

Rules 2022

The United Kingdom Freight Demurrage
and Defence Association Limited

Rules 2022

**The Rules of the United Kingdom Freight Demurrage
and Defence Association Limited**
(Effective from 12 noon GMT on 20th February, 2022)

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20th February,
2022

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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**.

Section 1: Introduction

The following provisions of the Insurance Act 2015 (“the Act”) are excluded from the Rules and any contract of insurance as follows:

- (1) Sections 8 and 14 of the Act are excluded. As a result, any breach of Rule 8(2), the duty of fair presentation and/or the duty of utmost good faith shall entitle the Association to avoid the contract of insurance.
- (2) Section 10 of the Act is excluded. As a result, unless otherwise stated, all warranties in these Rules or any contract of insurance must be strictly complied with and, if the Member or any person covered under these Rules fails to comply with any warranty, the Association shall be discharged from liability from the date of the breach, regardless of whether the breach is subsequently remedied.
- (3) Section 11 of the Act is excluded. As a result, if the Member or any person covered under these Rules fails to comply with any Rule or term of the contract of insurance between the Association and any person covered under these Rules the Association’s liability may be excluded, limited or discharged in accordance with these Rules and/or any such term.
- (4) Section 13A of the Act is excluded. As a result the Rules and the insurance contract between the Association and the Member and any person covered under these Rules shall not be subject to, nor shall the Association or the Managers be in breach of, any implied term that they will pay any sums due in respect of a claim within a reasonable time save where the breach is deliberate or reckless.

The **Rules** are subject to the **Memorandum** and **Articles** of association of the **Association**.

Section 2: Cover

Rule 1 Nature of Cover

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

Section 2: Cover

Rule 2 Extent of Cover

Costs covered

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

Costs liabilities

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

Risks covered

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

Section 2: Cover

- (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**;
- (o) claims by or against revenue, customs or other government, municipal or local authorities in relation to the **Ship**; and
- (p) environmental or sustainability issues in relation to the **Ship**.

Discretion as to further extension of cover

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

Prior Payment by Member

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

Limitation

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

Section 2: Cover

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

Mandatory cover

- (8) Notwithstanding Rule 3, a **Member** is covered in respect of **Costs**, not exceeding US\$10,000 (or such other sum as the **Directors** may from time to time decide) which are:
- (a) the **Costs** incurred by a Member for the purpose of obtaining legal or other advice in respect of 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**, unless and to the extent that the **Managers** in their discretion so decide, there shall be no recovery by the **Member** from the **Association** under this Rule 2 (8) in respect of any **Costs**:

- (a) which arise out of or are consequent upon either the fraud or fraudulent conduct by the **Member** or the wilful failure of the **Member** to discharge a debt; or
- (b) the recovery of which could risk the **Association** being or becoming subject to any sanction, or prohibition or action from any state, supranational or international governmental organisation.

Section 2: Cover

Rule 3 Support

Directors' discretion

- (1) The Directors shall be entitled in their discretion to decide in connection with any claims, disputes or Proceedings referred to in Rules 2(3) and (4) whether the Association will:
 - (a) give support to a **Member** for the **Costs** referred to in Rules 2(1) and (2) and, if so, to what stage or to what extent, in what manner and on what terms and conditions they think fit; or
 - (b) withdraw or vary the terms of any such support; or
 - (c) decline to give any further support for such **Costs** notwithstanding any previous support given by the **Association**.

Consequences of non-compliance

- (2) If a **Member** incurs any **Costs** as referred to in Rules 2(1) and (2):
 - (a) at a time when the **Member** has not complied with any terms or conditions imposed by the **Association**, or
 - (b) through any neglect or default on his part or that of his servants or agents,then, unless the **Directors** in their discretion decide otherwise, in each case the **Member** shall not be entitled to recover any such **Costs** from the **Association** and shall be liable to repay to the **Association** any **Costs** which the **Association** may have incurred in connection with such claims or disputes or **Proceedings**.

Costs incurred before support given

- (3) If a **Member** incurs any **Costs** in connection with any claims, disputes or **Proceedings** referred to in Rules 2(3) and (4) before the **Member** has the support of the **Association** to incur them, the **Member** shall not be entitled to recover any such **Costs** from the **Association** unless and to such extent as the **Association** decides to give support.

Section 2: Cover

Factors taken into account

- (4) The **Directors** may take into account any matters that appear to them to be relevant when deciding whether or not the **Association** will give support to the **Member** in relation to **Costs**. A non-exhaustive list of relevant matters that may be taken into account includes:
- (a) the merits of the claims, disputes or **Proceedings** in connection with which the **Member** seeks the support of the **Association**;
 - (b) the reasonableness of the **Member's** conduct assessed by reference to what the **Member** would or should have done if not eligible for cover with the **Association**;
 - (c) the extent to which the **Member** has complied with any relevant **Practice Recommendation** or **Circular** or any other obligation of the **Member** under the **Rules**;
 - (d) the cost effectiveness of the steps proposed by or taken on behalf of the **Member**;
 - (e) the interests of the **Membership** as a whole in addition to the interests of the individual **Member**; and
 - (f) the financial consequences of their decision for the **Association**.

Delegated authority

- (5) The powers vested in the **Directors** under this Rule 3 may, at the discretion of the **Directors**, be exercised by the **Managers**.

Sole arbiters

- (6) In exercising the powers vested in them under this Rule 3, the **Directors** or **Managers**, as the case may be, shall be the sole arbiters of relevant issues of fact or inferences of fact in respect of any claims, disputes or **Proceedings** in relation to which the **Member** seeks the support of the **Association**.

Confirmation in writing

- (7) The **Association** shall not be deemed to have given support in accordance with the provisions of this Rule 3 unless and until such support is confirmed by the **Managers** expressly in writing.

