

# Circular

**CIRCULAR TO ALL MEMBERS**

**Ref: 2009/05**

Dear Sirs,

## **RULES OF THE ASSOCIATION 2010/2011**

During 2009 the Association's Directors considered that a review of the Association's Rules was warranted in order to make the Rules clearer and more suited to the current needs of the Membership. Having undertaken this review the Directors have concluded that it is now appropriate to recommend a revised set of Rules to the Membership for consideration.

It is however stressed that this review focused on the clarity of the Rules and modernising them without altering the breadth of cover presently offered nor how the cover operates in practice.

A copy of the revised Rules ("the revised Rules"), together with a commentary is attached hereto as Appendix A. The commentary highlights material changes between the revised and the current Rules.

It will be noted from the attached that the revised Rules have been re-arranged into sections relevant to the category or issue with which any particular Rule is concerned. The revised Rules are structured to deal first with the nature of cover and how the cover operates, before moving into other areas such as issues relating to underwriting and the finances of the Association. Certain words within the revised Rules have been highlighted in **bold** type, which indicates that they are defined terms.

Importantly the types of claims that are capable of being covered have not been materially amended, but the wording has been revised in places to use terms which more adequately reflect modern business practices. In addition the revised Rules do not alter how the cover operates and cases will continue to be considered for support by the Managers and the Directors as appropriate. The revised Rules will also contain what will now be known as "Practice Recommendations". These are updated versions of previously released circulars relating to the conduct of claims, and include guidance on the factors that may be taken into account by the Managers or the Directors when considering support for a particular case.

***P.T.O***

The revised Rules are to be considered by the Membership at an Extraordinary General Meeting to be held on 21st January, 2010. If approved, the Rules will take effect from 20th February, 2010.

If any Members have any questions concerning the revised Rules they should contact the Managers.

Yours faithfully,

**THOMAS MILLER DEFENCE LTD**  
Managers

**RULES**  
**OF**  
**THE UNITED KINGDOM FREIGHT DEMURRAGE AND DEFENCE**  
**ASSOCIATION LIMITED**

Effective from 12 noon **GMT** on 20<sup>th</sup> February 2010.

*Draft*

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## 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**.

*The Introduction sets out the scope of the Rules and the cover provided by the Association. The specific provisions which appear in current Rule 1 have been moved to other sections.*

*The Introduction emphasises that certain words have a precise meaning and refers to the Section 9 Definitions.*

*It also emphasises that it is the obligation of the Member to provide proper and timely notification of matters covered by the Rules and not the obligation of lawyers. This reflects the “note” to the current Rule 4(l)(i).*



**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.

*This Rule echoes the wording of current Rule 1 but re-orders and simplifies it. It emphasises that the cover refers to "costs", as defined in Section 9.*

*Rule 1(1)(b) now includes the words 'ownership', 'management', and 'chartering'.*

*This is currently found at the proviso to Rule 4(1)(a) and now refers to the date of the salvage/towage contract as well as the date when salvage/towage services commence.*

*This reflects the proviso to the current Rule 2(A)(14) and the note to Rule 2 whereby disputes relating to the sale, purchase or construction of a ship will only be covered if an entry has been made from the date of the relevant agreement or such other date as agreed with the Managers.*

