

# **Rules 2010**

**The United Kingdom Freight Demurrage  
and Defence Association Limited**



# Rules 2010

The Rules of the United Kingdom Freight Demurrage and Defence Association Limited  
(Effective from 12 noon GMT on 20th February, 2010)

---

## **Managers**

### **Thomas Miller Defence Ltd**

90 Fenchurch Street  
London  
EC3M 4ST

Telephone: +44 207 283 4646  
Facsimile: +44 207 204 2131  
Email: [tmdefence@thomasmiller.com](mailto:tmdefence@thomasmiller.com)  
Website: [www.ukdefence.com](http://www.ukdefence.com)

## Directors As at 20 February 2010

**P. C. Laskaridis (Chairman)**  
Athens

**E. André**  
Renens

**A. S. Bernard**  
Monte Carlo

**Ms M. Bottiglieri**  
Torre Del Greco

**R. G. Crawford, CBE**  
London

**B. Goulandris**  
London

**G. A. Gratsos**  
Athens

**M. Hashim**  
Bangkok

**C. R. Kendall**  
Singapore

**M. F. Lykiardopulo**  
London

**T. J. McClure**  
Singapore

**S. Palios**  
Athens

**P. Pappas**  
Athens

**M. G. Pateras**  
Athens

**Tan Chin Hee**  
Singapore

**Y. T. Triphyllis**  
Piraeus

**G. Weston**  
Monte Carlo

**G. Woodford**  
London

## Key Contacts

The following sets out the contact details for the Club's management, claims handlers and underwriting.

### Defence Management

Daniel Evans	Club Manager	+44 20 7204 2124	daniel.evans@thomasmiller.com
Alan Mackinnon	Senior Director of Claims	+44 20 7204 2408	alan.mackinnon@thomasmiller.com
Nigel Long	Underwriting Policy Director	+44 20 7204 2051	nigel.long@thomasmiller.com
Richard Bettinson	Business Accountant	+44 20 7204 2035	richard.bettinson@thomasmiller.com
Susanne Murphy	Senior Claims Director and Publications and Marketing Director	+44 20 7204 2312	susanne.murphy@thomasmiller.com

### London Syndicate 1

LS1.ukclub@thomasmiller.com

Paul Sessions	Syndicate Manager and Senior Claims Director	+44 20 7204 2211	paul.sessions@thomasmiller.com
Kit Chan		+44 20 7204 2134	kit.chan@thomasmiller.com
William Fearn		+44 20 7204 2734	william.fearn@thomasmiller.com
Ioana Gonciari		+44 20 7204 2117	ioana.gonciari@thomasmiller.com
Maya Linkinosa		+44 207 204 2212	maya.linkinosa@thomasmiller.com
Jacqueline Tan		+44 20 7204 2118	jacqueline.tan@thomasmiller.com

### London Syndicate 2

LS2.ukclub@thomasmiller.com

Philip Clacy	Syndicate Manager	+44 20 7204 2302	philip.clacy@thomasmiller.com
Paul Kaye	Senior Claims Director	+44 20 7204 2328	paul.kaye@thomasmiller.com
Richard Case		+44 20 7204 2402	richard.case@thomasmiller.com
Martyn Haines		+44 20 7204 2293	martyn.haines@thomasmiller.com
Stuart James		+44 20 7204 2207	stuart.james@thomasmiller.com
Bill Kirrane		+44 20 7204 2554	bill.kirrane@thomasmiller.com
Alison McClure		+44 20 7204 2320	alison.mcclure@thomasmiller.com

## Key Contacts

London Syndicate 2		LS2.ukclub@thomasmiller.com	
Andrew Pearson	+44 20 7204 2319	andrew.pearson@thomasmiller.com	
Ursula Whittaker	+44 20 7204 2313	ursula.whittaker@thomasmiller.com	

London Syndicate 3		LS3.ukclub@thomasmiller.com	
John Turner	Syndicate Manager	+44 20 7204 2507	john.turner@thomasmiller.com
Tony Nicholson		+44 20 7204 2564	tony.nicholson@thomasmiller.com

H1 Piraeus		hellas1.ukclub@thomasmiller.com	
Rod Lingard	Syndicate Manager	+30 210 458 5211	rod.lingard@thomasmiller.com
Alexandra Couvadelli	Senior Claims Director	+30 210 458 5215	alexandra.couvadelli@thomasmiller.com
Marc Jackson	Senior Claims Director	+30 210 458 5228	marc.jackson@thomasmiller.com
Cedric Chatteley		+30 210 458 5225	cedric.chatteley@thomasmiller.com
Tony Fielder		+30 210 458 5214	tony.fielder@thomasmiller.com
Ernie Foster		+30 210 458 5226	ernest.foster@thomasmiller.com
Nick Milner		+30 210 458 5219	nick.milner@thomasmiller.com

Asia Pacific - Hong Kong		hongkong.ukclub@thomasmiller.com	
Peter Lau	Claims Manager	+852 2832 4411	peter.lau@thomasmiller.com
Helen Huang		+852 2832 4436	helen.huang@thomasmiller.com
Do Young Kim		+852 2832 4408	do.young.kim@thomasmiller.com
Felix Lai		+852 2832 4442	felix.lai@thomasmiller.com
Kelvin Lam		+852 2832 4418	kelvin.lam@thomasmiller.com
Danny Ng		+852 2832 4446	danny.ng@thomasmiller.com
Christopher Roberts		+852 2832 4492	christopher.roberts@thomasmiller.com

Asia Pacific - Singapore		seasia.ukclub@thomasmiller.com	
Ys Ng		+65 6309 9681	ys.ng@thomasmiller.com
Kenneth Lie		+65 6309 9682	kenneth.lie@thomasmiller.com

## Key Contacts

Americas - New Jersey		newjersey.ukclub@thomasmiller.com	
David Grammas		+1 201 557 7338	david.grammas@thomasmiller.com
Jana Byron		+1 201 557 7433	jana.byron@thomasmiller.com
Amy Lovseth		+1 201 557 7322	amy.lovseth@thomasmiller.com
Colin Snell		+1 201 557 7403	colin.snell@thomasmiller.com

Americas - San Francisco		sanfrancisco.ukclub@thomasmiller.com	
Markus McMillin		+1 415 343 0113	markus.mcmillin@thomasmiller.com

Underwriting		underwriting.ukclub@thomasmiller.com	
Nigel Long	Policy Underwriter and Senior Underwriting Director	+44 20 7204 2051	nigel.long@thomasmiller.com
Nigel Brooks	Senior Underwriting Director	+44 20 7204 2071	nigel.brooks@thomasmiller.com
Jim Binner	Senior Underwriting Director	+44 20 7204 2052	jim.binner@thomasmiller.com
Paul Pelling	Senior Underwriting Director	+44 20 7204 2036	paul.pelling@thomasmiller.com
Jason Riley	Senior Underwriting Director	+44 20 7204 2083	jason.riley@thomasmiller.com
Patrick Ruane	Senior Underwriting Director	+44 20 7204 2042	patrick.ruane@thomasmiller.com
Paul Collier	Underwriting Director	+44 20 7204 2063	paul.collier@thomasmiller.com
Damian Mustard	Underwriter	+44 20 7204 2137	damian.mustard@thomasmiller.com
Julie Page	Underwriter	+44 20 7204 2072	julie.page@thomasmiller.com
Kamel Tlili	Underwriter	+44 20 7204 2409	kamel.tlili@thomasmiller.com
Sue Jamieson	Underwriting Operations Director	+44 20 7204 2062	sue.jamieson@thomasmiller.com

## Contents

---

<b>Section 1: Introduction</b>	<b>1</b>
<b>Section 2: Cover</b>	<b>2</b>
Rule 1: Nature of Cover	2
Rule 2: Extent of Cover	3
Rule 3: Support	6
Rule 4: Exclusions from Cover	8
<b>Section 3: Conduct of Claims</b>	<b>11</b>
Rule 5: Obligations with regard to Claims	11
Rule 6: Claims Handling	13
Rule 7: General Powers in relation to Claims	14
<b>Section 4: Membership and Entry</b>	<b>15</b>
Rule 8: Applications for Cover	15
Rule 9: Certificate of Entry	15
Rule 10: Membership	16
Rule 11: Material Change	17
Rule 12: Fixed Premium Entry	17
Rule 13: Special Entry	18
Rule 14: Joint Entries	18
<b>Section 5: Period of Cover</b>	<b>19</b>
Rule 15: Period of Entry	19
Rule 16: Continuation of Entry	19
Rule 17: Termination of Cover	20
Rule 18: Effect of Termination	20
Rule 19: Cessation of Cover	21
Rule 20: Effect of Cessation	22
Rule 21: Cancellation of Cover	24
Rule 22: Effect of Cancellation	24

## Contents

---

<b>Section 6: Association's Funds</b>	<b>25</b>
Rule 23: Payment Obligations	25
Rule 24: Assessment of Calls	26
Rule 25: Funds of the Association	28
Rule 26: Investment	29
Rule 27: Contingency Fund and Contingency Call	29
Rule 28: Payment of Calls	31
Rule 29: Laid-up Returns	32
<b>Section 7: Directors and Managers</b>	<b>33</b>
Rule 30: Directors' Meetings	33
Rule 31: Miscellaneous Powers of the Directors	33
Rule 32: Delegation	34
Rule 33: Remuneration of Managers	34
Rule 34: Circulars and Practice Recommendations	35
Rule 35: Reinsurance	35
<b>Section 8: General</b>	<b>36</b>
Rule 36: Bye-Laws	36
Rule 37: Assignment	36
Rule 38: Knowledge	37
Rule 39: Preservation of Association's Rights	37
Rule 40: Right of Set-Off	37
Rule 41: Notices	38
Rule 42: Rights of Third Parties	40
Rule 43: Disputes and Differences	40
Rule 44: Governing Law	42
<b>Section 9: Definitions and Interpretation</b>	<b>43</b>
<b>Appendix: Practice Recommendations</b>	<b>48</b>

## Section 1: Introduction

---

These **Rules** were adopted in accordance with the powers conferred by the articles of association of The United Kingdom Freight Demurrage and Defence Association Limited which provide for the alteration, abrogation or addition to the **Rules** by special resolution of the **Association**.

The cover provided by the **Association** to its **Members** is set out in the **Rules**. The cover provided to **Members** is always subject to the warranties, conditions, exceptions, limitations and other terms set out in these **Rules**.

The **Rules** contain words which have a precise meaning. These defined terms are set out in the table of definitions in Section 9. This definitions section describes the intended interpretation of the defined terms only when they appear in bold and capitalised within the **Rules**.

As set out in Rule 34, **Circulars** and **Practice Recommendations** are published from time to time by the **Association** to provide guidance for **Members** on certain matters as well as information on resolutions or bye-laws made from time to time by the **Directors**. They may be viewed on the **Website**. **Practice Recommendations** now in effect are set out in the Appendix.

Rule 5 sets out certain continuing obligations owed by **Members** to the **Association**. It is stressed to all **Members** that it is the obligation of the **Member** to give proper and timely notification to the **Association** of matters covered by these **Rules**, and not the obligation of any lawyers or other persons representing the **Member**.

The **Rules** are subject to the **memorandum** and **articles** of association of the **Association**.

