



PROPOSED AMENDMENTS FOR 2010

TO THE RULES OF MARINE SHIPPING MUTUAL INSURANCE COMPANY LIMITED

The prime concern of the Rules Committee this year has been to ensure that the new Piracy, etc. exclusions introduced from July 2009 are effectively incorporated into the Rules themselves. This concentrated attention on the inter-relation and hierarchy both of the Rules themselves and the Policy wordings. Particular consideration of the relationship between present Rule 3 and the preamble to Sections IV and V led to the conclusion that improvements in the clarity of that relationship were desirable. Inevitably, this, together with the wish to incorporate various other amendments since the publication of the last Rule book, made it clear that the Rule book would realistically need to be reprinted for 2010. The opportunity has therefore been taken to undertake a much fuller review of the Rules, particularly with regard to where they differ from equivalent Rules of the North of England P&I Association.

Explanatory notes have been provided for the proposed changes and consequential renumbering and any cross referencing which will also be required. (In particular it should be noted that old Rule 16 has been absorbed elsewhere, but there is a new Rule 24. Rules in between, therefore, have been renumbered.) Under the old Rules, **Bold** type denotes wording to be deleted, and under the new Rules, **Bold** type denotes wording to be added. Some amendments require consequential amendment of provisions appearing elsewhere 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.



- **RULE 2 DEFINITIONS**

N.B. The proposed amendment is for clarity, as the most common subsequent reference is to “these Rules”.

OLD RULE

The Rules
The rules and regulations for the time being in force....

NEW RULE

The(**se**) Rules
The rules and regulations for the time being in force....

- **RULE 3 COVER**

N.B. The proposed amendment is made in the interests of clarity. The Rules themselves take precedence over any agreed clauses unless expressly stipulated in accordance with new Rule 7. “This Company” has been changed to “The Company” in this and other Rules as the latter term is to be found in the Definitions (Rule 2).

OLD RULE

3(1) **Unless otherwise agreed between the Member and the Managers in accordance with Rule 7** the cover afforded by **this** Company **is as provided in these Rules and** provides insurance for a Member against loss, damage, liability or expense incurred by him to the extent that such loss, damage, liability or expense arises in respect of the Member’s interest in an Entered Ship.

NEW RULE

3(1) The cover afforded by **the** Company provides insurance for a Member against loss, damage, liability or expense incurred by him to the extent that such loss, damage, liability or expense arises in respect of the Member’s interest in an Entered Ship, **and is provided subject to the terms and conditions of the clauses referred to in Rule 16 except to the extent that these Rules provide, or the Managers have expressly agreed in accordance with Rule 7, to the contrary.**

- **OLD RULE 7 SPECIAL INSURANCES – NEW RULE 7 VARIATION AND SPECIAL INSURANCE**

N.B. The proposed amendment makes any changes from the standard provisions of the Rules clearer, by dividing those changes into a) Variations, and b) Special Insurances. “Variations” are more usual amendments, as authorised by the terms of the new Rules 11, 12, 20, 21, and 29 and the new Preambles to Sections IV and V. A “Special Insurance” is a more unusual type of change (e.g. for war risk cover), and to be valid must be expressly acknowledged as a “Rule 7(2) Special Insurance.”



OLD RULE

Rule 7 Special Insurances

7(1) The Managers shall have the power to agree with the Member to vary the terms and conditions set out in these Rules whether in respect of new or existing insurances.

As soon as reasonably practicable after such agreement, the Managers shall confirm in writing to the Member the nature of such variation and the date from which such variation is to be effective.

7(2) The Managers may accept insurances from other insurers.

NEW RULE

Rule 7 **Variation and Special Insurance**

7(1) **Variation**

The Managers shall, **so far as provided elsewhere in these Rules**, have the power to agree with the Member to vary the terms and conditions set out in these Rules whether in respect of new or existing insurances.