	<p>(5) Claims as to the existence of a contract relating to an <b>Entered Ship</b> will only be covered if the <b>Ship</b> has been entered from the date the alleged contract was concluded.</p>	<p><i>This is currently found in the proviso to Rule 2(A)(2).</i></p>
<p><b>RULE 2</b> Extent of Cover</p> <p>Costs covered</p>	<p>(1) A <b>Member</b> is covered for <b>Costs</b> in respect of the claims, disputes or <b>Proceedings</b> set out in Rule 2(3) where –</p> <p>(a) the <b>Costs</b> are incurred to investigate or protect the <b>Member’s</b> legal position; or</p> <p>(b) the <b>Costs</b> are incurred in connection with <b>Proceedings</b>,</p> <p>and the <b>Member</b> has the express written support of the <b>Association</b> for any such <b>Costs</b> to be incurred.</p>	<p><i>Rules 2(1)(a) and (b) maintain the distinction found in the current Rule 2(D) between obtaining approval for costs to ascertain a Member’s legal position and costs associated with proceedings.</i></p>
<p>Costs liabilities</p>	<p>(2) A <b>Member</b> is also covered for <b>Costs</b> including interest on those <b>Costs</b> which a competent court or tribunal may order the <b>Member</b> to pay to any other party in <b>Proceedings</b> provided that the <b>Member</b> has the express written support of the <b>Association</b> to commence, pursue or defend those <b>Proceedings</b>.</p>	

Risks covered		
	<p><b>(3)</b> The cover provided by the <b>Association</b> under these <b>Rules</b> applies to claims, disputes or <b>Proceedings</b> relating to an <b>Entered Ship</b> concerning –</p>	<p><i>This sets out the risks covered. There are no material changes to the current Rules. Minor amendments are highlighted below:</i></p>
	<p><b>(a)</b> 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;</p>	<p><i>This condenses and merges the current Rules 2(A)(1) to (3).</i></p>
	<p><b>(b)</b> the building, purchase or sale of the <b>Ship</b>;</p>	
	<p><b>(c)</b> the design, repair, conversion or modification of the <b>Ship</b>;</p>	<p><i>This follows the current Rule 2(A)(6) but includes disputes relating to the “design” of a ship.</i></p>
	<p><b>(d)</b> the loss of, damage to, detention, delay to or loss of use of the <b>Ship</b>;</p>	<p><i>This follows the current Rule 2(A)(4) but includes disputes relating to the delay to or loss of use of the ship. The proviso to the current Rule 2(A)(4) is now found in Rule 7(6).</i></p>
	<p><b>(e)</b> the supply of fuel, lubricants, materials or equipment, or other necessities to the <b>Ship</b>;</p>	<p><i>This follows the current Rule 2(A)(5) but includes disputes relating to the supply of lubricants to a ship.</i></p>
	<p><b>(f)</b> salvage or towage services rendered by or to the <b>Ship</b>;</p>	
	<p><b>(g)</b> the loading, lightering, stowage, trimming, storage or discharge of cargo;</p>	<p><i>Rule 2(3)(g) follows the current Rule 2(A)(8) but includes disputes relating to the storage of cargo.</i></p>
	<p><b>(h)</b> General and/or Particular Average contributions or</p>	



charges;

- (i) claims by or against passengers intended to be, being or having been carried on the **Ship** or their personal representatives or dependents;
- (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**.

*Rule 2(3)(m) follows the current Rule 2(A)(10) although claims against the Association are excluded.*

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**

*This is the "omnibus" Rule contained at the current Rule 2(B). It includes claims relating to the mortgage of a ship, as currently found at*

	<p>including (but not limited to) those arising from the mortgage, leasing or similar financing arrangements of an <b>Entered Ship</b>.</p>	<p><i>Rule 2(14,) as well as 'leasing' and 'similar financing arrangements'. As with the current Rules these claims are at the discretion of the Directors.</i></p>
<p>Prior Payment by Member</p>	<p>(5) Unless the <b>Association</b> decides otherwise, a <b>Member</b> will have no right to recover any sums from the funds of the <b>Association</b> unless he has first paid those sums.</p>	
<p>Limitation</p>	<p>(6) Notwithstanding anything contained in these <b>Rules</b> 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 <b>Association</b> to a <b>Member, Joint Member</b> or any other person whatsoever in respect of <b>Costs</b> shall in no circumstances exceed in the aggregate US\$15 million any one event or occurrence or series thereof giving rise to a claim.</p> <p>(7) The <b>Directors</b> shall be entitled in their discretion and without giving reasons to decide whether the <b>Costs</b> shall, for the purpose of Rule 2(6), have arisen from one or more events or occurrences or a series of either.</p>	<p><i>This is currently found in Rule 4(B) and limits the Association's liability to a maximum amount of \$15 million (unless agreed otherwise) for any one event, occurrence or series of events/occurrences that might give rise to a claim.</i></p>
<p>Mandatory cover</p>	<p>(8) Notwithstanding Rule 3, a <b>Member</b> is covered in respect of <b>Costs</b>, liabilities, losses and expenses not exceeding US\$10,000 (or such other sum as the <b>Directors</b> may from time to time decide) which are:</p> <p>(a) the <b>Costs</b> incurred by a <b>Member</b> for the purpose of obtaining legal or other</p>	<p><i>This is the mandatory element of cover introduced in 2008, and currently found at Rule 2(C).</i></p>