## Section 2: Cover

### Rule 1 Nature of Cover

- (1) A **Member** is covered for **Costs** incurred by him which arise:
  - (a) in respect of the **Member's** interest in the **Entered Ship**; and
  - (b) in connection with the building, purchase, sale, ownership, management, chartering or **Operation** of the **Ship** by or on behalf of the **Member**; and
  - (c) out of events occurring during the period of **Entry** of the **Ship**.
- (2) Claims arising under a contract, in tort or under **Statute**, shall be deemed to arise at the date when the cause of action accrues.
- (3) Claims concerning salvage or towage shall be treated as having arisen at the date of the contract or the date when the relevant services commence (whichever is the earlier).
- (4) Claims concerning the building, purchase or sale of a **Ship** shall be deemed to arise at the date of the relevant contract or such later date and on such terms as the **Association** may agree.
- (5) Claims as to the existence of a contract relating to an **Entered Ship** will only be covered if the **Ship** has been entered from the date the alleged contract was concluded.

## Section 2: Cover

### Rule 2 Extent of Cover

Costs covered

- (1) A **Member** is covered for **Costs** in respect of the claims, disputes or **Proceedings** set out in Rule 2(3) where:
  - (a) the **Costs** are incurred to investigate or protect the **Member's** legal position; or
  - (b) the **Costs** are incurred in connection with **Proceedings**, and the **Member** has the express written support of the **Association** for any such **Costs** to be incurred.

Costs liabilities

- (2) A **Member** is also covered for **Costs** including interest on those **Costs** which a competent court or tribunal may order the **Member** to pay to any other party in **Proceedings** provided that the **Member** has the express written support of the **Association** to commence, pursue or defend those **Proceedings**.

Risks covered

- (3) The cover provided by the **Association** under these **Rules** applies to claims, disputes or **Proceedings** relating to an **Entered Ship** concerning:
  - (a) any charterparty, bill of lading, contract of affreightment or other contract, its existence, performance or cancellation and the exercise or enforcement of any right or remedy arising under or in connection with it;
  - (b) the building, purchase or sale of the **Ship**;
  - (c) the design, repair, conversion or modification of the **Ship**;
  - (d) the loss of, damage to, detention, delay to or loss of use of the **Ship**;
  - (e) the supply of fuel, lubricants, materials or equipment, or other necessities to the **Ship**;
  - (f) salvage or towage services rendered by or to the **Ship**;
  - (g) the loading, lightering, stowage, trimming, storage or discharge of cargo;
  - (h) General and/or Particular Average contributions or charges;
  - (i) claims by or against passengers intended to be, being or having been carried on the **Ship** or their personal representatives or dependents;

## Section 2: Cover

### Rule 2 Extent of Cover

- (j) officers, crew, stowaways and other persons on or about the **Ship**;
- (k) the classification of the **Ship**;
- (l) the representation of the **Member** at official investigations, inquests, or other enquiries whatsoever in relation to the **Ship**;
- (m) amounts due from or to underwriters and any other persons and/or companies conducting the business of insurance, other than the **Association**;
- (n) charges, disbursements, accounts received from agents, stevedores, chandlers, brokers, customs, harbour or other authorities, or others connected with the running, management and operation of the **Ship**; and
- (o) claims by or against revenue, customs or other government, municipal or local authorities in relation to the **Ship**.

Discretion as to further extension of cover

- (4) The cover provided by the **Association** may also at the discretion of the **Directors** be extended to other claims, disputes or **Proceedings** including (but not limited to) those arising from the mortgage, leasing or similar financing arrangements of an **Entered Ship**.

Prior Payment by Member

- (5) Unless the **Association** decides otherwise, a **Member** will have no right to recover any sums from the funds of the **Association** unless he has first paid those sums.

Limitation

- (6) Notwithstanding anything contained in these **Rules** or the terms of any support given under Rule 3 and subject to any other limitation specified in accordance with Rule 9(1)(b) and Rule 13, the liability of the **Association** to a **Member**, **Joint Member** or any other person whatsoever in respect of **Costs** shall in no circumstances exceed in the aggregate US\$15 million any one event or occurrence or series thereof giving rise to a claim.

## Section 2: Cover

### Rule 2 Extent of Cover

- (7) The **Directors** shall be entitled in their discretion and without giving reasons to decide whether the **Costs** shall, for the purpose of Rule 2(6), have arisen from one or more events or occurrences or a series of either.

Mandatory cover

- (8) Notwithstanding Rule 3, a **Member** is covered in respect of **Costs**, liabilities, losses and expenses not exceeding US\$10,000 (or such other sum as the **Directors** may from time to time decide) which are:
  - (a) the **Costs** incurred by a **Member** for the purpose of obtaining legal or other advice in respect of the claims, disputes or **Proceedings** set out in Rule 2(3);
  - (b) the **Costs** of, or incidental to, any proceedings to which a **Member** is party or at which he is represented, for the purpose of asserting or defending any of the claims, disputes or **Proceedings** set out in Rule 2(3), including any such **Costs** which the **Member** may become liable to pay to any other party to those proceedings;

PROVIDED that:

Without limitation to the operation of the provisions of the **Rules**, which may, in the event of their breach, restrict or exclude a **Member's** right of recovery from the **Association**, there shall be no recovery by the **Member** from the **Association** under this Rule 2(8) in respect of any **Costs**, liabilities, losses and expenses which arise out of or are consequent upon either the fraud of or fraudulent conduct by the **Member** or the wilful failure of the **Member** to discharge a debt unless and to the extent that the **Members** in their discretion so decide.

## Section 2: Cover

### Rule 3 Support

- Directors' discretion
- (1) The **Directors** shall be entitled in their discretion to decide in connection with any claims, disputes or **Proceedings** referred to in Rules 2(3) and (4) whether the **Association** will:
- (a) give support to a **Member** for the **Costs** referred to in Rules 2 (1) and (2) and, if so, to what stage or to what extent, in what manner and on what terms and conditions they think fit; or
  - (b) withdraw or vary the terms of any such support; or
  - (c) decline to give any further support for such **Costs** notwithstanding any previous support given by the **Association**.
- Consequences of non-compliance
- (2) If a **Member** incurs any **Costs** as referred to in Rules 2(1) and (2):
- (a) at a time when the **Member** has not complied with any terms or conditions imposed by the **Association**, or
  - (b) through any neglect or default on his part or that of his servants or agents, then, unless the **Directors** in their discretion decide otherwise, in each case the **Member** shall not be entitled to recover any such **Costs** from the **Association** and shall be liable to repay to the **Association** any **Costs** which the **Association** may have incurred in connection with such claims or disputes or **Proceedings**.
- Costs incurred before support given
- (3) If a **Member** incurs any **Costs** in connection with any claims, disputes or **Proceedings** referred to in Rules 2(3) and (4) before the **Member** has the support of the **Association** to incur them, the **Member** shall not be entitled to recover any such **Costs** from the **Association** unless and to such extent as the **Association** decides to give support.

## Section 2: Cover

### Rule 3 Support

- Factors taken into account
- (4) The **Directors** may take into account any matters that appear to them to be relevant when deciding whether or not the **Association** will give support to the **Member** in relation to **Costs**. A non-exhaustive list of relevant matters that may be taken into account includes:
- (a) the merits of the claims, disputes or **Proceedings** in connection with which the **Member** seeks the support of the **Association**;
  - (b) the reasonableness of the **Member's** conduct assessed by reference to what the **Member** would or should have done if not eligible for cover with the **Association**;
  - (c) The extent to which the **Member** has complied with any relevant **Practice Recommendation** or **Circular** or any other obligation of the **Member** under the **Rules**;
  - (d) the cost effectiveness of the steps proposed by or taken on behalf of the **Member**;
  - (e) the interests of the **Membership** as a whole in addition to the interests of the individual **Member**; and
  - (f) the financial consequences of their decision for the **Association**.
- Delegated authority
- (5) The powers vested in the **Directors** under this Rule 3 may, at the discretion of the **Directors**, be exercised by the **Managers**.
- Sole arbiters
- (6) In exercising the powers vested in them under this Rule 3, the **Directors** or **Managers**, as the case may be, shall be the sole arbiters of relevant issues of fact or inferences of fact in respect of any claims, disputes or **Proceedings** in relation to which the **Member** seeks the support of the **Association**.
- Confirmation in writing
- (7) The **Association** shall not be deemed to have given support in accordance with the provisions of this Rule 3 unless and until such support is confirmed by the **Managers** expressly in writing.

## Section 2: Cover

### Rule 4 Exclusions from Cover

The following are expressly excluded from cover unless and to the extent the **Directors** in their discretion decide otherwise:

- Minimum disputed amount
- (1) **Costs** arising out of claims where the amount in dispute is less than US\$10,000 (or its equivalent in any other currency at the date when the cause of action arises) or such other sum as the **Directors** may from time to time decide, such decision to be effective at the commencement of the **Policy Year** following the date on which the decision is taken;
- Unlawful trading
- (2) **Costs** arising out of or consequent upon an **Entered Ship** carrying contraband, blockade running or being employed in any unlawful trade;
- Exclusion of Hull and Machinery and Charterers' Liability Risks
- (3) **Costs** arising out of risks against which the **Member** would be insured if at the time of the incident giving rise to the **Costs** the **Ship** had been fully insured:
- (a) under **Hull Policies** for its **Proper Value** on terms no less favourable than those of the Lloyds Marine Policy MAR form 1/1/82 with the Institute Time Clauses Hulls 1/10/83 attached (except to the extent of any franchise or deductible not exceeding 2 per cent. of the insured value in respect of each incident); or
- (b) under policies providing for Charterers' liability for damage on terms no less favourable than those then current as special cover under Rule 4 Section 1 of the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited whether or not payable only at the discretion of its directors;
- Exclusion of War Risks
- (4) **Costs** arising out of risks against which the **Member** would be insured if at the time of the incident giving rise to the **Costs** the **Ship** had been fully insured for its **Proper Value** under War Risk Policies on terms no less favourable than those of the Institute Time War & Strikes Clauses Hull-Time 1/10/83 and the Institute Protection & Indemnity War & Strikes Clauses Hull-Time 20/7/87;

## Section 2: Cover

### Rule 4 Exclusions from Cover

- Exclusion of P & I Risks
- (5) **Costs** arising out of risks against which the **Member** would be insured if at the time of the incident giving rise to the **Costs** the **Ship** had been fully insured on terms no less favourable than those then current of The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited whether or not payable only at the discretion of its directors;
- Exclusion of specialist operations and certain passenger ship risks
- (6) **Costs** arising out of risks against which the **Member** would be insured if at the time of the incident giving rise to the **Costs** the **Ship** had been fully insured on terms no less favourable than those then current as special cover under Rule 4 Sections 2 and 3 of the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited whether or not payable only at the discretion of its directors;
- Exclusion of hotel, leisure or entertainment risks
- (7) **Costs** arising out of or consequent upon the provision on an **Entered Ship** of hotel, leisure or entertainment related facilities or similar services to any passengers and any claims, disputes or **Proceedings** whatsoever arising from such facilities or services;
- Exclusion of certain nuclear risks
- (8) **Costs** arising out of or as a consequence of the emission of ionising radiation from, or the radioactive, toxic, explosive or other hazardous or contaminating properties of, nuclear fuel or nuclear matter or radioactive products or waste carried as cargo in an **Entered Ship** with the exception of "excepted matter" as defined in the Nuclear Installations Act 1965 (and any regulations made under) or amendments, modifications or re-enactment of that Act and such further exceptions as the **Directors** may approve.

