2.29 Member**
A Member of the Association as defined in Article 3 of the Articles of Association and more particularly a Member of this Class of the Association.
- 2.30 Overspill Call**
Any monies payable to the Association in respect of an Entered Ship pursuant to Rule 11.4 *Overspill Calls* for the purpose of providing funds to pay part of an Overspill Claim.
- 2.31 Overspill Claim**
The Association's contribution to that part of any claim, including the costs and expenses associated therewith, (whether arising out of the terms of entry of any Entered Ship or out of the terms of the Pooling Agreement) which exceeds or may exceed the maximum sum recoverable in respect of that claim under the General Excess Loss Reinsurance Contract.
- 2.32 Overspill Claim Date**
The date on which the incident or occurrence giving rise to an Overspill Claim occurred or, if that date falls in a Policy Year which is closed under Rule 37.2 *Overspill Calls*, 20 August in the oldest Policy Year remaining open under the automatic closing provisions of Rule 37.2 in respect of Overspill Calls at the time when the notice under Rule 37.2 that an Overspill Claim might arise was given.
- 2.33 Owner**
Unless otherwise expressly indicated an Owner shall be a person being the owner, demise or bareboat charterer or operator of the Ship.
- 2.34 Owner's Entry**
An entry effected by an Owner and which does not insure a charterer of the Ship (other than a charterer insured as a Coassured and/or Associated Company).
- 2.35 Passenger**
A person carried on board an Entered Ship by virtue of holding a ticket of passage.
- 2.36 Personal Effects**
Personal property, documents, navigational or other technical instruments and tools brought on board, or being taken to or from, the Entered Ship by a Seafarer but excluding cash, valuables, or any other article which in the opinion of the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) is not an essential requirement for a Seafarer.

2.37 Policy Year

A year from 12:00:00 UTC on any 20 February to 12:00:00 UTC on the next following 20 February.

2.38 Pooling Agreement

The agreement, to which the Association is a party, between certain Protection and Indemnity Associations dated 20 February 1998 and any addendum to, or variation or replacement of, the said agreement, or any other agreement of a similar nature or purpose.

2.39 Prohibited Area

Any country, zone, area, port or place which the Association from time to time may declare to be excluded from cover provided under Rule 25.2 *Provision of Cover for War Risks*.

2.40 The Register

The Register of Members of the Association.

2.41 Representative

A representative of a Member appointed to the Committee.

2.42 Rules

The rules, regulations and byelaws for the time being in force concerning this Class of the Association.

2.43 Sanction

Any applicable economic, financial or trade sanction or embargo.

2.44 Seafarer

A person (including the Master) engaged under articles of agreement or otherwise contractually obliged to serve on board an Entered Ship including a substitute for such person and also including such persons while proceeding to or from such Ship.

2.45 Senior Member

In respect of an Entered Ship that Member whose name stands first in the Register in respect of such Ship who shall be the Member whose name stands first on the *Certificate of Entry* of such Ship.

2.46 Ship

In the context of a ship entered or proposed to be entered in this Class of the Association, any ship, boat, hydrofoil, hovercraft or other description of vessel whether completed or under construction (including a lighter, barge or similar vessel howsoever propelled but excluding

2.46.1 a unit or vessel constructed or adapted for the purpose of carrying out drilling operations in connection with oil or gas exploration or production,

2.46.2 a fixed platform or fixed rig and

2.46.3 a wing-in-ground craft)

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 or any proportion of the tonnage thereof or any share therein.

2.47 Special Cover

An agreement by the Association in writing in accordance with Rule 7 *Special Insurances* to cover:

2.47.1 risks not set out in Rules 19.1 to 19.23 inclusive; or

2.47.2 such other risks in respect of which additional insurance is agreed.

2.48 STOPIA

Small Tanker Oil Pollution Indemnification Agreement 2006 as subsequently amended.

2.49 TOPIA

Tanker Oil Pollution Indemnification Agreement 2006 as subsequently amended.

2.50 The United Kingdom

Great Britain and Northern Ireland.

2.51 Interpretation

For the purposes of these Rules:

- 2.51.1 *Writing* shall include printing, typewriting, lithography, facsimile, electronic means of written communication and any other mode or modes of representing or reproducing words in a visible form.
- 2.51.2 Words importing the singular number only shall include the plural number and vice versa.
- 2.51.3 Words importing persons shall include individuals, partnerships, corporations and associations.
- 2.51.4 The headings and sub-headings as set out in these Rules are for convenience and ease of reference only and do not affect the construction of any Rule or sub-Rule.

RULE 3 NATURE OF COVER

3.1 Extent of Cover

The cover provided by this Class of the Association is as set out in these Rules and provides insurance for a Member against loss, damage, liability or expense incurred by the Member which arises:

- 3.1.1 in respect of the Member's interest in an Entered Ship; and
- 3.1.2 out of events occurring during the period of entry of the Ship in the Association; and
- 3.1.3 in connection with the operation of the Ship.

3.2 Conditions

The risks covered as set out in Rule 19 *Risks Covered* are subject to all the conditions set out in other parts of these Rules and those risks may be varied or supplemented by special terms agreed in writing between a Member and the Managers either under Rule 7 *Special Insurances* or Rule 19 *Risks Covered*.

3.3 Contributions

The entry of a Ship in the Association is only valid provided that the Member has paid Contributions as specified in Rule 7 *Special Insurances* and Rule 11 *Calls* and as set out in the *Certificate of Entry* of the Entered Ship or any notice sent to the Member by the Association or the Managers under Rule 33.1 *Failure to Pay*.

3.4 Sanctions

Notwithstanding and without prejudice to any other provision of these Rules, including Rule 3.2 *Conditions*, and the provisions of the Articles of Association, these Rules may, on such notice as the Board may in its discretion decide, be amended at any time (including with effect during the course of a Policy Year) to such extent as the Board may in its discretion determine is necessary as a result of the potential or actual implementation of or change in any Sanction, prohibition, restriction, legislation, regulation or requirement to obtain any licence or approval, by any state, international or supranational organisation or other competent authority.

3.5 Insurance Act 2015

The following provisions of the *Insurance Act 2015* (the Act) are excluded from these Rules and the contract of insurance:

3.5.1 Section 8

Section 8 of the Act is excluded. As a result any breach of the duty of fair presentation shall entitle the Association to avoid the contract of insurance, regardless of whether the breach of the duty of fair presentation is innocent, deliberate or reckless.

3.5.2 Section 10

Section 10 of the Act is 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 party afforded the benefit of cover by the Association 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.

3.5.3 Section 11

Section 11 of the Act is excluded. As a result the Rules and all terms of the contract of insurance between the Association and the Member or any party afforded the benefit of cover 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 party afforded the benefit of cover

by the Association 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.

3.5.4 Section 13

Section 13 of the Act is 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 any party afforded the benefit of cover by the Association in the event that a fraudulent claim is submitted by or on behalf of the Member or any party afforded the benefit of cover by the Association.

3.5.5 Section 13A

Section 13A of the Act is excluded. As a result the Rules and the contract of insurance between the Association and the Member and any party afforded the benefit of cover by the Association shall not be subject to nor shall the Association or the Managers be in breach of any implied term that they will 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.

3.5.6 Section 14

Section 14 of the Act is excluded. As a result the contract of insurance between the Association, the Member and any party afforded the benefit of cover by the Association shall be deemed to be a contract 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.

RULE 4 MEMBERSHIP

4.1 Entry of a Ship

Every person whose application to enter a Ship in this Class of the Association for the insurance of that person's interest in that Ship shall (if not already a Member) be and shall become a Member of the Association as from the date of the acceptance of that person's application and that person's name shall be entered in the Register.

4.2 Directors

Every Director shall (if not already a Member), while holding office, be a Member of the Association and the Member's name shall be entered in the Register.

4.3 Reinsured Member

Whenever the Association agrees to accept the entry of a Ship by way of reinsurance from an insurer the Managers may in their discretion decide that the person insured by such insurer (if otherwise qualified to be a Member) is to be a Member of the Association in addition to the said insurer and they may accept the application on either basis. If such person is accepted as a Member that person's name shall be entered in the Register.

4.4 Cessation of Membership

A person shall cease to be a Member if for any reason whatsoever the entry of all Ships in respect of which the Member's interest was insured by the Association shall have ceased or terminated.

4.5 Separate Class

The Members who are entered for the time being in this Class shall form one separate Class within the Association.

RULE 5 RIGHT OF RECOVERY

5.1 Right of Recovery

If a Member shall be liable as set out in Rule 19 *Risks Covered*, in damages or otherwise, or shall incur any costs or expenses in respect of a Ship which was entered in the Association at the time of the casualty or event giving rise to such liability, costs or expenses, such Member shall be entitled to recover out of the funds of this Class of the Association the amount of such liability, costs or expenses to the extent and on the terms, conditions and exceptions provided by these Rules and by the *Certificate of Entry*

Provided always that:

- 5.1.1 if a tonnage less than the Full Tonnage of the Ship was entered in the Association, the Member shall, unless the entry of the Ship has been accepted on special terms which otherwise provide, be entitled only to recover such proportion as the Entered Tonnage bears to the Full Tonnage of the Ship.
- 5.1.2 unless the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in its discretion otherwise determines, it shall be a condition precedent to a Member's right to recover from the funds of the Association in respect of any liability, costs or expenses that the Member shall first have discharged such liability or paid such costs or expenses.

5.2 Subrogation

Any recovery by the Member from the Association is subject to the Association's rights of subrogation and the Member will, on request of the Managers, sign a *Certificate of Subrogation*.

5.3 Set-off

Without prejudice to any other part of these Rules the Association shall be entitled to set off any amount due from a Member against any amount due to such Member from the Association.

5.4 Incident

Any liabilities, costs and expenses which a Member may incur in accordance with Rule 5.1 *Right of Recovery* above in respect of the entry of any one Ship arising from any one incident or occurrence, including any claim in respect of liability for the removal or non-removal of any wreck, shall be treated for the purposes of these Rules as if they were one claim by the Member for recovery of the total amount of such liabilities, costs and expenses out of the funds of this Class of the Association.

5.5 Currency

Where a Member is entitled to a recovery out of the funds of this Class of the Association in respect of a loss suffered by the Member in a currency other than the currency specified in the Member's *Certificate of Entry* under Rule 6.3.7 (the specified currency), that loss shall be converted into the specified currency at the rate of exchange ruling on the day the relevant credit note is issued by the Association to the Member.

5.6 Sanctions

The Member shall have no entitlement to recovery out of the funds of this Class of the Association in respect of that part of any liabilities, costs and expenses which is not recovered by the Association under the Pooling Agreement, General Excess Loss Reinsurance Contract or any reinsurance(s) arranged by the Association or the Managers, because, and to the extent, of any shortfall in recovery from such parties or reinsurers by the Association which would result in a violation of any Sanction, or any prohibition or adverse action administered by any state, international or supranational 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 5.6 'shortfall' includes 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, international or supranational organisation or other competent authority.

5.7 Overspill Claims

5.7.1 Recoverability

Without prejudice to any other applicable limit, any Overspill Claim on the Association shall not be recoverable from the Association in excess of the aggregate of

- 5.7.1.1 that part of the Overspill Claim which is eligible for pooling under the Pooling Agreement but which, under the terms of the Pooling Agreement, is to be borne by the Association; and
- 5.7.1.2 the maximum amount that the Association is able to recover from the other parties to the Pooling Agreement as their contributions to the Overspill Claim.

5.7.2 Aggregate

The aggregate amount referred to in Rule 5.7.1 *Recoverability* above shall be reduced to the extent that the Association can evidence

- 5.7.2.1 that costs have been properly incurred by it in collecting or seeking to collect

- 5.7.2.1.1 Overspill Calls levied to provide funds to pay that part of the Overspill Claim referred to in Rule 5.7.1.1 above; or
- 5.7.2.1.2 the amount referred to in Rule 5.7.1.2 above; or
- 5.7.2.2 that it is unable to collect an amount equal to that part of the Overspill Claim referred to in Rule 5.7.1.1 above that it had intended to pay out of the levy of Overspill Calls because any Overspill Calls so levied, or parts thereof, are not economically recoverable, provided that if, due to a change in circumstances, such amounts subsequently become economically recoverable, the aggregate amount referred to in Rule 5.7.1 shall be reinstated to that extent.

5.7.3 Evidence of Aggregate

In evidencing the matters referred to in Rule 5.7.2.2 above the Association shall be required to show that

- 5.7.3.1 it has levied Overspill Calls on all its Members in respect of the Overspill Claim referred to in Rule 5.7.1 *Recoverability* above in accordance with and in the maximum amount permitted under Rule 11.4 *Overspill Calls*; and
- 5.7.3.2 it has levied those Overspill Calls in a timely manner, has not released or otherwise waived a Member's obligation to pay those Calls and has taken all reasonable steps to recover those Calls.

5.7.4 Funding of Overspill Claims

- 5.7.4.1 The funds required to meet any Overspill Claim on the Association shall be provided
 - 5.7.4.1.1 from such sums as the Association is able to recover from the other parties to the Pooling Agreement as their contributions to the Overspill Claim; and
 - 5.7.4.1.2 from such sums as the Association is able to recover from any special insurance which may, in the discretion of the Association, have been effected to protect the Association against the risk of payments of Overspill Claims; and
 - 5.7.4.1.3 from such proportion of any reserves established under Rule 39.1 *General Reserve* as the Board may in its discretion determine to utilise;
 - 5.7.4.1.4 by levying one or more Overspill Calls irrespective of whether the Association has sought to recover or has recovered all or any of the sums referred to in Rule 5.7.4.1.2 above but provided the Association shall first have made a determination in accordance with Rule 5.7.4.1.3 above; and
 - 5.7.4.1.5 from the funds held in any Overspill Reserve created under Rule 39.2 *Overspill Reserve*.
- 5.7.4.2 To the extent that funds required to meet any Overspill Claim on the Association are to be provided in the manner specified in Rule 5.7.4.1.4 above the Association shall only be required to pay such Overspill Claim as and when such funds are received by it, provided that it can show from time to time that in seeking to collect such funds, it has taken the steps referred to in Rule 5.7.3 *Evidence of Aggregate*.

5.7.5 Recoverability of Overspill Calls

Any issues arising under Rules 5.7.1 to 5.7.3 and 5.7.4.2 above in relation to whether

- 5.7.5.1 costs have been properly incurred in collecting or seeking to collect funds to pay Overspill Claims; or
- 5.7.5.2 any Overspill Call or part thereof is economically recoverable; or
- 5.7.5.3 in seeking to collect the funds referred to in Rule 5.7.4.2 above the Association has taken the steps referred to in that Rule;

shall be referred to a panel which acting as a body of experts and not as an arbitration tribunal shall be constituted in accordance with the arrangements established in the Pooling Agreement and operate in accordance with Rule 44.4 *Overspill Claims*.

Section II Entry and Contribution

RULE 6 ENTRY

6.1 Application

Any person who wishes to enter a Ship for insurance in this Class of the Association shall apply for such entry in such form as may from time to time be required by the Managers and shall furnish any particulars and information requested by the Managers.

6.2 Fair Presentation

6.2.1 The Member or potential Member and any agent:

6.2.1.1 must make to the Association and 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;

6.2.1.2 will 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.

6.2.2 In accordance with Rule 3.5 *Insurance Act 2015*, Section 8 of the *Insurance Act 2015* is excluded. Any breach of Rules 6.2.1.1 or 6.2.1.2 above shall entitle the Association to avoid the contract of insurance, regardless of whether the breach is innocent, deliberate or reckless.

6.2.3 The Member or potential Member is obliged to disclose any change in any material information relating to an entry including, but not limited to, 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 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.

6.3 Certificate of Entry

As soon as reasonably practicable after accepting any application for the entry of a Ship in this Class of the Association, the Managers shall issue a *Certificate of Entry* which (subject to any special terms on which such Ship may be entered) shall state:

6.3.1 The names of the Members on whose behalf such Ship has been entered and their interest in such Ship.

6.3.2 The names of the Members on whose behalf such Ship has been entered in the Register. The names shall be listed in the order in which their names appear on the *Certificate of Entry* and this order shall be conclusive proof of the rights of seniority between Members in accordance with these Rules and the Articles of Association.

6.3.3 The risks against which such Ship has been entered for insurance in the Association and the amount of any deductible or retention to be borne by the Member in respect of such risks.

6.3.4 The date on which the entry of such Ship is to commence.

6.3.5 The Full and Entered Tonnage of such Ship.

6.3.6 Any special terms as to Contribution.

6.3.7 The currency in which Contributions are calculated which shall be the currency in which transactions between the Member and the Association are conducted, subject to the provisions of Rule 12.3 *Currencies*.

6.3.8 Any limitations on the cover provided by the Association which are not set out in these Rules.

6.4 Entered Tonnage

The Managers may accept the entry of a Ship for a tonnage other Tonnage than the Full Tonnage of such Ship.

6.5 Subject to Rules

The terms and conditions on which a Ship is accepted for entry, including those relating to the nature and extent of the risks covered and the Contributions payable by the Member, shall be those set out in the Rules and byelaws hereinafter mentioned but subject to such variations, within the scope of these Rules, as may have been agreed between the Member and the Managers and set out in the *Certificate of Entry*.

6.6 Variation of Cover

If at any time the Managers and the Member agree to vary the terms and conditions on which a Ship is entered the Managers, as soon as reasonably practicable thereafter, shall issue an endorsement to the *Certificate of Entry* stating the nature of such variation and the date from which such variation is to be effective.

6.7 Contract of Insurance

Every *Certificate of Entry* issued as aforesaid shall be conclusive evidence of the contract of insurance.

6.8 Refusal of Application

The Managers may in their discretion and without giving any reason refuse an application by any person for entry of a Ship in this Class whether or not that person is already a Member of the Association.

6.9 ITOPF

Any person who wishes to enter a Ship for insurance in this Class of the Association shall become a member or associate of the International Tanker Owners Pollution Federation (ITOPF) as appropriate and shall enter the Ship in ITOPF. The Managers shall have the authority to arrange such membership, association and entry and to pay the fees due to ITOPF in respect of any such Ship from the funds of the Association.

RULE 7 SPECIAL INSURANCES

7.1 Fixed Premium

The Managers may accept the entry of a Ship on terms that the Member is liable to pay a fixed premium provided that every Member whose application for the entry of a Ship is accepted on the basis of paying a fixed premium shall be bound to pay and shall pay to the Association such sums as shall have been agreed with the Managers and at such time or times as the Managers shall have specified.

7.2 Special Acceptance

The Managers may accept insurances including entries of Ships on special terms as to Membership and Contribution and as to the nature and extent of risks covered, in respect of additional risks not set out in Rule 19 *Risks Covered*, provided that where such insurance is accepted the person insured shall be bound to pay and shall pay to the Association such sums as shall have been agreed with the Managers and at such time or times as the Managers shall have specified. The Managers may also accept such insurances from other insurers.

7.3 Reinsurance and Recovery

Without prejudice to the generality of Rule 38 *Reinsurance and Pooling*, the Managers may reinsure the whole or any part of the risk or risks of the Association insured under this Rule 7 *Special Insurances* or Rule 19.24 *Special Cover* and where such reinsurance is arranged the Member shall be entitled to recover only the net amount actually recovered under such reinsurance arrangements, together with that proportion (if any) of the risk or risks retained by the Association.