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 **Managers** in their discretion so decide.

**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

*This Rule brings together a number of provisions found at differing places within the current Rules, and details the process by which the Association considers the question of support for cases.*

*Rule 3(1) simplifies the language of the current Rule*

Consequence of non-compliance with the Rules

Costs incurred before support given

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**.

(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**.

(3) If a **Member** incurs any **Costs** in connection with any claims, disputes or **Proceedings** referred to in Rules 2(3) to (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

*27(A) and (B).*

*This simplifies the language of the current Rule 27(C).*

*This is currently found in the proviso to Rule 26(B).*

Factors taken into account

support.

(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

*This sets out the “non-exhaustive” list of factors taken into account on the question of support currently set out in the current Rule 27 (K). Rule 3(4)(b) has been amended slightly from the existing Rule whereby the issue of reasonableness is viewed by reference to what would be expected from a “reasonably prudent uninsured party”.*

*Rule 3(4)(c) provides that the Directors may take into account whether a Member has complied with any Practice Recommendation or Circular when deciding on whether to support a claim.*

**Association.**

Delegated authority	<p>(5) The powers vested in the <b>Directors</b> under this Rule 3 may, at the discretion of the <b>Directors</b>, be exercised by the <b>Managers</b>.</p>	<p><i>This maintains the current position, as per Rule 27(C) whereby the Managers are in certain circumstances authorised to act on the Directors' behalf in considering cases.</i></p>
Sole arbiters of fact	<p>(6) In exercising the powers vested in them under this Rule 3, the <b>Directors</b> or <b>Managers</b>, 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 <b>Proceedings</b> in relation to which the <b>Member</b> seeks to be covered by the <b>Association</b>.</p>	<p><i>This is based on the current Rule 27(G).</i></p>
Support to be confirmed in writing	<p>(7) The <b>Association</b> 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 <b>Managers</b> expressly in writing.</p>	<p><i>This is a new provision, whereby the Association's support for a case must be expressly confirmed and in writing.</i></p>
<b>RULE 4</b> Exclusions from Cover	<p>The following are expressly excluded from cover unless and to the extent the <b>Directors</b> in their discretion decide otherwise -</p>	<p><i>This Rule contains the current exclusions or limitations on cover to be found at different places within the existing Rules. Provisions effectively limiting cover but currently appearing as provisos, notes or definitions are now set out in this Rule for transparency.</i></p>
Minimum disputed amount	<p>(1) <b>Costs</b> 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 <b>Directors</b> may from time</p>	<p><i>This Rule sets out the minimum claim amount provision as contained in the proviso at the end of the current Rule 2(A)(b).</i></p>