## Section 2: Cover

### Rule 4 Exclusions from Cover

- Double Insurance
- (9) **Costs** recoverable under any other cover or insurance or which would have been recoverable:
- (a) apart from any terms in such other cover or insurance excluding or limiting liability on the ground of double insurance; and
  - (b) if the **Ship** had not been an **Entered Ship**, unless the **Member** is covered by a special agreement with the **Association** made either directly with himself or with other insurers upon the terms that certain **Costs** shall be borne by the **Association** notwithstanding such other cover or insurance;
- Time Bar
- (10) **Costs** relating to any claim, dispute or **Proceedings** not notified by the **Member** to the **Association** within one year after the **Member** had knowledge of the same;
- (11) **Costs** not presented to the **Association** by the **Member** for reimbursement within one year after discharging or settling the same;
- Joint Members
- (12) **Costs** incurred in connection with claims or disputes or **Proceedings** between **Joint Members**.

## Section 3: Conduct of Claims

### Rule 5 Obligations with regard to claims

- Notice of claims
- (1) A **Member** shall promptly (and in any event no later than three (3) months after the **Member** has knowledge of it) notify the **Association** in writing of every casualty, event, dispute or claim which may give rise to **Costs**, and provide copies of all relevant information, documents, reports or evidence.
- Appointment of lawyers
- (2) No **Member** shall without the prior approval in writing of the **Association**
- (a) appoint any lawyer or other person for legal or other advice in connection with any claim, dispute or **Proceedings** which might give or has given rise to a claim on the **Association**;
  - (b) enter into any fee arrangement with lawyers or other persons other than fees calculated on a time basis (such as conditional, contingency or success fees);
- Continuing obligation
- (3) A **Member** shall at all times:
- (a) collect, preserve and promptly produce all relevant documents and evidence whatsoever in his or his agents' custody, possession or control and whenever so requested allow the **Association** or lawyers or other persons appointed to act on his behalf to inspect them and to take copies notwithstanding any assertion of legal privilege or confidentiality; and
  - (b) both permit and use best endeavours to assist the **Association** or any such lawyers or persons to interview and obtain the co-operation of any servant, agent or other person who may at any time have been employed by the **Member** or whom it is considered may have information relevant to the casualty, event, dispute or claim; and
  - (c) keep the **Association** informed on the progress of any claim, dispute or **Proceedings**.

## Section 3: Conduct of Claims

### Rule 5 Obligations with regard to claims

Settlement  
of claims

- (4) No **Member** shall without the prior consent of the **Association** and without complying with any requirements of the **Association** in relation to **Costs**, withdraw, discontinue, admit, settle or compromise:
- (a) any claim, dispute or **Proceedings** which might give or has given rise to a claim on the **Association**; or
  - (b) any claim, dispute or **Proceedings** conducted with the support of the **Association**.

If a **Member** fails to comply with his obligations under this Rule 5(4) and does so settle or compromise a claim, dispute or **Proceedings**, he shall become liable to pay to the **Association** the whole of the **Costs** incurred by the **Association** or such proportion of the **Costs** as the **Directors** in their discretion shall decide.

Consequences of  
non-compliance

- (5) If a **Member** fails to comply with his obligations under this Rule 5, or if a **Member** wilfully or negligently withholds or knowingly conceals any relevant information, document or evidence or makes any false statement in relation to a claim, dispute or **Proceedings**, or if a **Member** causes or knowingly permits any other person to do so, the **Directors** may in their discretion either:
- (a) decline to give support to the claim, dispute or **Proceedings** or
  - (b) reduce the sum payable by the **Association** in respect of the claim, dispute or **Proceedings** by such amount as they may determine, or
  - (c) require the **Member** to repay to the **Association** the whole or part of any **Costs** which the **Association** may have incurred in connection with the claim, dispute or **Proceedings**.

## Section 3: Conduct of Claims

### Rule 6 Claims Handling

- (1) Where a **Member** requests the approval of the **Association** to incur **Costs**, the **Association** may at any time (whether or not it has given that approval) appoint on behalf of the **Member**, upon such terms as the **Association** thinks fit, lawyers or other persons to investigate and advise on or otherwise deal with any claim, disputes or **Proceedings**. The **Association** may at any time terminate any such appointment.
- (2) All persons appointed by the **Association** on behalf of the **Member** or appointed by the **Member** with the approval of the **Association** shall be or be deemed to be appointed on the terms that they have been instructed by the **Member** at all times (both while so acting and after they have ceased so to act):
- (a) to give advice and to report to the **Association** in connection with the claim, dispute or **Proceedings**;
  - (b) to seek and act on the instructions of the **Association**; and
  - (c) to produce to the **Association** any documents or information in their possession or power relating to the claim, dispute or **Proceedings**,
- as if such persons had been appointed to act and had at all times been acting on behalf of the **Association**.
- (3) Except as set out in Rule 2(2) the **Association** shall not be liable for and shall in no circumstances pay interest on any loss or expense incurred or paid by the **Member**.

## Section 3: Conduct of Claims

### Rule 7 General Powers in relation to Claims

Costs contribution to Association

- (1) Where in the opinion of the **Directors** the **Costs** to be incurred in any claim, dispute or **Proceedings** would be disproportionate compared with the amount in dispute, the **Directors** may in their absolute discretion pay to the **Member** out of the funds of the **Association** the whole or any part of the claim in respect of which the **Member** seeks to be covered by the **Association**.
- (2) Where a **Member** does not recover his entitlement to a claim and/ or **Costs** in full, the **Association** may in its discretion require him to pay to the **Association** the proportion of any sum recovered that the **Costs** bore to the claim, assuming both had been recovered in full.
- (3) The **Directors** may from time to time resolve in relation to specified future claims or classes of claim arising in the next **Policy Year** that support will only be given to a **Member** for **Costs** to be incurred in a specified amount or proportion.
- (4) Any support given to a **Member** to which a resolution under Rule 7(3) applies shall (subject to any other conditions imposed by the **Directors**) be subject to the terms of that resolution whether or not such terms be expressed in any confirmation of such support.
- (5) Notice giving particulars of every resolution passed under Rule 7(3) and its effective date shall be given to every **Member** in the form of a **Circular** and shall be published on the **Website**.
- (6) In any case where an **Entered Ship** is detained, the **Directors** may in their discretion order that the **Ship** remain under detention when the **Directors** consider it in the interests of the **Association** to test the legality of the detention. In such a case the **Association** will reimburse to the **Member** such sums as the **Directors** in their discretion consider would compensate the **Member** for any direct loss or liability incurred to third parties by reason of compliance with the **Directors'** order.
- (7) The **Directors** may in their discretion decide that the **Association** shall pay or reimburse a **Member** in whole or in part any **Costs** for which the **Association** would not otherwise be liable.

## Section 4: Membership and Entry

### Rule 8 Applications for Cover

- (1) Any **Applicant Member** who wishes to enter a **Ship** shall make an application for such **Entry** in such form as may from time to time be required.
- (2) When applying for **Entry** or negotiating any changes to or renewal of the terms of **Entry**, the **Applicant Member** warrants that all material particulars and information have been provided and that all such particulars and information are true and complete and will remain so throughout the period of the **Entry**. The particulars and information provided shall, if **Entry** of the **Ship** is accepted, form the basis of the contract between the **Member** and the **Association**.
- (3) The **Association** may without giving any reason refuse any application for the **Entry** of a **Ship** whether or not the **Applicant Member** in respect of such **Ship** is a **Member** of the **Association**.

### Rule 9 Certificate of Entry

Contents of certificate

- (1) After accepting an application for the **Entry** of a **Ship** the **Association** shall issue a **Certificate of Entry** which shall state:
  - (a) that the **Member** has been entered in the **Register of Members** (except where he is already a **Member**);
  - (b) any special terms on which the **Ship** has been entered, including any limitations on cover;
  - (c) the date and time of commencement of the **Entry**;
  - (d) if for a fixed period, the date and time of cessation of **Entry**.
- (2) If at any time the **Association** and the **Member** shall agree to vary the terms on which the **Ship** is entered, the **Association** shall issue to the **Member** an endorsement stating the terms of such variation and the date from which such variation was or is to be effective.

## Section 4: Membership and Entry

### Rule 9 Certificate of Entry

- (3) Every **Certificate of Entry** (with any endorsements) shall be conclusive evidence of its terms and binding unless in the opinion of the **Association** it contains any error or omission, in which case the **Association** may issue a new **Certificate of Entry** or a new endorsement which shall in like manner be conclusive evidence and binding.

### Rule 10 Membership

- (1) If the **Association** accepts an application for the **Entry** of a **Ship** from an **Applicant Member** who is not already a **Member** then such **Applicant Member** shall, as from the date of the acceptance of such **Entry**, become a **Member** and his name shall be entered in the **Register of Members**.
- (2) If the **Association** accepts an application for **Entry** of a **Ship** from an insurer, any **Ship** in respect of which the application is made shall be **Entered** by way of reinsurance and shall for the purposes of these **Rules** be an **Entered Ship**. The insurer concerned shall not become a **Member** but he shall in all other respects have the same rights and be under the same obligations for the purposes of these **Rules**. His contract with the **Association** shall for all purposes take effect as though he were the **Member** in respect of any such **Entered Ship** and in such capacity had entered any such **Ship** in the **Association**.

Membership of UK (IOM)

- (3) It is a condition of acceptance of any application for membership of the **Association** and the continuation of that membership that the **Member** will also become and remain a **Member of UK (IOM)** (or its successor or assigns) subject always to the provisions of the memorandum and articles of association and rules of **UK (IOM)** (or constitutional documentation of any successor or assign) from time to time in force.

## Section 4: Membership and Entry

### Rule 10 Membership

- (4) The provisions of Rule 10(3) shall apply if, but only if and for so long as the risks covered by the **Association** are reinsured in whole or in part with **UK (IOM)** (or its successor or assigns) by the **Association**.
- (5) Every **Member** and his **Successors** shall be bound by the **Rules**.

### Rule 11 Material Change

Changes to class, management, flag

The **Member** or any other person covered under the **Rules** is obliged to notify the **Association** of any material change relating to an **Entered Ship** including but not limited to a change of classification or classification society, change of management or change of flag.

### Rule 12 Fixed Premium Entry

The **Association** may accept an application for **Entry** of a **Ship** on terms that:

- (1) a **Fixed Premium** is payable to the **Association** in the sum agreed and at the time or times specified by the **Association**;
- (2) may exclude, limit, modify or otherwise alter the cover set out in Rules 1 and 2;
- (3) the person or persons covered shall not be or become a **Member** but shall in all other respects have the same rights and be under the same obligations, subject to Rule 12(2), as if he or they were a **Member** except in relation to payment of **Calls** or **Contingency Calls**.