Section 2: Cover

Rule 4 Exclusions from Cover

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

Minimum disputed amount

- (1) **Costs** arising out of claims where the amount in dispute is less than US\$10,000 (or its equivalent in any other currency at the date when the cause of action arises) or such other sum as the **Directors** may from time to time decide, such decision to be effective at the commencement of the **Policy Year** following the date on which the decision is taken;

Unlawful trading

- (2) **Costs** arising out of or consequent upon an **Entered Ship** carrying contraband, blockade running or being employed in any unlawful trade;

Exclusion of Hull and Machinery and Charterers' Damage to Hull Risks

- (3) **Costs** arising out of risks against which the **Member** would be insured if at the time of the incident giving rise to the **Costs** the **Ship** had been fully insured:
 - (a) under **Hull Policies** for its **Proper Value** on terms no less favourable than those of the Lloyds Marine Policy MAR form 1/1/82 with the Institute Time Clauses Hulls 1/10/83 attached (except to the extent of any franchise or deductible not exceeding 2 per cent. of the insured value in respect of each incident); or
 - (b) under policies providing for Charterers' liability for damage to hull on terms no less favourable than those then current as special cover under Clause 2 Section 1 of the Charterers' Terms and Conditions of The United Kingdom Mutual Steam Ship Assurance Association Limited whether or not payable only at the discretion of its directors (except to the extent of any reasonable franchise or deductible agreed between the **Member** and its Charterers' liability for damage to hull underwriters in respect of each incident);

Section 2: Cover

Exclusion of War Risks

- (4) **Costs** arising out of risks against which the **Member** would be insured if at the time of the incident giving rise to the **Costs** the **Ship** had been fully insured for its **Proper Value** under War Risk Policies on terms no less favourable than those of the Institute Time War & Strikes Clauses Hull-Time 1/10/83 and the Institute Protection & Indemnity War & Strikes Clauses Hull-Time 20/7/87;

Exclusion of P & I Risks

- (5) **Costs** arising out of risks against which the **Member** would be insured if at the time of the incident giving rise to the **Costs** the **Ship** had been fully insured on terms no less favourable than those then current of The United Kingdom Mutual Steam Ship Assurance Association Limited, or as special cover under the Charterers' Terms and Conditions thereof, save as provided in Rule 4 (3) (b), whether or not payable only at the discretion of its directors;

Exclusion of specialist operations and certain passenger ship risks

- (6) **Costs** arising out of risks against which the **Member** would be insured if at the time of the incident giving rise to the **Costs** the **Ship** had been fully insured on terms no less favourable than those then current as special cover under Rule 4 Sections 1 and 2 of The United Kingdom Mutual Steam Ship Assurance Association Limited whether or not payable only at the discretion of its directors;

Exclusion of hotel, leisure or entertainment risks

- (7) **Costs** arising out of or consequent upon the provision on an **Entered Ship** of hotel, leisure or entertainment related facilities or similar services to any passengers and any claims, disputes or **Proceedings** whatsoever arising from such facilities or services;

Section 2: Cover

Exclusion of certain nuclear risks

- (8) **Costs** arising out of or as a consequence of the emission of ionising radiation from, or the radioactive, toxic, explosive or other hazardous or contaminating properties of, nuclear fuel or nuclear matter or radioactive products or waste carried as cargo in an **Entered Ship** with the exception of “excepted matter” as defined in the Nuclear Installations Act 1965 (and any regulations made under) or amendments, modifications or re-enactment of that Act and such further exceptions as the **Directors** may approve.

Double Insurance

- (9) **Costs** recoverable under any other cover or insurance or which would have been recoverable:
- (a) apart from any terms in such other cover or insurance excluding or limiting liability on the ground of double insurance; and
 - (b) if the **Ship** had not been an **Entered Ship**, unless the **Member** is covered by a special agreement with the **Association** made either directly with himself or with other insurers upon the terms that certain **Costs** shall be borne by the **Association** notwithstanding such other cover or insurance;

Time Bar

- (10) **Costs** relating to any claim, dispute or **Proceedings** not notified by the **Member** to the **Association** within one year after the **Member** had knowledge of the same;
- (11) **Costs** not presented to the **Association** by the **Member** for reimbursement within one year after discharging or settling the same;

Joint Members

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

Section 3: Conduct of Claims

Rule 5 Obligations with regard to claims

Notice of claims

- (1) A **Member** shall promptly (and in any event no later than three (3) months after the **Member** has knowledge of it) notify the **Association** in writing of every casualty, event, dispute or claim which may give rise to **Costs**, and provide copies of all relevant information, documents, reports or evidence.

Appointment of lawyers

- (2) No **Member** shall without the prior approval in writing of the **Association** 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**.

Continuing obligation

- (3) A **Member** shall at all times:
 - (a) collect, preserve and promptly produce all relevant documents and evidence whatsoever in his or his agents' custody, possession or control and whenever so requested allow the **Association** or lawyers or other persons appointed to act on his behalf to inspect them and to take copies notwithstanding any assertion of legal privilege or confidentiality; and
 - (b) both permit and use best endeavours to assist the **Association** or any such lawyers or persons to interview and obtain the co-operation of any servant, agent or other person who may at any time have been employed by the **Member** or whom it is considered may have information relevant to the casualty, event, dispute or claim; and
 - (c) keep the **Association** informed on the progress of any claim, dispute or **Proceedings**.

Settlement of claims

- (4) No **Member** shall without the prior consent of the **Association** and without complying with any requirements of the **Association** in relation to **Costs**, withdraw, discontinue, admit, settle or compromise:

Section 3: Conduct of Claims

- (a) any claim, dispute or **Proceedings** which might give or has given rise to a claim on the **Association**; or
- (b) any claim, dispute or **Proceedings** conducted with the support of the **Association**.

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

Consequences of non-compliance

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

Rule 6 Claims Handling

- (1) Where a **Member** requests the approval of the **Association** to incur **Costs**, the **Association** may at any time (whether or not it has given that approval) appoint on behalf of the **Member**, upon such terms as the **Association** thinks fit, lawyers or other persons to investigate and advise on or otherwise deal with any claim, disputes or **Proceedings**. The **Association** may at any time terminate any such appointment.

Section 3: Conduct of Claims

- (2) All persons appointed by the **Association** on behalf of the **Member** or appointed by the **Member** with the approval of the **Association** shall be or be deemed to be appointed on the terms that they have been instructed by the **Member** at all times (both while so acting and after they have ceased so to act):
- (a) to give advice and to report to the **Association** in connection with the claim, dispute or **Proceedings**;
 - (b) to seek and act on the instructions of the **Association**; and
 - (c) to produce to the **Association** any documents or information in their possession or power relating to the claim, dispute or **Proceedings**,
- as if such persons had been appointed to act and had at all times been acting on behalf of the **Association**.
- (3) Except as set out in Rule 2(2) the **Association** shall not be liable for and shall in no circumstances pay interest on any loss or expense incurred or paid by the **Member**.

Rule 7 General Powers in relation to Claims

- (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**.