As soon as reasonably practicable after such agreement, the Managers shall confirm in writing to the Member the nature of such variation and the date from which such variation is to be effective.

7(2) **Special Insurance**

The Managers may accept insurances from other insurers **and** shall have the power, **not otherwise provided for by Rule 7(1)**, to agree with the Member to vary any of the terms and conditions set out in these Rules whether in respect of new or existing insurances.

Such variation shall be effective only to the extent that it is expressly acknowledged by the Managers as a "Rule 7(2) Special Insurance".

As soon as reasonably practicable after such agreement, the Managers shall confirm in writing to the Member the nature of such variation and the date from which such variation is to be effective.

- **OLD RULE 17, NEW RULE 16 RISKS COVERED**

N.B. The proposed change emphasises the paramount nature of the Radioactive Contamination, etc., exclusions and the Piracy, etc., exclusions. Old Rule 16 has been incorporated into Rule 8 (see below), thereby necessitating a renumbering of subsequent Rules.

OLD RULE

The risks covered shall be the perils set out in the following clauses.

NEW RULE

Subject always to Rules 23 and 24, the risks covered shall be the perils set out in the following clauses.

- **PREAMBLE TO SECTION IV CONDITIONS, EXCLUSIONS, LIMITATIONS AND WARRANTIES**

N.B. The sub-sections have been reversed in keeping with the superiority of the Rules over the agreed clauses. The reference to Rule 7 becomes a reference to Rule 7(1) to reflect the change in that Rule and the nature of any Variation under sub-section (b) of the Preamble. In this and the following preamble, "these Rules" has been amended to "the Rules". This is a stylistic change only, and no change of meaning is intended.



OLD RULE

The cover afforded by the Company shall be subject to:

(a) except to the extent that these Rules provide, or the Managers have agreed in accordance with Rule 7, to the contrary, the Conditions, Exclusions, Limitations and Warranties as set out in the clauses referred to in Rule 17, and

(b) Rules 18 to 24 inclusive.

NEW RULE

The cover afforded by the Company shall be subject to:

(a) Rules 17 to 24 inclusive, and

(b) except to the extent that the Rules provide, or the Managers have agreed in accordance with Rule 7(1), to the contrary, the Conditions, Exclusions, Limitations and Warranties as set out in the clauses referred to in Rule 16.

- PREAMBLE TO SECTION V CLAIMS

N.B. The structure of the preamble has been altered to more properly reflect the hierarchy of the Rules, agreed clauses, and special agreements. Again, the reference to Rule 7 becomes a reference to Rule 7(1) to reflect the change in that Rule.

OLD RULE

Except to the extent that these Rules provide, or the Managers have agreed in accordance with Rule 7 to the contrary, claims shall be made in accordance with the clauses referred to in Rule 17 together with Rules 25 to 27 inclusive.

NEW RULE

Claims shall be made in accordance with:

(a) Rules 25 to 27 inclusive, and

(b) Except to the extent that the Rules provide, or the Managers have agreed in accordance with Rule 7(1), to the contrary, the clauses referred to in Rule 16.

- RULE 11 PAYMENT

N.B. Once again, the reference to Rule 7 becomes a reference to Rule 7(1) to reflect the change in that Rule. The proposed additions of 11(4), 11(5) and 11(6) follow equivalent North of England Rules, the last being an amendment for 2010 making it clear that any taxes based on or calculated in relation to the premium payable to the Company are for the Member's account.

OLD RULE

11(1) Unless otherwise agreed between the Member and the Managers in accordance with Rule 7, every Call shall be payable in such instalments and on such dates as the Directors may specify.

NEW RULE

11(1) Unless otherwise agreed between the Member and the Managers in accordance with Rule 7(1), every Call shall be payable in such instalments and on such dates as the Directors may specify.

.....
11(4) Interest for Late Payment

Without prejudice to the rights and remedies of the Company under Rule 28(c) if any contribution, instalment or part thereof or any other sum of whatsoever nature due from any Member is not paid by such Member on or before the date specified for payment thereof the Directors may order such Member to 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.