## Section 4: Membership and Entry

---

### Rule 13 Special Entry

The **Association** may at any time in its discretion accept an application for **Entry** of a **Ship** on special terms which may exclude, limit, modify or alter the cover set out in Rule 2 and which may include risks otherwise excluded in Rule 1(1).

### Rule 14 Joint Entries

Joint liability

- (1) If a **Ship** is **Entered** in the names of **Joint Members** all **Joint Members** shall be jointly and severally liable to pay all **Calls**, **Contingency Calls** or other sums due to the **Association** in respect of such **Entry** unless otherwise agreed.
- (2) The receipt by any one of the **Joint Members** of any sums payable by the **Association** in respect of such **Entry** will discharge the obligations of the **Association** in full.
- (3) Failure by any **Joint Member** to disclose material information or documents within his knowledge shall be deemed to have been failure of all the **Joint Members**.
- (4) Conduct of any **Joint Member** which would entitle the **Association** to withhold the cover set out in Rule 2 shall be deemed the conduct of all the **Joint Members**.
- (5) Unless the **Association** has otherwise agreed in writing, the contents of any communication from or on behalf of the **Association** to any **Joint Member** shall be deemed to be within the knowledge of all the **Joint Members**, and any communication from any **Joint Member** to the **Association** shall be deemed to have been made with the full approval and authority of all the **Joint Members**.

## Section 5: Period of Cover

---

### Rule 15 Period of Entry

- (1) Subject to these **Rules**, an **Entry** (other than for a fixed period) shall continue until the end of the **Policy Year** during which the **Entry** began unless otherwise agreed with the **Association**.
- (2) The **Entry** of a **Ship** for a fixed period shall subject as otherwise provided in these **Rules** cease upon the expiry of that period.

### Rule 16 Continuation of Entry

The **Entry** of an **Entered Ship** shall continue on the same terms from **Policy Year** to **Policy Year** unless:

- (1) at the request of the **Member** other terms are agreed; or
- (2) a notice is given under Rule 17 (Termination); or
- (3) the **Association** gives a notice not later than noon **GMT** on 20th January in the current **Policy Year** that the terms upon which the **Ship** is to be **Entered** for the next **Policy Year** are to be changed. In that event, unless terms are agreed between the **Member** and the **Association** before the following noon **GMT** on 20th February, the **Entry** will then cease.

## Section 5: Period of Cover

### Rule 17 Termination of Cover

- (1) Unless the **Rules** provide otherwise, the period of **Entry** of any **Entered Ship** (other than for a fixed period) may only be terminated in one of the following ways:
  - (a) by written notice from the **Association** to the **Member** prior to noon **GMT** on 20th January in any **Policy Year** following a decision by the **Directors** in their discretion and without giving any reason to terminate an **Entry** of any **Member**;
  - (b) by written notice from the **Member** to the **Association** prior to noon **GMT** on 20th January in any **Policy Year**.
- (2) If a notice is given pursuant to Rule 17(1), the period of **Entry** shall terminate at noon **GMT** on 20th February following such notice unless the **Association** agrees or determines otherwise.

### Rule 18 Effect of Termination

- (1) When the cover of a **Member** or any other person covered under the **Rules** is terminated in accordance with Rule 17 ('date of termination'), then:
  - (a) the **Member** or other person covered and their **Successors** shall be and remain liable to pay in full all sums due to the **Association** pursuant to Rule 23 (Payment Obligations), in respect of the whole of the **Policy Year** in which the date of termination occurs and any **Contingency Calls** levied in accordance with Rule 27 (Contingency Fund and Contingency Call) unless the **Association** agrees or determines otherwise;

## Section 5: Period of Cover

### Rule 18 Effect of Termination

Liability prior to date of termination

- (b) the **Association** shall remain liable to reimburse **Costs** in respect of any **Entered Ship** arising from any event or in connection with any claim, dispute or **Proceedings** which occurred or were commenced prior to the date of termination, but shall be under no liability whatsoever in respect of any event occurring or **Proceedings** commenced after the date of termination.

### Rule 19 Cessation of Cover

Events leading to cessation

- (1) A **Member** or any other person covered under these **Rules** shall immediately cease to be covered in respect of any and all of his **Entered Ships** upon the happening of any **Cessation Event**.
- (2) Unless otherwise agreed in writing by the **Association**, a **Member** or other person covered shall also immediately cease to be covered in respect of any **Entered Ship** upon the occurrence of any of the following events:
  - (a) the **Member** or other person covered parting with or assigning his interest in the **Ship** (whether by bill of sale or other formal document or agreement or in any other way whatsoever); or
  - (b) the managers of the **Entered Ship** being changed; or
  - (c) the **Ship** ceasing to be or not being classed with a classification society approved by the **Association**; or
  - (d) the **Ship** being missing for ten (10) days from the date when she was last heard of, or being posted at Lloyd's as missing; or
  - (e) the **Ship** becoming an actual total loss; or
  - (f) acceptance by hull underwriters (whether of marine or war risks) that the ship is a constructive total loss; or

## Section 5: Period of Cover

---

### Rule 19 Cessation of Cover

- (g) agreement by hull underwriters (whether of marine or war risks) to pay to the **Owner** of the **Ship** an unrepaired damage claim which exceeds the market value (without commitment) of the **Ship** immediately prior to the casualty which gave rise to such claim; or
  - (h) a compromise or settlement with hull underwriters (whether of marine or war risks) on the basis of which the **Ship** is agreed or deemed to be an actual or constructive total loss; or
  - (i) the taking of a decision by the **Association** with the agreement of the **Member** or other person covered that the **Ship** is to be considered an actual or constructive total loss or otherwise may reasonably be considered to be commercially lost.
- (3) If the **Association** agrees that the cover of the **Entered Ship** shall continue after the occurrence of any of the events listed in paragraph (2)(a)–(c) of this Rule 19 it may in its discretion impose such terms and conditions as it thinks fit for the continuation of the cover.

### Rule 20 Effect of Cessation

When a **Member** or other person covered under the **Rules** ceases to be covered in accordance with Rule 19 ('date of cessation') then:

- (1) the **Member** or other person covered and the **Association** may agree that the **Member** or other person shall only be liable to pay **Calls** or **Fixed Premiums** in respect of the **Ship** for the **Policy Year** in the course of which such cover ceased on a pro rata basis (namely such proportion of the **Calls** or **Fixed Premiums** in respect of such **Ship** for the relevant **Policy Year** as the part of the **Policy Year** during which the **Ship** was **Entered** bears to the whole of such **Policy Year**),

## Section 5: Period of Cover

---

### Rule 20 Effect of Cessation

- (2) if not so agreed, the **Member** or other person covered and their **Successors** shall be and remain liable to pay in full all sums due to the **Association** pursuant to Rule 23 (Payment Obligations), in respect of the whole of the **Policy Year** (whether the **Ship** shall have been **Entered** for the whole or only part of such **Policy Year**) in which the date of cessation occurs;
- (3) the **Member** and his **Successors** shall be and remain liable to pay in full any **Contingency Calls** levied in accordance with Rule 27 (Contingency Fund and Contingency Call);
- (4) the **Association** shall remain liable to reimburse **Costs** in respect of any **Ship Entered** arising from any event or in connection with any claim, dispute or **Proceedings** which occurred or were commenced prior to the date of cessation, but shall be under no liability whatsoever in respect of any event occurring or **Proceedings** commenced after the date of cessation;
- (5) whether or not negotiations have taken place with a view to reaching an agreement as contemplated by Rule 20(1), the **Association** may assess, as at the date of cessation, the amount which seems to the **Association** in its discretion to represent the likely liability of the **Member** or other person covered for further amounts due to the **Association** but not yet debited at the date of cessation and if the **Association** does exercise its powers under this Rule 20(5), then the amount of any assessment made under this Rule 20(5) shall be payable in full by the **Member** or other person covered on such date or dates as the **Association** shall specify.

## Section 5: Period of Cover

---

### Rule 21 Cancellation of Cover

Where a **Member** has failed to pay, either in whole or in part, any amount due from him to the **Association**, the **Association** may give him notice in writing requiring him to pay such amount by any date specified in such notice, not being less than five **Business Days** from the date on which such notice is given. If the **Member** fails to make such a payment in full on or before the date so specified, the cover of the **Member** (whether or not the cover remains in force at the time of the notice) in respect of any and all ships referred to in such notice and entered in the **Association** by him or on his behalf shall be cancelled forthwith without further notice or formality.

### Rule 22 Effect of Cancellation

- (1) When the cover of a **Member** or any other person covered under the **Rules** is terminated in accordance with Rule 21 ('date of cancellation'), then the **Association** will from the date of cancellation cease to be liable to reimburse any **Costs** whatsoever in respect of any **Ship** in relation to which the cover of the **Member** or other person covered has been cancelled irrespective of whether:
  - (a) such **Costs** have been incurred or arisen or may be incurred or arise by reason of any event which has occurred or in conjunction with any **Proceedings** which were commenced at any time prior to the date of cancellation, including during previous **Policy Years**;
  - (b) such **Costs** arise by reason of any event occurring or **Proceedings** commenced on or after the date of cancellation;
  - (c) the **Association** may have admitted liability for payment to or appointed lawyers or any other persons; or
  - (d) at the date of or prior to the date of termination the **Association** knew that such **Costs** might or would arise.

## Section 6: Association's Funds

---

### Rule 23 Payment Obligations

- (1) A **Member** who has **Entered** a **Ship** in respect of any **Policy Year** shall pay **Calls** to the **Association** in accordance with these **Rules**.
- (2) A person who has **Entered** a **Ship** as a **Fixed Premium Entry** under Rule 12 shall pay the **Fixed Premium** or other sums agreed to be due to the **Association** in respect of that **Entry** in such instalments and on such dates as the **Association** shall specify.
- (3) A **Member** who has **Entered** a **Ship** shall pay any **Contingency Call** when levied pursuant to Rule 27.
- (4) A **Member** who has **Entered** a **Ship** in the **Association** should pay the amount of tax that the **Association** shall pay or be liable to pay on any **Calls, Contingency Calls, Fixed Premium** or other sum due from a **Member** and shall indemnify and hold harmless the **Association** in respect thereof.
- (5) The **Directors** may in their discretion and at any time require a guarantee in such form and on such terms as the **Directors** may decide to secure the payment of **Calls** or **Fixed Premiums, Contingency Calls** or such other sums as are due to the **Association** under these **Rules**.

## Section 6: Association's Funds

---

### Rule 24 Assessment of Calls

- (1) The **Directors** shall decide in respect of each **Policy Year** the extent of funds required by the **Association** in that **Policy Year** to meet the commitments of the **Association** and for the other purposes set out in Rule 25(2), and in their further discretion may allocate to such funds income accruing to the **Association** under Rule 25(1) in whatever proportions they deem expedient.
- (2) Before an application is accepted for the **Entry** of a **Ship** in the **Association** the **Applicant Member** and the **Association** shall agree the **Call Rating** of the **Ship**.
- (3) Before an application is accepted for a **Fixed Premium Entry** of a **Ship** the applicant person and the **Association** shall agree the **Fixed Premium** and the time or times at which it is payable.
- (4) In deciding the **Call Rating** or **Fixed Premium** of any **Entered Ship** the **Association** may take into account all matters which it may consider relevant, including but not limited to the degree of risk estimated to be involved.
- (5) Before each **Policy Year** commences the **Directors** shall decide the percentage (whether increase or decrease) by which a general adjustment is to be applied to the **Call Rating** or **Fixed Premium** of each **Entered Ship** payable for that **Policy Year**.
- (6) The **Call** or **Fixed Premium** payable for the **Policy Year** will be the **Call Rating** or **Fixed Premium** of the **Entered Ship** multiplied by the percentage to which there has been a general adjustment pursuant to Rule 24(5) as decided by the **Directors**, subject to any discount or surcharge as may be agreed between the **Member** and the **Association**.