<p>Unlawful trade</p>	<p>to time decide, such decision to be effective at the commencement of the <b>Policy Year</b> following the date on which the decision is taken;</p> <p>(2) <b>Costs</b> arising out of or consequent upon an <b>Entered Ship</b> carrying contraband, blockade running or being employed in any unlawful trade;</p>	
<p>Exclusion of Hull and Machinery and Charterer's Liability Risks</p>	<p>(3) <b>Costs</b> arising out of risks against which the <b>Member</b> would be insured if at the time of the incident giving rise to the <b>Costs</b> the <b>Ship</b> had been fully insured</p> <p>(a) under <b>Hull Policies</b> for its <b>Proper Value</b> 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</p> <p>(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;</p>	<p><i>Rule 4(3)(a) mirrors the current exclusion found in the existing Rule 4(C) relating to sums usually covered under hull and machinery policies.</i></p> <p><i>Rule 4(3)(b) formalises that charterer Members should have charterer's liability cover on terms no less favourable than those currently provided under Rule 4 Section 1 of the UK P&amp;I Club Rules.</i></p>
<p>Exclusion of War Risks</p>	<p>(4) <b>Costs</b> arising out of risks against which the <b>Member</b> would be insured if at the time of the incident giving rise to the <b>Costs</b> the <b>Ship</b> had been fully insured</p>	

<p>Exclusion of P &amp; I Risks</p>	<p>for its <b>Proper Value</b> under War Risk Policies on terms no less favourable than those of the Institute Time War &amp; Strikes Clauses Hull-Time 1/10/83 and the Institute Protection &amp; Indemnity War &amp; Strikes Clauses Hull-Time 20/7/87;</p> <p>(5) <b>Costs</b> arising out of risks <b>against</b> which the <b>Member</b> would be insured if at the time of the incident giving rise to the <b>Costs</b> the <b>Ship</b> 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;</p>	<p><i>Rules 4(5) and 4(6) reflect the provisions of the current Rule 4(E), which for ease of understanding has now been divided.</i></p>
<p>Exclusion of specialist operations and certain passenger ship risks</p>	<p>(6) <b>Costs</b> arising out of risks against which the <b>Member</b> would be insured if at the time of the incident giving rise to the <b>Costs</b> the <b>Ship</b> 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;</p>	
<p>Exclusion of hotel, leisure or entertainment risks</p>	<p>(7) <b>Costs</b> arising out of or consequent upon the provision on an <b>Entered Ship</b> of hotel, leisure or entertainment related facilities or similar services to any passengers and any claims, disputes or <b>Proceedings</b> whatsoever arising from such facilities or services;</p>	<p><i>This Rule incorporates the exclusion regarding claims relating to the provision of hotel, leisure or entertainment-related facilities on passenger ships, contained in the current Rule 36 Definitions (within the definition of "Operation.")</i></p>
<p>Exclusion of certain</p>	<p>(8) <b>Costs</b> arising out of or as a consequence of the emission of</p>	<p><i>This is based on the current Rule 4(F).</i></p>

<p>nuclear risks</p>	<p>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 <b>Entered Ship</b> 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 <b>Directors</b> may approve.</p>	
<p>Double insurance</p>	<p>(9) <b>Costs</b> recoverable under any other cover or insurance or which would have been recoverable -</p> <ul style="list-style-type: none"> <li>(i) apart from any terms in such other cover or insurance excluding or limiting liability on the ground of double insurance; and</li> <li>(ii) if the <b>Ship</b> had not been an <b>Entered Ship</b>,</li> </ul> <p>unless the <b>Member</b> is covered by a special agreement with the <b>Association</b> made either directly with himself or with other insurers upon the terms that certain <b>Costs</b> shall be borne by the <b>Association</b> notwithstanding such other cover or insurance;</p>	<p><i>This is based on the current Rule 4(G).</i></p>
<p>Time Bar</p>	<p>(10) <b>Costs</b> relating to any claim, dispute or <b>Proceedings</b> not notified by the <b>Member</b> to the <b>Association</b> within one year after the <b>Member</b> had knowledge of the same;</p> <p>(11) <b>Costs</b> not presented to the <b>Association</b> by the <b>Member</b> for</p>	<p><i>This is based on the current Rule 4(J).</i></p> <p><i>This is based on the current Rule 4(J).</i></p>

Joint  
Members

reimbursement within one year  
after discharging or settling the  
same;

- (12) Costs** incurred in connection  
with claims or disputes or  
**Proceedings** between **Joint  
Members**.