OLD RULE

NEW RULE

11(5) Insurance Premium Taxes

Unless a Member shall first have paid or discharged the same directly, he shall on demand pay to the Company 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 Company to the Member for which the Company determines it or the Member has or may become liable, and shall indemnify the Company and hold it harmless in respect of any loss, damage, liability, cost or expense which the Company may incur in respect of such premium tax or other similar tax.

11(6) Lien

The Company 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 Company.

- **RULE 12 LAID-UP RETURNS**

N.B. The reference to Rule 7 becomes a reference to Rule 7(1) to reflect the change in that Rule in this and each of the following three Rules.

OLD RULE

Unless otherwise agreed in writing between the Member and the Managers in accordance with Rule 7 laid-up returns shall be payable to Members in respect of any Entered Ship in accordance with the provisions of ITC-Hulls, at such rate as may be determined by the Managers from time to time.

NEW RULE

Unless otherwise agreed in writing between the Member and the Managers in accordance with Rule **7(1)** laid-up returns shall be payable to Members in respect of any Entered Ship in accordance with the provisions of ITC-Hulls, at such rate as may be determined by the Managers from time to time.

- **OLD RULE 21, NEW RULE 20 TRADING WARRANTIES**

OLD RULE

Unless otherwise agreed between the Member and the Managers in accordance with Rule 7 the Trading Warranties shall be as set out in the Institute Warranties.

NEW RULE

Unless otherwise agreed between the Member and the Managers in accordance with Rule **7(1)** the Trading Warranties shall be as set out in the Institute Warranties.

- **OLD RULE 22, NEW RULE 21 CLASSIFICATION AND STATUTORY REQUIREMENTS**

N.B. The “Ship’s Flag State” replaces “state of the Ship’s flag” for stylistic reasons only.



OLD RULE

Unless otherwise agreed between the Member and the Managers in accordance with Rule 7 the following conditions will be deemed to be incorporated in the terms of cover for each Entered Ship:

.....

(iv) the Member must comply with all statutory requirements of the **state of the Ship's Flag** relating to the construction, adaptation, condition, fitment and equipment of the Entered Ship and must at all times maintain the validity of such statutory certificates as are issued by or on behalf of the **state of the Ship's Flag** in relation to such requirements and in relation to safety management systems.

Unless and to the extent that the Directors otherwise decide, a Member shall not be entitled to any recovery from the Company in respect of any claim arising from the Member's failure to fulfil those conditions.

NEW RULE

Unless otherwise agreed between the Member and the Managers in accordance with Rule 7(1) the following conditions will be deemed to be incorporated in the terms of cover for each Entered Ship:

.....

(iv) the Member must comply with all statutory requirements of the **Ship's Flag State** relating to the construction, adaptation, condition, fitment and equipment of the Entered Ship and must at all times maintain the validity of such statutory certificates as are issued by or on behalf of the **Ship's Flag State** in relation to such requirements and in relation to safety management systems.

Unless and to the extent that the Directors otherwise decide, a Member shall not be entitled to any recovery from the Company in respect of any claim arising from the Member's failure to fulfil those conditions.

- **RULE 29 CESSER OF SHIP ENTRY**

N.B. Old Rule 29(b) was deleted from the Rules at last renewal, being in conflict with the Classification and Statutory Requirements (Old Rule 22, New Rule 21). The new Rule 29 has been slightly restructured.

OLD RULE

Unless otherwise agreed between the Member and the Managers in accordance with Rule 7 a Member shall cease to be insured by the Company in respect of an Entered Ship upon the happening of any of the events referred to in ITC-Hulls Clause 4 or any of the following events in relation to such Ship:

Total Loss

(a) If the Ship becomes a total loss or is accepted as being a constructive, compromised or arranged total loss whether under this or any other Policy.