7.4 PROVIDED ALWAYS THAT:

If the terms on which a Ship is entered or an insurance is given are such that the Member or person insured is not liable to contribute to Overspill Calls then that person's maximum recovery from the Association in respect of any claim shall be limited to such lesser sum as may be recoverable in respect of that claim under the General Excess Loss Reinsurance Contract.

RULE 8 JOINT ENTRIES AND CO-ASSUREDS

8.1 Joint Members

8.1.1 The Managers may accept an application by the Member as the Senior Member for another person or persons to be added to the entry of a Ship (hereinafter referred to as Joint Members)

Provided always that:

8.1.1.1 unless otherwise agreed in writing by the Managers, the Senior Member and all Joint Members shall be jointly and severally liable to pay all Contributions or other sums due to the Association in respect of such entry, and the receipt by any one of such persons of any sums payable by the Association shall be a sufficient discharge of the Association for the same;

- 8.1.1.2 the Association shall not insure any Joint Member against any liabilities, costs or expenses which arise other than out of operations and/or activities customarily carried on by or at the risk and responsibility of shipowners (or in the case of a charterer's entry, a charterer) and which are within the scope of the cover afforded by these Rules and the *Certificate of Entry*.
- 8.1.2 In relation to such application under Rule 8.1.1 the Senior Member and each Joint Member warrants that the Joint Member is, in relation to the Entered Ship:
 - 8.1.2.1 interested in its operation, management or manning, or
 - 8.1.2.2 the holding company or the beneficial owner of the Senior Member or any Joint Member falling within Rule 8.1.2.1, or
 - 8.1.2.3 a mortgagee or a financial institution (or its subsidiary or affiliate) leasing the Ship as shipowner to the Senior Member, or
 - 8.1.2.4 the bareboat or demise charterer.
- 8.1.3 For the purpose of this Rule 8.1, the liability of the Senior Member and all Joint Members to each other shall not be excluded nor be discharged by reason of co-assurance and any payment to the Senior Member or one of the Joint Members in respect of any losses, liabilities and the costs and expenses incidental thereto shall operate only as satisfaction but not exclusion or discharge of the liability of the Senior Member and the Joint Members to each other.

8.2 Co-assureds

The Managers may accept the addition to the entry of a Ship by a Senior Member of the following person or persons as a Co-assured:

- 8.2.1 a charterer, other than a bareboat or demise charterer, which is affiliated to or associated with the Senior Member
Provided always that:
 - 8.2.1.1 such charterer shall only be covered for the risks, liabilities, costs and expenses for which the Senior Member has cover in accordance with the terms of entry of the Ship in the Association;
 - 8.2.1.2 for the purposes of this Rule 8.2.1 a charterer shall only be affiliated to or associated with the Senior Member if
 - 8.2.1.2.1 both the Senior Member and the charterer have the same parent or
 - 8.2.1.2.2 one of the Senior Member and charterer is the parent of the other;
 - 8.2.1.2.3 where 'parent' in Rules 8.2.1.2.1 and 8.2.1.2.2 above is a company which owns at least 50% of the shares in and voting rights of another or owns a minority of the share in the other and the ability to procure that it is managed and operated in accordance with its wishes.
- 8.2.2 a contractor of the Senior Member for the provision of services by or to the Entered Ship
Provided always that:
 - 8.2.2.1 the contract has been approved by the Association; and
 - 8.2.2.2 the contract includes a Knock for Knock agreement in respect of any and all persons in the contractor's group; and
 - 8.2.2.3 the Co-assured contractor shall only be covered for liabilities, costs and expenses which are to be borne by the Senior Member under the terms of the contract and to the extent they would, if borne by the Senior Member, be recoverable from the Association in accordance with the terms of entry of the Ship in the Association; and
 - 8.2.2.4 once the Association has made indemnification under such cover for such liabilities, costs and expenses it shall not in respect of that loss or damage be under any further liability and shall not make any further payment to any person whatsoever, including the Senior Member and all Joint Members and Co-assureds insured under the same entry.

8.2.3 other persons (except charterers other than bareboat or demise charterers)

Provided always that:

8.2.3.1 the liability of the Association to such a person only extends insofar as such person may be found liable to pay in the first instance for loss or damage which is properly the responsibility of the Senior Member or, where so entered under Rule 8.2.1, such person's affiliated or associated charterer insured under the same entry and nothing herein contained shall be construed as extending cover in respect of any amount to the extent such amount would not have been recoverable from the Association by the Senior Member or affiliated or associated charterer insured under the same entry had the claim in respect of such loss or damage been made or enforced against such person; and

8.2.3.2 once the Association has made indemnification under such cover it shall not be under any further liability and shall not make any further payment to any person whatsoever, including, where the Co-assured is insured under the same entry as the Senior Member, such Senior Member and all Joint Members and, in the case of the Co-assured of an affiliated or associated charterer under that entry, such charterer, in respect of that loss.

8.3 Disclosure

Failure by the Senior Member or any Joint Member or Co-assured to disclose material information within the knowledge of the Senior Member or the Joint Member or Co-assured shall be deemed to have been failure of the Senior Member and all the Joint Members and Co-assureds.

8.4 Conduct

Conduct of the Senior Member or any Joint Member or Co-assured which would have entitled the Association to decline to indemnify the Senior Member, Joint Member or Co-assured shall be deemed the conduct of the Senior Member and all the Joint Members and Co-assureds.

8.5 Limits of Cover

Where any Ship is entered in the names of or on behalf of Joint Members and Co-assureds any limits on the cover provided by the Association and set out in these Rules or the *Certificate of Entry* shall apply to all Joint Members and Co-assureds in the aggregate as if the Ship had been entered by the Senior Member only.

8.6 Communications

Unless the Managers have otherwise agreed in writing, all communication from or on behalf of the Association to the Senior Member or any Joint Member or Co-assured shall be deemed to be within the knowledge of the Senior Member and all Joint Members and Co-assureds and any communication from the Senior Member or any Joint Member or Co-assured to the Association or to the Managers shall be deemed to have been made with the full approval and authority of the Senior Member and all the Joint Members and Co-assureds.

8.7 PROVIDED ALWAYS THAT:

There shall be no recovery in respect of any liabilities, costs or expenses which arise as the result of a claim brought between any of the Joint Members and Co-assureds, or with the Senior Member.

RULE 9 PERIOD OF INSURANCE

9.1 Attachment and Contribution

Unless otherwise agreed at the time of entry and subject as otherwise provided in these Rules, the insurance shall begin at the time on the date stated in the *Certificate of Entry* when the Member first has an interest in the Entered Ship or, in the case of a change in the terms of entry, immediately after 24:00:00 UTC on that date at the place where the Ship is located and shall continue until 12:00:00 UTC on 20 February next following. All Contributions shall be calculated as if the entry of the Ship or change in the terms of entry had taken place at 12:00:00 UTC on the date stated in the *Certificate of Entry*.

9.2 Change of Conditions

The insurance shall continue for the next Policy Year on the same terms and conditions as those in force for the current Policy Year, unless at the request of a Member other terms shall be agreed, or unless:

- 9.2.1 notice shall have been given in writing by either the Member to the Managers or the Managers to the Member not later than 12:00:00 UTC on 20 January in any year, that the insurance (not being for a fixed period) specified in the notice is to cease. In either event the insurance shall cease at the end of the then current Policy Year; or unless
- 9.2.2 the Managers shall have given notice not later than 12:00:00 UTC on 20 January that the terms of the insurance by the Association for the next following Policy Year are to be changed. In the event of such notice being given, the insurance for the next following Policy Year shall continue on such terms as may be agreed between the Member and the Managers before 12:00:00 UTC on 20 February immediately following such notice and, if no terms shall by then have been agreed, the insurance shall thereupon cease.
- 9.2.3 PROVIDED ALWAYS THAT:
- 9.2.3.1 if before 20 December in any year the Managers give notice of a decision of the Board under Rule 11.1.1 the Member shall be deemed to have agreed to and accepted such decision and the insurance shall continue for the next Policy Year unless by 20 January following the Member gives notice to the Managers under Rule 9.2.1; or
- 9.2.3.2 if the Managers give notice of an alteration in the Rules of the Association before the end of a Policy Year the Member shall be deemed to have agreed to and accepted such alteration and the insurance shall continue for the next Policy Year with the alteration taking effect from the start of that Policy Year.

9.3 Notice of Termination of Cover by Board or Managers

The Board or Managers may at any time by 30 days' notice to a Member terminate the entry of any Ship in this Class.

9.4 Prohibition of Withdrawal

An Entered Ship shall not be withdrawn from the Association at any time or in any manner except under the provisions of Rule 9.2 *Change of Conditions* or with the consent of the Board or Managers.

RULE 10 CONTRIBUTION BY WAY OF CALLS

10.1 Mutual Insurance

Subject to Rule 7 *Special Insurances*, Members who have entered Ships for insurance in this Class of the Association for any part of a Policy Year shall through the Association insure each other as hereinafter set out against liabilities, costs and expenses which they or any of them may incur or may become liable to pay in respect of such Entered Ships, and for this purpose the said Members shall contribute by way of Calls to the funds required to meet:

- 10.1.1 The claims (including any contribution to any Overspill Claim), costs and expenses of the Association and other outgoings (whether incurred, accrued or anticipated) which in the opinion of the Board necessarily and properly fall upon this Class of the Association in respect of such Policy Year.
- 10.1.2 Such transfers to reserves or provisions as the Board may deem it expedient to make, including transfers to reserves and provisions in respect of any deficiency which has occurred or which may be thought likely to occur in respect of any Closed Policy Year as the Board thinks fit.
- 10.1.3 The proportion attributable to this Class of such sums as the Association may by any Governmental legislation or regulation be required to set aside in order to establish and/or maintain an adequate Solvency Margin and/or Guarantee Fund in respect of any Policy Year.

10.2 Estimated Total Call

The said Calls shall be levied by means of an Estimated Total Call, Exceptional Calls and Overspill Calls in accordance with the provisions of Rule 11 *Calls*.

RULE 11 CALLS

11.1 Call Rate

- 11.1.1 Before the start of a Policy Year the Association shall levy upon Members an Estimated Total Call calculated at the Call Rate upon their Ships (subject to any special terms on which such Ships may be entered).
- 11.1.2 The Call Rate in respect of each Entered Ship shall be notified in writing to the Member and may be altered in accordance with the provisions of Rule 6.6 *Variation of Cover* and Rule 9.2.2.

11.2 Discount

If at any time before the closure in accordance with Rule 37.1 *Exceptional Calls* of any Policy Year the Board determines that the whole of the Estimated Total Call (together with any transfers from reserves made for the credit of or in respect of such Policy Year) is not required for the purposes set out in Rule 10 *Contribution by Way of Calls*:

- 11.2.1 it may declare a discount of such percentage of the Estimated Total Call as it may decide; and
- 11.2.2 the liability of the Member to pay the Estimated Total Call under Rule 11.1.1 shall be reduced accordingly.

11.3 Exceptional Calls

The Board may at any time or times during or after the end of each Policy Year (but not after such Policy Year has been closed in accordance with Rule 37.1 *Exceptional Calls*) direct that an Exceptional Call shall be paid by each Member in respect of Ships entered for such Policy Year of such amount as the Board may think fit. All Exceptional Calls so made shall be calculated pro rata to the Estimated Total Call (less any returns of Call) in the relevant Policy Year.

11.4 Overspill Calls

11.4.1 Open Policy Year

If the Board considers that a claim may become an Overspill Claim it may direct at any time or times during or after the end of a Policy Year (but not after such Policy Year has been closed in accordance with Rule 37.2 *Overspill Calls*) that an Overspill Call shall be paid by each Member in respect of Ships entered on the Overspill Claim Date of such amount as the Board may think fit.

11.4.2 Closed Policy Year

If the Board decides that an Overspill Claim may arise in a Policy Year which is closed under Rule 37.2 *Overspill Calls* in respect of Overspill Calls, then any Overspill Call which the Board directs to be paid in respect of that Overspill Claim shall be levied on and paid by the Members in respect of Ships entered on the Overspill Claim Date notwithstanding that the incident or occurrence giving rise to the Overspill Claim took place at a time when such Ships may not have been entered in the Association.

11.4.3 Calculation

Any Overspill Call directed by the Board to be paid under this Rule shall be levied on and payable by all Members in respect of all Ships entered on the Overspill Claim Date at such percentage of the Convention Limit of each Ship as the Board in its discretion shall decide.

Provided always that:

- 11.4.3.1 no such Overspill Call shall be levied in respect of any such Ship where the Member's *Certificate of Entry* or any endorsement thereof shall specifically exclude liability to contribute to an Overspill Call.

11.4.4 Member Limit

The Association shall not levy on any Member in respect of the entry of any one Ship an Overspill Call or Calls in respect of any one Overspill Claim exceeding in the aggregate 2.5% of the Convention Limit of that Ship.

11.4.5 Utilisation of Overspill Call

Any funds raised by the Association in respect of an Overspill Call shall only be utilised in accordance with the provisions of Rule 39.2 *Overspill Reserve*.

RULE 12 PAYMENT

12.1 Instalments

Subject to Rule 7.2 *Special Acceptance*, the Estimated Total Call and every Exceptional or Overspill Call shall be payable in such instalments and on such dates as the Board may specify.

12.2 Notification

As soon as reasonably practical after the amount of any Estimated Total Call or the rate of any Exceptional or Overspill Call shall have been fixed the Managers shall notify each Member concerned of:

12.2.1 such amount or such rates;

12.2.2 the date on which the Call concerned is payable or, if such Call is payable by instalments, of the amounts of such instalments and the respective dates on which they are payable;

12.2.3 the amount payable by such Member in respect of each Ship entered by the Member.

12.3 Currencies

Notwithstanding Rule 6.3.7 the Managers may require any Member to pay all or any part of any sums payable by the Member in such currencies as the Managers may specify.

12.4 Tax

The Member shall pay on demand to the Association the amount of any tax or other financial demand, relating to Calls or other sums due from or paid by the Member to the Association, for which the Managers determine the Association has or may become liable.

12.5 Set-off

No claim of any kind whatsoever by a Member against the Association shall give the Member a right of set-off against the Contributions or other sums of whatsoever nature due to the Association or shall entitle a Member to withhold or delay payment of any such Contributions or sums.

12.6 Penalty for Late Payment

Without prejudice to the rights and remedies of the Association under Rule 33.1 *Failure to Pay*, if any Contribution or instalment or part thereof or any other sum of whatsoever nature due from any Member is not paid by such Member on or before the date specified for payment thereof the Board may order such Member to pay interest on the amount not so paid, from and including the date so specified down to the date of payment, at such rate as the Board may from time to time determine.

12.7 Bad Debts

If any Contribution or other payment due from a Member to the Association is not paid and if the Board 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 the purposes of Contribution under Rule 10 *Contribution by Way of Calls*.

12.8 Effect of a Member's Non-payment

Without prejudice to the provisions of Rule 33 *Cesser of All Insurances* and Rule 34 *Cesser of Ship Entry*, if any Contribution or other payment due from a Member to the Association is not paid within 30 days of the date of service on a Member of a debit note, notice or other demand for payment there shall be no recovery from the Association in respect of any liabilities incurred by the Member in respect of any Ship which is or has been entered for insurance by the Member in the Association.

Provided always that:

12.8.1 the Managers may serve a notice extending the time for payment and the Member may then make arrangements satisfactory to the Managers prior to the expiry of the period of grace allowed in the said notice for the payment of any such Contribution or other payment.

RULE 13 LAID-UP RETURNS

13.1 Lay-up of an Entered Ship

Subject to any terms and conditions which may have been agreed in accordance with the provisions of Rule 6.5

Subject to Rules, if an Entered Ship shall be laid-up in any safe port or place for a period of 30 or more consecutive days after finally mooring there (such period being computed from the day on which it finally moored to the day of departure, one day only being excluded), and the said Entered Ship shall be completely free of cargo, the Member shall be allowed a return of Calls payable in respect of such Ship for the said period, such return being calculated at a rate of not more than 50% on a pro rata daily basis. If during such period the Ship is also without crew the return shall be as aforesaid but at a rate of not more than 95%. The return of Calls referred to herein shall be calculated after the deduction of such amount for reinsurance, liabilities of the Association under the Pooling Agreement and administrative expenses as the Managers may from time to time determine. No return of Calls shall be made by the Association unless the Managers receive written notification within three months of the end of the period in respect of which the returns are claimed.

Provided always that:

- 13.1.1 the Managers shall determine whether the port or place is a safe port or place for the purposes of this Rule; and
- 13.1.2 there shall be no return of Calls in respect of Overspill Calls.

RULE 14 RELEASE

14.1 Request by Member for Release

Upon or at any time after the cesser of insurance in respect of an Entered Ship for any reason, the Managers may, at the request of the Member, release the Member from liability for further contribution to Calls in respect of such Ship. Such release shall be on such terms and include the payment of such amount, as the Managers may, in their sole discretion, deem to be appropriate after taking into account the release formula determined from time to time by the Board.

14.2 No Request by Member for Release

In the absence of a request from the Member the Managers shall nevertheless have power to assess, as at the date of the cesser, or at any time thereafter, the liability of any Member for further Contributions in respect of such Ship and the amount of such assessment shall be payable by the Member on demand without any set-off.

14.3 Scope of Release

The Managers may release a Member from liability from further contribution to one or more of the following:

- 14.3.1 Estimated Total Call;
- 14.3.2 Exceptional Calls made under Rule 11.3 *Exceptional Calls*; and
- 14.3.3 Overspill Calls made under Rule 11.4 *Overspill Calls*.

14.4 Effect of Payment of Release Call

Upon payment of such assessment and fulfilment of such other terms as the Managers, in their sole discretion, may deem to be appropriate in the circumstances, the Member shall be released from liability for further contribution to Calls in respect of such Ship.

14.5 Effect of Release

As from the date of the release of an Entered Ship under this Rule 14 in respect of the Estimated Total Call, Exceptional Calls or Overspill Calls as the case may be the Member shall be under no further liability to contribute to the corresponding Calls in respect of that Ship under Rule 10 *Contribution by Way of Calls* nor shall the Member have any right to share in any return of Contributions or other receipts under either Rule 37.3 *Disposal of Excess Funds* or Rule 39.2 *Overspill Reserve* or both as the case may be in respect of that Ship.

RULE 15 RECOVERY OF CONTRIBUTIONS

15.1 Recovery

All monies from time to time payable by a Member may be recovered by action commenced under the instructions of the Managers in the name of the Association.

15.2 Lien

The Association shall have a lien on all ships owned or bareboat chartered by any Member (whether entered in the

Association or not) in respect of monies payable by the Member to the Association.

15.3 Other Jurisdiction

Nothing in these Rules (including the provisions of Rule 44 *Disputes and Differences* and Rule 46 *Jurisdiction*) shall affect or prejudice the right of the Association to take action in accordance with local law in any jurisdiction 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.

RULE 16 FLEET ENTRY

16.1 Effect of Fleet Entry

Where one or more Ships have been entered as a Fleet Entry then the debts of any one Member in respect of any such Entered Ship shall be treated as the debt of all the other Members whose Ships are or were entered as part of the same Fleet Entry and the Association shall be entitled to act as if all the Ships forming part of the Fleet Entry were entered by the same Member.