## Section 6: Association's Funds

---

### Rule 24 Assessment of Calls

- (7) If the **Association** gives notice prior to a **Policy Year** in accordance with Rule 16(3) that it requires alteration to the terms upon which a **Ship** is to be **Entered**, including but not limited to any change in the applicable **Call Rating** or **Fixed Premium** the revised **Call** or **Fixed Premium** payable in the ensuing **Policy Year** in respect of the **Ship** shall be as agreed between the **Member** and the **Association** and if by the following noon **GMT** on 20th February no such agreement has been made the **Entry** will then cease.
- (8) Notwithstanding Rule 24(5), the **Directors** may in their discretion decide in respect of **Ships** Entered in the **Association** for the relevant **Policy Year** at such time as they think fit, to apply an additional percentage increase to **Call Ratings** on all **Entered Ships** which is to be levied from and paid by the **Members** in such instalments and on such dates as the **Directors** shall specify.
- (9) Any **Call** fixed by the **Directors** pursuant to Rule 24(8) shall be payable by all **Members** whose **Ships** are **Entered** in the **Association** for the relevant **Policy Year**, notwithstanding that:
  - (a) the **Ship** may not have been so entered at the time or times when the **Association's** liability to pay the claims, general expenses or other outgoings referred to in Rule 25 (Funds of the Association) may have accrued; and
  - (b) the **Ship** will not be so entered at the time when the **Association** may incur a liability for, or pay, any claim or claims, general expenses or other outgoings.

## Section 6: Association's Funds

---

### Rule 25 Funds of the Association

- (1) The income of the **Association** shall derive from:
  - (a) payment to the **Association** of **Calls, Fixed Premiums**, other sources of income and other sums due to the **Association** in accordance with these **Rules**; and
  - (b) returns on investments made pursuant to Rule 26 (Investment).
  
- (2) The funds accruing to the **Association** under Rule 25(1) shall be used:
  - (a) to meet claims, general expenses and other outgoings (whether incurred, accrued or anticipated) of the **Association**, including without limitation:
    - (i) in respect of **Fixed Premium Entries** any excess of claims, general expenses and other outgoings over the premiums payable to the **Association** in respect of those **Entries**; and
    - (ii) any proportion of claims, general expenses or other outgoings of any insurer other than the **Association** which has fallen or which may be thought likely to fall upon the **Association** by virtue of any reinsurance or other agreement concluded between the **Association** and such other insurer;
  - (b) to cover any shortfall or deficiency in the funds of the **Association** where in the opinion of the **Directors** a payment due to the **Association** will not be received;
  - (c) to establish and maintain any solvency margin, guarantee fund or other fund as may be required of the **Association** by or under any governmental or other body, statute, legislation or regulation;
  - (d) to establish and maintain such surpluses or reserves for such contingencies or purposes as the **Directors** think fit;
  - (e) for such other purposes as the **Directors** may from time to time approve.

## Section 6: Association's Funds

---

### Rule 26 Investment

The funds of the **Association** may (subject to the direction and general supervision of the **Directors**) be invested in such stocks, shares, bonds, debentures or other securities or such currencies, commodities, or other real or personal property, or by being deposited in such accounts as the **Association** may think fit. The funds of the **Association** may also be invested by such other method as the **Directors** may approve.

### Rule 27 Contingency Fund and Contingency Call

- (1) The **Directors** may in their discretion establish and maintain a **Contingency Fund**:
  - (a) in the event of the withdrawal of an unusually large number of **Ships**;
  - (b) in the event of the **Association** ceasing to underwrite; or
  - (c) to meet in part or in whole the estimated total outstanding, contingent, future and anticipated liabilities of the **Association**, whether the said liabilities had arisen or might arise in respect of the current **Policy Year** or in respect of any other **Policy Year**.
  
- (2) The funds required to establish and maintain the **Contingency Fund** shall be levied by one or more **Contingency Calls** in the following manner:
  - (a) the **Directors** shall determine the total amount required to be raised by each such **Contingency Call**;
  - (b) each **Member** of the **Association** in the **Policy Year** during which the **Directors** resolve to make a **Contingency Call**, and each **Member** in any of the four (4) years preceding that **Policy Year** shall pay a **Contingency Call** whether or not any of the **Association's** outstanding, contingent, future or anticipated liabilities (in respect of which the **Contingency Call** was made) arose or may arise during the **Member's** period of **Entry**;

## Section 6: Association's Funds

### Rule 27 Contingency Fund and Contingency Call

- (c) the amount payable by each **Member** for each **Entered Ship** for each **Policy Year** for each **Contingency Call** shall be the amount calculated by the **Association** by dividing the total sum required for each **Contingency Call** by the total number of **Entered Ships** in the **Policy Year** in which the **Directors** resolve to make such **Contingency Call** and in each of the four years preceding that **Policy Year**.
- (3) Any amount or amounts not paid by any **Member** by way of any **Contingency Call** may in the discretion of the **Directors** be recovered from the other **Members** pro rata in proportion to the **Contingency Call** last due from them.
- (4) In the event that, following a **Contingency Call** levied pursuant to paragraphs (1) and (2) of this Rule 27, there is, in the opinion of the **Directors**, a surplus of funds after the total outstanding, contingent, future and anticipated liabilities of the **Association** the subject of any such **Contingency Call** have been met, every **Member** shall be entitled to have returned to him an amount equivalent to a proportion of the said surplus calculated pro rata to the amount of the **Contingency Call** last paid by him.
- (5) A **Member** shall only be liable to pay in respect of any **Ship** which ceased to be covered before the end of a **Policy Year**, in accordance with Rule 19, that proportion of the **Contingency Call** in respect of that **Ship** for that **Policy Year** as that part of the **Policy Year** during which the **Ship** was entered bears to the whole of that **Policy Year**.

## Section 6: Association's Funds

### Rule 28 Payment of Calls

- (1) Each **Call** and each **Contingency Call** shall be payable in such instalments and on such dates as the **Directors** may specify.
- (2) As soon as is reasonably practical after the amount of any **Call** or **Contingency Call** is fixed the **Association** shall notify each **Member** concerned of:
  - (a) any such amount as may be appropriate;
  - (b) the date on which the **Call** or **Contingency Call** or any instalment of the same is payable; and
  - (c) the amount payable by such **Member** in respect of each **Ship** entered by him.
- (3) The **Association** may require a **Member** to pay all or any part of any **Call** or **Contingency Call** in such currency or currencies as the **Association** may specify.
- (4) Notwithstanding the rights and remedies of the **Association** under these **Rules**, if any **Call**, **Contingency Call** (or any part-payment or instalment), **Fixed Premium** or any other sum due from any **Member** or other person covered under these **Rules** is not paid by that **Member** or other person on or before the due date under this Rule 28 or Rule 21 as the case may be, the **Member** or other person shall (unless the **Association** otherwise agrees in writing) pay interest on the outstanding amount from and including the due date to the date of payment, at such rate as the **Directors** may from time to time determine.
- (5) The **Association** shall have a lien or other right of action against any **Entered Ship** in respect of any **Call**, **Contingency Call**, **Fixed Premium** or any other sum of whatsoever nature due from the **Member** or any other person covered under the **Rules** and that lien or right of action shall continue notwithstanding that the cover of the **Member** or such other person or in respect of any **Ship Entered** by him has been terminated in accordance with Rule 17 (Termination of Cover), ceased in accordance with Rule 19 (Cessation of Cover) or cancelled in accordance with Rule 21 (Cancellation of Cover).

Interest payable  
on late payments

## Section 6: Association's Funds

---

### Rule 29 Laid-up Returns

- (1) If an **Entered Ship** shall be and remain unemployed in any safe place for a period of thirty (30) or more consecutive days after finally mooring there the **Member** shall be allowed a return of all **Calls** levied pursuant to these **Rules** at such rate as the **Association** may from time to time determine. Subject to that, the return of **Calls** will be pro rata to the period the **Ship** remains in a safe place as against the **Policy Year**.
- (2) For the purposes of Rule 29(1):
  - (a) a **Ship** will not be treated as laid-up if she is undergoing repair, conversion or modification or has either crew members (other than for her maintenance or security) or cargo on board, unless the **Association** decides otherwise;
  - (b) no return of **Calls** shall be allowed if a **Member** makes any claim in respect of the **Entered Ship** in respect of any claims, disputes or **Proceedings** arising out of events occurring during the period beginning with the **Ship's** arrival at the safe place and ending upon her final departure from the safe place;
  - (c) the **Association** shall decide whether any place is a safe place and, if disputed by the **Member**, the **Directors** will decide and their decision will be final;
  - (d) no claim for laid-up returns relating to any **Policy Year** shall be recoverable from the **Association** unless written notice has been given to the **Association** within six (6) months of the end of that **Policy Year**;
  - (e) no return of **Fixed Premiums** shall be payable unless the **Directors** otherwise decide; and
  - (f) no return of any **Contingency Call** or amounts due under Rule 24(8) shall be allowed by reason of Rule 29(1).

## Section 7: Directors and Managers

---

### Rule 30 Directors' Meetings

- (1) The **Directors** will meet as often as they may consider necessary to conduct the business of the **Association** and for the purpose of deciding whether to give support to **Members** in respect of any claims or disputes or **Proceedings** and for the purpose of the settlement of claims against the **Association**. No **Director** shall act as such in connection with any matter in which he is interested. The **Directors** shall not give any reason for their decisions.
- (2) At meetings convened pursuant to paragraph (1) of this Rule 30 the **Directors** may consider, as they think necessary, any information, documents or evidence relating to the claims or disputes or **Proceedings** in question together with any advice, reports or opinions received from the persons referred to in Rule 6 (Claims Handling). The **Member** concerned shall have the right to place any relevant evidence or contentions before the **Directors** but he shall do so by means of written submissions only, to be delivered to the **Association** no later than five (5) **Business Days** before the date of the relevant meeting.

### Rule 31 Miscellaneous Powers of the Directors

- (1) The **Directors** may cause the **Association** to become a member of any society or organisation, and for this purpose may authorise the payment by the **Association** to those bodies of such subscriptions or grants as the **Directors** may think fit.
- (2) The **Directors** may take or promote such steps as they consider expedient for advancing or defending the interests or defining the rights or liabilities of **Members**. For this purpose they may join with other associations and organisations in fighting test cases on such terms as they may deem desirable.

