

THE UNITED KINGDOM DEFENCE INSURANCE
ASSOCIATION (ISLE OF MAN) LIMITED

Rules 2017

**The United Kingdom Defence Insurance Association
(Isle of Man) Limited**



Rules

The United Kingdom Defence Insurance Association (Isle of Man) Limited
("The Association")

Effective on and from 12 noon Greenwich Mean Time on 20th February, 2017

Managers

Thomas Miller (Isle of Man) Limited

Level 2 Samuel Harris House
5-11 St Georges Street
Douglas
Isle of Man
IM1 1AJ

Telephone: + 44 1624 645 200
Facsimile: + 44 1624 645 202
Email: tmdefence@thomasmiller.com
Website: www.ukdefence.com

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Rule 1: Introduction

- 1.1 These Rules apply to reinsurance of risk afforded by the Association to The United Kingdom Freight Demurrage and Defence Association Limited in respect of freight, demurrage and defence risks insured or reinsured by that company.

These Rules are subject to the Memorandum and Articles of Association of the Association as from time to time in force.

Rule 2: Interpretation

- 2.1 Unless the context otherwise requires or admits, words defined in the Articles of Association of the Association shall have the same meaning in these Rules and the following words and expressions shall bear the following meanings:

“Articles” mean the Articles of Association of the Association as from time to time in force;

“GMT” means Greenwich Mean Time;

“Joint Member” has the meaning given to it in Rule 3.2;

“Managers” mean the Managers for the time being of the Association;

“Member” means a Member of the Association;

“Policy Year” means a year from noon GMT on any 20th February to noon GMT on the next following 20th February;

“Primary Insurance” means insurance or reinsurance afforded by UK;

“Reinsurance” means reinsurance with the Association of risks for which Primary Insurance is afforded by UK;

Rule 2: Interpretation (Continued)

- 2.1 (Cont.)** **“Reinsurance Proceeds”** mean all and any monies payable by the Association to UK in respect of or pursuant to any agreement between them in respect of Reinsurance;
- “Reinsured Entry”** means an entry by any person (either as a member of UK or who is treated by UK as a member in accordance with the Rules of UK) for Primary Insurance in respect of which the Association affords or has afforded Reinsurance to UK and any reference in these Rules to a Member in respect of whom there is a Reinsured Entry (however expressed) shall be understood to be a reference to the person who (either as a member of UK or who is treated by UK as a member in accordance with the Rules of UK) has Primary Insurance in UK;
- “Rules”** mean the rules and regulations for the time being in force concerning this Association;
- “Rules of UK”** mean the rules relating to the freight, demurrage and defence risks of UK for the time being in force;
- “Ship”** means a 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;
- “Special Call”** means a special call or calls made in accordance with Rule 4;
- “Special Return”** means a payment made in accordance with Rule 5;
- “UK”** means The United Kingdom Freight Demurrage and Defence Association Limited, a company limited by guarantee incorporated in England with registration number 501877.
- 2.2** Words denoting the singular number shall include the plural and vice versa.
- 2.3** Words denoting any gender include all genders.

Rule 2: Interpretation (Continued)

- 2.4** References to persons shall include firms, corporations and other associations or bodies of persons whether or not incorporated and any government state or agency of a state whether or not any of the foregoing has any separate legal personality.
- 2.5** Any reference to a statute or statutory provision shall be construed as including a reference to any statutory modification, consolidation, re-enactment (whether before or after the date hereof) from time to time and shall include reference to any provision of which it is a re-enactment (whether with or without modification) and any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents and permissions made thereunder and any conditions attaching thereto.
- 2.6** Headings are for ease of reference only and do not affect the construction or interpretation of these Rules.
- 2.7** A person who has been provided with Primary Insurance by UK shall be deemed to have agreed with the Association on his own behalf and on behalf of his successors that each of them will in every respect be subject to and bound by the provisions of these Rules.
- 2.8** These Rules shall not give a Member or any person claiming through or in succession to such Member any directly enforceable rights against the Association in respect of any Reinsurance Proceeds.
- 2.9** Any reference to a claim in these Rules shall be deemed to include the costs and expenses associated therewith.
- 2.10** These Rules may be amended in accordance with the terms of Article 5.3 of the Articles.