RULE 17 MORTGAGEES

17.1 Payment and Notice

At the request of a mortgagee and with the consent of the Member, the Managers may in their discretion, and subject to the provisions of Rule 42 *Assignment*, agree to:

- 17.1.1 pay to the mortgagees, or to their order, any recovery the Member is entitled to receive from the funds of the Association in respect of any liability, costs or expenses incurred by the Member on receipt of notice from the mortgagees that the Member is in default under the mortgage;
- 17.1.2 inform the mortgagees if notice is given to the Member in respect of the Entered Ship under Rule 9.3 *Notice of Termination* that the Member's insurance in the Association in respect of such Ship is to cease;
- 17.1.3 give the mortgagees 14 days' notice of the Association's intention to cancel the insurance of the Member by reason of the Member's failure to pay when due and demanded any sum due from the Member to the Association.

RULE 18 ASSOCIATED COMPANIES

18.1 Extension of Cover to Associated Companies

The Managers may accept the entry of any Ship on terms that the benefit of the cover afforded by the Association to a Member in respect of that Ship shall be extended to Associated Companies of that Member. The rights and obligations as between the Association and any such Associated Company shall be such as may be agreed between the Member and the Managers.

18.2 Conditions of Reimbursement

The liability of the Association to the Member and to Associated Companies to whom cover is extended in accordance with Rule 18.1 above shall be limited in amount to reimbursement of claims relating to liabilities, costs or expenses incurred by one or more of the Associated Companies to the extent and amount only that the Member:

- 18.2.1 would have incurred the same liabilities, costs and expenses if the same claims had been pursued against the Member; and
- 18.2.2 would thereafter have been entitled to obtain reimbursement from the Association in accordance with the terms of entry of the Ship in the Association.
- 18.2.3 Provided always that conduct of any Associated Company which would have entitled the Association to decline to indemnify that company shall be deemed to be the conduct of the Member.

18.3 Receipt of Reimbursement

The receipt by the Member, or any Associated Company to whom cover has been extended in accordance with Rule 18.1 above, of any reimbursement by the Association shall be deemed to be the receipt by the Member and all such Associated Companies jointly and shall fully discharge the Association from any further liability to the Member and any Associated Companies in respect of the loss or damage in respect of which the claim was brought.

18.4 PROVIDED ALWAYS THAT:

the provisions of Rule 27.1 *General Limitation* shall apply to any cover given under this Rule so that in circumstances where the Member could have (in the opinion of the Board) or has limited the Member's liability, then the amount to which the Member could have (in the opinion of the Board) or has so limited the Member's liability shall be the total amount recoverable from the Association.

Section III Risks Covered

RULE 19 RISKS COVERED

19 Risks Covered

Unless otherwise agreed between the Member and the Managers, the Member shall be insured by the Association against the following liabilities, costs and expenses arising in respect of the Member's interest in an Entered Ship, out of events occurring during the period of entry of the Ship in the Association and in connection with the operation of the Ship:

19.1 Seafarers

Liabilities which a Member may incur, together with costs and expenses incidental thereto, in respect of Seafarers. The following shall be recoverable:

19.1.1 Injury, illness or death

Medical, hospital, funeral and other expenses necessarily incurred and wages, maintenance, compensation and damages payable by reason of the personal injury to, illness of or death of a Seafarer.

Notwithstanding the provisos to Rule 5.1 *Right of Recovery*, where a Member has failed to discharge or pay a liability for wages, maintenance, compensation or damages for the personal injury to, illness of or death of a Seafarer, the Association shall discharge or pay such liability on the Member's behalf directly to such Seafarer or dependant thereof.

Provided always that:

- 19.1.1.1 the Seafarer or dependant has no enforceable right of recovery from any other party and otherwise would be uncompensated;
- 19.1.1.2 subject to Rule 19.1.1.3 below, the Association shall in no circumstances be liable for any sum in excess of the amount which the Member would have been able to recover from the Association under these Rules and the Member's terms and conditions of entry;
- 19.1.1.3 where the Association is under no liability in respect of the claim by virtue of Rules 33.1 *Failure to Pay* and 35.1 *Cesser for Failure to Pay*, the Association shall nevertheless discharge or pay the claim to the extent that it arises from an event occurring prior to the cesser of the insurance, but only as agent of the Member and the Member shall reimburse the Association in full.

19.1.2 Shipwreck unemployment indemnity

Wages payable to a Seafarer during unemployment in consequence of the wreck or loss of an Entered Ship and other payments made to Seafarers in consequence of such wreck or loss under statutory obligation.

Provided always that:

- 19.1.2.1 any such wages and other payments which exceed two months' basic wages shall not be recoverable from the Association.

19.1.3 Loss of effects

Compensation in respect of loss of or damage to the Personal Effects of a Seafarer or a relative of a Seafarer while on board the Entered Ship.

19.1.4 Substitutes

Expenses necessarily incurred in providing a substitute for a Seafarer who is unfit for duty, or has been left behind for any reason, where liability for such expenses could not reasonably have been avoided.

Provided always that:

- 19.1.4.1 wages shall only be recoverable as part of the said expenses when the Member is legally obliged to pay wages to two Seafarers simultaneously for the same job and is unable to recover such double wages from any other source.

19.1.5 Distressed seafarers, deserters and strikers

Expenses incurred by or chargeable to a Member under statutory obligation in respect of a distressed Seafarer or Seafarers who desert or go on strike, where such expenses are not recoverable under any other part of this Rule 19.1 and where such expenses cannot be recovered from the Seafarer.

19.1.6 Diversion

Diversion expenses associated with liabilities covered under this Rule 19.1 which are payable in accordance with Rule 19.6 *Diversion Expenses*.

19.1.7 Repatriation

Repatriation expenses associated with liabilities covered under this Rule 19.1 which are payable in accordance with Rule 19.7 *Repatriation*.

19.1.8 Collective and special agreements

The liabilities, costs and expenses insured under this Rule 19.1 may be extended to include those for which a Member may be liable under collective or special agreements which have received the prior approval of the Managers.

19.1.8.1 However there shall be no recovery under this Rule 19.1.8 arising out of a Member's liability under a contract of indemnity or guarantee between the Member and a third party (see Rule 19.15 *Contracts of Indemnity or Guarantee*).

19.1.9 PROVIDED ALWAYS THAT:

19.1.9.1 There shall be no recovery under this Rule 19.1 in respect of liabilities, costs or expenses:

19.1.9.1.1 which arise as a result of the termination of an agreement of service in accordance with the terms thereof, or by mutual consent, or from any other discretionary act of the Member, or from the sale of an Entered Ship; or

19.1.9.1.2 in respect of Seafarers employed as catering staff on board the Entered Ship when moored (otherwise than on a temporary basis) and open to the public as a hotel, restaurant, bar or other place of entertainment.

19.2 Passengers

Liabilities which a Member may incur, together with costs and expenses incidental thereto, in respect of Passengers. The following shall be recoverable:

19.2.1 Injury, illness or death

Liabilities arising out of the personal injury to, illness of or death of a Passenger, including the diversion and repatriation expenses specified in Rules 19.6 *Diversion Expenses* and 19.7 *Repatriation* associated therewith.

19.2.2 Baggage

Liability arising out of the loss of or damage to a Passenger's baggage.

19.2.3 Casualty

Liability to a Passenger consequent upon an incident or condition on board involving either:

19.2.3.1 collision, stranding, explosion, fire or any other cause affecting the physical condition of the Entered Ship so as to render it incapable of safe navigation to its intended destination; or

19.2.3.2 a threat to the life, health or safety of Passengers.

19.2.4 PROVIDED ALWAYS THAT:

19.2.4.1 the ticket of passage shall relieve the Member of liability, costs and expenses to the maximum extent permitted by the appropriate law, and

19.2.4.2 there shall be no recovery:

19.2.4.2.1 in respect of the cost of forwarding Passengers to their destination or returning them to their port of embarkation, or of their maintenance ashore except insofar as such costs may arise as a consequence of an incident covered under Rules 19.2.1 *Injury, illness or death* and 19.2.3 *Casualty*.

19.2.4.2.2 in respect of liabilities arising out of any contract other than the ticket of passage or a charter party.

19.2.4.2.3 in respect of liabilities arising or remaining with the Member as a result of any waiver of rights of recourse against any third party in respect of an excursion by a Passenger away from the Entered Ship.

- 19.2.4.2.4 in respect of liabilities, costs or expenses incurred as a result of the carriage of a Passenger by air except where such liabilities, costs or expenses arise during the repatriation of a Passenger by air in circumstances covered under Rules 19.2.1 *Injury, Illness or Death* and 19.2.3 *Casualty* or, subject always to Rule 19.2.4.2.2, during an excursion from an Entered Ship.
- 19.2.4.2.5 in respect of loss of or damage to specie, bullion, precious or rare materials or stones, plate, jewellery or other objects of a rare or precious nature, bank notes or other forms of currency, bonds or other negotiable instruments whether carried as cargo or a Passenger's baggage, unless the value has been declared to the Managers prior to any such carriage, any additional premium paid and any directions made by the Managers for safe custody and carriage complied with.

19.3 MLC 2006

The cover afforded to Members in respect of their liabilities under MLC 2006 is detailed in the relevant *Certificate of Entry* of the Entered Ship.

19.4 Injury to, Illness of or Death of Third Parties

Compensation and damages for which the Member is liable which are payable by reason of personal injury to, illness of or death of any person, other than a Seafarer or Passenger, and the diversion expenses specified in Rule 19.6 *Diversion Expenses* associated with the said injury, illness or death.

Provided always that:

- 19.4.1 cover under this Rule 19.4 is limited to liabilities, costs and expenses arising out of a negligent act or omission on board or in relation to the operation of the Entered Ship, or in relation to the handling of its cargo from the time of receipt of that cargo at the port of shipment until delivery of that cargo at the port of discharge; and
- 19.4.2 the Member shall take all appropriate steps permitted by law to recover such liabilities, costs and expenses from any other person or insurer concerned with such third party; and
- 19.4.3 there shall be no recovery under this Rule 19.4:
 - 19.4.3.1 unless the Managers have (except in the case of a relative of a Seafarer) approved of the presence of the third party to travel on board the Entered Ship and the terms and conditions on which the third party is carried, and the Member has paid or agreed to pay such additional Call or premium as may be required by the Association; or
 - 19.4.3.2 in respect of personnel (other than marine crew) employed otherwise than by the Member where the Entered Ship is providing accommodation to such personnel in relation to their employment on an oil or gas production or exploration facility, unless there has been a contractual allocation of risks as between the Member and the employer of the said personnel which has been approved by the Association (see Rule 19.15 *Contracts of Indemnity or Guarantee*); or
 - 19.4.3.3 in respect of hotel, restaurant, bar or other guests or visitors and catering crew on board the Entered Ship when moored (other than on a temporary basis) and open to the public as a hotel, restaurant, bar or other place of entertainment.

19.5 Stowaways or Persons Saved at Sea

The cost to a Member necessarily incurred in maintaining, landing, deporting or repatriating stowaways or persons saved at sea, including diversion expenses under Rule 19.6 *Diversion Expenses* and repatriation expenses under Rule 19.7 *Repatriation*.

Provided always that:

- 19.5.1 the Member shall take all appropriate steps permitted by law to recover such expenses from the stowaway or person saved at sea, or from any other person or insurer, or from any national or international bodies or organisations concerned with such persons; and
- 19.5.2 there shall be no recovery in respect of any consequential loss of profit or depreciation.

19.6 Diversion Expenses

The cost to a Member in respect of diversion expenses in circumstances which could entitle the Member to recover under Rule 19.1 *Seafarers*, Rule 19.2 *Passengers*, Rule 19.3 *MLC 2006*, Rule 19.4 *Injury to, Illness of or Death of Third Parties* (notwithstanding Rule 19.4.1) or Rule 19.5 *Stowaways or Persons Saved at Sea*, but confined to the net loss to the Member (over and above the expenses that would have been incurred but for the diversion or delay) in respect of port charges, bunkers, insurance, Seafarers' wages, stores and provisions necessarily incurred as a result of the diversion, while securing medical attention for sick or injured persons on board the ship, or while awaiting a substitute, or for the purpose of attempting to save life at sea.

19.7 Repatriation

The cost to a Member of maintaining, repatriating or deporting persons in circumstances which would entitle the Member to recover under Rule 19.1 *Seafarers*, Rule 19.2 *Passengers*, Rule 19.3 *MLC 2006*, Rule 19.4 *Injury to, Illness of or Death of Third Parties* or Rule 19.5 *Stowaways or Persons Saved at Sea*.

19.8 Life Salvage

Sums awarded to third parties by reason of the fact that they have saved or attempted to save the life of any person on or from an Entered Ship but only if, and to the extent that, such payments are not recoverable under the Hull Policies of the Entered Ship or from cargo owners or insurers.

19.9 Collision

Liabilities which a Member may incur, together with costs and expenses incidental thereto, as a result of a collision between an Entered Ship and any other ship.

The following shall be recoverable:

19.9.1 Collision clause

The one-fourth of the Member's liability (or such other proportion as may be applicable and agreed by the Managers) which is not covered under Clause 8 of the *Institute Time Clauses Hulls 1/10/83* or under other forms of Hull Policies on the Entered Ship approved by the Managers.

19.9.2 Excess collision

That part of the Member's liability which exceeds the amount recoverable under the Hull Policies on the Entered Ship and any amount recoverable under Rule 19.9.1 above solely by reason of such liability exceeding the insured value under the said policies.

Provided always that:

19.9.2.1 Proper value

for the purposes of this Rule 19.9.2 the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall determine whether the Entered Ship was insured for a proper value under the Hull Policies on that Ship. If the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) determines the amount actually insured to be less than the proper value, the Member shall only be entitled to recover the excess of such proper value.

19.9.2.1.1 Note: In determining whether the Ship was insured for a proper value the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) will need to be satisfied that the said Hull Policies have been the subject of periodic review in the light of proper advice on market conditions. A proper value will be a figure which is reasonably close to the equivalent of the free uncommitted market value of the Ship at the time of the collision.

19.9.3 Collision liability to cargo

Loss of or damage to cargo carried in an Entered Ship, arising out of a collision between the Entered Ship and another ship caused by the fault both of the Entered Ship and of the other ship, for which a Member may be liable to indemnify the owner or charterer of such other ship solely by reason of responsibility for such loss or damage being determined in a country where the liability for such loss or damage is joint and several and the "Both to Blame Collision Clause" is held invalid.

Provided always that:

19.9.3.1 there shall be no cover under this Rule 19.9.3 unless the Association has agreed to cover the Member's liabilities in respect of cargo under Rule 19.17 *Cargo* and cover under this Rule 19.9.3 shall be in accordance with the provisions of Rule 19.17.

19.9.4 Injury and death

Liability for the injury to, or death of, Seafarers or others insofar as such liability may be covered under Rule 19.1 *Seafarers*, Rule 19.2 *Passengers*, and Rule 19.4 *Injury to, Illness of or Death of Third Parties*.

19.9.5 Property damage

Liability for loss of or damage to property (other than the ship with which the Entered Ship collided, or cargo or other property on that other ship) insofar as such liability may be covered under Rule 19.10 *Damage to Property*.

19.9.6 Non-contact damage to ships

Liability for losses caused to any other ship or cargo or other property therein insofar as such liability may be covered under Rule 19.11 *Non-Contact Damage to Ships*.

19.9.7 Pollution

Liability in respect of an escape or discharge or threatened escape or discharge of oil or any other substance insofar as such liability may be covered under Rule 19.12 *Pollution*.

19.9.8 Wreck removal

Liability for removal of wrecks insofar as such liability may be covered under Rule 19.13 *Wreck Removal*.

19.9.9 Cargo

Liability in respect of cargo insofar as such liability may be covered under Rule 19.17 *Cargo*.

19.9.10 PROVIDED ALWAYS THAT:

19.9.10.1 *Hull policies*

a Member shall not be entitled to recover any amounts which would be recoverable under the Hull Policies on the Entered Ship or which would have been recoverable had there been no franchise or deductible applicable to those policies;

19.9.10.2 *Both to blame*

unless otherwise provided for under a form of Hull Policy on the Entered Ship approved by the Managers, if both ships are to blame then, when the liability of either or both of the ships in collision becomes limited by law, claims under this Rule 19.9 shall be settled on the principle of single liability. Otherwise claims under this Rule 19.9 shall be settled on the principle of cross-liabilities, as if the owner of each ship had been compelled to pay the owner of the other ship such proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Member in consequence of the collision;

19.9.10.3 *Member's own ships*

if a collision occurs involving two or more ships belonging to the same Member, or where a claim arises in respect of cargo belonging to a Member, the Member shall be entitled to recover from the Association and the Association shall have the same rights as if the ships had belonged to different owners, or as if the cargo had belonged to a third party.

19.10 Damage to Property

Liabilities which a Member may incur, together with costs and expenses incidental thereto, to pay damages or compensation for any loss of, or damage to, or infringement of rights in connection with, property.

The following shall be recoverable:

19.10.1 Fixed and floating objects

Liability arising out of any loss of or damage to any harbour, dock, pier, jetty, land or any object whatsoever moveable or immovable (not being another ship or cargo or other property therein or cargo or other property carried in the Entered Ship) by reason of contact between the Entered Ship and such harbour, dock, pier, jetty, land or moveable or immovable object.

19.10.2 Passengers' baggage

Liability arising out of the loss of or damage to a Passenger's baggage insofar as such liability may be covered under Rule 19.2 *Passengers*.

19.10.3 Excess liabilities

That part of the Member's liability which exceeds the amount recoverable under the Hull Policies on the Entered Ship in respect of the liabilities set out in Rule 19.10.1 above, subject always to provisos 19.9.2.1 and 19.9.10.1 to Rule 19.9 *Collision*.

19.10.4 Non-contact damage to ships

Liability for losses caused to the owner of any other ship, or cargo or other property therein, insofar as such liability may be covered under Rule 19.11 *Non-Contact Damage to Ships*.

19.10.5 Pollution

Liability in respect of an escape or discharge or threatened escape or discharge of oil or any other substance insofar as such liability may be covered under Rule 19.12 *Pollution*.

19.10.6 Wreck removal

Liability for the removal of wrecks insofar as such liability may be covered under Rule 19.13 *Wreck Removal*.

19.10.7 Other property losses

Liability for loss of, or damage to, or infringement of rights in connection with, the property of any person (other than those persons interested in cargo carried in the Entered Ship).

Provided always that:

19.10.7.1 this Rule 19.10.7 excludes liabilities which may be covered under Rules 19.10.1, 19.10.2, 19.10.3, 19.10.4, 19.10.5 and 19.10.6 above.

