

**AMENDMENTS FOR 2010/2011 TO THE RULES  
OF THE PROTECTING & INDEMNITY CLASS OF  
THE NORTH OF ENGLAND PROTECTING AND INDEMNITY  
ASSOCIATION LTD**

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 [.....].

*Some amendments require consequential amendment of provisions appearing earlier in the Rules. To assist in understanding these amendments, the Rules in question are 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

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14(5) Effect of a Member's Non-Payment

Except as provided in Rule 36, 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.

NEW RULE

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14(5) **Insurance Premium Taxes**

**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[5] **(6)** Effect of a Member's Non-Payment

Except as provided in Rule 36, if any contribution, Fixed Premium or other payment due from a Member to the

OLD RULE

14(6) 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.

NEW RULE

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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 39 EFFECT OF CESSER
- RULE 49 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. These 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 49 and then set out the procedures to be used in respect of such proceedings. The wording of Rule 17 is also amended to 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) in line with the rules of other clubs. The amendment to Rule 39 is a consequential amendment to reflect the changes to Rule 17.

OLD RULE

17(1) Notwithstanding Rule 49, 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

NEW RULE

17(1) [Notwithstanding Rule 49, 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

OLD RULE

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.

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 37(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 42(5), at the time of the cesser of insurance.

NEW RULE

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 37(c) (Failure to pay sums due) 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.**

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 37(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 42(5), 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 37(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

*PROVIDED ALWAYS THAT* in Rule 17(2) if any sum due is an Overspill Call or a sum due under Rule 41(3), the Member shall not be entitled to recovery from the Association of any claims whatsoever and whensoever arising in respect of any Entered Ship for any Policy Year, whether open or closed.

NEW RULE

*[PROVIDED ALWAYS THAT* in Rule 17(2) if any sum due is an Overspill Call or a sum due under Rule 41(3), the Member shall not be entitled to recovery from the Association of any claims whatsoever and whensoever arising in respect of any Entered Ship for any Policy Year, whether open or closed.]

• **RULE 39 EFFECT OF CESSER OF INSURANCE**

OLD RULE

39(1) For Failure to Pay

If the cesser of insurance shall have occurred by virtue of Rule 37(c) (Failure to pay sums due), the provisions of Rule 17(2) shall apply.

39 (2) For any Other Reason

Except as provided in Rule 41, 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

39(1) For Failure to Pay

If the cesser of insurance shall have occurred by virtue of Rule 37(c) (Failure to pay sums due), the provisions of Rule 17[(2)](1) shall apply.

39 (2) For any Other Reason

Except as provided in Rule **17(2) and** 41, 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 49 DISPUTES AND DIFFERENCES**

OLD RULE

DISPUTES AND DIFFERENCES

49 (1) Except as provided in Rules 17(1) and 36(3), any difference or dispute which arises 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, shall in the first instance be referred to and adjudicated upon by the Directors. Such reference and adjudication shall be on written submissions only.

NEW RULE

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

49(1) Except as provided in Rules [17(1) and] 36(3) **and 49(3)**, any difference or dispute which arises 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, shall in the first instance be referred to and adjudicated upon by the Directors. Such reference shall be on written submissions only.

OLD RULE

49 (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.

NEW RULE

49(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.

**49(3) Sums Payable To The Association**

**Notwithstanding Rule 49(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.**

OLD RULE

49 (3) Sole Remedy

Except as provided in Rule 36(3), 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 49 and may only commence proceedings other than the arbitration under Rule 49(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 49(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.

NEW RULE

49[(3)](4) Sole Remedy

Except as provided in Rule 36(3), 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 49(1) and **Rule 49(2)** and may only commence proceedings other than the arbitration under Rule 49(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 49(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.

- RULE 19 RISKS COVERED

N.B. The proposed amendment to Rule 19(6) is to clarify the extent to which Members can recover the cost of insurances when there is a diversion of the vessel to land sick or injured crew. In some instances Members have sought to argue that the current version of the Rule allows them to seek recovery of P&I premium payable during such a diversion. Although such claims are resisted by the Managers (on the basis that it is only extra insurance required as a consequence of the diversion - such as SOL cover - which is recoverable) from time to time the Managers have found themselves in conflict with Members over the correct interpretation of the Rules. The proposed wording will avoid this conflict and reflects the position adopted by the other International Group Clubs.

OLD RULE

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19(6) Diversion Expenses

Expenses of diversion of an Entered Ship where and to the extent that those expenses:

(a) represent the net loss to the Member (over and above such expenses as would have been incurred but for the diversion) in respect of the cost of fuel, insurance, Seamen’s wages, stores, provisions and port charges, and

(b) are incurred solely for the purpose of securing treatment for an injured or sick person or while awaiting a substitute for such person or for the purpose of landing stowaways or refugees.

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NEW RULE

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Expenses of diversion of an Entered Ship where and to the extent that those expenses:

(a) represent the net loss to the Member (over and above such expenses as would have been incurred but for the diversion) in respect of the cost of fuel, **additional** insurance, Seamen’s wages, stores, provisions and port charges, and

(b) are incurred solely for the purpose of securing treatment for an injured or sick person or while awaiting a substitute for such person or for the purpose of landing stowaways or refugees.

