

AMENDMENTS FOR 2010/2011 TO THE RULES OF THE FREIGHT, DEMURRAGE AND DEFENCE CLASS

Explanatory notes have been provided for the proposed changes and consequential renumbering and any cross referencing which will also be required. In the proposed new Rules, new wording is in **bold** and existing wording to be deleted is shown as [.....].

A number of amendments require consequential amendment of provisions which appear earlier in the Rules. To assist in understanding the amendments, the Rules in question have been set out together (although in some cases out of numerical order).

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• RULE 14 PAYMENT

N.B. The proposed amendment to this Rule is to introduce a new provision making it clear that any taxes based on or calculated in relation to the premium payable to the Association are for the Member's account.

OLD RULE	NEW RULE
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14(5) Effect of a Member's Non-Payment	14(5) Insurance Premium Taxes
If any Contribution, Fixed Premium or other payment due from a Member to the Association is not paid and if the Directors decide that payment cannot be obtained, the sums required to make good any resulting shortfall or deficiency in the funds of the Association shall be deemed to be expenses of the Association for the purpose of contribution under Rule 12.	Unless a Member shall first have paid or discharged the same directly, he shall on demand pay to the Association or to its order the amount of any premium tax or other similar tax levied on or in connection with the insurance or reinsurance provided by the Association to the Member for which the Association determines it or the Owner has or may become liable, and shall indemnify the Association and hold it harmless in respect of any loss, damage, liability, cost or expense which the Association may incur in respect of such premium tax or other similar tax.
14(6) Lien	14[5] (6) Effect of a Member's Non-Payment
The Association shall be entitled to, and the Member hereby grants, a lien on the Entered Ship in respect of any amount whatsoever owed by the Member to the Association.	If any Contribution, Fixed Premium or other payment due from a Member to the Association is not paid and if the Directors decide that payment cannot be obtained, the sums required to make good any resulting shortfall or deficiency in the funds of the Association shall be deemed to be

expenses of the Association for the purpose of contribution under Rule 12.

14(7) Lien

The Association shall be entitled to and the Member hereby grants a lien on the Entered Ship in respect of any amount whatsoever owed by the Member to the Association.

- **RULE 17 NON-PAYMENT**
- **RULE 29 EFFECT OF CESSER**
- **RULE 38 DISPUTES AND DIFFERENCES**

N.B. The amendments to these Rules follow a review of the Association's position in respect of its rights to seek recovery of and security for sums due to it and to ensure that recovery actions can proceed as quickly as possible. The amendments reflect the movement of provisions concerning the Association's right to decide whether to commence court or arbitration proceedings from Rule 17 to Rule 38 and then set out the procedures to be used in respect of such proceedings. The wording of Rule 17 is also amended to make it apply cesser for non-payment to closed policy years in addition to open policy years (on the basis that it is contrary to the principle of mutuality for a Member who owes any money to have the benefit of any cover with the Association) and is in line with the rules of other clubs. The amendment to Rule 29 is a consequential amendment to reflect the changes to Rule 17.

OLD RULE

17(1) Notwithstanding Rule 38, all monies from time to time payable by a Member may be recovered by court proceedings commenced under the instructions of the Managers in the name of the Association. Where a Member is domiciled within a State which is an original and/or acceding party to the 1968 Brussels Convention and/or 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, the English courts will have jurisdiction in respect of court proceedings commenced for the recovery of any such monies payable by that Member.

NEW RULE

17(1) [Notwithstanding Rule 38, all monies from time to time payable by a Member may be recovered by court proceedings commenced under the instructions of the Managers in the name of the Association. Where a Member is domiciled within a State which is an original and/or acceding party to the 1968 Brussels Convention and/or 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, the English courts will have jurisdiction in respect of court proceedings commenced for the recovery of any such monies payable by that Member.]

If having failed to pay any sum due to the Association a Member has ceased to be insured by the Association by virtue of Rule 27(c) (Failure to pay sums due) the Association shall not be liable for any claim

17(2) If having failed to pay any sum due to the Association a Member has ceased to be insured by the Association by virtue of Rule 27(c) (Failure to pay sums due) the Association shall not be liable for any claims under these Rules whether the incident giving rise to such claim occurred before or after the cesser of insurance, unless the incident giving rise to such claim occurred during a Policy Year which had been closed, in accordance with Rule 31, at the time of the cesser of insurance.

whatsoever under the rules applying to any Policy Year whether the incident giving rise to such claim occurred before or after the cesser of insurance and whether in an open or closed Policy Year.

17(2) [If having failed to pay any sum due to the Association a Member has ceased to be insured by the Association by virtue of Rule 27(c) (Failure to pay sums due) the Association shall not be liable for any claims under these Rules whether the incident giving rise to such claim occurred before or after the cesser of insurance, unless the incident giving rise to such claim occurred during a Policy Year which had been closed, in accordance with Rule 31, at the time of the cesser of insurance.]