Costs contribution to Association

- (2) Notwithstanding and without prejudice to any other right under the **Rules** to recover **Costs**, the **Association** may at any time notify the **Member** in writing that it requires the **Member** to pay to the **Association** from any part of its recovered claim such sum in respect of **Costs** as the **Association** in

Section 3: Conduct of Claims

its discretion considers reasonable. In determining that sum the **Association** may take into account the proportion the claim to be paid to the **Member** bears to the total it considers realistically recoverable by the **Member** and any other matters it considers relevant.

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

Section 4: Membership and Entry

Rule 8 Applications for Cover

- (1) Any **Applicant Member** who wishes to enter a **Ship** shall make an application for such **Entry** in such form as may from time to time be required.
- (2) When applying for **Entry** or negotiating any changes to or renewal of the terms of **Entry**, the **Applicant Member** must provide all material particulars and information and ensure that all such particulars and information are true and complete.
- (3) The **Association** may without giving any reason refuse any application for the **Entry** of a **Ship** whether or not the **Applicant Member** in respect of such **Ship** is a **Member** of the **Association**.

Rule 9 Certificate of Entry

Contents of certificate

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

Section 4: Membership and Entry

may issue a new **Certificate of Entry** or a new endorsement which shall in like manner be conclusive evidence and binding.

Rule 10 Membership

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

Membership of UK (IOM)

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

Rule 10 Membership

Section 4: Membership and Entry

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

Rule 11 Material Change

Changes to class, management, flag

The **Member** or any other person covered under the **Rules** is obliged to notify the **Association** of any material change relating to an **Entered Ship** including but not limited to a change of classification or classification society, change of management or change of flag. Upon such disclosure, or failure to disclose, the **Association** may amend the **Member's Call Rating** or **Fixed Premium** and/or the terms of **Entry**, or terminate the **Entry** in respect of such **Entered Ship** with effect from the time of disclosure or the time at which such material change ought to have been notified to the **Association**.

Rule 12 Fixed Premium Entry

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

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

Rule 13 Special Entry

Section 4: Membership and Entry

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

Rule 14 Joint Entries

Joint liability

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

Section 5: Period of Cover

Rule 15 Period of Entry

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

Rule 16 Continuation of Entry

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

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

Rule 17 Termination of Cover

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

Section 5: Period of Cover

- (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.
- (3) Notwithstanding anything in the Rules to the contrary, the **Association** may, where an **Entered Ship** is being or may be employed by a **Member** in a carriage, trade or voyage which may in anyway whatsoever expose the **Association** to the risk of being or becoming subject to any sanction, prohibition, restriction or adverse action in any form whatsoever by any state, competent authority or government, suspend the cover of the **Member** until further notice pending investigation by the **Association** or, at any time the **Association** determines it is exposed to such risk, terminate the cover of the **Member** with immediate effect by written notice.

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;

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

Section 5: Period of Cover

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**.

Events leading to cessation

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

Section 5: Period of Cover

the agreement of the **Member** or other person covered that the **Ship** is to be considered an actual or constructive total loss or otherwise may reasonably be considered to be commercially lost.

- (3) If the **Association** agrees that the cover of the **Entered Ship** shall continue after the occurrence of any of the events listed in paragraph (2)(a)–(c) of this Rule 19 it may in its discretion impose such terms and conditions as it thinks fit for the continuation of the cover.

Rule 20 Effect of Cessation

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

- (1) the **Member** or other person covered and the **Association** may agree that the **Member** or other person shall only be liable to pay **Calls** or **Fixed Premiums** in respect of the **Ship** for the **Policy Year** in the course of which such cover ceased on a pro rata basis (namely such proportion of the **Calls** or **Fixed Premiums** in respect of such **Ship** for the relevant **Policy Year** as the part of the **Policy Year** during which the **Ship** was **Entered** bears to the whole of such **Policy Year**);
- (2) if not so agreed, the **Member** or other person covered and their **Successors** shall be and remain liable to pay in full all sums due to the **Association** pursuant to Rule 23 (Payment Obligations), in respect of the whole of the **Policy Year** (whether the **Ship** shall have been **Entered** for the whole or only part of such **Policy Year**) in which the date of cessation occurs;
- (3) the **Member** and his **Successors** shall be and

Section 5: Period of Cover

remain liable to pay in full any **Contingency Calls** levied in accordance with Rule 27 (Contingency Fund and Contingency Call);

- (4) the **Association** shall remain liable to reimburse **Costs** in respect of any **Ship Entered** arising from any event or in connection with any claim, dispute or **Proceedings** which occurred or were commenced prior to the date of cessation, but shall be under no liability whatsoever in respect of any event occurring or **Proceedings** commenced after the date of cessation;
- (5) whether or not negotiations have taken place with a view to reaching an agreement as contemplated by Rule 20(1), the **Association** may assess, as at the date of cessation, the amount which seems to the **Association** in its discretion to represent the likely liability of the **Member** or other person covered for further amounts due to the **Association** but not yet debited at the date of cessation and if the **Association** does exercise its powers under this Rule 20(5), then the amount of any assessment made under this Rule 20(5) shall be payable in full by the **Member** or other person covered on such date or dates as the **Association** shall specify.

Rule 21 Cancellation of Cover

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

Rule 22 Effect of Cancellation

Section 5: Period of Cover

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

Section 6: Association's Funds

Rule 23 Payment Obligations

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

Section 6: Association's Funds

Rule 24 Assessment of Calls

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

Section 6: Association's Funds

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

Section 6: Association's Funds

Rule 25 Funds of the Association

- (1) The income of the **Association** shall derive from:
 - (a) payment to the **Association** of **Calls, Fixed Premiums**, other sources of income and other sums due to the **Association** in accordance with these **Rules**; and
 - (b) returns on investments made pursuant to Rule 26 (Investment).

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

Section 6: Association's Funds

Rule 26 Investment

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

Rule 27 Contingency Fund and Contingency Call

- (1) The **Directors** may in their discretion establish and maintain a **Contingency Fund**:
 - (a) in the event of the withdrawal of an unusually large number of **Ships**;
 - (b) in the event of the **Association** ceasing to underwrite; or
 - (c) to meet in part or in whole the estimated total outstanding, contingent, future and anticipated liabilities of the **Association**, whether the said liabilities had arisen or might arise in respect of the current **Policy Year** or in respect of any other **Policy Year**.