Rule 3: Membership

- 3.1** Any person to whom UK shall afford or shall have afforded Primary Insurance shall become a Member if and with effect from the time and the date on which such Primary Insurance afforded to such Member shall be reinsured by UK with the Association and any such Member may be liable for Special Calls in accordance with Rule 4.
- 3.2** If Primary Insurance is afforded to two or more persons in respect of any one Ship and such persons are howsoever entered as Joint Owners in UK in respect of such Primary Insurance in accordance with the Rules of UK and there is a Reinsured Entry for that Ship in their respect, such persons shall be Joint Members in the Association.
- 3.3** The terms upon which each Joint Member shall be entitled to recover Special Returns and upon which the Association shall be entitled to recover from the Joint Members Special Calls or other sums due to the Association, shall be such as may be agreed in writing between the Joint Members and the Managers.
- 3.4** Unless otherwise agreed, all Joint Members shall be jointly and severally liable to pay all Special Calls or other amounts due to the Association in respect of their Reinsured Entry. Receipt by any one of the Joint Members of any sums payable by the Association shall be deemed to be the receipt by all Joint Members jointly and shall be a sufficient discharge of the Association for the same.
- 3.5** Failure by any Joint Member to disclose material information or documents within his knowledge shall be deemed to have been a failure of all the Joint Members.
- 3.6** Unless the Managers have 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 or the Managers or agents shall be deemed to have been made with the full approval and authority of all the Joint Members.

Rule 4: Contingency Fund and Special Calls

- 4.1** The Directors may in their discretion establish and maintain a fund (hereinafter called “the Contingency Fund”) to meet in part or in whole the estimated total outstanding liabilities, 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.
- 4.2** The funds required to establish and maintain the Contingency Fund shall be levied by a Special Call in the following manner:
- 4.2.1** the Directors shall determine the total amount required to be raised by each such Special Call;
 - 4.2.2** each Member who has a Reinsured Entry at any time in the Policy Year during which the Directors resolve to make a Special Call, and each Member (whether or not the Member has a Reinsured Entry in the Policy Year during which the Directors resolve to make a Special Call) who had a Reinsured Entry either in any of the four years preceding the Policy Year in which the Directors resolve to make a Special Call or in any Policy Year commencing on or after 20 February 1999 (whichever number of Policy Years shall be the smaller) shall pay in respect of any and each Special Call for each Reinsured Entry for each such Policy Year the amount calculated in accordance with Rule 4.2.3, notwithstanding that the Member may not have had a Reinsured Entry when any of the Association’s outstanding liabilities, contingent, future and anticipated liabilities (in respect of which the Special Call was made) arose or may arise.

Rule 4: Contingency Fund and Special Calls (Continued)

4.2 (Cont.) 4.2.2 PROVIDED that:-

By reason of any agreement between the Member and the Managers which so provides, the Member shall only be liable to pay a Special Call in respect of such Reinsured Entry for any Policy Year in the course of which a Member ceases to be covered by virtue of Rule 7, or ceases to be covered in respect of any Ship entered by the Member or on his behalf by virtue of Rule 7, on a pro-rata basis, namely such proportion of the Special Call (as calculated in accordance with Rule 4.2.3) in respect of such Reinsured Entry for that Policy Year as part of the Policy Year during which there was a Reinsured Entry with the Association bears to the whole of such Policy Year;

4.2.3 subject to the rating agreed for the Reinsured Entry in accordance with the Rules of UK, the amount payable by each Member for each Reinsured Entry for each year for each Special Call shall be the amount calculated by the Managers by dividing the total sum required for each Special Call (as determined by the Directors) by the sum of (a) the total number of Reinsured Entries in the Policy Year in which the Directors resolve to make such Special Call and (b) the total number of Reinsured Entries either in each of the four years preceding that Policy Year or in each of the Policy Years commencing on or after 20 February 1999 (whichever number of years shall be the smaller).

4.3 Any amount or amounts not paid by any Member by way of any Special Call may in the discretion of the Directors be recovered from the other Members rateably in proportion to the Special Call last due from them.

Rule 5: Special Returns

- 5.1** In the event that there is, in the opinion of the Directors, a surplus of funds after the total outstanding liabilities, contingent, future and anticipated liabilities of the Association have been provided for, every Member may be entitled to have returned to him an amount equivalent to a proportion of the said surplus calculated pro rata to the Member's financial interest in the Association as the Directors shall from time to time determine.