Material  
considered by  
Directors

## Section 7: Directors and Managers

---

### Rule 32 Delegation

Managers' delegated authority

- (1) Whenever any power, duty or discretion is conferred on the **Association** under these **Rules**, such power, duty or discretion shall, subject to any terms, conditions or restrictions contained in these **Rules**, be exercised by:
  - (a) the **Directors**; or
  - (b) the **Managers** where such power, duty or discretion is delegated by the **Directors** from time to time and any reference to an opinion, assessment, decision, notice or exercise of discretion of or by the **Association** shall be to an opinion, assessment, decision, notice or exercise of discretion of or by that of the **Directors** or **Managers** as appropriate.
- (2) Except as set out in Rule 3(5), whenever any power, duty or discretion is stated in these **Rules** to be vested in the **Directors**, such power, duty or discretion shall be exercisable only by the **Directors**.
- (3) A **Member** shall not be entitled to enquire as to the extent of any delegation by the **Directors** under these **Rules**. However, where delegation by the **Directors** to the **Managers** is permitted under these **Rules**, a **Member** shall be entitled to rely on any decision or communication by the **Managers** without further enquiry or evidence of delegation by the **Directors**.

### Rule 33 Remuneration of Managers

The **Managers** shall be remunerated by the **Association** on such basis and in such amounts as may be approved by the **Directors**.

## Section 7: Directors and Managers

---

### Rule 34 Circulars and Practice Recommendations

- (1) The **Association** may from time to time issue **Circulars** or make **Practice Recommendations** which will come into effect upon notice of the same being given to a **Member** or other person covered under the **Rules**.
- (2) The **Practice Recommendations** in effect at the commencement of the **Policy Year** are attached to the **Rules** in the Appendix.
- (3) The **Association** may at any time add to, vary or amend any **Practice Recommendations** or **Circulars** upon notice being given to a **Member** or other person covered under the **Rules**.

### Rule 35 Reinsurance

The **Association** may reinsure or cede any risks covered by the **Association** with such reinsurers and on such terms as the **Association** decides.

## Section 8: General

---

### Rule 36 Bye-Laws

- (1) The **Directors** may pass bye-laws from time to time which shall be deemed to be incorporated into these **Rules** with effect from the beginning of the next **Policy Year**. Breach of a bye-law by a **Member** shall be grounds for the **Association** to:
  - (a) reject or reduce any claim made by the **Member** to the extent to which it would not otherwise have arisen; and/ or
  - (b) impose terms on the continued **Entry** of the **Member's Ships** in the **Association**.
- (2) Notice giving particulars of every bye-law passed and its effective date shall be given to every **Member** and shall be published on the **Website**.

### Rule 37 Assignment

- (1) The rights conferred by the **Association** to its **Members** and their **Successors** are personal and no interest arising under these **Rules** or under any contract between the **Association** and any **Member** may be assigned nor any legal or beneficial interest created without the written consent of the **Association**. Such consent shall be at the discretion of the **Association** and may be given upon such terms or conditions as the **Association** thinks fit. In the absence of such consent any purported assignments shall be null and void and of no effect.
- (2) The **Association** shall without prior notice be entitled in settling any claim presented by an assignee to deduct or retain such amount as the **Association** may then estimate to be sufficient to discharge any existing or future liabilities of the assignor to the **Association**.

## Section 8: General

---

### Rule 38 Knowledge

Where any of the **Rules** is qualified by the inclusion of a reference to the knowledge or awareness of a **Member** or **Owner** or **Applicant Member** or any similar expression, he shall be deemed to have knowledge of anything of which he ought reasonably to have knowledge had due and careful enquiries been made.

### Rule 39 Preservation of Association's Rights

Any exercise or partial exercise by the **Association** of any of its rights under these **Rules**, or any forbearance, delay or omission in exercising any such rights shall not constitute a waiver of any right available to the **Association** nor affect the right to exercise that right at a later time. The rights of the **Association** are cumulative and not exclusive of any rights or remedies provided by law.

### Rule 40 Right of Set Off

- (1) Notwithstanding anything else contained in these **Rules** the **Association** shall be entitled to set off any amount due from a **Member** to the **Association** against any amount due to such **Member** from the **Association**.
- (2) A **Member** shall not be entitled to set off claims or other amounts due or alleged to be due from the **Association** or recoveries from third parties against any **Calls**, **Contingency Calls**, **Fixed Premiums** or any other sums due to the **Association**.

## Section 8: General

### Rule 41 Notices

- Member to Association**
- (1) Any notice or other communication to be given or served on the **Association** under or in connection with these **Rules** shall be in writing and may be delivered by hand or sent by pre-paid post (using airmail in the case of a notice from any country outside the United Kingdom) to the **Association's** registered office.
- Association to Member**
- (2) Any notice or other communication to be given or served by the **Association** under or in connection with these **Rules** shall be in writing and may be delivered personally or sent by post, fax or e mail:
- (a) to the **Member** at any address as recorded for him by the **Association**; or
  - (b) to any other person covered under the **Rules** at the address provided by such person for the service of notices; or
  - (c) to any broker or other intermediary through whom a **Ship** to which the notice relates is or was entered in the **Association**.
- Joint Members**
- (3) In the case of **Joint Members**:
- (a) any communication from any **Joint Member** to the **Association** or the **Managers** shall be deemed to have been made with the full approval and authority of all relevant **Joint Members**; and
  - (b) any notice given to the **Member** first named in the **Register of Members** shall be sufficient notice to all the **Joint Members**.
- Alternative address**
- (4) Any **Member** may from time to time specify an alternative address within the United Kingdom at which notices or other communications may be served. Such address may be used by the **Association** in substitution for that **Member's** address as recorded by the **Association**.

## Section 8: General

### Rule 41 Notices

- Timing of service**
- (5) Any notice or communication made under this Rule 41 shall be deemed to be given or served:
- (a) if delivered by hand, at the time it is left at the address;
  - (b) if sent by post within the United Kingdom to another address within the United Kingdom, on the second **Business Day** after posting;
  - (c) if otherwise sent by post, on the fifth **Business Day** after posting; and
  - (d) in the case of an email or facsimile transmission, at the time of transmission,
- except that where delivery by hand or by email or facsimile transmission is deemed to occur after 5.00pm (local time) on a **Business Day**, or at any time on a day which is not a **Business Day**, the date of service shall be deemed to be the next **Business Day**. The **Association's** logs and records shall, in the absence of manifest error, be conclusive evidence of such communication and of its despatch or receipt.
- Notices binding on Successors**
- (6) Successors of a **Member** shall be bound by any notice or communication served under this Rule 41 notwithstanding that the **Association** may have notice of the circumstances leading to such succession.

## Section 8: General

### Rule 42 Rights of Third Parties

- (1) These **Rules** and any contract between the **Association** and a **Member** shall not be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party, except to the extent (if any) that the **Rules** or any such contract expressly provide for that Act to apply.
- (2) Notwithstanding that any term of these **Rules** or any contract between the **Association** and a **Member** may be or become enforceable by a third party, the **Rules** or any of them may be varied, amended or modified or cover may be suspended, cancelled or terminated without the consent of any third party.

### Rule 43 Disputes and Differences

- (1) The **Member** hereby submits to the jurisdiction of the High Court of Justice in England in respect of any action by the **Association** to recover any sum the **Association** may consider to be due to it from the **Member** and acknowledges the **Association** shall in addition be entitled to take action in any jurisdiction to recover such sums.
- (2) Any other dispute or difference between the **Member** and the **Association** arising out of or in any way connected with these **Rules** shall be referred first to the **Directors** for their determination, whether or not the **Directors** have already considered the subject out of which the dispute or difference arises or is connected.
- (3) If the **Directors** in their absolute discretion determine that the subject matter out of which the dispute or difference arises or is connected has been previously considered by them (whether in relation to that **Member** or otherwise), they shall not be obliged to consider the matter further. The **Member's** rights of recourse to arbitration pursuant to Rule 43(5) remain unaffected.

Referral to the Directors

## Section 8: General

### Rule 43 Disputes and Differences

- (4) The **Directors** will reach their decision on the dispute or difference referred to them but shall only consider submissions in writing. The **Directors** may take into account any issues of fact, inferences of fact or other matters which either arise in connection with the subject matter of the dispute or difference or the **Directors** consider relevant. The **Directors** shall not be obliged to give any reason for their decision.
- (5) The **Member** is not entitled to recover any costs or expenses incurred in connection with the referral of the dispute or difference to the **Directors**.
- (6) If the **Member** does not accept the decision of the **Directors** the dispute or difference shall be referred to a single arbitrator in London.
- (7) The arbitrator will be a Queen's Counsel at the Commercial Bar experienced in the business of shipping and marine mutual insurance. If the parties cannot agree whom to appoint, an arbitrator shall be appointed upon the nomination of the Chairman of the Commercial Bar Association.
- (8) The arbitrator's decision will be final and binding on the parties. The submission to arbitration and the arbitration proceedings shall be subject to the Arbitration Act 1996 and any statutory modification or re-enactment thereof.
- (9) Except as provided in this Rule 43, no **Member** shall be entitled to maintain any **Proceedings** against the **Association** in relation to any difference or dispute other than action to enforce any award that the arbitrator appointed under Rule 43(6) or 43(7) may direct to be paid by the **Association**, in which case the sole obligation of the **Association** to such **Member** under these **Rules** and any contract between them in respect of any such dispute or difference shall be to pay the sum directed by such award.

Arbitration

Choice of arbitrator

Binding effect of decision

## Section 8: General

---

### Rule 43 Disputes and Differences

- (10) Any dispute arising between a **Member** and the **Managers** shall be referred to arbitration in accordance with the provisions of Rule 43 (6) to (8) and no **Member** shall be entitled to maintain any proceedings against the **Managers** other than as so provided.

### Rule 44 Governing Law

These **Rules** and any contract between the **Association** and a **Member** shall be deemed to have been concluded in England save where expressly stated otherwise in such contract, and both these **Rules** and any such contract shall be governed by and construed in accordance with English law.

## Section 9: Definitions and Interpretation

---

In these **Rules** the words standing in the first column of the table below shall have the meanings set opposite to them in the second column, if not inconsistent with the subject or context.

Words	Meanings
<b>Applicant Member</b>	In relation to a <b>Ship</b> which is desired or intended to be entered in the <b>Association</b> , means Owner, owners in partnership, owners holding separate shares in severalty, part owner, mortgagee, trustee, charterer, operator, manager or builder of such ship or any other person, provided always that they are named in the <b>Certificate of Entry</b> , by whom or on whose behalf an application has been, is being or is to be made for the <b>Entry</b> , whether he be or is to be a <b>Member</b> or not.
<b>Articles</b>	The articles of association for the time being of the <b>Association</b> .
<b>Association</b>	The United Kingdom Freight Demurrage and Defence Association Limited.
<b>Business Day</b>	A day, except a Saturday or a Sunday, on which banks in the City of London are open for business generally.
<b>Call</b>	Sums payable to the <b>Association</b> in respect of an <b>Entered Ship</b> pursuant to Rules 23(1), 24 and 25.
<b>Call Rating</b>	The rate agreed to be payable to the <b>Association</b> in respect of a <b>Ship Entered</b> or to be <b>Entered</b> by a <b>Member</b> or <b>Applicant Member</b> pursuant to Rule 24.
<b>Certificate of Entry</b>	A document and any endorsement to the document issued by the <b>Association</b> which records the name of the <b>Member</b> and evidences the contract of insurance in respect of an <b>Entered Ship</b> .