- (2) The funds required to establish and maintain the **Contingency Fund** shall be levied by one or more **Contingency Calls** in the following manner:
 - (a) the **Directors** shall determine the total amount required to be raised by each such **Contingency Call**;
 - (b) each **Member** of the **Association** in the **Policy Year** during which the **Directors** resolve to make a **Contingency Call**, and each **Member** in any of the four (4) years preceding that **Policy Year** shall pay a **Contingency Call** whether or not any of the **Association's** outstanding, contingent, future or anticipated liabilities (in respect of which the **Contingency Call** was made) arose or may arise during the **Member's** period of **Entry**;

Section 6: Association's Funds

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

Section 6: Association's Funds

Rule 28 Payment of Calls

- (1) Each **Call** and each **Contingency Call** shall be payable in such instalments and on such dates as the **Directors** may specify.
- (2) As soon as is reasonably practical after the amount of any **Call** or **Contingency Call** is fixed the **Association** shall notify each **Member** concerned of:
 - (a) any such amount as may be appropriate;
 - (b) the date on which the **Call** or **Contingency Call** or any instalment of the same is payable; and
 - (c) the amount payable by such **Member** in respect of each **Ship** entered by him.
- (3) The **Association** may require a **Member** to pay all or any part of any **Call** or **Contingency Call** in such currency or currencies as the **Association** may specify.

Interest payable on late payments

- (4) Notwithstanding the rights and remedies of the **Association** under these **Rules**, if any **Call**, **Contingency Call** (or any part-payment or instalment), **Fixed Premium** or any other sum due from any **Member** or other person covered under these **Rules** is not paid by that **Member** or other person on or before the due date under this Rule 28 or Rule 21 as the case may be, the **Member** or other person shall (unless the **Association** otherwise agrees in writing) pay interest on the outstanding amount from and including the due date to the date of payment, at such rate as the **Directors** may from time to time determine.

Section 6: Association's Funds

- (5) The **Association** shall have a lien or other right of action against any **Entered Ship** in respect of any **Call, Contingency Call, Fixed Premium** or any other sum of whatsoever nature due from the **Member** or any other person covered under the **Rules** and that lien or right of action shall continue notwithstanding that the cover of the **Member** or such other person or in respect of any **Ship Entered** by him has been terminated in accordance with Rule 17 (Termination of Cover), ceased in accordance with Rule 19 (Cessation of Cover) or cancelled in accordance with Rule 21 (Cancellation of Cover).

Rule 29 Laid-up Returns

- (1) If an **Entered Ship** shall be and remain unemployed in any safe place for a period of thirty (30) or more consecutive days after finally mooring there the **Member** shall be allowed a return of all **Calls** levied pursuant to these **Rules** at such rate as the **Association** may from time to time determine. Subject to that, the return of **Calls** will be pro rata to the period the **Ship** remains in a safe place as against the **Policy Year**.
- (2) For the purposes of Rule 29(1):
- (a) a **Ship** will not be treated as laid-up if she is undergoing repair, conversion or modification or has either crew members (other than for her maintenance or security) or cargo on board, unless the **Association** decides otherwise;
 - (b) the **Association** shall decide whether any place is a safe place and, if disputed by the **Member**, the **Directors** will decide and their decision will be final;
 - (c) 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 three (3) months of the end of that **Policy Year**;
 - (d) no return of **Fixed Premiums** shall be payable unless the **Directors** otherwise decide; and
 - (e) 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.

Material considered by Directors

- (2) At meetings convened pursuant to paragraph (1) of this Rule 30 the **Directors** may consider, as they think necessary, any information, documents or evidence relating to the claims or disputes or **Proceedings** in question together with any advice, reports or opinions received from the persons referred to in Rule 6 (Claims Handling). The **Member** concerned shall have the right to place any relevant evidence or contentions before the **Directors** but he shall do so by means of written submissions only, to be delivered to the **Association** no later than five (5) **Business Days** before the date of the relevant meeting.

Rule 31 Miscellaneous Powers of the Directors

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

Section 7: Directors and Managers

Rule 32 Delegation

Managers' delegated authority

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

Section 7: Directors and Managers

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**.

Rule 34 Circulars and Practice Recommendations

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

Rule 35 Reinsurance

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

Section 8: General

Rule 36 Bye-Laws

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

Rule 37 Assignment

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

Section 8: General

Rule 38 Knowledge

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

Rule 39 Preservation of Association's Rights

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

Rule 40 Right of Set Off

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

Section 8: General

Rule 41 Notices

Member to Association

- (1) Any notice or other communication to be given or served on the **Association** under or in connection with these **Rules** shall be in writing and may be delivered personally or sent by pre-paid post (using airmail in the case of a notice from any country outside the United Kingdom) or by courier to the **Association's** registered office or by email (to tmdefence@thomasmiller.com).

Association to Member

- (2) Any notice or other communication to be given or served by the **Association** under or in connection with these **Rules** shall be in writing and may be delivered personally or sent by courier, post, or e mail:
 - (a) to the **Member** at any address as recorded for him by the **Association**; or
 - (b) to any other person covered under the **Rules** at the address provided by such person for the service of notices; or
 - (c) to any broker or other intermediary through whom a **Ship** or account to which the notice relates is or was entered in the **Association** at any place of business of that broker or other intermediary; or
 - (d) if it is a general notice, by making it available on the **Association's Website**.

Joint Members

- (3) In the case of **Joint Members**:
 - (a) any communication from any **Joint Member** to the **Association** or the **Managers** shall be deemed to have been made with the full approval and authority of all relevant **Joint Members**; and
 - (b) any notice given to the **Member** first named in the **Register of Members** shall be sufficient notice to all the **Joint Members**.

Alternative address

- (4) Any **Member** may from time to time specify an alternative address within the United Kingdom at which notices or other communications may be served. Such address may be used by the **Association** in substitution for that **Member's** address as recorded by the **Association**.

Section 8: General

Timing of service

- (5) Any notice or communication made under this Rule 41 shall be deemed to be given or served:
- (a) if delivered personally, at the time it is left at the address;
 - (b) if sent by post within the United Kingdom to another address within the United Kingdom, on the second **Business Day** after posting;
 - (c) if otherwise sent by post, on the fifth **Business Day** after posting; and
 - (d) if sent by email, at the time of transmission;
 - (e) if sent by courier, on the second **Business Day** after sending; and
 - (f) if posting on the **Association's Website**, at the time is made available on the **Website**.

except that where delivery personally or by email or by courier 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 be conclusive evidence of such communication and of its despatch, posting and receipt.

Notices binding on Successors

- (6) Successors of a **Member** shall be bound by any notice or communication served under this Rule 41 notwithstanding that the **Association** may have notice of the circumstances leading to such succession.