Rule 6: Interpretation

- 6.1** Subject to Rule 4, each Special Call shall be payable in such instalments and on such dates as the Directors may specify.
- 6.2** As soon as is reasonably practicable after the amount of any Special Call shall have been fixed, the Managers shall notify each Member concerned:
- 6.2.1** of any such amount as may be appropriate;
 - 6.2.2** of the date on which the Special Call concerned or any instalment is payable;
 - 6.2.3** of the amount payable by such Member in respect of each Reinsured Entry for such Member; and
 - 6.2.4** if such Special Call is payable by such Member in any currency other than pounds sterling, of such fact.
- 6.3** The Managers may require any Member to pay all or any part of any Special Call payable by him in such currency or currencies as the Managers may specify.

Rule 6: Interpretation (Continued)

- 6.4** No claim of any kind whatsoever by a Member against the Association shall constitute any set-off against any Special Call or other sums of whatsoever nature due to the Association, nor shall any such claim entitle a Member to withhold or delay payment of all or any part of such Special Call or other sums.
- 6.5** Without prejudice to the other rights and remedies of the Association under these Rules, if any Special Call or any instalment or part thereof or any other sum of whatsoever nature due, from any Member is not paid by that Member on or before the date specified for payment thereof, that Member shall pay interest on the amount not so paid from and including the date so specified down to the date of payment at such rate as the Directors may from time to time determine, but the Managers may waive payment of such interest in whole or in part.

Rule 7: Cesser of Membership

- 7.1** A Member shall cease to be a Member of the Association in accordance with the Articles and on the happening of any of the following events:
- 7.2** where the Member ceases to be a member of UK or ceases to be treated by UK as a member of UK except where such cesser of membership of UK occurs as a result of UK ceasing to exist as a corporate entity;
- 7.3** where the Member ceases to have any Reinsured Entries and has been released from liability for contribution to Special Calls in accordance with Rule 4;
- 7.4** if having failed to pay either in whole or in part when due and demanded by the Directors or the Managers on behalf of the Association any sum due from the Member to the Association, the Member is served with a notice by or on behalf of the Association requiring the Member to pay such sum on or before any date which may be specified in such notice and the Member fails to pay such sum in full on or before the date so specified.

Rule 8: Reinsurance

- 8.1** The Managers may in their discretion reinsure or retrocede on behalf of the Association the whole or any part of the risks of the Association with such reinsurers and on such terms as the Managers shall consider appropriate, subject always (notwithstanding any other provision in these Rules or in the Articles) to having first obtained such consents as may be necessary and in accordance with the terms of any reinsurance.

Rule 9: Investment

- 9.1 The funds of the Association may (subject to the policy and general supervision of the Directors) be invested by the Managers by means of the purchase of such stocks, shares, bonds, debentures or other securities or the purchase of such currencies, commodities or other real or personal property, or by means of being deposited in such accounts on such terms and in such manner as the Managers may think fit. The funds of the Association may also be invested by such other method as the Directors may approve.

Rule 10: Set-off

- 10.1 For the purpose of determining whether any (and if so, what) sum is due under these Rules, no account shall be taken of any amount due or alleged to be due by the Association to the Member for any reason whatsoever, and no set-off of any kind (including any set-off which might otherwise have arisen by reason of the bankruptcy or winding up of the Member) shall be allowed against such sum (whether or not any set-off against any Special Call or other monies payable to the Association has been allowed at any time in the past) except to the extent (if any) to which any sum determined by the Directors or by the Managers as due, may (in the Directors' or the Managers' discretion) in itself have already allowed for a set-off or credit in favour of the Member.

Rule 11: Forbearance

- 11.1** No act, omission, course of dealing, forbearance, delay or indulgence by the Association in enforcing any of these Rules or any of the terms or conditions of its contracts with Members nor any granting of time by the Association shall prejudice or affect the rights and remedies of the Association under these Rules or under such contracts, and no such matter shall be treated as any evidence of waiver of the Association's rights thereunder, nor shall any waiver of a breach of these Rules or contracts by a Member operate as a waiver of any subsequent breach thereof. The Association shall at all times be entitled to insist on the strict application of these Rules and on the strict enforcement of its contracts with Members.

Rule 12: Assignment

- 12.1** No right or benefit given by the Association and interest arising under these Rules may be assigned without the written consent of the Managers, who shall have the right in their discretion to give or refuse such consent without stating any reason or to give such consent upon any such terms or conditions as they may think fit. Any purported assignment made without such consent shall, unless the Managers in their discretion otherwise determine, be void and of no effect.
- 12.2** Whether or not the Managers shall expressly so stipulate as a condition for giving their consent to any assignment, the Association shall be entitled before making any payment to an assignee to deduct or retain such amount as the Managers may then estimate to be sufficient to discharge any liabilities or potential liabilities of the assignor to the Association, whether existing at the time of the assignment or having accrued or being likely to accrue thereafter.