Trading Certificates

(b) If the Member fails to comply with all the statutory requirements of the state of the Ship's flag relating to the construction, adaptation, condition, fitment and equipment of the Entered Ship and/or fails at all times to maintain the validity of such statutory certificates as are issued by or on behalf of the state of the Ship's flag.

NEW RULE

Unless otherwise agreed between the Member and the Managers in accordance with Rule 7(1) a Member shall cease to be insured by the Company in respect of an Entered Ship upon the happening of any of the following events in relation to such Ship:

(a) any of the events referred to in ITC-Hulls Clause 4;

(b) If the Ship becomes an actual total loss or is accepted as being a constructive, compromised or arranged total loss whether under this or any other insurance.

- **OLD RULE 24, NEW RULE 23 RADIOACTIVE CONTAMINATION, ETC., EXCLUSION**

N.B. The proviso regarding Rule 23(b)(ii) has been incorporated into the Rules for some years by Policy endorsement.



OLD RULE

Notwithstanding anything herein to the contrary, the Company shall not be liable for any liabilities, losses, costs or expenses directly or indirectly caused by or contributed to by or arising from:

(a)

(i) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from combustion of nuclear fuel,

(ii) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof,

(iii) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter,

(iv) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-Rule does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored or used for commercial, agricultural, medical, scientific or other similar peaceful purposes,

(b)

(i) any chemical, biological, bio-chemical or electromagnetic weapon,

(ii) the use or operation as a means for inflicting harm, of any computer virus.

NEW RULE

Notwithstanding anything herein to the contrary, the Company shall not be liable for any liabilities, losses, costs or expenses directly or indirectly caused by or contributed to by or arising from:

(a)

(i) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from combustion of nuclear fuel,

(ii) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof,

(iii) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter,

(iv) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-Rule does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored or used for commercial, agricultural, medical, scientific or other similar peaceful purposes,

(b)

(i) any chemical, biological, bio-chemical or electromagnetic weapon,

(ii) the use or operation as a means for inflicting harm, of any computer virus.

Provided always that this Rule 23(b)(ii) is only to apply to claims in respect of war and terrorism not excluded elsewhere in this insurance.

• NEW RULE 24 VIOLENT THEFT AND PIRACY EXCLUSION

N.B. This new Rule, together with the more rigorous Rule regime brought about by changes shown previously, is intended to effect the Violent Theft and Piracy Exclusion previously agreed by the Board, and currently enforced solely by Policy endorsement.

OLD RULE

NEW RULE

Notwithstanding anything herein to the Contrary, in no case shall the Company be liable for any loss damage liability or expense caused by piracy or violent theft by persons from outside the Entered Ship.



- OLD RULE 8 JOINT ENTRIES AND OLD RULE 16 COVER FOR ASSOCIATED COMPANIES, NEW RULE 8 JOINT ENTRIES AND ASSOCIATED COMPANIES

N.B. The change consolidates old Rule 16 into an extended Rule 8 which location is felt more logical.

OLD RULE

16(1) The Managers may accept the entry of any Ship upon terms that the benefit of the cover afforded by the Company to a Member in respect of that Ship shall be extended to Associated Companies of that Member. The rights and obligations as between the Company and any such Associated Company shall be such as may be agreed between the Member and the Managers.

16(2) Conditions of Reimbursement

The liability of the Company to the Member and to Associated Companies to whom cover is extended in accordance with Rule **16(1)** shall be limited in amount to reimbursement of claims relating to liabilities, losses, costs or expenses incurred by one or more of the Associated Companies to the extent and amount only that the Member:

(a) would have incurred the same liabilities, losses, costs and expenses if the same claims had been pursued against him, and

(b) would thereafter have been entitled to obtain reimbursement or indemnification from the Company in accordance with the terms of entry of the Ship in the Company.

Provided always that conduct of any Associated Company which would have entitled the Company to decline to reimburse or indemnify that company shall be deemed to be the conduct of the Member.