Section 8: General

Rule 42 Rights of Third Parties

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

Rule 43 Disputes and Differences

- (1) The **Member** hereby submits to the jurisdiction of the High Court of Justice in England in respect of any action by the **Association** to recover any sum the **Association** may consider to be due to it from the **Member** and acknowledges the **Association** shall in addition be entitled to take action in any jurisdiction to recover such sums.

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.
- (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.

Section 8: General

- (4) The **Directors** will reach their decision on the dispute or difference referred to them but shall only consider submissions in writing. The **Directors** may take into account any issues of fact, inferences of fact or other matters which either arise in connection with the subject matter of the dispute or difference or the **Directors** consider relevant. The **Directors** shall not be obliged to give any reason for their decision.
- (5) The **Member** is not entitled to recover any costs or expenses incurred in connection with the referral of the dispute or difference to the **Directors**.

Arbitration

- (6) If the **Member** does not accept the decision of the **Directors** the dispute or difference shall be referred to a single arbitrator in London.

Choice of arbitrator

- (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.

Binding effect of decision

- (8) The arbitrator's decision will be final and binding on the parties. The submission to arbitration and the arbitration proceedings shall be subject to the Arbitration Act 1996 and any statutory modification or re-enactment thereof.
- (9) Except as provided in this Rule 43, no **Member** shall be entitled to maintain any **Proceedings** against the **Association** in relation to any difference or dispute other than action to enforce any award that the arbitrator appointed under Rule 43(6) or 43(7) may direct to be paid by the **Association**, in which case the sole obligation of the **Association** to such **Member** under these **Rules** and any contract between them in respect of any such dispute or difference shall be to pay the sum directed by such award.

Section 8: General

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

Rule 44 Governing Law

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

Section 9: Definitions and Interpretation

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

Words	Meanings
Applicant Member	In relation to a Ship which is desired or intended to be entered in the Association , 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 Certificate of Entry , by whom or on whose behalf an application has been, is being or is to be made for the Entry , whether he be or is to be a Member or not.
Articles	The articles of association for the time being of the Association .
Association	The United Kingdom Freight Demurrage and Defence Association Limited.
Business Day	A day, except a Saturday or a Sunday, on which banks in the City of London are open for business generally.
Call	Sums payable to the Association in respect of an Entered Ship pursuant to Rules 23(1), 24 and 25.

Section 9: Definitions and Interpretation

Words	Meanings
Call Rating	The rate agreed to be payable to the Association in respect of a Ship Entered or to be Entered by a Member or Applicant Member pursuant to Rule 24.
Certificate of Entry	A document and any endorsement to the document issued by the Association which records the name of the Member and evidences the contract of insurance in respect of an Entered Ship .
Cessation Event	If a Member or other person covered under the Rules is a corporation, Cessation Event means any of the following occurring in respect of that Member 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 Rules); (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 Member's or other person's Entered Ships ; or (d) otherwise becoming insolvent or suffering any similar event to those listed in (a) and (b) of this paragraph in any jurisdiction.

Section 9: Definitions and Interpretation

Words	Meanings
	<p>If a Member or other person covered under the Rules is an individual, Cessation Event means any of the following occurring in respect of that Member 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 Member's or other person's Entered Ships; or (e) death; or (f) becoming incapable by reason of mental disorder of managing and administering his property or affairs.</p>
Circular	<p>A notice in writing to a Member or other person covered under the Rules pursuant to Rule 34 relating to the management of the Association and the cover provided to a Member or group of Members.</p>
Contingency Call	<p>Sums payable to the Association pursuant to Rule 27.</p>
Contingency Fund	<p>A fund established by the Directors pursuant to Rule 27.</p>

Section 9: Definitions and Interpretation

Words	Meanings
Costs	Any costs or expenses incurred in connection with bringing or defending any of the claims referred to in Rule 2 but not including a Member's 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 Directors in their discretion decide otherwise.
Directors	The board of directors for the time being of the Association .
Entered Ship	A Ship which has been entered in the Association , and 'Entered' and 'Entry' shall be construed accordingly.
Fixed Premium	Any monies payable to the Association under Rule 12.
Fixed Premium Entry	A Ship which has been entered in the Association pursuant to Rule 12 by a voyage charterer for an agreed fixed premium or in such other manner as the Directors might from time to time agree.
GMT	Greenwich Mean Time.
Hull Policies	Policies effected on the hull and machinery of a Ship including any excess liability policy.
Joint Member(s)	One or more of those Members (being greater in number than one) on behalf of whom a Ship is entered in the Association .

Section 9: Definitions and Interpretation

Words	Meanings
Managers	The managers for the time being of the Association .
Member	A member for the time being of the Association as evidenced by an entry in the Register of Members , and Membership shall be construed accordingly.
Member of UK	A member (as defined in and subject to the memorandum and (IOM) articles of association and rules thereof) of UK (IOM) .
Memorandum	The memorandum of association for the time being of the Association .
Operation	The employment or use of an Entered Ship .
Owner	In relation to an Entered Ship , 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 Certificate of Entry by whom or on whose behalf an application has been, is being or is to be made for the Entry , whether he be or is to be a Member or not.
Policy Year	A year from noon GMT on any 20th February to noon GMT on the next following 20th February.
Practice	A notice in writing to a Member or other person covered

Section 9: Definitions and Interpretation

Words	Meanings
Recommendation	under the Rules pursuant to Rule 34 relating to the ownership, management, chartering or operation of an Entered Ship and any matters associated therewith which may give rise to a claim on the Association .
Proceedings	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.
Proper Value	The market value of the Ship , without commitment, at the date of the relevant incident.
Register of Members	The Register of Members of the Association as required to be kept pursuant to section 113 of the Companies Act 2006.
Rules	The rules for the time being of the Association set out herein including the Introduction.
Ship	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.
Statute	A legislative act or law.

Section 9: Definitions and Interpretation

Words	Meanings
Successors	In relation to all the persons set out in the definitions of Member , Owner and Applicant Member and in relation to any other person whomsoever by whom or on whose behalf a Ship shall have been Entered , 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.
UK (IOM)	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 Association may reinsure risks.
Website	The Internet website of the Association currently to be found at www.ukdefence.com

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

Words in the singular shall include the plural.

Words in the masculine gender shall include the feminine gender.

'Person' shall include a corporation.