If a Member who, or whose Entered Ship or Ships, has or have ceased to be insured by the Association for any reason other than by virtue of Rule 27(c) (Failure to pay sums due) fails to pay any sum whatsoever that may be due from him to the Association, the Managers may serve him with a notice requiring him to pay such sum on or before the date specified in such notice. If the Member fails to pay such sum in full on or before the date so specified, the Association shall not be liable for any claim whatsoever under the rules applying to any Policy Year whether the incident giving rise to such claim occurred before or after the cesser of insurance and whether in an open or closed Policy Year in respect of any and all Ships that are or have at any time been entered by him, on his behalf or in which he is shown to have an interest on the relevant Certificate of Entry.

OLD RULE

17(3) If a Member whose Entered Ship or Ships cease for any reason to be insured by the Association fails to pay when due and demanded by the Managers any Release Call agreed or assessed under Rule 16, or any

NEW RULE

[17(3) If a Member whose Entered Ship or Ships cease for any reason to be insured by the Association fails to pay when due and demanded by the Managers any Release Call agreed or assessed under Rule 16, or any

other sum due by way of Contribution, Fixed Premium or otherwise, he may be served with a notice by or on behalf of the Managers of the Association requiring him to pay such sum on or before any date which may be specified in such notice. If he then fails to pay such sum in full on or before the date so specified, then the Association shall not be liable for any claims under these Rules unless the incident giving rise to such claim occurred during a Policy Year which had been closed, in accordance with Rule 31(1), at the time of the cesser of insurance.

other sum due by way of Contribution, Fixed Premium or otherwise, he may be served with a notice by or on behalf of the Managers of the Association requiring him to pay such sum on or before any date which may be specified in such notice. If he then fails to pay such sum in full on or before the date so specified, then the Association shall not be liable for any claims under these Rules unless the incident giving rise to such claim occurred during a Policy Year which had been closed, in accordance with Rule 31(1), at the time of the cesser of insurance.]

• **RULE 29 EFFECT OF CESSER OF INSURANCE**

OLD RULE

29(1) For Failure to Pay

If the cesser of insurance shall have occurred by virtue of Rule 27(c) (Failure to Pay Sums Due), the provisions of Rule 17(2) shall apply.

29 (2) For any Other Reason

If the cesser of insurance shall have occurred by virtue of any other reason the Association shall remain liable for all claims under these Rules arising by reason of any incident which occurred before the cesser but shall be under no liability whatsoever by reason of any incident which occurred after the cesser.

NEW RULE

29(1) For Failure to Pay

If the cesser of insurance shall have occurred by virtue of Rule 27(c) (Failure to Pay Sums Due), the provisions of Rule 17[(2)](1) shall apply.

29 (2) For any Other Reason

Except as provided in Rule 17(2), if the cesser of insurance shall have occurred by virtue of any other reason the Association shall remain liable for all claims under these Rules arising by reason of any incident which occurred before the cesser but shall be under no liability whatsoever by reason of any incident which occurred after the cesser.

• **RULE 38 DISPUTES AND DIFFERENCES**

OLD RULE

DISPUTES AND DIFFERENCES

38(1) Except as provided in Rule 17(1), and in the proviso to Rule 26(2), if any difference

NEW RULE

DISPUTES, [AND] DIFFERENCES **AND DEBT**

38(1) Except as provided **in the proviso to Rule 26(2)** [Rule 17(1) and in the proviso to]

or dispute shall arise between an Insured Party 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 Insured Party thereunder or in connection therewith, such difference or dispute shall in the first instance be referred to and adjudicated upon by the Directors. Such reference and adjudication shall be on written submissions only.

38(2) If the Insured Party 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 Insured Party) 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 English Arbitration Act 1996 and any statutory modification or re-enactment thereof. Such arbitration shall be commenced within one (1) year of the date when notice of the decision of the Directors is given to the Insured Party, failing which any such dispute or difference shall be time barred.

and Rule [26(2)] 38(3), if any difference or dispute shall arise between an Insured Party 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 Insured Party thereunder or in connection therewith, such difference or dispute shall in the first instance be referred to and adjudicated upon by the Directors. Such reference and adjudication shall be on written submissions only.

38(2) If the Insured Party 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 Insured Party) 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 English Arbitration Act 1996 and any statutory modification or re-enactment thereof. Such arbitration shall be commenced within one (1) year of the date when notice of the decision of the Directors is given to the Insured Party, failing which any such dispute or difference shall be time barred.