19.10.8 PROVIDED ALWAYS THAT:

19.10.8.1 there shall be no recovery under this Rule 19.10 in respect of expenditure arising out of a Member's liability under a contract of indemnity or guarantee between a Member and a third party (see Rule 19.15 *Contracts of Indemnity or Guarantee*);

19.10.8.2 there shall be no recovery under this Rule 19.10 in respect of any liabilities which a Member may incur to persons interested in another ship, or cargo or other property therein, by reason of a collision between the Entered Ship and that other ship (see Rule 19.9 *Collision*) or to persons interested in cargo carried in the Entered Ship (see Rule 19.17 *Cargo*);

19.10.8.3 if the loss, damage or expense relates to any property belonging to the Member (other than that carried on board the Entered Ship – see Rule 20.1.2 *Equipment*), such Member shall be entitled to recover from the Association, and the Association shall have the same rights, as if such property belonged to a third party, but to the extent only that such loss, damage or expense is not recoverable under any other insurances upon the said property.

19.11 Non-Contact Damage to Ships

Liabilities which a Member may incur, together with costs and expenses incidental thereto, as a result of damage caused to another ship otherwise than by collision between that other ship and the Entered Ship.

The following shall be recoverable:

19.11.1 Other ship or cargo

Liability for loss of or damage to any other ship, or cargo or other property therein, together with damages resulting therefrom.

19.11.2 Injury and death

Liability for the injury to, or death of, Seafarers or others insofar as such liability may be covered under Rule 19.1 *Seafarers*, Rule 19.2 *Passengers* or Rule 19.4 *Injury to, Illness of or Death of Third Parties*.

19.11.3 Pollution

Liability in respect of an escape or discharge or threatened escape or discharge of oil or any other substance insofar as such liability may be covered under Rule 19.12 *Pollution*.

19.11.4 Wreck removal

Liability for the removal of wrecks insofar as such liability may be covered under Rule 19.13 *Wreck Removal*.

19.11.5 PROVIDED ALWAYS THAT:

19.11.5.1 If the loss or damage relates to any ship, or cargo or other property therein, belonging to the Member such Member shall be entitled to recover from the Association and the Association

shall have the same rights, as if such ship or cargo or other property belonged to a third party, but to the extent only that such loss, damage or expense is not recoverable under any other insurance upon the said ship, cargo or other property.

19.12 Pollution

Liabilities which a Member may incur, together with costs and expenses incidental thereto, as the result of an escape or discharge or threatened escape or discharge of oil or any other substance from the Entered Ship or from other property.

The following shall be recoverable:

19.12.1 Damages

Liability for damages or compensation payable to any person arising from an escape or discharge or threatened escape or discharge of oil or any other substance from the Entered Ship or from other property.

19.12.2 Clean-up

The costs of any measures reasonably taken for the purpose of preventing, minimising or cleaning up an escape or discharge of oil or any other substance from the Entered Ship or from other property together with any liability for losses or damages arising from any measures so taken.

Provided always that:

19.12.2.1 the value of any ship or wreck and of any stores and materials, or cargo or other property, removed and saved as the result of any such measures shall either be credited to the Association or deducted from any recovery due from the Association.

19.12.3 Agreement

Liability which a Member may incur, together with costs and expenses incidental thereto, as a party to any agreement relating to oil pollution, for loss, damage or expenses, including expenditure reasonably incurred in accordance with the Member's obligations under such agreement.

Provided always that:

19.12.3.1 such agreement has been approved by the Managers and the Member has paid or agreed to pay such additional Call or premium as may be required by the Association.

19.12.4 Government order

The costs or liabilities incurred as a result of compliance with any order or direction given by any Government or authority as a consequence of an incident involving an escape or discharge or threatened escape or discharge of oil or any other substance for the purpose of preventing or reducing any such escape, discharge or threat or damage incidental thereto.

Provided always that:

19.12.4.1 such costs or liabilities shall not be recoverable where the compliance with such an order or direction is a requirement prior to the normal operation or salvage or repair of the Entered Ship; and

19.12.4.2 such costs or liabilities are not recoverable under the Hull Policies on the Entered Ship.

19.12.5 Salvors' special compensation

Liability which a Member may incur to pay special compensation to a salvor of an Entered Ship under the terms of the *Special Compensation P&I Club (SCOPIC) Clause* or in respect of work done or measures taken to prevent or minimise damage to the environment under the provisions of Article 14 of the *International Convention on Salvage 1989* or the terms of a standard form salvage agreement equivalent thereto approved by the Association.

19.12.6 Fines

Liability which a Member may incur for the payment of fines in respect of an escape or discharge or threatened escape or discharge of oil or any other substance insofar as such liability may be covered under Rule 19.19 *Fines*.

19.12.7 PROVIDED ALWAYS THAT:

19.12.7.1 there shall be no recovery in respect of losses, liabilities, or the costs and expenses incidental thereto, arising as the result of an escape or discharge or threatened escape or discharge of oil

- or any other substance other than under this Rule 19.12 and all recoveries hereunder shall be subject to any Limit of Liability; and
- 19.12.7.2 there shall be no recovery under this Rule 19.12 of any liabilities in respect of cargo which come within the provisions of Rule 19.17 *Cargo*; and
- 19.12.7.3 there shall be no recovery under this Rule 19.12 of any liabilities in respect of expenditure which forms or could form a part of General Average expenditure under any unamended version of the York/Antwerp Rules; and
- 19.12.7.4 there shall be no recovery under this Rule 19.12 of any liabilities arising as a consequence of the escape or discharge or threatened escape or discharge of any oil or other substance (previously carried on the Ship) from any land-based dump, storage or disposal facility, unless the escape or discharge results directly from an error in the management or navigation of the Entered Ship, or unless the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in its discretion decides otherwise; and
- 19.12.7.5 unless otherwise limited to a lesser sum, the Association's aggregate liability in respect of losses, liabilities, and the costs and expenses incidental thereto, arising as a result of an escape or discharge or threatened escape or discharge of oil to the Senior Member, all Joint Members and Co-assureds under any one *Certificate of Entry* shall be limited to the Limit of Liability for each Entered Ship in respect of any one incident or occurrence except that:
- 19.12.7.5.1 where an Entered Ship is also separately insured on behalf of any person (other than a charterer who is not a demise or bareboat charterer) by the Association or by another association which participates in the Pooling Agreement, the aggregate of claims in respect of losses, liabilities, and the costs and expenses incidental thereto, arising as a result of an escape or discharge or threatened escape or discharge of oil recoverable from the Association and/or such other association(s), shall be limited to the Limit of Liability in respect of any one incident or occurrence. If such claims exceed this limit, the liability of the Association in respect of each *Certificate of Entry* shall be limited to that proportion of the limit that claims recoverable from the Association under that *Certificate of Entry* bear to the aggregate of the said claims recoverable from the Association and from such other association(s), if any; and
- 19.12.7.5.2 when the Entered Ship and other ships provide salvage or other assistance to another ship following a casualty and such other ships are insured for losses, liabilities, and the costs and expenses incidental thereto, arising as a result of an escape or discharge or threatened escape or discharge of oil with the Association and/or with any other association which participates in the Pooling Agreement and General Excess Loss Reinsurance Contract, the aggregate of claims from the Entered Ship and such other ships in respect of losses, liabilities, and the costs and expenses incidental thereto, arising as a result of an escape or discharge or threatened escape or discharge of oil arising from the said salvage or other assistance recoverable from the Association and/or such other association(s), shall be limited to the Limit of Liability. If such claims exceed this limit, the liability of the Association in respect of each Entered Ship shall be limited to that proportion of the limit that claims recoverable from the Association in respect of that Ship bear to the aggregate of the said claims recoverable from the Association and from such other association(s), if any; and
- 19.12.7.6

19.12.7.6.1 where an Entered Ship is a 'relevant ship' as defined in TOPIA, the Member shall be a party to that agreement for the period of entry of the Ship in the Association unless the Association otherwise agrees in writing. Where an Entered Ship is a 'relevant ship' as defined in STOPIA, the Member shall be a party to that agreement for the period of entry of the Ship in the Association unless the Association otherwise agrees in writing. There shall be no recovery under this Rule in respect of any event arising during a period when the Member is not in compliance with such requirements unless the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in its discretion decides otherwise.

19.12.7.6.2 the Association is the agent of the Member in respect of any Entered Ship which is a 'relevant ship' as defined in TOPIA or STOPIA as regards any and all communications and dealings under those agreements.

19.13 Wreck Removal

Liabilities which a Member may incur, together with costs and expenses incidental thereto, in respect of:

19.13.1 Entered Ship

The raising, removal, destruction, lighting or marking of the wreck of an Entered Ship, or of any cargo, equipment or other property which is or was carried on board an Entered Ship.

19.13.2 The presence or involuntary shifting of the wreck of an Entered Ship, including any cargo, equipment or other property which is or was carried on board.

19.13.3 Other ship

The raising, removal, destruction, lighting or marking of the wreck of any other ship, and of any cargo or other property which is or was on board any other ship.

19.13.4 PROVIDED ALWAYS THAT:

19.13.4.1 the costs of raising, removal, destruction, lighting or marking were compulsory by law, or the costs thereof were legally recoverable from the Member under a contract approved by the Managers;

19.13.4.2 the value of the wreck itself and of any stores and materials or cargo or other property saved shall either be credited to the Association or deducted from any recovery due from the Association;

19.13.4.3 there shall be no recovery under this Rule 19.13 if the Member shall, without the consent of the Managers in writing, transfer the Member's interest in the wreck, cargo or other property (otherwise than by abandonment) prior to the said raising, removal, destruction, lighting or marking;

19.13.4.4 there shall be no recovery under this Rule 19.13 in respect of any liability incurred more than two years after the ship, cargo, equipment or other property became a wreck, or was lost, unless the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in its discretion decides otherwise; and

19.13.4.5 the Entered Ship became a wreck as a result of an event occurring during the period of entry of the Ship in the Association, in which case the Association shall continue to be liable for the claim notwithstanding that in other respects the liability of the Association shall have terminated pursuant to Rule 34 *Cesser of Ship Entry*.

19.14 Towage

19.14.1 Towage of an Entered Ship

Liability which a Member may incur, together with costs and expenses incidental thereto, arising out of the towage of an Entered Ship:

19.14.1.1 under the terms of a contract entered into for the purpose of entering or leaving port, or manoeuvring within the port, during the ordinary course of trading;

19.14.1.2 in the ordinary course of trading of an Entered Ship which is habitually towed from port to port or from place to place.

Provided always that:

19.14.1.2.1 such liability shall only be covered by the Association to the extent that the Member is not insured against such liability under the Hull Policies on the Entered Ship; and

19.14.1.2.2 such Ship has been so declared to the Managers;

19.14.1.3 under the terms of any other contract for the towage of an Entered Ship.

Provided always that:

19.14.1.3.1 the towage contract has been approved by the Managers and the Member has paid, or agreed to pay, such additional Call or premium as may be required by the Association.

19.14.2 Towage by an Entered Ship

Liability which a Member may incur, together with costs and expenses incidental thereto, arising out of the towage by an Entered Ship of any ship or object.

Provided always that:

19.14.2.1 an Entered Ship specially designed or converted for the purpose of towage shall have been declared as such to the Managers at the time of entry or at the time of conversion for the purpose of towage; and

19.14.2.2 the towage contract has been approved by the Managers and the Member has paid or agreed to pay such additional Call or premium as may be required by the Association; or

19.14.2.3 the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in its discretion shall, having regard to all the circumstances, consider the terms of the towage contract as reasonable and the liability as coming within the scope of the cover afforded by the Association; however

19.14.2.4 there shall be no recovery from the Association in respect of any liability for loss of, damage to or wreck removal of, a towed ship or object or of any cargo or other property carried thereon, whether such liability arises under the terms of a contract or otherwise, unless the Managers have agreed in writing to cover such liability.

19.15 Contracts of Indemnity or Guarantee

Liability which a Member may incur, together with costs and expenses incidental thereto, for injury to, illness of or death of any person or for loss of, or damage to, cargo (subject to Rule 20.1.4 *Cargo and freight*) or other property, arising under the terms of a contract made by the Member in relation to services to be provided to or by an Entered Ship.

Provided always that:

19.15.1 the contract has been approved by the Managers and the Member has paid, or agreed to pay, such additional Call or premium as may be required by the Association; or

19.15.2 the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in its discretion decides that the Member should be reimbursed.

19.16 Quarantine

Extraordinary expenses incurred by a Member, as a direct consequence of an outbreak of infectious disease, for disinfection of an Entered Ship or the cargo or persons on board such Ship, or in respect of quarantine.

Provided always that:

19.16.1 the ordinary expenses of loading and discharging cargo, and of provisions for Seafarers or Passengers, and of bunkers during the period of detention while in quarantine, shall be deducted from the actual expenses incurred and the balance only shall be recoverable;

19.16.2 in the case of an Entered Ship, which is not already under contract, being ordered or chartered to proceed to a port where it is known or should be reasonably anticipated that such Ship will, as a result, be subjected to quarantine there or elsewhere there shall be no recovery of expenses arising at, or consequent upon the Ship having been at, such port.

19.17 Cargo

Liabilities which a Member may incur, or expenditure which the Member may be unable to recover, together with costs and expenses incidental thereto, in respect of cargo intended to be, or being, or having been carried in an Entered Ship, which arises out of a breach by the Member or by persons for whose acts, neglect or default the Member is liable, of the Member's obligations or duties as a carrier properly and carefully to load, handle, stow, carry, keep, care for, discharge or deliver the cargo or out of unseaworthiness or unfitness of the Entered Ship.

The following shall be recoverable:

19.17.1 Loss, shortage and damage

Liability for loss or shortage of, or damage to, or other responsibility for, cargo (other than cargo carried under a contract of through carriage).

19.17.2 Damaged cargo

The additional costs of discharging, disposing of, or restowing, damaged cargo insofar as these costs cannot be recovered from any other party.

19.17.3 Unrecoverable expenditure

The additional costs of discharging and disposing of, or of restowing, cargo which are necessarily incurred in order to continue the safe prosecution of the voyage following a casualty, insofar as these costs cannot be recovered from any other party and could not form part of general average expenditure.

19.17.4 Through transit

Liability for loss or shortage of, or damage to, or other responsibility for cargo carried under a contract of through carriage, including transit by land, water or air to or from the Entered Ship.

Provided always that:

19.17.4.1 such contract has been approved by the Managers and the Member has paid, or agreed to pay, such additional Call or premium as may be required by the Association.

19.17.5 Contracts of indemnity

Liabilities arising under the terms of a contract of indemnity which relates to the handling or custody of cargo insofar as such liability may be covered under Rule 19.15 *Contracts of Indemnity or Guarantee* subject always to Rule 20.1.4 *Cargo and freight*.

19.17.6 Collision liability to cargo

Liability for loss of or damage to cargo carried in an Entered Ship under Rule 19.9.3 *Collision liability to cargo*.

19.17.7 Disposing of cargo

The additional costs of storing and disposing of cargo rejected or not collected by receivers insofar as these costs cannot be met out of the salvaged value of such cargo or recovered from any other party, even where such rejection or failure to collect does not arise out of a breach by the Member or any other person of their obligations or duties as a carrier.

Provided always that:

19.17.7.1 there shall be no recovery in respect of storage costs for the first 30 days following discharge.

19.17.8 PROVIDED ALWAYS THAT:

19.17.8.1 *Hague Visby Rules*

unless Special Cover has been agreed in writing by the Managers, if a Member enters into a contract of carriage by sea which is on terms less favourable to the carrier than those contained in the Hague or Hague Visby Rules, the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may in its discretion reject any claim or reduce it to the extent by which the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) considers such claim would have been reduced had the contract of carriage been on terms as favourable to the carrier as those contained in the Hague or Hague Visby Rules;

19.17.8.2 *Deviation*

there shall be no recovery where the Member has become liable in consequence of a deviation from the contractually agreed voyage unless in the case of a deviation authorised by the Member, prior notice of the intended deviation has been given to the Managers or, in the case

of a deviation without the Member's authority, the earliest possible notice has been given to the Managers after the Member has received information thereof and, in either case, the Managers have confirmed to the Member that cover under this Rule continues unprejudiced. Nevertheless, the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may allow such a claim either in part or in whole if, in its discretion, it considers that the Member had reasonable grounds for believing that no deviation was to be or had been made. If, upon receiving information of the deviation, the Managers advise the Member that cover under this Rule is prejudiced and the Member then requests the Managers to arrange Special Cover to cover the Member's liabilities under this Rule, the cost of such insurance shall be borne by the Member;

19.17.8.3 *Loading and discharge*

unless the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall, in its discretion, otherwise determine there shall be no recovery in respect of a Member's liability:

19.17.8.3.1 for the cost of carrying cargo to the port of destination stipulated in the contract of carriage from another port at which the cargo was discharged from an Entered Ship, or for storage or other charges; or

19.17.8.3.2 arising, otherwise than under a bill of lading already issued, out of the failure to arrive or late arrival of an Entered Ship at a port of loading, or out of failure to load, or late loading of, any particular cargo or cargoes in an Entered Ship; or

19.17.8.3.3 arising out of the delivery of cargo carried under a negotiable bill of lading or similar document of title (including an electronic bill of lading) without production (or the equivalent thereof in the case of an electronic bill of lading) by the person to whom delivery is made of the relevant bill of lading or document of title, except where cargo has been carried in the Entered Ship either

19.17.8.3.3.1 under the terms of a non-negotiable bill of lading, waybill or other non-negotiable document (and has been properly delivered as required by that document) and liability arises under the terms of a negotiable bill of lading or other similar document of title issued on behalf of a party other than the Member providing for carriage partly by a means of transport other than the Entered Ship or

19.17.8.3.3.2 under the terms of an approved electronic trading system and has been properly delivered to the person so entitled in accordance therewith; or

19.17.8.3.4 arising out of the delivery of cargo carried under a non-negotiable bill of lading, waybill or similar document without production of such document by the person to whom delivery is made, where such production is required by the express terms of that document or the law to which that document, or the contract of carriage contained in or evidenced by it, is subject, except where the Member is required by any other law to deliver, or relinquish custody or control of the cargo, without production of such document; or

19.17.8.3.5 arising out of the discharge of cargo at a port or place other than the port or place provided in the contract of carriage; or

19.17.8.3.6 arising from the mistaken, imprudent or illegal exercise of a lien over cargo; or

19.17.8.3.7 in respect of the issue of an ante-dated or post-dated bill of lading, waybill or other document containing or evidencing the contract of carriage; or

19.17.8.3.8 in respect of a bill of lading, waybill or other document containing or evidencing the contract of carriage issued with an incorrect description of the cargo, its quantity or condition, or of its port of loading or discharge with the knowledge either of the Member (or of any agent appointed by the Member in which the Member has a substantial interest) or of the Master of the Entered Ship.

19.17.8.4 *ad valorem bills of lading*

where cargo or other property is carried under an ad valorem bill of lading or other document of title, contract of carriage or waybill in which a value of more than two thousand five hundred Dollars (USD2,500) (or the equivalent in any other currency) is declared and/or inserted by reference to a unit, piece, package or otherwise, where the effect of such a declaration / insertion is to deprive the Member of any right or rights of limitation to which the Member would otherwise have been entitled and cause the Member to incur a greater liability than the Member would have done but for such declaration / insertion, to the extent that such liability thereby exceeds two thousand five hundred Dollars (USD2,500) (or the equivalent in any other currency) in respect of any such unit, piece or package there shall be no recovery, unless

19.17.8.4.1 Special Cover has been agreed by the Managers in writing after receiving prior notice from the Member or the earliest possible notice after the Member has received notice of the said carriage;

19.17.8.5 *Rare and valuable cargo*

there shall be no recovery in respect of loss of or damage to specie, bullion, precious or rare metals or stones, plate, jewellery or other objects of a rare or precious nature, bank notes or other forms of currency, bonds or other negotiable instruments, unless the contract of carriage and the spaces, apparatus and means used for the carriage and the instructions given for the safe custody thereof, have been approved by the Managers prior to any such carriage and any directions made by the Managers have been complied with;

19.17.8.6 *Member's own cargo*

where the cargo in respect of which a claim arises belongs to a Member, such Member shall be entitled to recover from the Association, and the Association shall have the same rights, as if such cargo belonged to a third party and that third party had entered into a contract of carriage with the Member.