*This Rule maintains the  
current exclusion for costs in  
dealing with disputes between  
joint Member entries currently  
found in Rule 9(D) although  
the exclusion is now subject  
to the Directors' discretion  
otherwise.*

**Section 3: Conduct of Claims**

**Rule 5**

Obligations with regard to claims

Notice of claims

Appointment of lawyers

Continuing obligations

(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.

(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);

(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

*This Rule sets out the obligations which Members owe to the Association in respect of claims and the conduct of claims.*

*This is a new provision dealing with conditional or contingency fees and requires a Member to seek the Association's approval before entering in to any such fee agreement.*

*This Rule largely mirrors the current Rule 4(1)(ii). It expressly requires Members to keep the Association informed on the progress of any claim.*

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**.

(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**

*This Rule stresses the importance of the Member obtaining the Association's agreement before settling or compromising any claim. It is currently found at Rule 4 (1)(iv).*



the whole of the **Costs** incurred by the **Association** or such proportion of the **Costs** as the **Directors** in their discretion shall decide.

- (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**.

*This is based on the provisions of the current Rule 4(l)(v), but has been updated in light of the importance which the Directors attach to a Member's reporting obligations.*

- (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

*This Rule maintains the provisions of the current Rule 26 relating to the appointment of third parties, on whose behalf such third parties are instructed and reporting obligations.*

**Rule 6**  
Claims  
Handling

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

*This is based on the current Rule 26 (B).*

*This is based on the current Rule 26(C). This has been substantially shortened.*

**Rule 7**

General Powers in relation to claims

paid by the **Member**.

- (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.

*Rule 7 as a whole has been substantially amended and simplified.*

*Rule 7(1) retains the Directors' power, currently found at Rule 27(D), to make a contribution to the principal amount in dispute if it is not cost-effective to incur costs in resolving a claim.*

*This is based on the current Rule 27(F).*

*This is based on the current Rule 27(H).*

*This is a simplified version of the current Rule 27(I).*

(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**.

*This is based on Rule 27(J). This now provides that notices of any resolution taken under Rule 7(3) shall be notified by way of a Circular and notice on the Association's 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.

*This retains the Directors' power to order the continued detention of a Member's ship to test the legality of any such detention if the Directors consider it to be in the interests of the Association, currently found as the proviso to Rule 2(A)(4).*

(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.

*This is currently found as the proviso to Rule 27(E).*

### 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**.

*This is based on the current Rule 6*

#### **Rule 9**

Certificate of  
Entry

- (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

*This is based on the current Rule 8*

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.

(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

*This Rule largely reflects the current Rule 11, although it has been substantially shortened.*



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**.

- (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.
- (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

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

*This is a new provision and emphasises the Member's obligation to notify the Association of any material change relating to the entered ship.*

**Rule 12**

Fixed  
Premium  
Entry

classification society, change of management or change of flag.

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**.

*This is based on the current Rule 3(A)*

**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 by Rule 1(1).

*This is based on the current Rule 3(B)*

**Rule 14**

Joint Entries

- (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

*Rule 14 reflects the current Rule 9. No material amendments have been made although the wording has been simplified.*

**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.

*Rules 15 to 22 largely reflect the provisions of current Rules 13 to 15 and 23 to 24 dealing principally with issues of the period of entry with the Association. The Rules have been substantially shortened and amended in order to achieve greater clarity on questions of termination, cessation and cancellation of cover, and their consequences.*

**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.

*This is based on the current Rule 14.*

**Rule 17**  
Termination

(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.

*This is based on the current Rule 15.*

**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;

- (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

- (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

*This is based on the current Rule 23.*

- (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
- (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 of Cover

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**),
- (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

*This is based on the current Rule 24.*



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 –
  - (a) 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.

**Rule 21**  
Cancellation

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.

