



CLASS II
Freight, Demurrage and Defense

Edition 2018

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RULE 1 DEFINITIONS

In these Rules, the following words and phrases shall have the following meanings unless the context otherwise requires,

Approval

Approval shall be in discretion of the Directors or Managers (as the case may be).

Cost

Fees and/or disbursements for advice or representation by lawyers or surveyors (or similar experts independent of the Member) in connection with any actual or threatened or intended dispute or claim.

General Rules

The General Rules for the time being of the Association.

Proper Value

The value for which an entered ship should in the opinion of the Managers be insured as determined by the Managers in their discretion. For the purpose of this definition, the Managers are entitled to take account of whether the Hull and Machinery and/or Excess Liability policies of such ship have been the subject of periodic review in the lights of market conditions, so that the total amount of liability cover provided by those policies is maintained at all times at a figure which is as near as possible to the equivalent of the free uncommitted market value of the ship, but in no event less than the aggregate of the limits of liability set out in the International Convention relating to the Limitation of Liability of Owners for Marine Claims 1976 and any revisions thereof.

NB: Members are therefore recommended to confer with their brokers and/or ship valuers in order to assess, in the light of the above, the total amount for which collision liability insurance should be arranged. Provided the necessary insurance is arranged on the basis of the advice received, the Managers will usually give favourable consideration to the insured value being the proper value.

Rules

The General Rule and the Class II Rules.

RULE 2 GENERAL

2.1 Insurance in this Class is subject to the General Rules and to the Memorandum and Articles of the Association.

2.2 The contract relating to entry in this Class shall be deemed to be separate from the contract for entry in any other Class, provided that if the Member ceases for any reason to be covered under Class I of the Association either at all or in relation to a particular occurrence, then the coverage under this insurance shall likewise cease.

2.3 Notes printed in italic script are indicative of current practice but do not form part of the Rules.

RULE 3 RIGHT OF RECOVERY

If the Member shall become liable for costs as set out in Rules 4 and 5 in respect of a ship which was entered in the Association at the time when the claim giving rise to such costs arose, the Member shall be entitled to recover out of the fund of the Association the amount of such costs to the extent and upon the terms, and subject to the conditions, limits, deductibles and exceptions provided for by the Rules and by the Certificate of Entry;

PROVIDED ALWAYS that:

- (i) unless the Managers in their discretion otherwise determine, it shall be a condition precedent of a Member's right to recover from the funds of the Association in respect of any cost that the Member shall have first unconditionally discharged the same in full by payment out of monies belonging to him absolutely and not by way of loan or otherwise;
- (ii) as to claims and disputes arising under contract (other than those specified in proviso (ii) to this Rule) in tort or under statute, such claims and disputes will be deemed to have arisen at the date when the cause of action accrued;
- (iii) as to claims and disputes concerning salvage, or in respect of towage services, such claims and disputes will be deemed to have arisen at the date when relevant services commenced;
- (iv) in no circumstances whatsoever shall the Association be under any obligation to provide bail or security for costs.

RULE 4 COST INSURED

Subject to Rule 3, the Member shall be insured by the Association in respect of the following costs:

4.1 The cost incurred by a Member with the approval of the Managers for the purpose of obtaining legal or other advice in connection with any of the claims, disputes or proceedings specified in Rule 5.

4.2 The costs of or incidental to any legal or other proceedings which a Member may take or defend with the approval of the Managers for the purpose of asserting or defending claims specified in Rule 5 including any such costs which the Member may become liable to pay to any other party to those proceedings.

4.3 The costs of or incidental to any of the legal or other proceedings specified in sub- rules 11 and 12 of Rule 5 to which a Member may be a party or at which he may be represented, with the approval of the Managers, including any such costs which the Member may become liable to pay to any other party to those proceedings.

If the Member shall incur liability or loss as a result of compliance with requirements of the Directors pursuant to Rule 5, sub-rule 4, then he shall be indemnified by Association in respect thereof.