19.17.8.7 *Paperless trading*

there shall be no recovery from the Association for any liability, cost or expense arising from the use of any electronic trading system, other than an electronic system approved in writing by the Managers, to the extent that such liability, cost or expense would (save insofar as the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in its discretion otherwise determines) not have arisen under a paper trading system.

For the purposes of this proviso:

19.17.8.7.1 an electronic trading system is any system which replaces or is intended to replace paper documents used for the sale of goods and/or their carriage by sea or partly by sea and other means of transport which

19.17.8.7.1.1 are documents of title, or

19.17.8.7.1.2 entitle the holder to delivery or possession of the goods referred to in such documents, or

19.17.8.7.1.3 evidence a contract of carriage under which the rights and obligations of either of the contracting parties may be transferred to a third party.

19.17.8.7.2 a 'document' shall mean anything in which information of any description is recorded including, but not limited to, computer or other electronically generated information.

19.17.8.8 *Slot charters*

a Member who is a slot or space charterer of an Entered Ship may recover under this Rule for the Member's liabilities, together with costs and expenses incidental thereto, to persons interested in other cargoes carried in the Entered Ship, whether or not the Member is a carrier;

19.17.8.9 *Deck cargo*

there shall be no recovery where the Member has become liable in consequence of the carriage of cargo on deck unless the cargo is suitable for carriage as loaded on the deck of the Entered Ship and either:

- 19.17.8.9.1 Special Cover has been agreed by the Managers in writing after receiving prior notice from the Member or the earliest possible notice after the Member has received notice of the said carriage; or
- 19.17.8.9.2 the contract of carriage is specially claused to the effect that the cargo is carried on deck and either provides that the carrier is free from all liability for loss or damage to such cargo or provides the carrier with rights, immunities and limitations no less favourable than those contained in the Hague Rules or Hague Visby Rules; or
- 19.17.8.9.3 the contract of carriage contains an appropriate liberty to carry cargo on deck and provides for the Hague Rules or Hague Visby Rules to apply to such cargo; or
- 19.17.8.9.4 where the contract of carriage is compulsorily subject to the Hamburg Rules by operation of law, the Member has complied with the provisions of paragraphs 1 and 2 of Article 9 thereof.

Nevertheless, the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may allow such a recovery in whole or in part if, in its discretion, it considers that the Member had reasonable grounds for believing that the conditions of this proviso had been complied with.

19.18 General Average

19.18.1 Ship's proportion of general average

The Entered Ship's proportion of general average expenditure (including salvage) and sue and labour expenses not recoverable under the Hull Policies by reason of the value of the Ship being assessed for contribution to general average or salvage at a sound value in excess of the insured value under such policies. The Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall determine whether the Entered Ship was insured for a proper value under the Hull Policies on that Ship. If the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) determines the amount actually insured to be less than the proper value, the Member shall only be entitled to recover the excess of such proper value.

19.18.1.1 Note: In determining whether the Ship was insured for a proper value the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) will need to be satisfied that the said policies have been the subject of periodic review in the light of proper advice on market conditions. A proper value will be a figure which is reasonably close to the equivalent of the free uncommitted market value of the Ship at the time of the general average act.

19.18.2 Unrecoverable general average contribution

The cost to the Member of that proportion of general average expenditure (including salvage) and special charges which should be paid by cargo or by some other party to the maritime adventure, but which are not so paid after the exhaustion of all legal remedies against such parties solely by reason of a breach of the contract of carriage. Subject always to provisos 19.17.8.1, 19.17.8.2, 19.17.8.3 and 19.17.8.7 insofar as they are capable of application.

19.18.3 PROVIDED ALWAYS THAT:

General average shall be adjusted according to the York-Antwerp Rules 1974, 1994 or 2016 or on other contractual terms approved by the Managers. If it is not, then any recovery from the Association shall be limited to what would be recoverable if general average were adjusted according to the law and practice of the place where the adventure ended.

19.19 Fines

Fines or other penalties, together with costs and expenses incidental thereto, imposed in respect of the Entered Ship by any court, tribunal, or authority of competent jurisdiction, upon a Member or upon any Seafarer or person whom the Member may be legally liable to reimburse (other than under the terms of a contract or indemnity, unless and only to the extent such terms have been previously approved by the Managers) or reasonably reimburses with the approval of the Managers, for:

19.19.1 Cargo

Short or over delivery of cargo or failure to comply with regulations relating to declaration of goods or to documentation of the cargo (other than fines or penalties arising from the smuggling of goods or cargo or any attempt thereat), subject always to the Association having agreed to cover the Member's responsibilities in respect of cargo under Rule 19.17 *Cargo*.

19.19.2 Immigration laws

Breach of any immigration law or regulation.

19.19.3 Pollution

The accidental escape or discharge of oil or any other substance subject always to:

19.19.3.1 the Association having agreed to cover the Member's liabilities together with the costs and expenses incidental thereto, in respect of such accidental escape or discharge under Rule 19.12 *Pollution*; and

19.19.3.2 any overall Limit of Liability in respect of such escape or discharge.

19.19.4 Other faults

Any other act, neglect or default of a Seafarer or other servant or agent of the Member in the course of their duties in respect of the Entered Ship and which, in the discretion of the Board (or, in the case of claims not exceeding USD2,000,000, the Committee), comes within the scope of the cover afforded by the Association.

19.19.5 PROVIDED ALWAYS THAT:

There shall be no recovery from the Association of a fine or other penalty nor of the costs and expenses relating thereto:

19.19.5.1 imposed for the overloading of an Entered Ship; or

19.19.5.2 imposed for illegal fishing (including the costs and expenses incurred in defending any allegation of illegal fishing); or

19.19.5.3 imposed for the infringement of regulations relating to safe navigation (including the maintenance of proper charts), unless the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) is satisfied that the Member had taken all reasonable steps to prevent the infringement which gave rise to the fine or other penalty; or

19.19.5.4 imposed for a criminal activity which the Member had knowledge of, recklessly disregarded, or failed to take reasonable steps to prevent; or

19.19.5.5 imposed for an infringement of MARPOL regulations where the Entered Ship's oily water separator or similar pollution prevention device has been bypassed or rendered inoperable.

19.19.5.6 involving the confiscation of an Entered Ship by reason of the infringement of any customs law or customs regulation unless the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in its discretion authorises the recovery, in whole or in part, by the Member of the Member's loss arising by reason of such confiscation.

19.19.5.6.1 The Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in exercising its discretion under proviso 19.19.5.6 above shall take account of the following:

19.19.5.6.1.1 the amount recoverable from the Association shall in no circumstances exceed the market value (without commitment) of the Entered Ship at the date of the confiscation;

19.19.5.6.1.2 the Member shall satisfy the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) that the Member took all reasonable steps to prevent the infringement which gave rise to the confiscation;

19.19.5.6.1.3 the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) will only consider authorising such a recovery after the Member has been permanently deprived of the Member's interest in the Entered Ship.

19.20 Legal Costs, Sue and Labour

19.20.1 Legal costs

Legal costs and expenses which a Member may incur in respect of any liability or expenditure against which the Member is insured under these Rules.

19.20.2 Sue and labour

Losses, costs and expenses necessarily incurred by a Member after an incident in order to avoid or reduce a liability or expenditure against which the Member is insured by the Association, even if such losses, costs and expenses would otherwise be excluded by these Rules. Administrative expenses incurred by a Member including the salary or retainer of any employee or third party shall be excluded.

19.20.3 Special direction

Losses, costs and expenses which a Member may be required to incur by special direction of the Association in cases in which the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) decides that it is in the interests of the Association that the direction be given, even if such losses, costs and expenses would otherwise be excluded by these Rules.

19.20.4 PROVIDED ALWAYS THAT:

- 19.20.4.1 no such losses, costs or expenses shall be recoverable unless either they have been incurred with the prior agreement of the Managers or the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall determine that such losses, costs and expenses were reasonably incurred;
- 19.20.4.2 unless otherwise agreed the costs and expenses incurred under Rule 19.20.1 shall be free of deductible and any losses, costs and expenses incurred under Rules 19.20.2 or 19.20.3 shall bear the same deductible as the liability or expenditure so avoided or reduced would have borne;
- 19.20.4.3 costs and expenses incurred in respect of a formal enquiry into a casualty involving an Entered Ship shall be recoverable to such extent only as the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may determine;
- 19.20.4.4 losses, costs and expenses arising from or related to ransom demands or extortion shall be recoverable only to such extent as the Board may determine.

19.21 Charterer's Entry

A Member may be insured against liabilities, together with costs and expenses incidental thereto, which may be incurred by reason of the Member's interest as charterer of a Ship or part thereof (other than a demise or bareboat charterer) in accordance with these Rules and the Member's *Certificate of Entry*.

Provided always that:

- 19.21.1 there shall be no recovery from the Association excess of the Limit of Liability; and
- 19.21.2 there shall be no recovery for loss of or damage to the Entered Ship in accordance with Rule 20.1.1 *Damage to the Entered Ship*.

19.22 Consortium P&I Cover

19.22.1 Consortium Claims

Where liability arises out of the carriage of cargo on a Consortium Vessel the claim shall be recoverable under these Rules as a Consortium Claim in accordance with the terms of the Pooling Agreement.

- 19.22.1.1 A claim shall be a Consortium Claim where:

19.22.1.1.1 it arises under the entry of a Ship (or any entered part of a Ship) in the Association under this Class; and

19.22.1.1.2 it arises out of the carriage of cargo on a Consortium Vessel; and

19.22.1.1.3 the Member (or any charterer affiliated to or associated with the Member coassured under the same entry) and the operator of the Consortium Vessel are parties to a "Consortium Agreement"; and

19.22.1.1.4 at the time the cover in respect of Consortium Claims attaches the Member employs a Ship entered in the Association pursuant to that Consortium Agreement.

19.22.1.2 For the purposes of a Consortium Claim the Consortium Vessel shall be treated as a ship entered in the Association on behalf of the Member under a Charterer's Entry.

19.22.2 Allocation of Consortium Claims

Where a Ship under an Owner's Entry and a Ship under a Charterer's Entry are both employed by the Member pursuant to a Consortium Agreement at the time of the event giving rise to the Consortium Claim occurs, the Consortium Claim of the Member shall for all purposes be treated as a claim arising in respect of the Owner's Entry of the Member.

19.22.3 Aggregation

19.22.3.1 Where the Member has more than one Entered Ship employed pursuant to the Consortium Agreement at the time the event giving rise to the Consortium Claim occurs, all such Entered Ships shall be deemed to be an entry (or, as the case may be, part entry) of one Entered Ship.

19.22.3.2 Where one or more ships of the Member is / are employed pursuant to the Consortium Agreement at the time the event giving rise to the "Consortium Claim" occurs and the Member has an entry in respect of any of those ships in more than one association being a party to the Pooling Agreement where "Consortium Claims" on each of the associations in respect of the Entered Ships arising from that event out of the carriage of cargo on one Consortium Vessel exceed the Limit of Liability, the "Consortium Claims" on all such associations shall be limited to such proportion of that amount as those Consortium Claims bear to the aggregate of the Consortium Claims on all the associations.

19.22.4 Exclusions

There shall be no recovery in respect of a Consortium Claim in respect of:

19.22.4.1 physical damage to the Consortium Vessel;

19.22.4.2 physical damage to equipment or containers owned by or leased to the Member on board the Consortium Vessel;

19.22.4.3 losses, liabilities, and the costs and expenses incidental thereto, otherwise excluded under these Rules.

19.22.5 Limit of liability

The limit of liability in respect of a Consortium Claim shall not exceed the Limit of Liability in the aggregate any one incident or occurrence under any and all entries of the Member in the Association and in any other association which is a party to the Pooling Agreement.

19.23 Risks Incidental to Ship Owning

Liabilities, costs and expenses incidental to the business of owning, operating, chartering or managing Ships which, in the discretion of the Board (or, in the case of claims not exceeding USD2,000,000, the Committee), come within the scope of the cover afforded by the Association, but only to the extent that the Board may decide that the Member should recover from the Association.

19.24 Special Cover

Subject always to the Articles of Association of the Association, and save insofar as expressly prohibited by these Rules, the Managers may agree that the Association will insure a Member against the risks specified in these Rules whether or not such risks arise in connection either with an Entered Ship or the operation of an Entered Ship (despite the provisions of Rule 3.1 *Extent of Cover*).

Provided always that:

19.24.1 the nature and extent of the risks and the terms of the cover shall have been expressly agreed in writing between the Member and the Managers.

19.25 Special Cover for Salvors

Without prejudice to the generality of Rule 19.24 *Special Cover* and in accordance with Rule 2.47.2 a Member may be insured against liabilities, together with costs and expenses incidental thereto, which may be incurred in connection with any salvage service or attempted salvage service provided to a ship by the Member or by any subcontractor of the Member or any of their respective servants or agents. The following may be covered:

19.25.1 Salvage ships

Liabilities, together with costs and expenses incidental thereto, arising in respect of the Member's interest in an Entered Ship out of events occurring during the period of entry of the Ship in the Association and in connection with the operation of the Ship.

19.25.2 Oil pollution

Liabilities, together with costs and expenses incidental thereto, caused by an escape or discharge of oil which occurs during such salvage services in accordance with the provisions of Rule 19.12 *Pollution*, whether or not they are in respect of a Member's interest in an Entered Ship (despite the provisions of Rule 3.1 *Extent of Cover*).

19.25.3 Salvors' liabilities

Liabilities, together with costs and expenses incidental thereto, caused by events occurring during such salvage services, and which are not covered under Rules 19.25.1 or 19.25.2 above, whether or not they are in respect of a Member's interest in an Entered Ship (despite the provisions of Rule 3.1 *Extent of Cover*).

19.25.4 PROVIDED ALWAYS THAT:

19.25.4.1 Specific cover

there shall be no recovery under this Rule unless cover has been specifically extended in writing by the Managers and the Member has paid or agreed to pay such additional Call or premium as may be required by the Association;

19.25.4.2 Risks covered

the cover given under this Rule 19.25 in connection with any salvage or attempted salvage service provided to a ship shall be in all respects the same as that given under Rule 19.1 to Rule 19.23 inclusive in respect of the operation of Entered Ships, save that in the case of cover given under Rules 19.25.2 or 19.25.3 the liability need not have been imposed or incurred in respect of an Entered Ship;

19.25.4.3 Contracts of indemnity or guarantee

there shall be no recovery in respect of any liability which would not have been incurred but for the provisions of a contract of indemnity or guarantee given by the Member or the Member's subcontractor, or any of their respective servants or agents, unless the Managers shall have approved such contract in advance and the Member has paid or agreed to pay such additional Call or premium as may be required by the Association (see Rule 19.15 *Contracts of Indemnity or Guarantee*);

19.25.4.4 Application for cover

it is a condition of every insurance under Rules 19.25.2 and 19.25.3 that the Member and each of the Member's Associated Companies, shall at the time when the Member's cover is afforded under this Rule and thereafter within 30 days before the beginning of each Policy Year, apply to enter for insurance in the Association every ship of which they are then in possession or control, being a ship used or intended to be used in connection with salvage operations, on terms that every such application may be accepted in respect of such one or more ships as the Managers may in their discretion determine.

19.26 Special Cover for Extended Through Transit Risks

Without prejudice to the generality of Rule 19.24 *Special Cover* and in accordance with Rule 2.47.2 a Member may be insured against liabilities, together with costs and expenses incidental thereto, arising out of the carriage of any cargo or container by or on behalf of a Member. The following may be covered on such terms as may be agreed in writing by the Managers:

19.26.1 Injury, illness or death

Compensation and damages for which the Member is liable which are payable by reason of the injury to, illness of or death of any person, other than a Seafarer, Passenger or any person on board the Entered Ship.

19.26.2 Damage to property

Liability of the Member for loss of or damage to any fixed or moveable property whatsoever (not being cargo or other property carried in the Entered Ship).

19.26.3 PROVIDED ALWAYS THAT:

- 19.26.3.1 there shall be no recovery under this Rule for liabilities arising out of the carriage of any cargo or container while it is on board the Entered Ship; and
- 19.26.3.2 the cargo or container, as the case may be, is intended to be or has been carried on an Entered Ship, including one entered by virtue of Rule 19.21 *Charterer's Entry*; and
- 19.26.3.3 the liability does not arise out of the terms of a contract of indemnity or guarantee between the Member and a third party (See Rule 19.15 *Contracts of Indemnity or Guarantee*); and
- 19.26.3.4 the liability does not fall within the terms of Rule 19.17 *Cargo*; and
- 19.26.3.5 there shall be no recovery under this Rule for loss of or damage to any ship and/or water borne conveyance in which the cargo or container is carried; and
- 19.26.3.6 there shall be no recovery under this Rule for liabilities arising out of the carriage of the container itself.

Section IV Exclusions, Limitations and Warranties

RULE 20 RISKS SPECIFICALLY EXCLUDED

20 Risks Specifically Excluded

20.1 There shall be no recovery from the Association, except as otherwise provided in this Rule, in respect of:

20.1.1 Damage to the Entered Ship

Loss of, or damage to, the Entered Ship or any part thereof or losses as a result of the confiscation of the Entered Ship as may be agreed to be recoverable by the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in the exercise of its discretion under Rule 19.19.5.6 of Rule 19.19 *Fines*.

20.1.2 Equipment

Loss of, or damage to, any equipment on board the Entered Ship or any containers, lashings, stores, spares or fuel thereon to the extent that the same are owned or leased by the Member or by any Associated Company of the Member or by any company under the same management as the Member.

20.1.3 Repairs to the Entered Ship

The cost of repairs to the Entered Ship or of cleaning any part of the Entered Ship, or any charges or expenses in connection therewith, other than such as may be covered under Rule 19.12 *Pollution*, or Rule 19.18 *General Average*.

20.1.4 Cargo and freight

Loss of or damage to, or liabilities arising in respect of, cargo intended to be, or being, or having been carried in the Entered Ship or loss of freight or hire relating to the Entered Ship, or any proportion thereof, unless such loss, damage or liability forms part of the measure of damages or expenditure paid by the Member and recoverable under Rule 19.9.3 *Collision liability to cargo*, Rule 19.17 *Cargo* or Rule 19.18.2 *Unrecoverable general average contribution*.

20.1.5 Pollution

Losses or liabilities arising as the result of an escape or discharge or threatened escape or discharge of oil or any other substance other than in accordance with Rule 19.12 *Pollution*.