*This is based on the current Rule 23.*

*The reference to "7 days" in the current Rules (for example to pay sums due within 7 days) has been amended to "5 business days" to achieve greater clarity.*

**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 -
- (a) 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 –
    - (i) such **Costs** have been incurred or arisen or may

*This is based on the current Rule 24.*

be incurred or arise by reason of any event which has occurred or in connection with any **Proceedings** which were commenced at any time prior to the date of cancellation, including during previous **Policy Years**;

(ii) such **Costs** arise by reason of any event occurring or **Proceedings** commenced on or after the date of cancellation;

(iii) the Association may have admitted liability for payment to or appointed lawyers or any other persons; or

(iv) 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**.

*Rule 23 through to Rule 29 deal with issues relating to the assessment of calls, investments and contingency funds. No material amendments have been made to these Rules which generally accord with Rules 16 through to 22 of the current Rules. The material points to note are highlighted where appropriate below:*

**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**

*This Rule (currently Rule 17) provides the Directors power to determine the level of call or calls required to be paid by Members and fixed premium entries.*

**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**.

- (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.

**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**

*This Rule is based on the current Rule 18.*

**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;

*This is a new provision dealing with circumstances where the Association's funds can be used where there is a shortfall in the amounts due to the Association.*

(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;

*This is also a new provision which specifically makes reference to the Association's funds being used to establish or maintain a solvency margin or fund which might be required by a governmental or other regulatory authority.*

(d) to establish and maintain such surpluses or reserves for such contingencies or purposes as the **Directors** think fit;

*This is also a new provision which specifically permits the Directors to maintain surpluses or reserves if necessary.*

(e) for such other purposes as the **Directors** may from time to time approve.



**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.

*This is based on the current Rule 19.*

**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**;

*This Rule incorporates the Note to the current Rule 20, which specifies that the Rule is designed to enable the Directors to make a contingency call in certain circumstances.*

- (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**;
- (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

*This follows the current Rule*

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.

*20(D) whereby if there is a surplus of funds following a contingency call or calls, Members of the Association are entitled to a "Contingency call return".*

- (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**.

*This provides a specific formula for calculating any contingency call where a Member is entered for part of a policy year.*

**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
  - (c) any instalment of the same is payable; and

*No material amendment has been made to this Rule, which is similar to the current Rule 21.*

- (d) 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 26 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), ceased in accordance with Rule

**Rule 29**

Laid-up  
Returns

19 (Cessation of Cover) or cancelled in accordance with Rule 21 (Cancellation of Cover).

- (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

*No material amendments have been made to this Rule, which is similar to the current Rule 22.*

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.

*Rules 30 through to 35 set out provisions relating to the conduct of Directors' meetings, remuneration of the Managers and also circulars. These provisions are based the current Rules 28 to 31. Any material amendments are noted below.*

(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.

*The 7 days reference in the current Rule 28(B) has been changed to 5 business days and a definition of **Business Days** has been added.*

**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

*This Rule (current Rule 29(A)) entitles the Directors to cause the Association to become a Member of any society or organisation if the Directors see fit. The specific reference to the Chamber of Shipping of the United Kingdom from the*

**Rule 32**  
Delegation

**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.

- (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**.

*current Rule 29(A) is deleted.*

*This is a new provision, allowing the Directors to take steps for joining other organisations in fighting test cases for example.*

*This deals with delegation by the Directors to the Managers. This Rule sets out the distinction between the definition of "Association," which can mean both Directors and Managers, and "Directors," where the Rules specifically retain certain powers exercisable solely 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**.

*This is a new provision and provides that as far as Member's are concerned, any communication from the Managers is binding upon the Association.*

**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**.

*This is based on the current Rule 31.*

**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.

*This is a new provision whereby the Rules now make specific reference to Circulars – previously these were referred to in the introductory section of the Rules. The Rule also refers to Practice Recommendations issued by the Association. Rule 34(2) specifically provides that the Practice Recommendations are included in the Rule book.*

**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.

*This is a new provision and expressly permits the Association to reinsure any of its risks to reinsurers.*

**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**.

*This is based on the current Rule 25, but is amended to reflect that the bye-laws are 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

*This Rule simplifies the language of the current Rule 12.*

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**.