38(3) Sums Payable To The Association

Notwithstanding Rule 38(1), the Association may, in its sole discretion, recover any monies from time to time payable by a Member either:

(a) by court proceedings. Where a Member is domiciled within a State which is an original and/or acceding party to the 1968 Brussels Convention and/or 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, the English courts will have jurisdiction in respect of court proceedings commenced for the recovery of any such monies payable by that Member; or

(b) by arbitration in London before two Arbitrators (one to be appointed by the Association and the other by the Member) and an Umpire to be appointed by the Arbitrators, with the submission to arbitration and all the proceedings therein being subject to the English Arbitration Act 1996 and any statutory modification or re-enactment thereof.

PROVIDED ALWAYS THAT notwithstanding Rules 38(1) and (2) the Association shall be entitled at any time to take whatever action is deemed necessary by the Managers to obtain security for any claims the Association may have against the Insured Party, including the right of the Association to take action and/or commence proceedings in any jurisdiction to enforce its right of lien on ships.

38 (3) Sole Remedy

No Insured Party shall be entitled to maintain any action, suit or other legal proceedings against the Association otherwise than in accordance with the procedures laid down in this Rule 38 and may only commence proceedings other than the arbitration under Rule 38(2), so as to enforce an award under such arbitration and then only for such sum if any as the award may direct to be paid by the Association. The sole obligation of the Association to such Insured Party under these Rules and any Certificate of Entry in respect of such difference or dispute shall be to pay such sum as may be directed by such an award.

PROVIDED ALWAYS THAT notwithstanding Rules 38(1) [and], **(2) and (3)** the Association shall be entitled at any time to take whatever action is deemed necessary by the Managers to obtain security for any claims the Association may have against the Insured Party, including the right of the Association to take action and/or commence proceedings in any jurisdiction to enforce its right of lien on ships.

38[(3)]**(4)** Sole Remedy

No Insured Party shall be entitled to maintain any **demand, claim, counterclaim or set-off in any legal proceedings whatsoever whether commenced by or against the Association** or any action, suit or other legal proceedings **whatsoever** against the Association otherwise than in accordance with the procedures laid down in Rule 38**(1) and Rule 38(2)** and may only commence proceedings other than the arbitration under Rule 38(2) so as to enforce an award under such arbitration and then only for such sum if any as the award may direct to be paid by the Association. The sole obligation of the Association to such Insured Party under these Rules and any Certificate of Entry in respect of such difference or dispute shall be to pay such sum as may be directed by such an award.

- **RULE 20 DEDUCTIBLES**

N.B. This amendment reflects the new FD&D standard deductibles which were set out in the Association's Circular dated 16 November 2009 (Financial Review and Renewal 2010) and which require an amendment to Rule 20.

OLD RULE

Unless otherwise agreed between the Member and the Managers as part of the terms upon which the Ship is entered into the Association the Member's recovery from the Association shall be subject to a deductible of 25% with a minimum of US\$2,500 and a maximum of US\$50,000 per claim.

NEW RULE

Unless otherwise agreed between the Member and the Managers as part of the terms upon which the Ship is entered into the Association the Member's recovery from the Association shall be subject to a deductible of 25% with a minimum of **[US\$2,500] US\$10,000** and a maximum of **[US\$50,000] US\$100,000** per claim.

- **RULE 27 CESSER OF ALL INSURANCES**

N.B. A review of the cesser provisions is currently under way to ensure that in the event of a Member failing to pay sums due to the Association, the Association can act quickly to safeguard the interests of the mutual membership, to terminate cover and to take steps to recover the outstanding monies. This has resulted in extension of the effect of cesser for non-payment to closed Policy Years (see Rule 17 amendments above).

- **RULE 39 NOTICES**

N.B. The amendment to Rule 39 is to ensure that when taking steps to serve the Notices required of it in respect of recovery of sums due from Members, the Association can use the most convenient way of service available to it.

OLD RULE

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39(2) On an Insured Party

A notice or other document required under these Rules to be served on an Insured Party may be served in writing by sending it through the post in a pre-paid letter or by sending it by telegram, cable, courier, telex, facsimile or other electronic communication addressed to the Member at his address appearing in the Register or to his broker or agent. In the case of Insured Parties (other

NEW RULE

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39(2) On an Insured Party

A notice or other document required under these Rules to be served on an Insured Party may be served in writing by sending it through the post in a pre-paid letter or by sending it by telegram, cable, courier, telex, facsimile or other electronic communication addressed to the Member at his address appearing in the **[Register] Association's records** or to his broker or agent. In the case

than Members) notice shall be served on any such Insured Party or on his broker or agent and such service shall be sufficient service upon all Insured Parties.

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of Insured Parties (other than Members) notice shall be served on any such Insured Party or on his broker or agent and such service shall be sufficient service upon all Insured Parties.

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