20.1.6 Salvage

Salvage of an Entered Ship or services in the nature of salvage provided to an Entered Ship and any costs and expenses in connection therewith other than such as may be covered under Rule 19.8 *Life Salvage*, Rule 19.12.5 *Salvors' special compensation* or Rule 19.18 *General Average*.

20.1.7 Charterparties

Loss arising out of breach of or cancellation of a charter or other engagement of an Entered Ship, other than such as may relate to cargo liabilities under Rule 19.17 *Cargo*, general average under Rule 19.18 *General Average* or loss of charterers' property on board the Entered Ship under Rule 19.10.7 *Other property losses*.

20.1.8 Road vehicles

Liabilities which a Member may incur as the owner or operator of a road vehicle.

20.1.9 Employers' liability

The breach of any obligation to an employee (other than a Seafarer) owed by a Member as an employer.

20.1.10 Bad debts

Loss arising out of irrecoverable debts or out of the insolvency of any person.

20.1.11 Fraud

Loss arising out of the fraud of agents, or of an Associated Company or of employees of the Member acting as an agent, unless the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall, in its discretion, otherwise determine.

20.1.12 Demurrage and delay

Claims relating to demurrage on or detention of an Entered Ship.

20.1.13 Towing and salvage

Liabilities arising out of the towing, salvage or wreck removal by an Entered Ship of any other ship or object save where such towing, salvage or wreck removal was necessary for the purpose of saving or attempting

to save life at sea, unless such liabilities are covered under the terms of Rule 19.14.2 *Towage by an Entered Ship* or Rule 19.25 *Special Cover for Salvors*.

20.1.14 Carriage of through transit cargo

Losses or liabilities arising out of the carriage of cargo by a means of transport other than the Entered Ship, when the cargo is carried under a contract of through carriage, unless and to the extent that cover has been agreed under Rule 19.17.4 *Through transit* or Rule 19.26 *Special Cover for Extended Through Transit Risks*.

20.1.15 Diving

Losses or liabilities arising out of the activities of professional or commercial divers where the Member is responsible for such activities, unless:

- 20.1.15.1 cover has been extended in respect of such operations under the terms of Rule 19.25 *Special Cover for Salvors*; or
- 20.1.15.2 the activities are incidental to and carried out in relation to the inspection, repair or maintenance of the Entered Ship or in relation to damage caused by the Entered Ship; or
- 20.1.15.3 the activities are recreational.

20.1.16 PROVIDED ALWAYS THAT:

the foregoing exceptions 20.1.1 to 20.1.15 shall not apply to losses, costs and expenses incurred under Rule 19.20 *Legal Costs, Sue and Labour* either to avoid or reduce a liability or expenditure or by the special direction of the Association.

20.2 Sanctions Exclusion

Losses or liabilities where the provision of cover or a payment by the Association in respect thereof may expose the Association or the Managers to the risk of being subject to any Sanction, penalty, prohibition or any adverse action by a state, international or supranational organisation or other competent authority.

RULE 21 EXCLUSION OF CERTAIN SPECIALIST RISKS

21 Exclusion of Certain Specialist Risks

21.1 There shall be no recovery from the Association in respect of any claim relating to liabilities, costs and expenses of an Entered Ship which is:

21.1.1 Salvage tugs

a salvage tug or other Ship used or intended to be used for salvage or wreck removal operations, when the claim arises as a result of any salvage and/or wreck removal service or attempted salvage and/or wreck removal service, unless cover has been specifically extended for such operations under Rule 19.25 *Special Cover for Salvors*.

21.1.2 Heavy lift ships

a semi-submersible heavy lift ship or other ship designed exclusively for the carriage of heavy lift cargo where the claim arises out of the loss of or damage to or wreck removal of cargo, unless the cargo is being carried under a contract on HEAVYCON terms or any other contract approved by the Managers in writing.

21.1.3 Drilling and production operations

used for drilling, core sampling, or production operations in connection with oil or gas exploration or production when the claim arises out of or during such operations. 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.

21.1.4 Storage ships

used for the storage of oil when either:

- 21.1.4.1 oil is transferred directly from a producing well to the Ship and the claim arises out of or during such transfer; or
- 21.1.4.2 the Ship has oil and gas separation equipment on board and gas is being separated from oil while on board (other than by natural venting) and the claim arises out of or during such separation.

21.1.5 Waste ships

used for waste incineration or waste disposal operations, when the claim arises out of those operations.

21.1.6 Entertainment ships

moored on a permanent basis open to the public as a hotel, restaurant, bar or other place of entertainment, when the claim arises in respect of hotel or restaurant guests or other visitors or the catering crew of the Ship.

21.1.7 Underwater operations

used as or in connection with the operation of a submarine, mini-submarine, diving bell, or remotely operated underwater vehicle.

21.1.8 Specialist operations

used for dredging, blasting, pile-driving, well-intervention, cable or pipe-laying, construction, installation or maintenance work, core sampling, mining, depositing of spoil, and power generation and decommissioning, and such other operations as may be determined by the Managers from time to time, to the extent that such liabilities, costs and expenses arise as a consequence of:

21.1.8.1 claims brought by any party for whose benefit the work has been performed, or by any third party (whether connected with any party for whose benefit the work has been performed or not); or

21.1.8.2 the failure to perform such specialist operations by the Member or the fitness for purpose or quality of the Member's work, products or services; or

21.1.8.3 any loss of or damage to the contract work.

Provided always that:

21.1.8.4 to the extent that the Member has cover in accordance with these Rules, the exclusion in this Rule 21.1.8 shall not apply to liabilities, costs and expenses incurred by a Member in respect of:

21.1.8.4.1 loss of life, injury or illness of crew and other personnel on board the Entered Ship;

21.1.8.4.2 the wreck removal of the Entered Ship;

21.1.8.4.3 oil pollution emanating from the Entered Ship or the threat thereof.

21.1.8.5 Special Cover may be agreed between the Member and the Managers under Rule 7 *Special Insurances*.

RULE 22 IMPRUDENT TRADING

22 Imprudent Trading

The Association shall not insure a Member against any liabilities, costs or expenses arising out of or consequent upon an Entered Ship carrying contraband, blockade running, or being employed in an unlawful trade, or performing any voyage or being employed in any trade if the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) having regard to all the circumstances shall be of the opinion that the nature of the carriage, trade or voyage in which the Ship was engaged was imprudent, unsafe, unduly hazardous or improper.

RULE 23 EXCLUSION OF NUCLEAR RISKS

23.1 General Exclusion of Nuclear Risks

Unless otherwise agreed in writing there shall be no recovery from the Association in respect of any liabilities, costs or expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or the Member's servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or cost or expense is incurred, was directly or indirectly caused by or arises from:

- 23.1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- 23.1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- 23.1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- 23.1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.
- 23.1.5 PROVIDED ALWAYS THAT:
 - 23.1.5.1 this exclusion shall not apply to liabilities, costs or expenses arising out of the carriage of "excepted matter" (as defined in the *Nuclear Installations Act 1965* of the United Kingdom or any regulation made thereunder) as cargo on an Entered Ship and agreed by the Managers in writing.

23.2 Certificates

Notwithstanding the exclusions in Rule 23.1 *General Exclusion of Nuclear Risks* the Association will discharge on behalf of the Member liabilities, costs and expenses arising under a demand made pursuant to the issue by the Association on behalf of the Member of:

- 23.2.1 a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of *US Public Law 89-777*, and/or
- 23.2.2 a certificate issued by the Association in compliance with Article VII of the *International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992* or any amendments thereto, and/or
- 23.2.3 an undertaking given by the Association to the International Oil Pollution Compensation Fund 1992 in connection with STOPIA or, except where such liabilities, costs or expenses arise from or are caused by an act of terrorism, TOPIA, and/or
- 23.2.4 a certificate issued by the Association in compliance with Article 7 of the *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001*, and/or
- 23.2.5 a non-war certificate issued by the Association in compliance either with Article 4 bis of the *Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974* and the *Protocol* thereto of 2002 and Guidelines for its implementation or *Regulation (EC) No. 392/2009 of the European Parliament and of the Council* which gives effect thereto, and/or
- 23.2.6 a certificate issued by the Association in compliance with Article 12 of *The Nairobi International Convention on the Removal of Wrecks, 2007*
- 23.2.7 PROVIDED ALWAYS THAT:
 - 23.2.7.1 the Member shall indemnify the Association to the extent that any payment under any such guarantee, undertaking or certificate 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 risks policy or other policies of insurance had the Member complied with the terms and conditions thereof, and
 - 23.2.7.2 the Member agrees that:
 - 23.2.7.2.1 any payment by the Association under any such guarantee, undertaking or certificate 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
 - 23.2.7.2.2 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.

RULE 24 EXCLUSION OF RISKS COVERED BY HULL POLICIES

24 Exclusion of Risks covered by Hull Policies

Unless otherwise agreed in writing, the Association shall not, except only as provided by Rule 19.9.1 *Collision clause* and

19.9.2 *Excess collision*, Rule 19.10.3 *Excess liabilities* and Rule 19.18.1 *Ship's proportion of general average*, insure a Member to any extent whatsoever against any of the risks, liabilities, costs or expenses against which the Member would be insured if the Entered Ship were fully insured under Hull Policies on terms not less wide than those of the *Lloyd's Marine Policy MAR Form 1/1/82* with the *Institute Time Clauses – Hulls 1/10/83* attached and with no deductible or franchise applicable to claims under those policies.

RULE 25 EXCLUSION OF WAR RISKS

25.1 General Exclusion of War Risks

Unless otherwise agreed in writing there shall be no recovery from the Association against any liabilities, costs or expenses (irrespective of whether a contributory cause of any liability, cost or expense being incurred was negligence on the part of the Member or of the Member's servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or cost or expense is incurred was caused by:

25.1.1 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;

Provided always that:

25.1.1.1 in the event of any dispute as to whether or not any act constitutes an act of terrorism the decision of the Board shall be final.

25.1.2 capture, seizure, arrest, restraint or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat;

25.1.3 mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war

Provided always that this exclusion shall not apply to liabilities, costs and expenses which arise solely by reason of:

25.1.3.1 the transport of any such weapons whether on board the Entered Ship or not, or

25.1.3.2 the use of such weapons, either as a result of government order or with the agreement in writing of the Managers or the Board, where the reason for such use is the avoidance or mitigation of liabilities, costs or expenses which would otherwise fall within the cover given by the Association.

25.2 Provision of Cover for War Risks

Where the Association has agreed in writing to provide cover against any or all of the risks set out in Rule 25.1 above such cover shall be subject to such terms and conditions as may have been agreed between the Member and the Managers including any war risks clause endorsement applicable to the *Certificate of Entry*. The Association shall have the power to declare Prohibited Areas; which

25.2.1 may at any time and from time to time be changed by the Association giving seven days' notice of such change;

25.2.2 shall automatically extend to all countries, zones, areas, ports and places upon:

25.2.2.1 the hostile detonation of a nuclear device,

25.2.2.2 the outbreak of war between any of the following countries:

United Kingdom

United States of America

France,

The Russian Federation

The People's Republic of China

25.2.2.3 requisition either for title or use of the Entered Ship,

and there shall be no cover in respect of the event giving rise to such automatic extension.

25.3 Certificates

Notwithstanding the exclusions in Rule 25.1 *General Exclusion of War Risks* the Association will discharge on behalf of the Member liabilities, costs and expenses arising under a demand made pursuant to the issue by the Association on behalf of the Member of:

- 25.3.1 a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of *US Public Law 89-777* and/or
- 25.3.2 a certificate issued by the Association in compliance with Article VII of the *International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992* or any amendments thereto, and/or
- 25.3.3 an undertaking given by the Association to the International Oil Pollution Compensation Fund 1992 in connection with STOPIA or, except where such liabilities, costs or expenses arise from or are caused by an act of terrorism, TOPIA, and/or
- 25.3.4 a certificate issued by the Association in compliance with Article 7 of the *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001* and/or
- 25.3.5 a certificate issued by the Association in compliance with Article 12 of *The Nairobi International Convention on the Removal of Wrecks, 2007* and/or
- 25.3.6 a certificate issued by the Association in compliance with MLC 2006
- 25.3.7 PROVIDED ALWAYS THAT:
 - 25.3.7.1 the Member shall indemnify the Association to the extent that any payment under any such guarantee, undertaking or certificate 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 risks policy had the Member complied with the terms and conditions thereof, and
 - 25.3.7.2 the Member agrees that:
 - 25.3.7.2.1 any payment by the Association under any such guarantee, undertaking or certificate 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
 - 25.3.7.2.2 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.

RULE 26 OTHER INSURANCES

26.1 Double Insurance

Unless the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall, in its discretion, otherwise determine there shall be no contribution by the Association to liabilities, costs or expenses recoverable under any other insurance or which would have been so recoverable:

- 26.1.1 apart from any terms in such other insurance excluding or limiting liability on the ground of double insurance; and
- 26.1.2 if the Ship had not been entered in the Association with cover against the risks set out in these Rules.

26.2 Certification

Where a Member has provided evidence of financial responsibility to any authority in respect of any liability, cost or expense, or potential liability, cost or expense, by producing to that authority evidence of insurance other than evidence of insurance under these Rules, there shall be no contribution by the Association to the Member or to any other person in respect of such liability, cost or expense.

- 26.2.1 PROVIDED ALWAYS THAT this Rule may be waived either:
 - 26.2.1.1 by prior agreement with the Association in writing or,
 - 26.2.1.2 if the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in its discretion so decides.

RULE 27 LIMITATION OF LIABILITY

27.1 General Limitation

Subject to these Rules and to any special terms and conditions on which a Ship may be entered, the Association insures the liability of a Member in respect of an Entered Ship as this liability may ultimately be determined and fixed

by law, including any laws pertaining to limitation of liability. The Association shall in no circumstances be liable for any sum in excess of such legal liability. If the Ship is entered for less than its Full Tonnage the liability of the Association shall be limited to the proportion that the Entered Tonnage of the Ship bears to the Full Tonnage.

27.2 Limit of Liability

The Association shall in no circumstances be liable for any sum in excess of the Limit of Liability:

27.2.1 as set out in or provided in accordance with these Rules, including Rule 27.1 *General Limitation*; or

27.2.2 as may be advised by the Association by Policy Year circular; or

27.2.3 as set out in the Member's *Certificate of Entry*

whichever is the lowest.

27.3 Passengers and Seafarers

27.3.1 For the purposes of this Rule 27.3 and the provisos hereto, and without prejudice to any other provision of these Rules, a "Passenger" shall mean a person carried onboard a ship 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 "Seafarer" shall mean any other person on board a ship who is not a Passenger.

27.3.2 Unless otherwise limited to a lesser sum, the Association's aggregate liability in respect of any one Entered Ship for losses, liabilities, and the costs and expenses incidental thereto, shall not exceed:

27.3.2.1 USD2,000,000,000 any one event in respect of Passengers; and

27.3.2.2 USD3,000,000,000 any one event in respect of Passengers and Seafarers.

27.3.3 PROVIDED ALWAYS THAT:

Where an Entered Ship is also separately insured on behalf of any person (other than a charterer who is not a demise or bareboat charterer) by the Association and/or by any other association which participates in the Pooling Agreement:

27.3.3.1 the aggregate amount in respect of Passengers recoverable from the Association and/or such other associations shall not exceed the Limit of Liability any one event; and the liability of the Association shall be limited to such proportion of that sum as the amount recoverable in respect of Passengers from the Association bears to the aggregate of all such amounts otherwise recoverable in respect of Passengers from the Association and all such other associations;

27.3.3.2 the aggregate amount in respect of Passengers and Seafarers recoverable from the Association and/or such other associations shall not exceed the Limit of Liability any one event and the liability of the Association shall be limited:

27.3.3.2.1 where liability in respect of Passengers has been limited to USD2,000,000,000 in accordance with proviso 27.3.3.1 to such proportion of the balance of USD1,000,000,000 as the amount recoverable in respect of Seafarers bears to the aggregate of all such claims otherwise recoverable in respect of Seafarers from the Association and all such associations; and

27.3.3.2.2 in all other cases, to such proportion of USD3,000,000,000 as the amounts recoverable in respect of Passengers and Seafarers bear to the aggregate of all such claims otherwise recoverable from the Association and all such associations.

27.3.4 Where liabilities to Passengers include liabilities arising under a non-war certificate issued by the Association in compliance with either Article 4 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 this Rule 27.3:

27.3.4.1 the Managers may in their absolute discretion, until the Certified Liabilities, or such part of the Certified Liabilities as the Managers may decide, have been discharged, defer payment of a claim in respect of other liabilities to Passengers or any part thereof; and

27.3.4.2 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 Member shall indemnify the Association in respect of such payment.

27.4 Prioritisation of Liabilities

27.4.1 Where:

27.4.1.1 the Association has issued any guarantee, undertaking or certificate as referred to in Rule 23.2 and Rule 25.3 or other bail or security in accordance with Rule 31.5.1 under which it undertakes directly to discharge or guarantee any relevant liabilities (together the *Direct Liabilities*); and

27.4.1.2 claims in respect of *Direct Liabilities* alone or in combination with other claims may in the opinion of the Managers exceed and limit(s) on the cover provided by the Association as set out in the Rules or in the *Certificate of Entry*;

then payment of any such other claims or any part thereof may in the absolute discretion of the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) be deferred until the *Direct Liabilities*, or such parts of the *Direct Liabilities* as the Board (or, in the case of *Direct Liabilities* not exceeding USD2,000,000, the Committee) may in their absolute discretion determine, have been discharged.

27.4.2 To the extent any claims or liabilities (including *Direct Liabilities*) discharged by the Association exceed the limit(s) any payment by the Association in respect thereof shall be by way of loan and the Member shall indemnify the Association promptly upon demand in respect of such payment and shall assign to the Association to the extent and on the terms that the Association determines in its discretion to be practicable all the rights of the Member under any other insurance and against any third party.

RULE 28 CLASSIFICATION AND CONDITION OF SHIPS

28.1 Classification

Every Member warrants that every Ship entered by the Member for insurance in this Class is and shall remain throughout the period of entry fully classed with a classification society approved by the Managers and that throughout such period the Member will fully and timely comply with all the rules, recommendations and requirements of such society relating to the Entered Ship.

Provided always that:

28.1.1 the Board may in its discretion waive compliance with this warranty for such periods and on such terms as it thinks fit.

28.2 Change of Classification

Any change of classification or classification society shall forthwith be notified to the Managers in writing, together with all outstanding recommendations, requirements or restrictions specified by any classification society as at the date of such change.

28.3 Information from the Member

Where required by the Managers it is a condition precedent to the Member's right of recovery from the Association that the Member shall first have provided to the Managers an assurance that the Entered Ship's class has been maintained, as well as a list of recommendations, requirements or restrictions specified by any classification society and where any periodic docking survey or any special survey of hull, machinery or equipment is overdue, a statement as to whether or not an extension has been permitted by the classification society. If the Managers so require, such information shall be certified by the classification society.

28.4 Statutory Requirements

Every Member

28.4.1 shall comply with all the statutory requirements of the state of the Ship's flag relating to the construction, adaptation, condition, fitment, equipment, manning and loading of the Entered Ship; and

28.4.2 must at all times maintain the validity of any statutory certificates which are required and issued by or on behalf of the state of the Ship's flag.