**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.

*This is a new Rule, and defines the "knowledge" a Member should be deemed to have whenever "knowledge" is referred to in the Rules.*

**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.

*This is based on the current Rule 32.*

**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**.

*This is based on the current Rule 4(H).*

- (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

*This is based on the current Rule 21(D).*

<p><b>Rule 41</b> Notices (Member ⇨ Association)</p>	<p>against any <b>Calls, Contingency Calls, Fixed Premiums</b> or any other sums due to the <b>Association</b>.</p> <p>(1) Any notice or other communication to be given or served on the <b>Association</b> under or in connection with these <b>Rules</b> 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 <b>Association's</b> registered office.</p>	<p><i>This is based on the current Rule 33, however it has been updated.</i></p>
<p>(Association ⇨ Member)</p>	<p>(2) Any notice or other communication to be given or served by the <b>Association</b> under or in connection with these <b>Rules</b> shall be in writing and may be delivered personally or sent by post, fax or e mail</p> <p>(a) to the <b>Member</b> at any address as recorded for him by the <b>Association</b>; or</p> <p>(b) to any other person covered under the <b>Rules</b> at the address provided by such person for the service of notices; or</p> <p>(c) to any broker or other intermediary through whom a <b>Ship</b> to which the notice relates is or was entered in the <b>Association</b>.</p>	
<p>Joint Members</p>	<p>(3) In the case of <b>Joint Members</b></p> <p>–</p> <p>(a) any communication from</p>	<p><i>This is based on the current Rule 9(C)(iii)</i></p>

Alternative address	<p>any <b>Joint Member</b> to the <b>Association</b> or the <b>Managers</b> shall be deemed to have been made with the full approval and authority of all relevant <b>Joint Members</b>; and</p> <p>(b) any notice given to the <b>Member</b> first named in the <b>Register of Members</b> shall be sufficient notice to all the <b>Joint Members</b>.</p>
Timing of service	<p>(4) Any <b>Member</b> 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 <b>Association</b> in substitution for that <b>Member's</b> address as recorded by the <b>Association</b>.</p>
Timing of service	<p>(5) Any notice or communication made under this Rule 41 shall be deemed to be given or served -</p> <p>(a) if delivered by hand, at the time it is left at the address;</p> <p>(b) if sent by post within the United Kingdom to another address within the United Kingdom, on the second <b>Business Day</b> after posting;</p> <p>(c) if otherwise sent by post, on the fifth <b>Business Day</b> after posting; and</p> <p>(d) in the case of an email or facsimile transmission, at</p>

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.

**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.

*This is based on the current Rule 1(8) but has been slightly expanded.*

**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.

*This is based on the current Rule 34 but has been updated.*

*Rule 43(1) specifically provides that, in respect of amounts due to the Association, a Member submits to the jurisdiction of the English High Court and acknowledges that the Association can take steps in other jurisdictions to recover any debt.*

Referral to the Directors

(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.

*In terms of other disputes with the Association, the current Rules provide that disputes may be dealt with by the Directors by way of “adjudication.” This proposed Rule provides that any “dispute or difference” which arises will be referred to the Directors for a “Determination.” The Directors are entitled to consider that the dispute or difference has previously been considered and in that circumstance the Member’s right of recourse is arbitration.*

Option to waive determination

(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.