However, as regards costs of claims falling within sub-rule (3) of Rule 5 which are or which are deemed by Rule 7 to be covered by other insurances, then this insurance shall only cover the same proportion of such costs as the part of the claim not so insured or deemed insured bears to the total claim.

RULE 5 MATTERS COVERED

Subject to Rule 7 and 8, the cover provided hereunder shall relate solely to the following categories of claims, disputes or proceedings relating to the entered ship:

5.1 Claims under any charterparty, bill of lading, waybill, contract of affreightment or similar contract relating to the entered ship or to the carriage of goods in or to the trading of the entered ship generally, including but not limited to the exercise or assertion of any rights arising there under or generally including but not limited to the right of withdrawal, exercise of a lien, and claims arising therefrom, claims and disputes concerning hire, off- hire, set-off, freight, deadfreight, laytime, demurrage and/or damages for detention, dispatch, speed, performance and description of vessel, port safety and order to the entered ship.

5.2 Claims in respect of detention of the entered ship by third parties (including detention consequent from damage to the entered ship) and in respect of interference, neglect, default or any other cause whatsoever involving detention of or loss of or

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damage to the entered ship by any Department of State, authority, public body or other person or persons whatsoever connected with maritime business;

PROVIDED ALWAYS that the Directors may require a Member to case the entered ship to remain where she is for the purpose of testing the legality of such detention and if the Member shall comply with any such requirement the Member shall insured by the Association against any liability incurred to third parties consequent on such compliance and against any actual loss sustained by a Member during a period of such compliance to the extent that such loss is not otherwise recoverable, but no exceeding such sums as the Directors in their sole and absolutely discretion may from time to time decide.

5.3 Claims in respect of supply of inferior or unsatisfactory or unsuitable fuel, materials or equipment, or other necessaries or for negligent repair of or alteration to the entered ship;

PROVIDED ALWAYS that in relation to disputes about fuel quality, the member has subscribed to and used the Fuel Oil Bunker Analysis and Advisory Service or an equivalent scheme for the proper taking of samples of the fuel concerned and for the analysis of such samples.

5.4 Claims in respect of overcharges in accounts in relation to the entered ship howsoever arising.

5.5 Claims in respect of the cancellation of a charter party or like contract in respect of the entered ship.

5.6 Claims in respect of improper loading, lightening, stowage, trimming or discharging of cargo on or from the entered ship.

5.7 Claims for amounts due under policies of insurance on the entered ship and/or cargo and/or freight thereon;

PROVIDED ALWAYS that there shall be no coverage in respect of claims by or against the Association.

5.8 Claims in respect of salvage and/or towage services rendered by the entered ship unless the entered ship is entered as a tug or salvage vessel.

5.9 Representation of the Member at official investigations, Coroners' inquests or other enquiries whatsoever in relation to the entered ship.

5.10 Claims by or against passengers, stowaways, refugees, masters. Crew and other person on or about the entered ship.

5.11 Claims in respect of general and/or particular average contributions or charges.

5.12 Claims arising in connection with any contract for or the building, conversion, purchase, sale or mortgage of the entered ship;

PROVIDED ALWAYS that:

(i) In respect of the building or conversion of a ship that the vessel has been insured for Builder's Risks at the time when the contract is signed or when the vessel's keel is laid, or equivalent work done, and that the building contract and insurance for Builders' Risks shall have been approved by the Managers at the time of entry;

(ii) in respect of the purchase of a second hand vessel that the entry of that vessel commenced as at the date of signing of such contract.

5.13 Claims by or against revenue or customs authorities in connection with the entered ship.

5.14 All such claims and disputes and all cost of legal or other proceedings (other than those specified in the foregoing paragraphs of this Rule) as the Managers in their discretion decide are within the scope of this Class;

PROVIDED ALWAYS that in relation to any and to all of the matters referred to in sub- rules 1 to 14 of this Rule, the Association shall be under no liability in respect of any legal or other proceedings commenced or defended without the prior written approval of the Managers, the Managers having discretion as to what cases may be taken up, as to the conduct thereof and as to the discontinuance or settlement of cases which have already been taken up with the Association's approval.