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Rule 19(17) Proviso (I) Paperless Trading

N.B. The International Group have provided clarification of the extent to which so called “cyber risks” (eg failure in the operation of the electronic system, corruption of messages in transmission, etc) are to be pooled and the wording set out below is to be adopted by Group Clubs.

OLD RULE

(I) Paperless Trading

There shall be no recovery from the Association in respect of any liability, cost or expense whatsoever or howsoever arising, whether directly or indirectly, out of or in consequence of:

(a) the Member’s participation in or use of any system or contractual arrangement the predominant purpose of which is to replace paper-based documentation in shipping and/or international trade with electronic messages, including, without limitation, the Bolero system (any such system or arrangement being referred to in this Rule as a “paperless system”), or

(b) a document which is created or transmitted under a paperless system which document contains or evidences a contract or carriage, or

OLD RULE

NEW RULE

(I) Paperless Trading

[There shall be no recovery from the Association in respect of any liability, cost or expense whatsoever or howsoever arising, whether directly or indirectly, out of or in consequence of:

(a) the Member’s participation in or use of any system or contractual arrangement the predominant purpose of which is to replace paper-based documentation in shipping and/or international trade with electronic messages, including, without limitation, the Bolero system (any such system or arrangement being referred to in this Rule as a “paperless system”), or

(b) a document which is created or transmitted under a paperless system which document contains or evidences a contract or carriage, or

NEW RULE

(c) the carriage of goods pursuant to such a contract of carriage,

save to the extent that the Managers in their sole discretion may determine that such liability, cost or expense would have arisen and would have been covered by the Association if the Member had not participated in or used a paperless system and any contract of carriage had been contained in or evidenced by a paper document.

For the purpose of this Rule a “document” shall mean anything in which information of any description is recorded, including, but not limited to, computer or other electronically generated information.

(c) the carriage of goods pursuant to such a contract of carriage,

save to the extent that the Managers in their sole discretion may determine that such liability, cost or expense would have arisen and would have been covered by the Association if the Member had not participated in or used a paperless system and any contract of carriage had been contained in or evidenced by a paper document.

For the purpose of this Rule a “document” shall mean anything in which information of any description is recorded, including, but not limited to, computer or other electronically generated information.]

**There shall be no recovery from the Association for any liability, cost or expense arising from the use of any electronic trading system, other than an electronic trading system approved in writing by the Managers, to the extent that such liability, cost or expense would not (save insofar as the Directors in their sole discretion shall otherwise determine) have arisen under a paper trading system.**

**For the purposes of this Proviso:**

**(a) an electronic trading system is any system which replaces or is intended to replace paper documents used for the sale of goods and/or their carriage by sea or partly by sea and other means of transport and which:**

**(i) are documents of title, or**

**(ii) entitle the holder to delivery or possession of the goods referred to in such documents, or**

**(iii) evidence a contract of carriage under which the rights and obligations of either of the contracting parties may be transferred to a third party.**

**(b) a “document” shall mean anything in which information of any description is recorded including, but not limited to, computer or other electronically generated information.**

- RULE 20 PAYMENT FIRST BY THE MEMBER

N.B. The International Group Clubs have agreed to amend their Rules to specifically provide that they would not rely on policy or technical defences (such as the “pay to be paid” Rule) in respect of crew personal injury or death claims. Although the amendment appears to change the Association’s position in respect of the pay to be paid principle, the new wording in fact reflects the existing practice of the Group Clubs in any event.

OLD RULE

Unless the Directors in their discretion otherwise decide, it is a condition precedent of a Member’s right to recover from the funds of the Association in respect of any liabilities, costs or expenses that he shall first have discharged or paid the same.

NEW RULE

**20(1) General**

Unless the Directors in their discretion otherwise decide, it is a condition precedent of a Member’s right to recover from the funds of the Association in respect of any liabilities, costs or expenses that he shall first have discharged or paid the same.

**20(2) Seamen**

**Notwithstanding the provisions of Rule 20(1), where a Member has failed to discharge a liability to pay damages or compensation for death, personal injury or illness of a Seaman, the Association shall discharge or pay such claim on the Member’s behalf directly to such Seaman or dependant thereof.**

**PROVIDED ALWAYS THAT:**

**(A) the Seaman or dependant has no enforceable right of recovery against any other party and would otherwise be uncompensated,**

**(B) subject to (C) below, the amount payable by the Association shall under no circumstances exceed the amount which the Member would have been able to recover from the Association under the Rules and the Member’s terms of entry,**

**(C) where the Association is under no liability to the Member in respect of such claim in accordance with Rule 17(1) the Association shall nevertheless discharge or pay that claim to the extent only that it arises from an event occurring prior to the date of cancellation, but as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such claim.**

- RULE 37 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 50 NOTICES

N.B. The amendment to Rule 50 is to ensure that when taking steps to serve the Notices required of it (eg, 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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50(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 joint members notice shall be served on any such Member or on his broker or agent and such service shall be sufficient service upon all joint members.

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NEW RULE

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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 of joint members notice shall be served on any such Member or on his broker or agent and such service shall be sufficient service upon all joint members.

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