Process of determination

(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

	<p>matters which either arise in connection with the subject matter of the dispute or difference or the <b>Directors</b> consider relevant. The <b>Directors</b> shall not be obliged to give any reason for their decision.</p>	
<p>Costs not recoverable</p>	<p>(5) The <b>Member</b> is not entitled to recover any costs or expenses incurred in connection with the referral of the dispute or difference to the <b>Directors</b>.</p>	<p><i>This provides that a Member is not entitled to recover costs or expenses in connection with the “determination.” This does not, however, prevent a costs recovery in respect of any subsequent arbitration.</i></p>
<p>Arbitration</p>	<p>(6) If the <b>Member</b> does not accept the decision of the <b>Directors</b> the dispute or difference shall be referred to a single arbitrator in London.</p>	<p><i>After any “determination” the dispute or difference can be referred to a single arbitrator which will be a QC with commercial shipping and marine mutual experience, which is similar to the current Rules.</i></p>
<p>Choice of arbitrator</p>	<p>(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.</p>	
<p>Binding effect of decision</p>	<p>(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.</p>	
<p>Non-entitlement to other proceedings</p>	<p>(9) Except as provided in this Rule 43, no <b>Member</b> shall be entitled to maintain any</p>	<p><i>This is similar to the current Rule 34(D).</i></p>



Claims  
against  
Managers

**Rule 44**  
Governing  
Law

**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.

- (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.

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.

*This is a new provision and states that any dispute between a Member and the Managers is to be referred to arbitration in London.*

*Within the definition section there are a number of new defined terms including:*

- *Business Day*
- *Circular – this definition specifies exactly the purpose of a circular*
- *GMT*
- *Hull Policies*
- *Practice Recommendations*
- *Termination Event*

### **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.

<b>Words</b>	<b>Meanings</b>
<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 <b>Owner</b> , 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> .

<p><b>Cessation Event</b></p>	<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>
<p><b>Circular</b></p>	<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>
<p><b>Contingency Call</b></p>	<p>Sums payable to the <b>Association</b> pursuant to Rule 27.</p>
<p><b>Contingency Fund</b></p>	<p>A fund established by the <b>Directors</b> pursuant to Rule 27.</p>
<p><b>Costs</b></p>	<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>
<p><b>Directors</b></p>	<p>The board of directors for the time being of the <b>Association</b>.</p>

<b>Entered Ship</b>	A <b>Ship</b> which has been entered in the <b>Association</b> , and 'Entered' and 'Entry' shall be construed accordingly.
<b>Fixed Premium</b>	Any monies payable to the <b>Association</b> under Rule 12.
<b>Fixed Premium Entry</b>	A <b>Ship</b> which has been entered in the <b>Association</b> pursuant to Rule 12.
<b>GMT</b>	Greenwich Mean Time.
<b>Hull Policies</b>	Policies effected on the hull and machinery of a <b>Ship</b> including any excess liability policy.
<b>Joint Member(s)</b>	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> .
<b>Managers</b>	The managers for the time being of the <b>Association</b> .
<b>Member</b>	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.
<b>Member of UK (IOM)</b>	A member (as defined in and subject to the memorandum and articles of association and rules thereof) of <b>UK (IOM)</b> .
<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 GMT 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 Rules 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 Members of the Association 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.
<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, Owner</b> and <b>Applicant 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 Association 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.

## PRACTICE RECOMMENDATIONS

**PRACTICE RECOMMENDATION 1**

<b>Title:</b>	Dates of Entry – owner and charterer Members
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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.



**PRACTICE RECOMMENDATION 2**

<b>Title:</b>	Conduct of claims
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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.

**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.

**PRACTICE RECOMMENDATION 3**

<b>Title:</b>	Contingency and conditional fee arrangements
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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(1)(b) provides that a Member must "notify the Association in writing of any fee arrangement it proposes to enter into 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
- (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**

<b>Title:</b>	Compliance with statutory requirements
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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.

## PRACTICE RECOMMENDATION 5

<b>Title:</b>	Bunker quality disputes
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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.

**PRACTICE RECOMMENDATION 6**

<b>Title:</b> Bunker supply ownership
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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.”

**PRACTICE RECOMMENDATION 7**

<b>Title:</b>	VAT Payment Procedures
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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 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.

*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.

**PRACTICE RECOMMENDATION 8**

<b>Title:</b>	Pre-fixture enquiries
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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 of other operators who have had contractual dealings with this party or brokers who are knowledgeable of them.