## Section 9: Definitions and Interpretation

Words	Meanings
<b>Cessation Event</b>	<p>If a <b>Member</b> or other person covered under the <b>Rules</b> is a corporation, <b>Cessation Event</b> means any of the following occurring in respect of that <b>Member</b> or other person: (a) an order being made or resolution passed for its winding up (except for the purposes of a bona fide reconstruction or amalgamation pursuant to which the resulting corporation agrees to be bound by these <b>Rules</b>); (b) the appointment of an office holder under a court order or as a result of the enforcement of security by a third party including but not limited to the appointment of an administrator, administrative receiver or receiver; (c) undisputed possession being taken by or on behalf of a secured creditor of all of the <b>Member's</b> or other person's <b>Entered Ships</b>; or (d) otherwise becoming insolvent or suffering any similar event to those listed in (a) and (b) of this paragraph in any jurisdiction.</p> <p>If a <b>Member</b> or other person covered under the <b>Rules</b> is an individual, <b>Cessation Event</b> means any of the following occurring in respect of that <b>Member</b> or other person: (a) becoming bankrupt; (b) entering into (or a court or other competent authority imposing on him) any composition or arrangement with his creditors generally; (c) suffering any similar event to those listed in (a) and (b) in this paragraph in any jurisdiction; (d) undisputed possession being taken by or on behalf of a secured creditor of all of the <b>Member's</b> or other person's <b>Entered Ships</b>; or (e) death; or (f) becoming incapable by reason of mental disorder of managing and administering his property or affairs.</p>
<b>Circular</b>	<p>A notice in writing to a <b>Member</b> or other person covered under the <b>Rules</b> pursuant to Rule 34 relating to the management of the <b>Association</b> and the cover provided to a <b>Member</b> or group of <b>Members</b>.</p>
<b>Contingency Call</b>	<p>Sums payable to the <b>Association</b> pursuant to Rule 27.</p>

## Section 9: Definitions and Interpretation

Words	Meanings
<b>Contingency Fund</b>	<p>A fund established by the <b>Directors</b> pursuant to Rule 27.</p>
<b>Costs</b>	<p>Any costs or expenses incurred in connection with bringing or defending any of the claims referred to in Rule 2 but not including a <b>Member's</b> administrative costs or expenses, and not including the costs of providing or maintaining any property, guarantee, bond or other asset given as security for such claims unless and to the extent the <b>Directors</b> in their discretion decide otherwise.</p>
<b>Directors</b>	<p>The board of directors for the time being of the <b>Association</b>.</p>
<b>Entered Ship</b>	<p>A <b>Ship</b> which has been entered in the <b>Association</b>, and 'Entered' and 'Entry' shall be construed accordingly.</p>
<b>Fixed Premium</b>	<p>Any monies payable to the <b>Association</b> under Rule 12.</p>
<b>Fixed Premium Entry</b>	<p>A <b>Ship</b> which has been entered in the <b>Association</b> pursuant to Rule 12.</p>
<b>GMT</b>	<p>Greenwich Mean Time.</p>
<b>Hull Policies</b>	<p>Policies effected on the hull and machinery of a <b>Ship</b> including any excess liability policy.</p>
<b>Joint Member(s)</b>	<p>One or more of those <b>Members</b> (being greater in number than one) on behalf of whom a <b>Ship</b> is entered in the <b>Association</b>.</p>
<b>Managers</b>	<p>The managers for the time being of the <b>Association</b>.</p>
<b>Member</b>	<p>A member for the time being of the <b>Association</b> as evidenced by an entry in the <b>Register of Members</b>, and <b>Membership</b> shall be construed accordingly.</p>
<b>Member of UK (IOM)</b>	<p>A member (as defined in and subject to the memorandum and articles of association and rules thereof) of <b>UK (IOM)</b>.</p>

## Section 9: Definitions and Interpretation

---

Words	Meanings
<b>Memorandum</b>	The memorandum of association for the time being of the <b>Association</b> .
<b>Operation</b>	The employment or use of an <b>Entered Ship</b> .
<b>Owner</b>	In relation to an <b>Entered Ship</b> , means owner, owners in partnership, owners holding separate shares in severalty, part owner, mortgagee, trustee, charterer, operator, manager or builder of such ship or any other person, provided always that they are named in the <b>Certificate of Entry</b> by whom or on whose behalf an application has been, is being or is to be made for the <b>Entry</b> , whether he be or is to be a <b>Member</b> or not.
<b>Policy Year</b>	A year from noon <b>GMT</b> on any 20th February to noon <b>GMT</b> on the next following 20th February.
<b>Practice Recommendation</b>	A notice in writing to a <b>Member</b> or other person covered under the <b>Rules</b> pursuant to Rule 34 relating to the ownership, management, chartering or operation of an <b>Entered Ship</b> and any matters associated therewith which may give rise to a claim on the <b>Association</b> .
<b>Proceedings</b>	Court, arbitration or other legal proceedings including mediation or other recognised forms of alternative dispute resolution and the enforcement of judgments, awards or orders made in those proceedings.
<b>Proper Value</b>	The market value of the <b>Ship</b> , without commitment, at the date of the relevant incident.
<b>Register of Members</b>	The Register of <b>Members</b> of the <b>Association</b> as required to be kept pursuant to section 113 of the Companies Act 2006.
<b>Rules</b>	The rules for the time being of the <b>Association</b> set out herein including the Introduction.

## Section 9: Definitions and Interpretation

---

Words	Meanings
<b>Ship</b>	Ship, boat, hovercraft, rig or other description of vessel or structure (including any ship, boat, hovercraft, rig or other vessel or structure under construction) used or intended to be used for any purpose whatsoever in navigation or otherwise on, under, over or in water, or any part thereof or any proportion of the tonnage thereof or any share therein.
<b>Statute</b>	A legislative act or law.
<b>Successors</b>	In relation to all the persons set out in the definitions of <b>Member</b> , Owner and Applicant <b>Member</b> and in relation to any other person whomsoever by whom or on whose behalf a <b>Ship</b> shall have been <b>Entered</b> , shall include an heir, executor, administrator, personal representative, permitted assignee, receiver, curator or person authorised to act on behalf of one who becomes incapable by reason of mental disorder of managing his property or affairs, trustee in bankruptcy, liquidator and other successors whatsoever.
<b>UK (IOM)</b>	The United Kingdom Defence Insurance Association (Isle of Man) Limited, a company incorporated in the Isle of Man with liability limited by guarantee, without a share capital, with which the <b>Association</b> may reinsure risks.
<b>Website</b>	The Internet website of the <b>Association</b> currently to be found at <a href="http://www.ukdefence.com">www.ukdefence.com</a>

Headings, which appear in certain **Rules** to the left of the text of the Rule itself, are provided for ease of reference and do not form part of the **Rules**.

Words in the singular shall include the plural.

Words in the masculine gender shall include the feminine gender.

'Person' shall include a corporation.

A reference to 'writing', shall include printing, typewriting, lithography, facsimile and any other mode of representing words in a visible form.

## Appendix: Practice Recommendations

---

Practice Recommendations provide guidance for Members on certain matters, as well as information on resolutions or bye-laws made from time to time by the Directors. They are applicable at all times unless otherwise amended. Members will be made aware of updates to Practice Recommendations in accordance with Rule 41 and by publication on the Website. Further copies are also available upon request to the Managers.

## Appendix: Practice Recommendations

---

### Practice Recommendation 1

#### **Dates of Entry – owner and charterer Members**

The attention of Members is drawn to Rule 1(1)(c) of the Association's Rules under which a Member is only covered for costs incurred which arise out of events occurring during the period when the ship is entered in the Association. This can have implications where contracts are agreed in advance of the delivery of a ship but where the ship is not entered with the Association until it is delivered to the Member. Were such a contract to be cancelled or claims to arise prior to the ship being delivered, the Association could not accept any claims arising unless the ship had been entered from the date of the contract.

With regard to owned entries, Rule 1(4) of the Association's Rules also provides as follows:

“Claims concerning the building, purchase or sale of a Ship shall be deemed to arise at the date of the relevant contract or such later date and on such terms as the Association may agree”.

The effect of this sub-section is that when an Application for Membership is completed the risk will usually only attach, so far as claims under a construction or sale and purchase contract are concerned, if the entry is made with effect from the date of the building or purchase contract or such later date as agreed with the Managers. Liability for calls also begins with effect from that date.

In the case of the assignment or novation of a building or purchase contract where the new buyer steps into the shoes of the original buyer, the appropriate date of entry will usually be the date of the original contract, if cover is required for claims arising under the original contract, as opposed to the date of the assignment or novation. Where a ship under construction is purchased under a Memorandum of Agreement (a newbuilding on-sale) the appropriate date will be the date of the Memorandum of Agreement.

In all cases entries are subject to the implied term, applicable to any entry, that at the time of application the applicant is not aware of any claim or any events likely to give rise to a claim in connection with the building or purchase contracts in question.

With regard to chartered entries, Members are required to enter ships from the date of any charterparty if they wish to be covered for disputes such as non-delivery or cancellation of the contract.

## Appendix: Practice Recommendations

---

### Practice Recommendation 2

#### **Conduct of claims**

Over a number of years the Association has experienced an escalation in the general level of legal costs and expenses in a number of major jurisdictions. Faced with this trend the Managers have, from time to time, issued circulars highlighting the need for Members, when confronted with matters which may involve the Association, to observe closely certain requirements aimed at both avoiding unnecessary legal expenditure and achieving the most cost-effective use of the Association's resources.

In summary, these requirements are as follows:

#### **Notification of Claims**

Rule 5(1) requires Members to give prompt notification to the Managers of any matter which may give rise to costs forming a claim on the Association. This obligation applies even if it is anticipated that a dispute may be settled amicably. Not only does prompt notice ensure compliance with the Rules, it also affords the Managers the opportunity to offer advice on any claim.

#### **Appointment of Lawyers**

Rule 5(2) requires that Members should obtain the Managers' written approval before a lawyer or surveyor or other professional advisor is instructed in any matter which may form a claim on the Association. The Managers recognise that on occasions this may not be possible and in these circumstances notification should be made to the Managers as soon as possible after any such appointment. In many cases the Managers can offer their considerable experience in claims matters by providing advice and assistance in resolving claims, without the need for external advice.

The Managers' Value for Money programme ('VfM') is also an integral part of the Association's strategy to achieve greater levels of value from service providers. As part of this VfM programme a number of UK based law firms have been appointed Preferred Legal Partners and Approved Suppliers. Details of these appointments and the VfM programme can be found on the Association's website; [www.ukdefence.com](http://www.ukdefence.com) or by speaking to your Account Manager or Syndicate contact.

Where the involvement of lawyers is unavoidable, the Managers will, wherever possible, respect a Member's choice of lawyer, provided that lawyer is suitably qualified for the matter in question.

## Appendix: Practice Recommendations

---

### Practice Recommendation 2

#### **Conduct of claims**

#### **Information and Consultation**

Under Rule 5(3), Members should ensure that the Managers are kept closely involved in and informed of the progress of a matter, whether or not lawyers have been instructed. In particular, the Managers should receive, contemporaneously with developments in the case, copies of all documentation and correspondence which is relevant to the conduct of the matter. Where lawyers have been appointed, this is often best achieved by ensuring that the Managers are copied into all correspondence with those lawyers. The Managers should also always be consulted before any decisions are taken which are likely to impact on the future conduct, strategy or the costs of a case.