28.4.3 PROVIDED ALWAYS THAT:

the Board may in its discretion waive compliance with this Rule for such periods and on such terms as it

thinks fit.

28.5 Information from the Classification Society

Should the Association wish to approach the classification society directly for information, the Member will provide the necessary authorisation.

28.6 Survey before Entry or Re-Entry

The Managers may as a condition of entry or re-entry of a Ship in the Association require the Member or prospective Member to submit the Ship to survey by a surveyor appointed by the Managers. The Managers in their discretion may require the Member or prospective Member to bear the expense of such survey. In the light of such survey the Managers may:

- 28.6.1 refuse the entry or re-entry of the Ship; or
- 28.6.2 refuse the entry or re-entry of the Ship until repairs or other action recommended by the surveyor have been carried out to the satisfaction of the Managers within any time limit prescribed by the Managers; or
- 28.6.3 accept the entry or re-entry of the Ship on such special terms as the Managers may in their discretion decide.

28.7 Ship Management Appraisal

Without prejudice to any warranties or other duties and obligations imposed on a Member under these Rules or the general law, the Managers may at any time and from time to time require a Member to undergo an appraisal of the management systems ashore or on board Ship relating to the operation of Ships managed or operated by the Member by a surveyor appointed by the Managers on a date and at a place agreed between the Member and the Managers and within such time limit as may be specified by the Managers. The Managers may in their discretion require the Member to bear the expense of such appraisal or they may treat it as an expense reimbursable by the Association under Rule 19.20 *Legal Costs, Sue and Labour*. In the light of such appraisal or in the event of failure by the Member to undergo such appraisal within the time limit specified by the Managers, the Managers shall have the power, in their discretion to:

- 28.7.1 terminate the entry of all Ships entered by the Member forthwith; or
- 28.7.2 amend, vary or impose special terms on the terms of entry of Ships entered by that Member with immediate effect in such manner as they think fit, including the exclusion of all or part of the risks specified in Rule 19 *Risks Covered* for such time or period as they may specify.

Provided always that:

- 28.7.2.1 if the Member does not accept such amendment, variation or condition the Member shall have the option of withdrawing the entry of the Member's Ships forthwith.

28.8 Condition Survey

Without prejudice to any warranties or other duties and obligations imposed on a Member under these Rules or the general law, the Managers may at any time and from time to time require a Member to submit the Member's Entered Ship to survey by a surveyor appointed by the Managers on a date and at a place agreed between the Member and the Managers and within such time limit as may be specified by the Managers. The Managers may in their discretion require the Member to bear the expense of such survey or they may treat it as an expense reimbursable by the Association under Rule 19.20 *Legal Costs, Sue and Labour*. In the light of such survey or in the event of failure by the Member to submit the Entered Ship to such survey within the time limit specified by the Managers, the Managers shall have the power, in their discretion, to:

- 28.8.1 terminate the entry of the Ship forthwith; or
- 28.8.2 amend, vary or impose special terms on the terms of entry of the Ship with immediate effect in such manner as they think fit, including the exclusion of all or part of the risks specified in Rule 19 *Risks Covered* for such time or period as they may specify.

Provided always that:

- 28.8.2.1 if the Member does not accept such amendment, variation or condition the Member shall have the option of withdrawing the Member's entry of the Ship forthwith.

28.9 Disclosure of Surveys

Every Member or prospective Member:

- 28.9.1 consents to and authorises the disclosure by the Managers to any association which is a party to the Pooling Agreement any survey of a Ship made under Rule 28.6 *Survey before Entry or Re-Entry* or Rule 28.8 *Condition Survey*; and
- 28.9.2 waives any rights or claims against the Association or the Managers of whatsoever nature arising in respect of or relating to the contents of or opinions expressed in any survey so disclosed.
- 28.9.3 PROVIDED ALWAYS THAT:
 - 28.9.3.1 such survey may only be disclosed to another association when an application for entry of such Ship is made thereto; and
 - 28.9.3.2 the disclosure of the survey shall be for the limited purpose only of that association considering an application to enter such Ship for insurance.

28.10 Right of Adjudication

If any difference or dispute between a Member and the Managers shall arise concerning the actions taken by the Managers under this Rule 28, the Member shall have the right to refer the matter to adjudication by the Board under Rule 44 *Disputes and Differences*. Pending such adjudication, any such action taken by the Managers shall bind the Member.

28.11 Obligation of Member

Notwithstanding the provisions of this Rule 28 nothing shall relieve the Member of the Member's obligation to keep the Member's Entered Ship at all times in a proper condition. Any recommendations or observations of a surveyor acting under any part of this Rule shall be treated as within the actual knowledge of the Member. Any failure by the Member to implement the said recommendations shall entitle the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) in its discretion to refuse, in whole or in part, a claim for recovery from the Association in respect of any incident whatsoever occurring after such recommendations have been made.

RULE 29 BYELAWS

29.1 Power to Pass Byelaws

The Board shall have power to pass byelaws ordering and prescribing the conditions and/or the form of contracts of carriage generally, or for use in any particular trade, or for any particular port or place.

29.2 Recommendations

The Board may also recommend the use of any particular form of contract of carriage in any particular trade. Members whose Ships are engaged in such trades shall endeavour to use the appropriate form of contract of carriage when the circumstances of the fixture or engagement of such Ships permit.

29.3 Notice

Notice shall be sent by the Managers to all Members upon the passing of any such byelaw or issue of such recommendation. The byelaw or recommendation shall come into operation on the date stated in the notice and shall thereupon be assumed to be incorporated in these Rules and shall be included in, or with, every copy of these Rules issued by the Association as soon as may be conveniently possible. If a Member shall commit a breach of such byelaw the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may reject or reduce any claim made by the Member to the extent to which it would not have arisen if the Member had complied with the byelaw and the burden of proving in each case that the claim (or portion thereof) could not have been avoided by such a compliance shall be on the Member. The Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may further impose such terms upon the Member as it may think fit as a condition of the continuance of the entry of the Member's Ship or Ships in this Class.

Section V Claims

RULE 30 OBLIGATION OF THE MEMBER IN RESPECT OF CLAIMS

30.1 Notice

Every Member shall be bound to give prompt notice in writing to the Managers of every incident likely to give rise to a claim under these Rules and of any legal or arbitration proceedings commenced against the Member. The Member shall furnish the Managers as soon as reasonably possible thereafter with all documents or information relevant thereto.

30.2 Mitigation of Loss

Upon the occurrence of any incident which may give rise to a claim under these Rules, the Member shall take such steps as at the time shall appear proper for the purpose of averting or minimising any loss, damage, expense or liability in respect of which the Member may be insured under these Rules.

30.3 Information

A Member must at all times promptly notify the Managers of any information, documents or reports in the Member's or the Member's agents' possession or knowledge relevant to any incident referred to under Rule 30.1 *Notice* above. Further the Member shall, whenever so requested by the Managers, give the Association or its representatives free access to such information, documents or reports with liberty to inspect and copy the same. Such free access shall include the right to conduct a survey, or to interview any officer, servant or agent of the Member who may in the opinion of the Association be in possession of information relevant to the said incident.

30.4 Time Limit for Notice

Every claim against the Member in respect of an incident referred to in Rule 30.1 *Notice*, above, shall be notified to the Association as soon as possible, but in no case later than 12 months after the Member has received notice that the claim is being, or may be, made against the Member in respect of such incident. The Member shall give notice to the Association in writing of the commencement of any legal or arbitration proceedings against the Member as soon as possible, but in no case later than 30 days after the Member has received service of the said proceedings.

30.5 Time Limit for Reimbursement

All requests by a Member for reimbursement of any losses, costs or expenses recoverable from the Association under these Rules and the *Certificate of Entry* must be made to the Association within 12 months of the incurring of the loss or the payment of the cost or expense by the Member.

RULE 31 POWERS OF THE MANAGERS RELATING TO THE HANDLING AND SETTLEMENT OF CLAIMS

31.1 Control of Claims

The Managers shall have the right, if they so decide, to control or direct the conduct of any claim or legal or other proceedings relating to any matter which may result in loss, damage, expense or liability in respect of which the Member is or may be insured under these Rules and the *Certificate of Entry* and to require the Member to settle, compromise or otherwise dispose of such claim or proceedings in such manner and on such terms as the Managers see fit.

31.2 Refusal to follow Requirements of Managers

If the Member does not settle, compromise or dispose of a claim or proceedings in accordance with the requirements of the Managers under Rule 31.1 *Control of Claims*, any eventual recovery by the Member in respect of such claim or proceedings from the Association shall be limited to the amount the Member would have recovered if the Member had acted as required by the Managers.

31.3 Abandonment

In the event of an Entered Ship becoming an actual or constructive total loss, the Association shall, subject to the hull insurers' rights in the matter, be entitled to request the Member concerned to abandon the Ship to the Association or to such other person (including the world at large) as the Association shall nominate. If the Member concerned does not abandon the Ship having received such a request from the Association, the Association shall not be responsible for any claim that could have been avoided had the Member abandoned the Ship as aforesaid, and the burden of

proving that the claim could not have been avoided by such abandonment shall be upon the Member.

31.4 Appointment of Experts

- 31.4.1 Without prejudice to any other provision of these Rules and without waiving any of the Association's rights hereunder, the Managers may at any and all times appoint on behalf of the Member, on such terms as the Managers may think fit, lawyers, surveyors or other persons with a view to advising the Managers on investigating or dealing with any matter which may result in loss, damage, expense or liability in respect of which the Member is or may be insured under these Rules, including taking or defending legal or other proceedings in connection therewith. The Managers may also at any time discontinue such employment if they think fit.
- 31.4.2 All lawyers, surveyors or other persons appointed by the Managers on behalf of the Member, or appointed by the Member with the prior consent of the Managers, shall at all times be and be deemed to be appointed and employed on the terms:
- 31.4.2.1 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 Association in connection with the matter without prior reference to the Member and to produce to the Association without prior reference to the Member any documents or information in their possession or power relating to such matter, all as if such person had been appointed to act and had at all times been acting on behalf of the Association;
- 31.4.2.2 that any advice they may give to the Member is that of an independent contractor employed by the Member and shall in no way bind the Association.

31.5 Bail

- 31.5.1 The Association is under no obligation to provide bail or other security on behalf of any Member, but where the same is provided it shall be on such terms as the Managers may consider appropriate and shall not constitute any admission of liability by the Association for the claim in respect of which the bail or other security is given. In no case shall cash deposits be made by the Association.
- 31.5.2 It shall be a condition of the provision of bail or other security on behalf of any Member, that the Member shall indemnify the Association for any costs associated with the provision of such bail or other security and for any liability the Association may incur to a third party under or in connection with such bail or other security.
- Provided always that:
- 31.5.2.1 the indemnity shall not extend to those amounts that the Member would have been entitled to recover from the Association under these Rules had the Member paid them directly.

31.6 Recovery of Costs

Insofar as costs are covered under these Rules, the Association shall be entitled to any sum which the Member recovers in respect of such costs pursuant to any award, judgment or settlement agreement. If any claims, disputes or proceedings are settled or compromised for a lump sum which includes costs recoverable from any other party, or without any or adequate provision as to the payment of such costs, then in any of those events the Association shall be entitled to recover from the Member such reasonable sum as the Managers may in their sole discretion determine as being attributable to costs.

RULE 32 POWERS OF THE BOARD AND THE COMMITTEE RELATING TO THE SETTLEMENT OF CLAIMS ON THE ASSOCIATION

32.1 Agreement of Claims

The Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall meet as often as may be required for settlement of claims which shall be paid by the Association as the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may determine in accordance with these Rules, but the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall have power from time to time to authorise the Managers to effect payment of claims without prior reference to the Board (or, in the case of claims not exceeding USD2,000,000, the Committee). No Director shall sit on the Board and no Representative shall sit on the Committee

while it is engaged in the settlement of any claim in which the Director or Representative is interested.

32.2 Power of the Board and the Committee in respect of Claims

Without prejudice to any other provisions of these Rules the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) shall have power in its discretion to reject a claim or reduce the sum payable by the Association in respect thereof, if:

- 32.2.1 in the opinion of the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) the Member making the claim has not taken such steps before, at the time of, or after the incident or events giving rise to the claim, to protect the Member's interests as the Member should have done or as the Member would have done if the Member had not been insured in this Class;
- 32.2.2 the Ship in respect of which the claim is submitted has ceased before the incident which gave rise to the claim to be fully classed by a classification society approved by the Managers or if the Member has failed fully and timely to comply with all the rules, recommendations and requirements of such society and the Member has failed to give notice of this cesser or failure to the Managers;
- 32.2.3 the Member has failed fully to comply with the recommendations of a surveyor appointed by the Managers under Rule 28 *Classification and Condition of Ships*;
- 32.2.4 the claim shall have been settled, or any liability shall have been admitted, by or on behalf of, the Member without the prior consent in writing of the Managers;
- 32.2.5 the Member failed to comply with a recommendation or directive made at any time by the Board, the Committee or the Managers to the Member, in connection with the handling or settlement of the claim or potential claim;
- 32.2.6 the Member shall have failed to comply with any of the Member's obligations under Rule 30 *Obligation of the Member in respect of Claims*.

32.3 Interest

Save only as provided in Rule 3.5 *Insurance Act 2015* a Member shall not be entitled to be paid interest on the Member's claim against the Association.

Section VI Cesser of Insurance

RULE 33 CESSER OF ALL INSURANCES

33 Cesser of All Insurances

A Member shall cease to be insured by the Association in respect of all Ships entered by the Member upon the happening of any of the following events:

33.1 Failure to Pay

If, having failed to pay when due and demanded by the Managers any sum due from the Member to the Association, the Member is served with a notice by or on behalf of the Managers or the Association requiring the Member to pay such sum and the Member fails to pay such sum in full on, or before, the date specified in such notice.

33.2 Failure of Individual

If, being an individual, the Member shall die, or shall become of unsound mind or otherwise mentally unfit, shall become bankrupt or shall make any arrangement or composition with the Member's creditors generally.

33.3 Failure of Corporation

If, being a corporation, an effective resolution is passed for voluntary winding up or it applies to the court to be wound up or an order is made by the court for its compulsory winding up or it is dissolved or upon the appointment of a receiver or manager in respect of all or part of the corporation's business or upon possession being taken of any property of the corporation under the provisions of a charge secured upon that property or upon its entering into or becoming subject to any composition or arrangement with its creditors or upon its commencing or being the subject of any proceedings before a court, arbitration tribunal, dispute resolution body or equivalent, of competent jurisdiction under any bankruptcy or insolvency laws to seek protection from its creditors or to re-organise its affairs.

33.4 Sanctions

If, by virtue of any Sanction, prohibition or any adverse action by a state, international or supranational organisation or other competent authority, the Association is prohibited from insuring the Member.

RULE 34 CESSER OF SHIP ENTRY

34 Cesser of Ship Entry

A Member shall cease to be insured by the Association in respect of an Entered Ship upon the happening of any of the following events in relation to such Ship:

34.1 Transfer of Interest

If the Member shall cease to have a legal, beneficial or other interest in the Ship, or if entire control and possession is transferred whether by demise charter or otherwise.

34.2 Change of Management

If the managers or operators of the Ship shall be changed.

34.3 Total Loss of Ship

If the Ship becomes a total loss or is accepted by the hull insurers as being a constructive, compromised or arranged total loss, except as regards liabilities flowing from the casualty which gave rise to such total loss of the Ship.

34.4 Ship Missing

If the Ship shall be missing for ten days from the date it was last heard of or from it being posted at Lloyd's as missing, whichever shall be the earlier.

34.5 Mortgage of the Ship

If the Ship be mortgaged or otherwise hypothecated, unless an undertaking or guarantee approved by the Managers is given to pay all Contributions due or to become due in respect of the Ship.

Provided always that:

34.5.1 the Managers may waive this provision.

34.6 Classification

If the Member fails to meet the requirements of Rule 28 *Classification and Condition of Ships*.

34.7 Termination

If the entry of the Ship shall have been terminated in accordance with Rule 9.3 *Notice of Termination of Cover by Board or Managers* or Rule 28.7 *Ship Management Appraisal* or Rule 28.8 *Condition Survey*.

34.8 Sanctions

If, by virtue of any Sanction, prohibition or any adverse action by a state, international or supranational organisation or other competent authority, the Association is prohibited from insuring the Entered Ship.

RULE 35 EFFECT OF CESSER

35.1 Cesser for Failure to Pay

If the cesser of insurance shall have occurred by virtue of Rule 33.1 *Failure to Pay* the Association shall not be liable for any claims under these Rules in respect of any Ship which has been entered by the Member, whether the incident giving rise to such claim occurred before or after the cesser of insurance, unless the incident giving rise to such claim occurred during a Policy Year which had been closed at the time of the cesser of insurance.

35.2 Cesser for any Other Reason

If the cesser of insurance or cesser of the Ship's entry shall have occurred by virtue of any other reason, the Association shall remain liable for all claims under these Rules arising by reason of any incident which occurred before the cesser but shall be under no liability whatsoever by reason of any incident which occurred after the cesser.

Provided always that:

35.2.1 the provisions of Rule 35.1 above shall apply to the contract of insurance even if the entry of the Ship shall have ceased under the provisions of Rule 33.2 *Failure of Individual*, Rule 33.3 *Failure of Corporation* or Rule 34 *Cesser of Ship Entry* before the notice specified in Rule 33.1 *Failure to Pay* shall have been issued or taken effect.

35.2.2 the Board (or, in the case of claims not exceeding USD2,000,000, the Committee) may in its discretion admit either wholly or partly any claim for which the Association is under no liability under this Rule whether the incident giving rise to such claim occurred before or after the cesser of insurance.

35.3 No Waiver of Rights

Without prejudice to the generality of Rule 41 *Forbearance* 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 the cesser of insurance, shall derogate from the effect of Rule 33 *Cesser of All Insurances* and Rule 34 *Cesser of Ship Entry* or be treated as a waiver of any of the Association's rights thereunder.

RULE 36 CONTRIBUTIONS DUE ON CESSER OF INSURANCE

36.1 Liability for Contributions

Subject to the Member's liability being otherwise agreed or assessed under Rule 14 *Release*, a Member whose Entered Ship or Ships cease to be insured by the Association for any reason, shall be and remain liable to pay to the Association all Contributions in respect of such Ship or Ships for all Policy Years which have not been closed under Rules 37.1 *Exceptional Calls* and 37.2 *Overspill Calls* as at the date of such cesser, including the Policy Year in which the insurance ceases which, under Rule 10 *Contribution by Way of Calls*, such Member would have been liable to pay had the insurance of such Ship or Ships not ceased.

Provided always that:

- 36.1.1 the Member shall be liable for Contributions for the Policy Year in which the insurance ceases pro rata only for the period beginning with the date of entry and ending with the happening of the event that occasioned the cesser of insurance if:
- 36.1.1.1 such cesser arises by virtue of Rule 9.3 *Notice of Termination of Cover by Board or Managers*; or
 - 36.1.1.2 such cesser arises upon the happening of any of the events specified under Rules 34.1 *Transfer of Interest*, 34.2 *Change of Management*, 34.3 *Total Loss of Ship*, 34.4 *Ship Missing*, 34.5 *Mortgage of the Ship* and 34.6 *Classification* and the Member gives notice of the event in writing to the Managers within one month of the date thereof; or
 - 36.1.1.3 such cesser arises by virtue of Rule 33.1 *Failure to Pay*, in such case the Member's liability to pay Contributions shall include the sum specified in the notice given under that Rule.