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

Appendix: Practice Recommendations

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

Appendix: Practice Recommendations

Practice Recommendation 1 Dates of Entry – owner and charterer Members

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

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

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

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

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

Appendix: Practice Recommendations

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 **Conduct of claims**

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

In summary, these requirements are as follows:

Notification of Claims

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

Appointment of Lawyers

Rule 5(2) requires that Members should obtain the Managers' written approval before a lawyer or surveyor or other professional advisor is instructed in any matter which may form a claim on the Association. The Managers recognise that on occasions this may not be possible and in these circumstances notification should be made to the Managers as soon as possible after any such appointment.

Appendix: Practice Recommendations

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. Where the involvement of lawyers is unavoidable, the Managers will, wherever possible, respect a Member's choice of lawyer, provided that the 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 and other Practice Recommendations.

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

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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

Fee arrangements with third party suppliers

The vast majority of costs incurred by the Association are in respect of the provision of legal services. The Managers have agreements with a number of Preferred Suppliers as to the fees to be charged for work undertaken for Members of the Association. Historically these fees have been charged on an hourly basis and ensuring value for money from those legal suppliers is a key requirement.

This hourly rate approach, albeit commonplace, provides no certainty to either the Member or the Association as to the actual ultimate cost of a case. The progress of litigation can, in some cases, be unpredictable. However the Association considers that greater certainty and transparency in the provision of legal and other services should be possible without compromising the quality of those services. The Association therefore considers that in each case where legal service providers and other service providers are instructed, consideration of alternative billing arrangements should be positively considered by the Member, legal or other service provider in conjunction with the Managers.

Alternative billing arrangements can include:

- 1. Capped fees**

The arrangement anticipates hourly rates coupled with a maximum fee that will be charged for a

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particular task.

2. **Fixed fees**
Such fees are often agreed for specific tasks or sets of tasks.
3. **Reduced hourly rates with success bonuses**
This option includes reduced hourly rates but with an uplift in the event of “success”. It is important that there is a clear agreement as to what constitutes “success” sufficient to trigger the uplift.
4. **Collar arrangements**
This option commonly relies on a mutually agreed target band for fees for a specific task. If the recorded time comes within the agreed target band then the supplier will invoice for the recorded time. If the fee comes below the target band then there would be an agreed uplift. If the target band is breached then there would be a reduction in those recorded fees above the target band.
5. **Conditional and contingency fee arrangements**
With such arrangements the fees are linked to the outcome of the proceedings. The nature of “success” must be clearly defined. Also such fee arrangement must be permissible in the relevant jurisdiction where the fee is being agreed.

With such conditional and contingency fees each case will be considered on its own facts and merits but in general amounts payable under such fee arrangements are capable of being covered provided that:

- a) the case merits support in any event and the arrangement s 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

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- d) any such fee arrangement is referred to the Managers in advance for their prior approval.

The Association recognises that in some cases an hourly rate may be considered the most appropriate means of charging for a particular case. Nevertheless in considering any cases for support and determining the extent of support the Association will take in to account the nature of the fee arrangements that have been agreed with the service providers concerned. The Association would also expect to be consulted in advance of any fee agreements being reached.

Practice Recommendation 4 **Compliance with statutory requirements**

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

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

Practice Recommendation 5 **Bunker quality disputes**

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

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

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particular attention to the following:

1. The fuel specification contained in the charterparty or used when ordering fuel.

Members are advised to refer to the latest version of the recognised fuel standard such as ISO8217, which will govern sulphur content, and to endeavour to make specific reference to elements such as aluminium and silicon. Reference should also be made to stability, homogeneity and compliance with MARPOL and to the fuel being free from any material at a concentration that causes the fuel to be unacceptable for use in accordance with the standards.

2. The terms and conditions covering the purchase of fuel.

Members are advised to be aware that contracts have often been noted to include a clause exempting the supplier from or indemnifying it against all liability unless put on notice within a very short time period and action may therefore need to be taken promptly.

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 continuous drip samples to be taken throughout the bunkering process at the ship's manifold, in accordance with MARPOL procedures and the terms of the applicable contract. Clear procedures should be agreed in charterparties and supply contracts for sampling and testing the fuel, including the exchange, witnessing, sampling location, sealing and storage of samples as well as procedures for resolving any quality disputes, including identifying which samples are to be binding.

4. Fuel analysis scheme

Members are advised to consider entering the ship into a fuel analysis scheme and to follow any recommendations made under that scheme.

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5. The Member's handling of the fuel

The careful storage and treatment of low sulphur fuel is important in order to minimise engine problems. Members are advised to pay careful attention to specific technical requirements of any fuel stemmed, including heating, use of additives, engine manufacturer recommendations and cylinder lube oil. Members should also avoid blending fuels from different sources due to a risk of incompatibility and instability.

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 Bunker supply ownership

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

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

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

Practice Recommendation 7 Indirect Taxes – the approach of the Association

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. It has been the general practice

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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.

Many jurisdictions, both within the European Union ("EU") and elsewhere commonly require the payment of indirect taxes on the supply of claims related services to a Member. Subject to the terms of this Practice Recommendation, the Association's position is that it will, in addition to the costs of the services themselves, meet indirect taxes which may be levied on such services.

The following sets out the procedures as to how invoices from claims related service providers should be rendered.

The following applies both to electronic and hard copy invoices.

All Suppliers of Services Worldwide

1. All invoices should be 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 either in hard copy or electronically and a copy of the invoice, again either electronically or in hard copy must be sent to the Managers.

Suppliers based in the EU

Upon being initially instructed by or on behalf of a Member a service provider will be provided with details of the relevant Member's EU 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 EU will, in most circumstances, be free of

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VAT provided the EU based service provider is given confirmation that the relevant Member has a place of business outside the EU.

Suppliers based in the same EU country as the Member

It will be necessary for the EU based supplier of services to charge VAT on VATable services, which the Member may recover if that Member is able to be registered for VAT. Members based in the EU should ordinarily be registered for VAT and in such circumstances, where the relevant invoice forms an accepted claim against the Association, the Association will pay the amount of such an invoice net of VAT, the VAT being settled directly by the Member with the EU based supplier of the services.

Suppliers based in an EU country other than that of the Member

Where a supplier of services based in one EU country provides services to a Member in, or belonging to, another EU 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. Members are reminded that where VAT is applicable they must account for VAT using the reverse charge to the relevant authorities.

Suppliers and Members outside the EU

Liability for indirect taxes will be driven by local regulations. For example, UK service providers will charge VAT on VATable services which a UK based Member may recover if that Member is able to be registered for VAT in the UK. If the Member is not based in the UK, whether in the EU or otherwise, the services will be free of VAT as being outside scope.