Rule 13: Delegation

- 13.1** Whenever any power, duty or discretion is conferred or imposed upon the Managers by virtue of these Rules, such power, duty or discretion may, subject to any terms, conditions or restrictions contained in these Rules, be exercised by any one or more of the Managers or by any authorised employee of the Managers.
- 13.2** 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 unless the same shall have been delegated to any committee of the Directors or to the Managers in accordance with the provisions as regards delegation contained in the Articles or elsewhere in these Rules, in which event the power, duty or discretion may be exercised by any person to whom the same shall have been so delegated.

Rule 14: Expenses

- 14.1** The Association shall pay out of the funds towards the expenses attendant on carrying into effect the purposes and objects such amounts as the Directors shall determine.

Rule 15: Certificate of Entry

- 15.1** A Member may request a certificate from the Association stating the terms of his Membership of the Association, such certificate to be in such terms as the Directors may in their discretion from time to time decide.

Rule 16: Jurisdiction, Choice of Law, Disputes and Differences

- 16.1** These Rules and any contract between the Association and a Member shall in all respects be governed by and construed in accordance with the laws of the Isle of Man.
- 16.2** If any difference or dispute shall arise between a Member (which expression in this Rule shall include former Member) and the Association out of or in connection with these Rules or any contract between them or as to the rights or obligations of the Association or the Member thereunder or in connection therewith, such difference or dispute shall in the first instance be referred to and adjudicated upon by the Directors. At any adjudication, the Directors shall be the sole arbiters of relevant issues of fact, inferences of fact, in respect of any matters forming part of the reference. Such reference and adjudication shall be by written submissions only.
- PROVIDED ALWAYS that:-
- Where the Directors have previously considered the facts or matters giving rise to such difference or dispute, whether in the exercise of a discretion conferred on them under any other provision of these Rules, or otherwise, reference to the Directors for the purposes of adjudication in accordance with this Rule 16.2 may be waived at the election of the Directors and the Member concerned shall be entitled to refer the difference or dispute to arbitration in accordance with the provisions of Rule 16.3.
- 16.3** If the Member concerned in such difference or dispute does not accept the decision of the Directors, it shall be referred to the arbitration in London of two arbitrators (one to be appointed by the Association and the other by such Member) and an umpire to be appointed by the arbitrators, and the submission to arbitration and all the proceedings therein shall be subject to the provisions of the Arbitration Act 1976, and any statutory modification or re-enactment thereof.

Rule 16: Jurisdiction, Choice of Law, Disputes and Differences (Continued)

- 16.4** Any arbitrator or umpire appointed hereunder shall be a commercial man or a Queen's Counsel practising primarily in the Commercial Court and in either case shall be conversant with the business of shipping and mutual insurance (P&I and Defence) associations.
- 16.5** No Member shall be entitled to maintain any action, suit or other legal proceeding against the Association upon any such difference or dispute:
- 16.5.1** unless and until the same has been referred to the Directors for adjudication under Rule 16.2 and the Directors shall have given their decision thereon or the reference to such adjudication shall have been waived in accordance with the proviso to Rule 16.2, and
 - 16.5.2** if such decision is not accepted by such Member or if the reference to such adjudication shall have been waived, unless and until such difference or dispute shall have been referred to arbitration as provided in Rule 16.3 and the Award in such reference shall have been published, and
 - 16.5.3** then only for such sum (if any) as the Award may direct to be paid by the Association, and
 - 16.5.4** the sole obligation of the Association to such Member under these Rules and any contract between them or otherwise howsoever in respect of such dispute or difference shall be to pay such sum as may be directed by such an Award.

UKDIA

The United Kingdom Defence Insurance Association (Isle of Man) Limited
Level 2, Samuel Harris House, 5-11 St Georges Street, Douglas IM1 1AJ
email: tmdefence@thomasmiller.com web: www.ukdefence.com

London

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

Greece

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

Hong Kong

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

Singapore

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

New Jersey

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

Registered Office

Level 2, Samuel Harris House, 5-11 St Georges Street, Douglas IM1 1AJ

Registered in the Isle of Man
No. 094573C