36.2 Set-off

For the purpose of determining whether any (and, if so, what) sum is due for the purposes of Rule 36.1 *Liability for Contributions* or otherwise under these Rules no account shall be taken of any amount due or alleged to be due by the Association to the Member for any reason whatsoever, and no set-off of any kind (including any set-off which might otherwise have arisen by reason of the bankruptcy or winding up of the Member) shall be allowed against such sum (whether or not any set-off against Contributions has been allowed at any time in the past), except to the extent (if any) to which any sum demanded by the Managers as due, and required to be paid in a notice served under Rule 33.1 *Failure to Pay*, may (in the Managers' discretion) in itself have already allowed for a set-off or credit in favour of the Member.

36.3 Security for Overspill Calls

- 36.3.1 If
- 36.3.1.1 the Association makes a declaration in accordance with Rule 37.2 *Overspill Calls* that a Policy Year shall remain open for the purpose of levying an Overspill Call or Calls, and
 - 36.3.1.2 a Member who is liable to pay any such Overspill Call or Calls as may be levied by the Association ceases or has ceased to be insured by the Association for any reason, or the Association determines that the insurance of any such Member may cease
 - 36.3.1.3 the Association may require such Member to provide to the Association by such date as the Association may determine (the *due date*) a guarantee or other security in respect of the Member's estimated future liability for such Overspill Call or Calls, such guarantee or other security to be in such form and amount (the *guarantee amount*) and on such terms as the Association in its discretion may deem to be appropriate in the circumstances.
- 36.3.2 Unless and until such guarantee or other security as is required by the Association has been provided by the Member, the Association shall not be liable for any claims under these Rules in respect of any Ship entered by the Member or on the Member's behalf for any Policy Year.
- 36.3.3 If such guarantee or other security is not provided by the Member to the Association by the *due date*, a sum equal to the *guarantee amount* shall be due and payable by the Member to the Association on the *due date*, and shall be retained by the Association as a security deposit on such terms as the Association in its discretion may deem to be appropriate in the circumstances.
- 36.3.4 The provision of a guarantee or other security as required by the Association (including a payment in accordance with Rule 36.3.3 above) shall in no way restrict or limit the Member's liability to pay such Overspill Call or Calls as may be levied by the Association.

Section VII The Funds of the Association

RULE 37 CLOSING OF POLICY YEARS

37.1 Exceptional Calls

The Board shall, at such time as it may deem expedient after the end of a Policy Year, declare that such Policy Year shall be closed in respect of Exceptional Calls made under Rule 11.3 *Exceptional Calls*.

37.2 Overspill Calls

A Policy Year shall be closed automatically in respect of Overspill Calls upon the expiry of a period of three years from the commencement of that Policy Year.

Provided always that:

37.2.1 this automatic closure shall be suspended if prior to the expiry of that period any of the parties to the Pooling Agreement sends a notice in accordance with the Pooling Agreement giving notice of a possible Overspill Claim for which the Overspill Claim Date would fall in that Policy Year, in which event the Association shall, as soon as is practicable, declare that the said Policy Year shall remain open for the purpose of levying Overspill Calls. Once such a declaration has been made the Policy Year shall remain open for the purpose of levying Overspill Calls until such time as the Board may determine that all liabilities in respect of the Overspill Claim or Claims have been satisfied or sufficient provision made therefor.

37.3 Disposal of Excess Funds

If prior to closing any Policy Year the Contributions and other receipts (including transfers from reserves and provisions) in respect of such Policy Year shall exceed the claims, expenses, losses and other outgoings (whether incurred, accrued or anticipated) falling upon the Association for that year together with all transfers to reserves and provisions made out of the Contributions paid in respect of such Policy Year, then the excess may be disposed of either:

37.3.1 by being put to General Reserve in accordance with the provisions of Rule 39.1 *General Reserve*; and/or

37.3.2 the Board may order it to be returned in whole or in part to the Members who paid such Contributions in proportion to their respective Contributions, save that no return shall be made in respect of any Ship which has been subject to a release under Rule 14 *Release* or which was entered on special terms which specifically excluded liability to contribute to Exceptional Calls, or the entry of which ceased by reason of the application of Rule 33.1 *Failure to Pay*.

37.4 Amalgamation of Closed Policy Years

On closing a Policy Year, or at any time thereafter, the Board may resolve 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 Board shall so resolve then the two or more Closed Policy Years concerned shall for all purposes be treated as though they constitute a single Closed Policy Year.

37.5 Closed Policy Year Balances

If in respect of any Closed Policy Year it shall appear to the Board that the claims, expenses, losses and other outgoings (whether incurred, accrued or anticipated) falling upon the Association for that year, together with all transfers to reserves and provisions, will not balance with the Contributions and other receipts (including transfers from reserves and other provisions) in respect of that year, then any credit shall be transferred to the General Reserve of the Association and any deficit shall be treated as an expense of the Association and may be made up either by a transfer from the General Reserve of the Association or by Calls under Rule 10.1 *Mutual Insurance*.

RULE 38 REINSURANCE AND POOLING

38.1 Individual Ships

The Managers may reinsure on behalf of the Association the whole or any part of the risks arising in connection with any Entered Ship or Ships on such terms and with such reinsurers as the Managers shall consider appropriate.

38.2 Risks of the Association

The Managers may reinsure or cede on behalf of the Association the whole or any part of the risks of the Association

(including any risk which may arise under the Pooling Agreement) with such reinsurers and on such terms as the Managers shall consider appropriate.

38.3 Pooling Agreement

The Association may continue to be a party to the Pooling Agreement or to any other agreement of a similar nature or purpose.

38.4 Retained Risks

The Board may, in its discretion, reinsure or cede on behalf of the Association, with such reinsurers and on such terms as the Board shall consider appropriate, the whole or any part of the risks or liabilities of the Association which are or might be payable out of any General Reserve which has been or might be established under Rule 39.1 *General Reserve*.

RULE 39 RESERVES

39 Reserves

The Board may establish and maintain such reserve funds or other accounts for such contingencies or purposes as it in its discretion thinks fit. In particular:

39.1 General Reserve

The Board may set aside at any time to General Reserve such sums from the proceeds of the Estimated Total Call or Exceptional Call in respect of any Policy Year as it thinks fit. Such General Reserve may be used by the Board at any time:

- 39.1.1 so as to provide in whole or in part for any claims, expenses, losses or other outgoings of the Association (whether incurred, accrued or anticipated) and including, but not limited to, any deficiency which has occurred or may occur in respect of any Closed Policy Year or so as to eliminate or reduce any Call in respect of any Policy Year past, present or future; or
- 39.1.2 to make a distribution to Members of such amount and in such manner as it thinks fit.

39.2 Overspill Reserve

The Board shall create an Overspill Reserve or Reserves from the proceeds of any Overspill Call or Calls.

- 39.2.1 Any Overspill Reserve so created shall be made up from the proceeds of one Overspill Call only and shall be specified to be in respect of a particular Overspill Claim (whether such claim has occurred or is anticipated).
- 39.2.2 Any Overspill Reserve shall be invested by the Board as a separate fund and any gains (including dividends, interest, or accruals of interest) or losses, in the funds so invested, shall be credited or debited, as the case may be, to the said Overspill Reserve.
- 39.2.3 Each Member who has made a contribution to an Overspill Call which has been used to create an Overspill Reserve shall (subject to the powers of the Board under this Rule 39.2) have an interest in such Overspill Reserve proportional to the amount actually contributed by the Member to the Overspill Call which was used to create the said Overspill Reserve.
- 39.2.4 Any sums standing to the credit of an Overspill Reserve shall be used to eliminate or reduce the burden of the specified Overspill Claim or to pay such claim in whole or in part, or shall be returned to the Members in accordance with Rule 39.2.6 below.
- 39.2.5 If more than one Overspill Call has been made in respect of one Overspill Claim and more than one Overspill Reserve created in accordance with the provisions of Rule 39.2.1 above in respect of such Overspill Claim then such Overspill Reserves shall be utilised by the Board for the payment of such Overspill Claim in the order in which they were established.
- 39.2.6 If at any time it shall appear to the Board that the sum standing to the credit of an Overspill Reserve is greater than is required to meet the actual or anticipated Overspill Claim for which it was established the Board may order the whole or part of such surplus to be returned to the Members who contributed by way of Overspill Call to such Overspill Reserve. Any such return shall be made to Members in proportion to their interests in the said Overspill Reserve as set out in Rule 39.2.3 above.

Provided always that:

- 39.2.6.1 the Association shall be entitled to set off any sums owing to the Association by a Member against any such return; and
- 39.2.6.2 if in the opinion of the Board it appears impossible or impracticable to make such a return to one or more Members then the amounts which would otherwise have been due to be returned shall be transferred to General Reserve; and
- 39.2.6.3 no return shall be made in respect of Contributions levied on any Ship which has been released under Rule 14 *Release*.

RULE 40 INVESTMENT

40.1 Investment Management

Subject to the approval of the Board the funds of this Class of the Association may be invested by the Managers or by any investment manager or firm of brokers or agents appointed by the Managers. The Board may from time to time and at any time lay down such guidelines for the investment of the funds of the Association as it shall think fit.

40.2 Investment Media

Such investments may be made 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 as the Managers may think fit, or by such other method as the Board may approve.

40.3 Pooling of Funds

Unless the Board otherwise decides the funds standing to the credit of all Policy Years and, subject to the provisions of Rule 39.2 *Overspill Reserve*, of any reserve or account of this Class, shall be pooled and invested as one fund.

40.4 Gains and Losses

When funds are so pooled any dividends, interest, or accruals of interest and any realised or unrealised investment gains or losses, arising on the pooled funds shall be credited or debited, as the case may be, to the income and expenditure account of the Association in the financial year in which such gains or losses arise.

40.4.1 Any such gains may be used to meet:

- 40.4.1.1 the claims, expenses, losses and other outgoings (whether incurred, accrued or anticipated) which in the opinion of the Board necessarily and properly fall upon this Class of the Association; or
- 40.4.1.2 such transfers to reserves or provisions as the Board may deem it expedient to make, including transfers to reserves and provisions in respect of any deficiency which has occurred or which may be likely to occur in respect of any Closed Policy Year as the Board thinks fit.

40.4.2 Any such losses shall be treated as an expense of the Association and may be made up either by a transfer from any investment reserve, the General Reserve or by Calls under Rule 10.1 *Mutual Insurance*.

Section VIII General Terms and Conditions

RULE 41 FORBEARANCE

41.1 No Admission or Promise to Forego

No act, omission, forbearance or conduct of the Association whatsoever and whensoever occurring, whether by or through its officers, servants or agents or otherwise, shall constitute any admission or promise that the Association will forego any of its rights under these Rules.

41.2 Advice of Experts

Any person appointed under Rule 31.4 *Appointment of Experts* is appointed to assist the Member, and any recommendations and advice which such person may give shall in no way bind, prejudice or affect the rights and remedies of the Association under these Rules.

41.3 Waiver by the Board

Notwithstanding any neglect or non-compliance with, or breach of, any of these Rules by a Member the Board may in its sole discretion waive any of the Association's rights arising therefrom and may pass and pay in full or in part any claim which it thinks fit. The Association shall nevertheless at all times and without notice be entitled to insist on the strict application of these Rules.

RULE 42 ASSIGNMENT

42.1 No Assignment

No insurance afforded 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.

42.2 Set-off

The Association shall be entitled before making any payment to an assignee of the Member to deduct or retain such amount as the Managers may then estimate to be sufficient to discharge any liabilities or potential liabilities of the Member to the Association.

RULE 43 DELEGATION

43.1 Delegation by the Board

Whenever any power, duty or discretion is stated in these Rules to be vested in the Board, such power, duty or discretion shall be exercisable by the Board unless the same shall have been delegated to any sub-committee of the Board, or to the Managers, in accordance with the provisions as regards delegation contained in the Articles of Association of the Association in which event the power, duty or discretion may be exercised by any person to whom the same shall have been so delegated.

43.2 Delegation by the Managers

Whenever any power, duty or discretion is conferred or imposed upon the Managers by virtue of these Rules, such power, duty or discretion may, subject to any terms, conditions or restrictions contained in these Rules, be exercised by any one or more of the Managers or by any employee of the Managers to whom the same shall have been delegated or sub-delegated.

RULE 44 DISPUTES AND DIFFERENCES

44.1 Adjudication by the Board

If any difference or dispute between the Association or the Managers and any other person shall arise out of or in connection with these Rules or any contract of insurance between the Association and a Member such difference or dispute shall in the first instance be referred to and adjudicated by the Board notwithstanding that the Board may have already considered the matter before any such difference or dispute arose. Such reference and adjudication shall be on written submissions only.

44.2 Arbitration

If such other person does not accept the decision of the Board, or if the Board shall fail to make any award within three months of the reference to it, the difference or dispute shall then be referred to arbitration in London.

- 44.2.1 The arbitration shall be conducted by two arbitrators, one to be appointed by each of the parties, and in case the arbitrators shall not agree then the difference or dispute shall be referred to the decision of an umpire to be appointed by them.
- 44.2.2 No Member of the Association nor the Managers nor any employee of the Managers shall act as arbitrator or umpire.
- 44.2.3 The evidence and proceedings upon any arbitration may in the discretion of the arbitrators or umpire be taken in a mercantile way without regard to legal technicalities respecting evidence.
- 44.2.4 The arbitrators or umpire may, in case any point of law shall arise, take the opinion of such counsel or solicitor as they may think fit, and may act upon any such opinion, and unless the arbitrators or umpire taking such an opinion otherwise direct, the costs of and incidental thereto shall be deemed to be part of the costs of the award.
- 44.2.5 The costs of and incidental to any such reference and award shall be in the discretion of the arbitrators or umpire respectively.
- 44.2.6 The submission to arbitration and all the proceedings therein shall be subject to the provisions of the *Arbitration Act 1996* or any statutory modification or re-enactment thereof.

44.3 Sole Remedy

No such other person shall be entitled to maintain any action, suit or other legal proceedings against the Association otherwise than in accordance with the procedures laid down in this Rule 44 and may only commence proceedings, other than the arbitration under Rule 44.2 *Arbitration* above, so as to enforce an award under such arbitration and then only for such sum, if any, as the award may direct to be paid by the Association. The sole obligation of the Association to such other person under these Rules, and any *Certificate of Entry*, in respect of such difference or dispute shall be to pay such sum as may be directed by such an award.

44.4 Overspill Claims

- 44.4.1 Any of the issues referred to in Rule 5.7.5 *Recoverability of Overspill Calls* shall be referred to a panel (the *Panel*), which shall act as a body of experts and not as an arbitration tribunal and be constituted in accordance with arrangements established in the Pooling Agreement.
- 44.4.2 If the *Panel* has not been constituted at a time when a Member wishes to refer an issue to it, the Association shall, on request by the Member, give a direction for the constitution of the *Panel* as required under the Pooling Agreement.
- 44.4.3 The Association may (and, on the direction of the Member, shall) give such direction as is required under the Pooling Agreement for the formal instruction of the *Panel* to investigate any issue and to give its determination as soon as reasonably practicable.
- 44.4.4 The *Panel* shall in its discretion decide what information, documents, evidence and submissions it requires in order to determine an issue and how to obtain these, and the Association and the Member shall cooperate fully with the *Panel*.
- 44.4.5 In determining any issue referred to it under Rule 5.7.5 *Recoverability of Overspill Calls* the *Panel* shall endeavour to follow the same procedures as it follows in determining issues arising in respect of the relevant Overspill Claim which are referred to it under the Pooling Agreement.
- 44.4.6 In determining an issue the members of the *Panel* shall rely on their own knowledge and expertise and may rely on any information, documents, evidence or submission provided to it by the Association or the Member as the *Panel* sees fit.
- 44.4.7 If the three members of the *Panel* cannot agree on any matter, the view of the majority shall prevail.
- 44.4.8 The *Panel* shall not be required to give reasons for any determination.
- 44.4.9 The *Panel's* determination shall be final and binding upon the Association and the Member (subject only to Rule 44.4.10 below) and there shall be no right of appeal from such determination.

- 44.4.10 If the *Panel* makes a determination on an issue, the Association or the Member may refer the issue back to the *Panel*, notwithstanding Rule 44.4.9 above, if it considers that the position has materially changed since the *Panel* made its determination.
- 44.4.11 The costs of the *Panel* shall be paid by the Association.
- 44.4.12 Costs, indemnities and other sums payable to the *Panel* by the Association in relation to any Overspill Claim, whether the reference to the *Panel* has been made under this Rule 44.4 or under the Pooling Agreement, shall be deemed to be costs properly incurred by the Association in respect of that Overspill Claim for the purposes specified in Rule 5.7.2.1.

RULE 45 NOTICES

45.1 Notice Served on the Association

A notice required under these Rules to be served on the Association may be served by sending it through the post in a prepaid letter or by sending it by facsimile message or by electronic mail to the Association at the Association's registered office for the time being.

45.2 Notice Served on a Member

A notice required under these Rules to be served on a Member may be served by sending it through the post in a prepaid letter or by sending it by facsimile message or by electronic mail to such Member at the Member's address as appearing in the Register or at any place of business of a broker or other intermediary through whom a Ship to which the notice relates is or was entered in the Association. In the case of Joint Members and Co-assureds, a notice shall be served on any Joint Member and any Co-assured respectively, and such service shall be sufficient service upon all Joint Members or Co-assureds as the case may be.

45.3 Addresses

Any Member described in the Register by an address not within the United Kingdom who shall from time to time give the Association an address within the United Kingdom at which notices may be served upon the Member, shall be entitled to have notices served upon the Member at such address, which shall be deemed to be the Member's address as appearing in the Register for the purposes of Rule 45.2 *Notice Served on a Member*.

45.4 Date of Service of Notice

Any notice or other document if served by post shall be deemed to have been served on the day following the day on which the letter containing the same was put in the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post in a prepaid envelope. Any notice served by facsimile machine or electronic mail, shall be deemed to have been served on the day after it was despatched and in proving such service it shall be sufficient to prove that the notice was duly despatched.

45.5 Successors

The successors of anyone who is or was at any time a Member of the Association shall be bound by a notice or other document served as aforesaid if sent to the last such address of such Member notwithstanding that the Association may have notice that the Member has become of unsound mind or is otherwise mentally unfit, or of the Member's death, bankruptcy or liquidation.

RULE 46 JURISDICTION

46.1 English Law

These Rules and any contract of insurance between the Association and a Member shall be governed by and construed in accordance with English law.

Provided always that:

- 46.1.1 it is not intended, save as provided in Rule 19.1.1 *Seafarers – Injury, illness or death*, that any benefit or rights should be acquired through the operation of the *Contracts (Rights of Third Parties) Act 1999* or other similar legislation.

46.2 Jurisdiction

Any dispute or difference with the Association (including disputes over the interpretation, effect or application of Rule 44 *Disputes and Differences*) shall (subject to Rule 44) be decided exclusively by the High Court in London.

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