It is noted that as from 1st January, 2022, the UK is not part of the EU VAT regime.

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Practice Recommendation 8 **Pre-contract enquiries**

Members will be aware that one of the factors taken into consideration in determining the extent of the Association's support is the "reasonableness of a Member's conduct." As part of this review the Directors will consider the extent of enquiries that have been made by a Member prior to entering into a contract or other agreement capable of being covered by the Association including but not limited to charterparties, Memorandums of Agreement, newbuilding or supply contracts, 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 or type and terms and details of the agreement being entered into. However the Directors do consider that where the contractual party is unknown or relatively unknown to the Member, reasonable enquiries should be made prior to entering into such a contract of other operators who have had dealings with this party or brokers who are knowledgeable of them or of independent third party advisers.

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Practice Recommendation 9 Compliance with international sanctions and other mandatory legislation

Members will be aware that at various times governmental or other supranational bodies introduce sanctions or other types of legislation which impact on the ability of Members and others to conduct business or trade to particular areas or countries. This has particularly been the case recently in respect of the UN, US and the EU which have introduced various sanctions regimes affecting business and trading relations with a number of countries including Iran, Syria, Libya and Venezuela.

Members are reminded 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 addition Members are reminded that under Rule 4(2) any costs arising out of or consequent upon an Entered Ship carrying contraband, blockade running or being employed in any unlawful trade are expressly excluded from the Association's cover unless and to the extent that the Directors in their discretion otherwise decide.

Under proviso (b) to Rule 2, the Association's cover is premised on the basis that there will be no recovery of any costs which could risk the Association being or becoming subject to any sanction or prohibition. Rule 17(3) also provides that the cover may be suspended until further notice or may be terminated immediately where the Association determines that it is exposed to the risk of secondary sanctions as a result of an entered ship being employed in a sanctionable trade.

If an entered ship or Member is named as a sanctioned entity, for example as a Specially Designated National by the US Office of Foreign Assets Control, it is likely that cover will be immediately suspended or terminated.

It is important that Members undertake due and proper enquiries before entering into transactions, voyages or other arrangements that may potentially be affected by any governmental or supranational legislation including sanctions, as claims that arise subsequently may not be recoverable from the Association.

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Practice Recommendation 10 **Effective management of claims, control of costs and factors impacting support**

The Managers are committed to ensuring that best practice is applied in the handling of cases by third party service providers and also to improve the cost effectiveness of the services provided.

As a legal costs insurer a proper and accurate assessment of the likely costs of a potential course of action is absolutely critical. If it becomes apparent that a service provider's estimate is likely to be exceeded then the service provider must bring that to the attention of the Managers at the earliest opportunity along with a detailed explanation as to the reasons for any overrun.

The Directors place great store in the proposed steps to be taken in any particular case and the costs to be incurred. Both are relevant factors, pursuant to Rule 3 of the Association's Rules, in determining support for any given case. The Directors have become increasingly concerned by the number of cases where estimates have proved inadequate or inappropriate. In the case of an inadequate or inappropriate estimate the service provider will be expected to honour the estimate previously given unless there are mitigating circumstances.

Under Rule 3(4) the factors to be taken into account in relation to decisions on support by the Managers and the Directors include the merits of the dispute, the reasonableness of the Member's conduct, the extent of compliance with obligations, cost effectiveness and the proportionality of costs to be incurred when considered in the context of the amount and issues in dispute, and generally.

Proportionality, costs versus claim amounts is something which is becoming increasingly prevalent and unless there are compelling mitigating circumstances costs will need to evidence proportionality to the claim amount otherwise this will undoubtedly have an impact on the extent of support that can be extended to the particular case in question.

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Practice Recommendation 11 **Enforceability of charterparty guarantees**

The Association has been involved in a number of cases which involve the enforceability or otherwise of charterparty guarantees. As a result of ineffective drafting or the failure to comply with other formalities, Members have found themselves unable to enforce otherwise good claims.

Members will no doubt be aware of the reasons for asking a third party to guarantee performance by their contractual counterparty, which could include factors that the counterparty has no readily identifiable assets, is located in a jurisdiction where enforcement procedures may be unreliable or there may be certain reputational issues. Given the importance of such guarantees there are steps that should be taken when agreeing to such a guarantee, these can include:

- The guarantee should use wording that effectively provides the protection that the Member is seeking. For example, it should be payable on demand and contain a suitable choice of law and jurisdiction that will assist with enforcement in due course;
- Any guarantee should preferably be contained in a separate document signed by the party guaranteeing performance and not simply be contained in the charterparty and with words such as “guaranteed by [X]”;
- If the guarantee is to form part of the main contract, the wording should still be drafted in such a way that the terms of the guarantee are fully expressed and, most importantly, the guarantor signs and acknowledges its obligations under the guarantee;

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- If the person signing the guarantee is purporting to do so as agent for the guarantor, or with its authority, the Member should satisfy itself that the person signing has the proper authority. A Member should not assume that a shipbroker or the Member's counterparty has authority to bind the guarantor;
- The entitlement of the guarantor to provide the guarantee in accordance with any local laws or regulations should be checked. For example, where a Chinese bank or other company provides a guarantee, this must be approved by and registered with the State Administration of Foreign Exchange. Otherwise the guarantee may not be enforceable in due course;
- Other formalities may need to be observed. Under English law, the guarantee must be in writing and signed by the guarantor or its authorised agent. This differs from other contracts, where there is not a need for the agreement to be in writing.

The above factors will be taken in to account by the Directors in the exercise of their discretion pursuant to the Association's Rules in determining support for a particular case which involves the enforcement of charterparty guarantees.

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Practice Recommendation 12 **Costs in multi-party litigation – intermediate charterers drop out and streamlining agreements**

Notwithstanding back to back charterparties an intermediate charterer can still be found liable for the costs of a counterparty and unable to pass that liability on to another party. To minimise these risks a drop out or streamlining agreement should be considered at an early stage.