There may be occasions when a Member intends to seek retrospective support for the costs of a case. This may arise in circumstances where a decision has been taken to restrict or decline support. Notwithstanding this if a Member intends to revisit the decision subsequently it remains an obligation of the Member to keep the Managers closely apprised of developments in the case, and to follow the guidelines contained within this circular.

#### **Settlement**

Under Rule 5(4) Members should seek the prior consent of the Managers before settling or compromising any claim, dispute or Proceedings which might give rise to a claim on or which has been conducted with the support of the Association. In particular, Members should ensure that any requirement of the Managers to make provision in any settlement agreement for costs or expenses which have been incurred by the Association is complied with.

In some cases, the terms of any settlement or compromise may include a specific provision for the recovery of costs. However, where a settlement is proposed which contemplates the payment of an "inclusive" sum, without specific reference to the recovery of costs, and a costs recovery might otherwise have been expected, then the Managers should be consulted over the proportion of the settlement which may properly be attributable to costs before the settlement is concluded.

#### **Payment of Fees**

In most cases, where the Association has given support to costs being incurred, fees will be met by the Association directly. However, where this is not the case, Members should seek the Managers' approval before paying any fees which may subsequently form a claim on the Association.

## Appendix: Practice Recommendations

---

### Practice Recommendation 3

#### Contingency and conditional fee arrangements

Some Members are already familiar with contingency fees, a term used to describe an arrangement between client and lawyer in which the amount payable to the lawyer depends in whole or in part on the result of the case. Such arrangements – often referred to as “no win no fee” - have been most prevalent in the USA, but are by no means unique to that jurisdiction.

Prior to 2000 contingency fee arrangements were not permitted in England, as they were considered contrary to public policy. Thereafter however English law has permitted the use conditional fee agreements (“CFAs”) whereby if the case is won, the lawyer is entitled to his normal fee, based on hourly billing, plus a “success fee” which may not exceed 100% of the normal fee (the uplift is usually between 25% and 50%), and which is usually recoverable from the losing party. However fee agreements where the lawyer is paid a percentage of the damages awarded remain unenforceable in England.

In practical terms, Members and the Association are likely to face one of two situations. The Association may be asked to support a conditional fee arrangement agreed with a Member’s lawyer. Alternatively, the Association may be asked to pay fees in a case where the Member, as the unsuccessful litigant, incurs a costs liability that includes a payment under a CFA.

Rule 5(2)(b) provides that a Member must “seek the Association’s prior approval before entering into any fee arrangement with lawyers” other than fees calculated on a time basis (such as conditional, contingency or success fees).

In principle, contingency fee arrangements or CFA’s fall within the Association’s cover. Each case will be considered on its own facts and merits but, in general, amounts payable to Members’ lawyers under a contingency fee arrangement or CFA will be supported by the Association provided that:

- (a) the case merits support in any event and the arrangement is not being used to fund speculative litigation; and
- (b) the fees offer a cost-effective means of pursuing the case; and
- (c) the maximum sum payable under the arrangement does not grossly exceed the fees that would have been charged had the case been billed on an hourly basis; and

## Appendix: Practice Recommendations

---

### Practice Recommendation 3

#### Contingency and conditional fee arrangements

- (d) any contingency fee arrangement or CFA is referred to the Managers in advance for their prior approval.

The Members’ attention is particularly drawn to (d) above. Members are asked to note that, if a contingency fee arrangement or CFA is not referred to the Managers in advance, the Managers may be unable to commit the Association to amounts payable to the Member’s lawyers under the arrangement.

Where a Member, as the unsuccessful litigant, incurs a costs liability that includes a payment under a contingency fee arrangement or CFA, the Association will cover the Member’s costs liability if the Association has agreed to support the costs of the litigation.

### Practice Recommendation 4

#### Compliance with statutory requirements

Members will be aware that from time to time statutory requirements are introduced which become mandatorily applicable to ships or certain categories or types of ships. A non exhaustive list of such statutory requirements could include ISM, ISPS, the phase-out of single hull tankers or Marpol Annex VI (bunker fuel sulphur limits).

Members are reminded that under Rule 3(4)(b) of the Association’s Rules, the reasonableness of a Member’s conduct is one of the factors which the Directors may take into account when considering the extent to which the Association can support the costs of a case. In the context of disputes arising from the effect of statutory requirements, the approach taken by a Member towards compliance and certification will be one of the relevant factors taken into account.

## Appendix: Practice Recommendations

---

### Practice Recommendation 5

#### **Bunker quality disputes**

The Association has over a number of years been involved in cases concerning the supply of inferior bunkers. In many instances the Member's case has been compromised by its inability to provide clear evidence that the bunkers supplied to the ship were the cause of the damage.

In order to maximise the prospects of successfully resolving such claims, Members are recommended to pay particular attention to the following:

1. The fuel specification contained in the charterparty or used when ordering fuel.  
Members are advised to use a recognised fuel standard such as ISO8217 and to endeavour to make specific reference to elements such as aluminium and silicon. Reference should also be made to stability and to the need to prohibit the blending of spent lubricants with fuel oils.
2. The terms and conditions covering the purchase of fuel.  
Some contracts have been noted to include a clause exempting the supplier from or indemnifying him against all liability unless put on notice within three days of delivery.
3. The Member's instructions for sampling procedures.  
As samples from tanks may be claimed to be mixed with previous bunkers or residues, Members are advised to arrange for drip samples to be taken throughout the bunkering process at the ship's manifold. Procedures should cover the exchange, witnessing and storage of samples.
4. The entering of a ship in a fuel analysis scheme and the following of any recommendations made under that scheme.

In determining the extent to which the Association can give support to the costs of a bunker quality dispute the Directors may enquire as to the extent to which the Member has followed the above or similar guidelines.

## Appendix: Practice Recommendations

---

### Practice Recommendation 6

#### **Bunker supply ownership**

There have been a number of recent instances where owner Members have been forced to pay for bunkers supplied to the ship on behalf of a charterer who has subsequently become insolvent.

Although in a number of jurisdictions it is impossible to prevent the creation of a maritime lien in favour of a bunker supplier, Members are recommended to protect their position so far as possible by having a clause along the following lines stamped on the invoice for any goods or services, including bunkers, supplied on behalf of charterers.

"The goods and/or services being hereby acknowledged, receipted for, and/or ordered are being accepted and/or ordered solely for the account of charterers Messrs..... of ..... and not for the account of said ship or her owners. Accordingly, no lien or other claim against said ship can arise therefrom."

## Appendix: Practice Recommendations

---

### Practice Recommendation 7

#### VAT Payment Procedures

As Members will be aware, pursuant to the Association's Rules, all legal and claims related services are supplied to a Member notwithstanding any involvement on the part of the Association. In recent years it has been the general practice of the Association, at the Managers' discretion, to waive the requirement of prior payment by a Member and to settle directly with claims service suppliers those fees and disbursements which have been incurred in relation to services supplied to a Member, provided they have been incurred with the Managers' prior approval.

In certain circumstances depending on the domicile of the Member and the jurisdiction in which claims related services are provided the European Community Value Added Tax legislation may apply. The following sets out the procedures as to how invoices from claims related service providers should be rendered.

#### All Suppliers of Services Worldwide

1. All invoices must be prepared in duplicate and addressed to the Member, either showing the Member's full business style or describing the Member as the Owner or Charterer (as appropriate) of the m.v.."(insert ship name)..".
2. All invoices must also show the following details:
  - Ship name
  - The Association's file reference (if known)
  - Type of service supplied
  - Description of incident or contract (as appropriate).
3. The original invoice must be sent to the Member's designated principal place of business. The original invoice must record on its face that it is for the Member's information only unless it carries an element of EC VAT (see below). A copy of the invoice must be sent to the Managers, or, where the supplier is using the DataCert software, the billing data should be transmitted to the Managers via DataCert.

## Appendix: Practice Recommendations

---

### Practice Recommendation 7

#### VAT Payment Procedures

#### Suppliers based in the EC

Upon being initially instructed by or on behalf of a Member a service provider will be provided with details of the relevant Member's EC VAT status and, where appropriate, the Member's VAT registration number. As in the past, the supply of services to a Member who does not "belong" within the EC will, in most circumstances, be free of VAT provided the service provider confirmation that the relevant Member has a place of business outside the EC.

#### Suppliers based in the same EC country as the Member

It will be necessary for the supplier of services to charge VAT on VATable services, which the Member may recover if that Member is registered for VAT. In such circumstances, where the relevant invoice forms an accepted claim against the Association, the Association will only pay the amount of such an invoice net of VAT, the VAT being settled directly by the Member with the supplier of the services. If, however, the Member is not registered for VAT, the full amount of the invoice (inclusive of VAT) will be borne by the Association.

#### Suppliers based in an EC country other than that of the Member

The Managers are advised that, where a supplier of services based in one EC country provides services to a Member in, or belonging to, another EC country, the supplier of services will, in most circumstances, not need to include VAT provided the Member's VAT registration number is quoted upon the relevant invoice. Where such an invoice forms an accepted claim against the Association the invoiced amount (net of VAT) will be met by the Association. However, if the relevant Member is not registered for VAT and VAT is chargeable, then the full amount of the invoice (inclusive of VAT) will be borne by the Association.

## Appendix: Practice Recommendations

---

### Practice Recommendation 8 **Pre-fixture enquiries**

Members will be aware that one of the factors taken into consideration in determining the extent of the Association's support is the "reasonableness of a Member's conduct." As part of this review the Directors will consider the extent of pre-fixture enquiries that have been made by a Member prior to entering into a contract which forms the basis of a dispute. The level of enquiries will of course depend on whether the Member has had previous dealing with the other party and also the nature of the trade, however the Directors do consider that where the contractual party is unknown or relatively unknown to the Member, enquiries should be made prior to entering into such a contract of other operators who have had contractual dealings with this party or brokers who are knowledgeable of them.

The UK Defence Club is a mutual insurance company managed on behalf of its Members by Thomas Miller.

Thomas Miller provides a range of insurance solutions for the international shipping and transport sectors.

Hellenic War Risks, ITIC, TT Club, UK P&I Club, UK War Risks

### **The UK Defence Club**

c/o Thomas Miller Defence Ltd,  
90 Fenchurch Street, London EC3M 4ST  
tel: +44 207 283 4646  
email: tmdefence@thomasmiller.com web: www.ukdefence.com

### **Greece**

Thomas Miller (Hellas) Limited  
tel: +30 210 429 1200  
email: hellas1.ukclub@thomasmiller.com

### **Hong Kong**

Thomas Miller (Asia Pacific) Ltd  
tel: +852 2832 9301  
email: hongkong.ukclub@thomasmiller.com

### **Singapore**

Thomas Miller (South East Asia) Pte Ltd  
tel: +65 6323 6577  
email: seasia.ukclub@thomasmiller.com

### **New Jersey**

Thomas Miller (Americas) Inc  
tel: +1 201 557 7300  
email: newjersey.ukclub@thomasmiller.com

Registered Office  
90 Fenchurch Street, London EC3M 4ST

Registered in England  
No. 501877