If the Managers in their discretion decide that it is not appropriate for a member to be supported by the Association in connection with any claim or dispute or proceedings having regard solely to the cost likely to be incurred in such proceedings as compared with the amount in dispute then the Managers may in their discretion (as an alternative to refusing to support the Member in such proceedings) pay to the Member out of the fund of this Class of the Association the whole or any part of the claim by or against the Member as the managers may think fit. If such a payment tendered by the Association, then the liability of the Association in respect of the claim, dispute or proceedings shall thereupon cease.

RULE 6 ENTRY AND NOTICE

6.1 Unless otherwise agreed in writing at the time of entry and subject as otherwise provided in the Rules, the insurance shall begin at the time and date stated in the Certificate of Entry and shall continue until noon GMT on 20th February next following.

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

- (a) notice shall have been given in writing by either the Member to the Managers or the Managers to the Member not later than noon GMT 20th January in each year, that the insurance specified in the notice is not to be renewed, or
- (b) the Managers shall have given a notice not later than noon GMT on 20th January in the current policy period that the terms of the insurance by the Association for the next following policy period shall be renewed upon such terms as may be agreed between the Member and the Managers before noon GMT on 20th February immediately following such notice, and if no terms shall by then have been agreed, the insurance shall not renewed;

PROVIDED ALWAYS that if before 20th December in any year the Managers give notice of an alteration in the Rules of the Association and/or a decision of the Directors under General Rule 7.4, the Member shall be deemed to have agreed to and accepted such alteration and/or decision and the insurance shall be renewed for the next policy period, unless by 20th January following, he had given notice to the Managers under sub-rule 2(a) of this Rule.

6.3 Notwithstanding anything herein contained, the Directors or the Managers may at any time terminate the insurance of any ship in the Association by giving seven days notice to a Member.

6.4 An entered ship shall not withdrawn from the Association by the Member at any time or in any other manner except with the written consent of the Managers.

6.5 The Member shall be under a duty to disclose to the Association all material circumstances in connection with any renewal of this insurance. The duty shall arise 45 days prior to the expiry of the current policy period and shall continue until the Association is irrevocably committed to renew this insurance.

RULE 7 EXCLUSION OF RISK COVERED BY HULL POLICIES ETC

The Association shall not insure the Member to any extent whatsoever against any costs to the extent that they relate to a loss in respect of which he was insured by any insurer other than the Association, or would have been insured if , at the time of the incident giving rise to the said costs, the entered ship had been:

- (a) fully insured for its proper value under Hull policies on terms not less wide than those of the Lloyd's Marine Policy with Institute Time Clause - Hulls, 1.20.83, attached with not deductible or franchise or self-insurance applicable to claims under such policies,
- (b) fully covered for its proper value against war risks insured in and under the Rules of Class III of the Association with the Institute War and Strike Clauses Hull - Rime 01.11.95 or by some equally wide insurance with no deductible, franchise or self-insurance, and
- (c) insured against risks covered by the Association's Class I - Protection and Indemnity - or by some equally wide insurance.

RULE 8 RISKS SPECIFICALLY EXCLUDED

Unless the Directors in their discretion otherwise decide, the Member shall not be covered for the costs of asserting or defending any claims or disputes or proceedings in respect of:

- (a) a substantial body shipowners rather than the individual Member, unless all or the majority are entered in the Class
- (b) diplomatic action or action by national or international bodies, other than those referred to in Rule 5.4,
- (c) liner conferences,
- (d) an amount which is less than US\$ 5000.00 (Five Thousand United States Dollars),
- (e) a claim which the managers, in their discretion, conclude is not economically recoverable or as no reasonable prospect of recovery, taking into account, without prejudice to the generality of the foregoing, any legal problems of enforcement and any assets available to satisfy a judgment or award,
- (f) a claim which has arisen owing to the want of due diligence of the Member, his managers, superintendents or onshore management in the chartering, control or management of an entered ship,
- (g) a claim against the Member which relates to money owned by or damages claimed against that Member and where the Managers in their discretion conclude that there is no justification in the Member's refusal to pay,
- (h) a claim where the Member, his managers, superintendents or onshore management knew or ought reasonably to have known that he was in breach of any regulations or agreements, whether relating to safety, navigation, port requirements or contracts of employment or otherwise.
- (j) costs or expenses incurred or payments made in relation to ransom demands, extortion, blackmail, bribery or other unlawful demands.

RULE 9 CONDITIONS OF RECOVERY

No costs shall be recoverable from the Association unless:

- (a) they have been incurred with the prior written consent of the Managers, or
- (b) they have been incurred by the Association on behalf of the Member in accordance with General rule 19.2 (employment of lawyers and others), or
- (c) the Directors in their discretion shall decide that they were reasonably incurred and ought in all the circumstances to be borne by the Association.

RULE 10 GENERAL POWERS OF THE DIRECTORS

10.1 The Directors shall, subject to the Rules, be entitled in their discretion to decide whether a Member should be supported by the Association in respect of any claims or disputes or proceedings which are set out in Rule 5.

10.2 Without prejudice to General Rule 19.2 the Directors shall be entitled in their discretion to decide that the Association shall support the Member in connection with any claims, disputes, or proceedings to such state or extent, in such manner and on such terms and conditions as the Director may think fit, including a term that the Member will not be reimbursed by the Association in respect of any specified amount or proportion of the cost referred to in rule 4.

10.3 Without prejudice to the General Rule 19.1(g) the Directors shall be entitled, at any time, in their discretion to decide that the Association shall discontinue its support or decline to provide further support in connection with any claims, disputes or proceedings notwithstanding any previous decision by the Director to support the same.

10.4 If the Member shall incur any costs, in connection with any claims, disputes or proceedings or incur any liability to pay any costs to any other party to such claims disputes or proceedings at a time when the Member has not complied with any terms or conditions imposed by the Managers or Directors, or if a Member shall incur any costs through any neglect or default on his part or that of his servants or agents, then the Member shall not be entitled to recover any such costs from the Association and shall be liable to repay to the Association any cost which the Association may incur in connection with such claims, disputes or proceedings;

PROVIDED ALWAYS that the Directors may in their discretion decide that the Association should pay or reimburse the Member in whole or in part in respect of any costs for which the Association would not otherwise be liable under this sub-rule or in respect of the costs of any proceedings to which a Member has been a party or in which he has been represented without the support of the Directors under Rule 4.2 or in respect of any such costs as are referred to in rule 4.3 which a Member may have incurred without the approval of the Directors.

10.5 When a Member has settled proceedings on terms which result in a net recovery for him which included cost recoverable from any other party or lacks a provision as to the recovery of costs from the paying party, then in either event, the Member shall make to the Association such payment in respect of costs recovered as the Managers shall in their discretion consider fair.

10.6 Where a Member has become entitled by judgment, award, agreement, admission or otherwise to recover from any other party in whole or in part the cost of, or incidental to, any proceedings but the Member has been unable to recover the full amount of the claim and costs to which he has become entitled, the Member shall be obliged, if the Directors in their discretion so require, to pay to the Association such proportion of the sum actually recovered by him as the amount of such costs covered by the association bear to the sum of such claim and costs.

RULE 11 DEDUCTIBLES

The Member shall bear one fifth of all costs and expenses arising from claims, disputes and proceedings, except for any claims, disputes and proceedings arising in or being pursued in the United States of America, in respect of which the Member shall bear one third of all such costs and expenses. If the Association has paid any costs and expenses that should have been borne by the Member, the Association shall be entitled to recover such costs and expenses from the Member as a debt due from the Member.