By way of background, in the *VAKIS T* [2004] 2 Lloyd's Rep. 465 the owner brought a claim against the head charterer for damage to the ship caused by its calling at an allegedly unsafe port. The head charterer similarly commenced proceedings against its sub-charterer who had access to evidence vital to defend the owner's claim. The owner's allegations were held to be spurious; the ship had never docked at the allegedly unsafe port and the cause of the damage was the unseaworthy condition of the ship. The intermediate charterer was therefore liable for the sub-charterer's costs and sought to pass on that cost liability to the owner. Although the tribunal found in favour of the intermediate charterer the High Court overturned the decision. The Court found that the claim, as between the intermediate charterer and sub-charterer, was without foundation and therefore failed on the grounds of causation. It was consequently not possible for the intermediate charterer to pass on the sub-charterer's costs to the owner.

Being back to back therefore is not an entirely risk free position.

Under English law arbitrators cannot order the consolidation of arbitral references (unlike cases which are subject to English High Court) therefore invariably multiple reference can be on-going under several charterparties. Different arbitrators can also be appointed which can lead to inconsistent decisions both at an interlocutory or substantive stage of the proceedings.

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Consolidation agreements between the parties can minimise costs and avoid delays. In appropriate cases, Members and their advisers are encouraged to conclude such agreements or engage in dialogue in order to avoid unnecessary costs. The parties in a charter chain can agree that one or more parties can “drop out” of the litigation. Such agreements can be an effective way of minimising cost exposure for an intermediate charterer and reducing delays for the remaining parties. Alternatively, certain arbitrations in a chain can be “stayed” on the basis that the parties co-operate in the remaining reference(s). In more complex “streamlining” agreements the parties may agree to include some or all of the following:

- To bear their own costs and expenses incurred prior to the date of the agreement;
- To share costs and expenses going forward in relation to issues contemplated under the agreement. Such fees can be shared pro – rata to the monies at risk or to the number of parties to the agreement;
- To nominate a law firm to have the on-going conduct of the underlying dispute;
- To co-operate, including the provision of information, evidence (including making available all witnesses and experts) and disclosure of all relevant disclosable documents including survey reports, correspondence, witness statements and expert reports;
- To provide security and/or counter security where appropriate for the sums in dispute plus interest, and any liability for the recoverable costs payable in the underlying dispute, or to pay disputed sums or security into an interest bearing escrow account;

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- To agree not to seek further security by way of arrest or attachment proceedings;
- To appoint the same arbitrators under all relevant charters, including any necessary third arbitrator or umpire;
- To stay intermediate disputes;
- To provide reasonable reporting of the progress of the underlying dispute;
- To agree a settlement mechanism where appropriate (e.g. the underlying dispute should only be settled upon terms agreed by all parties, with such agreement not to be unreasonably withheld) or to record the parties' agreement to be bound by a final arbitration award or judgment rendered in relation the underlying dispute; and
- To agree appropriate law and dispute resolution provisions which can order consolidation.

In order to minimise costs and delays Members are encouraged to consider consolidation of arbitral reference, or where appropriate, drop out, or streamlining agreements.

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Practice Recommendation 13 **Cyber related claims**

Members will be aware of the increasing risk of cyber-crime particularly in light of the increasing role of technology within the shipping industry.

Members are reminded that under Rule 3 (4) a number of factors are taken into account when assessing the extent and level of support to be given by the Association. These include the merits of the claim or dispute in connection with which a Member seeks the support of the Association and 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. Essentially this represents an obligation upon a Member to act as a reasonable and prudent uninsured.

In the context of cyber risks it is reasonable for all Members to take appropriate cyber security measures and to have in place suitable processes and procedures to prevent and respond to a cyber-incident. These arrangements should be kept under review particularly in light of the changing nature and scope of cyber risks.

Cyber security guidelines have been issued by several industry bodies including the IMO, BIMCO and Intertanko.

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BIMCO has published a standard Cyber Security Clause which is designed to apply when a party's ability to perform its contractual obligations is affected by a cyber-security incident. The clause emphasises the need for parties to be aware of the risk and encourages them to have in place and regularly review systems and procedures in place to minimise that risk, and encourages co-operation and information sharing between parties in order to mitigate damage and to resolve cyber incidents. The clause also includes a simple limitation provision which is applicable in the absence of gross negligence or wilful misconduct. The clause does not address payment fraud and Members are recommended to prevent or minimise this risk through enhanced verification and authorisation procedures.

It is recommended that Members consider incorporating this clause or similar in contracts as needed.

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Practice Recommendation 14 **Ship Managers' cover**

The Association's cover extends to Ship Managers. Although most Ship Managers will have some sort of cover for liabilities arising out of their activities for and on behalf of an owner or operator, that cover does not always cover the costs of all types of disputes that may arise.

Disputes which can be covered by the Association, subject to the Rules, include issues and disputes arising in multiple jurisdictions, under several contracts including those relating to the supply of fuel, food and necessaries to the ship, stevedore services, crew providers, local ships agents and, potentially, under the ship management contract itself, for managers with standalone cover.

The cover does not, nor is it intended to, replicate the cover provided by Ship Managers' existing liability cover and the Association would expect a Member to have liability cover on terms equivalent or no less favourable than those of The International Transport Intermediaries Club Ltd.

Practice Recommendation 15 **Traders' cover**

The Association is able to provide defence cover for commodity traders under a FD&D Traders' Extension for legal costs insurance relating to certain disputes arising under commodity sale/purchase contracts. Trader Members can purchase the cover for specific commodity trading desks and it would be complimentary to their navigating defence entry with the Association as either owner or charterer.

- Much like ordinary defence insurance the cover will respond to situations where the trader Member has a genuine or potential dispute or requires legal advice in order to resolve or defend claims. Trader Members, subject to the rules, have the benefit of up to \$1m per dispute.

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- The cover is available to a trader Member in its capacity as cargo owner or trader of goods which are either intended to be, are being or have been carried on a ship whether or not that ship is ever entered with the Association (e.g. an owned entry or chartered-in ship which is declared under a traditional defence entry) at any material time.
- The cover is not an “all risks” policy but can respond in relation to disputes concerning freight, laytime, despatch and/or demurrage of the ship or the loading, lightering, stowing, trimming and/or discharge of the cargo as well as agency.
- The cover excludes any legal and or other costs necessary to establish or resist claims concerning damage (i.e. quality) to or loss (i.e. quantity) of cargo. For example, cover shall not respond where the dispute is completely unrelated to a ship (e.g. wrongful cancellation, pre-shipment default, counterparty insolvency) or where the dispute in question arises under a service agreement (e.g. transport, storage, inspection, financing) or a contract of insurance. However the cover can respond if say demurrage is incurred in respect of a parcel of cargo intended to be carried but which has not yet been loaded. In all other respects, the cover follows and is subject to all other defence rules.

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

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