16(3) Receipt of Reimbursement

The receipt by the Member, or any Associated Company to whom cover has been extended in accordance with Rule **16(1)**, of any payment by the Company shall be deemed to be the receipt by the Member and all such Associated Companies jointly and shall fully discharge the obligations of the Company in respect of such payment.

NEW RULE

8(5) The Managers may accept the entry of any Ship upon terms that the benefit of the cover afforded by the Company to a Member in respect of that Ship shall be extended to Associated Companies of that Member. The rights and obligations as between the Company and any such Associated Company shall be such as may be agreed between the Member and the Managers.

8(6) Conditions of Reimbursement

The liability of the Company to the Member and to Associated Companies to whom cover is extended in accordance with Rule **8(5)** shall be limited in amount to reimbursement of claims relating to liabilities, losses, costs or expenses incurred by one or more of the Associated Companies to the extent and amount only that the Member:

(a) would have incurred the same liabilities, losses, costs and expenses if the same claims had been pursued against him, and

(b) would thereafter have been entitled to obtain reimbursement or indemnification from the Company in accordance with the terms of entry of the Ship in the Company.

Provided always that conduct of any Associated Company which would have entitled the Company to decline to reimburse or indemnify that company shall be deemed to be the conduct of the Member.

8(7) Receipt of Reimbursement

The receipt by the Member, or any Associated Company to whom cover has been extended in accordance with Rule **8(5)**, of any payment by the Company shall be deemed to be the receipt by the Member and all such Associated Companies jointly and shall fully discharge the obligations of the Company in respect of such payment.

- RULE 10 CALLS

N.B. As in Rule 3, “this Company” has been changed to “the Company” as the latter term is to be found in the Definitions (Rule 2).



OLD RULE

10(1) Unless otherwise agreed between the Member and the Managers in accordance with Rule 7 Members who have Entered Ships for insurance in **this** Company for any part of a Policy Year shall through the Company insure each other as hereinafter set out against liabilities, losses, costs and expenses which they or any of them may incur or may become liable to pay in respect of such Entered Ships, and for this purpose the said Members shall contribute by way of Calls to the funds required to meet:

(a) the claims, expenses, reinsurance premiums, unpaid contributions and other outgoings (whether incurred, accrued or anticipated) which in the opinion of the Directors necessarily and properly fall upon **this** Company in respect of such Policy Year;

(b) such of the general expenses of the Company as the Directors may from time to time think fit to charge against the insurance business of **this** Company in respect of such Policy Year;

NEW RULE

10(1) Unless otherwise agreed between the Member and the Managers in accordance with Rule 7 Members who have Entered Ships for insurance in **the** Company for any part of a Policy Year shall through the Company insure each other as hereinafter set out against liabilities, losses, costs and expenses which they or any of them may incur or may become liable to pay in respect of such Entered Ships, and for this purpose the said Members shall contribute by way of Calls to the funds required to meet:

(a) the claims, expenses, reinsurance premiums, unpaid contributions and other outgoings (whether incurred, accrued or anticipated) which in the opinion of the Directors necessarily and properly fall upon **the** Company in respect of such Policy Year;

(b) such of the general expenses of the Company as the Directors may from time to time think fit to charge against the insurance business of **the** Company in respect of such Policy Year;

- **OLD RULE 13 RECOVERY OF CONTRIBUTIONS, NEW RULE 13 SUMS PAYABLE TO THE COMPANY**

N.B. The proposed addition to the Rule reflects recent amendments to the North of England Rules and extend the Company's rights to arbitration procedures to recover monies owed. Following review, the new Lugano Convention is now expressly referred to, a step North of England has not yet taken.

OLD RULE

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 Company**. 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 Judgments 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

Notwithstanding Rule 38, **the Company may, in its sole discretion, recover any monies from time to time payable by a Member either:**

(a) by court proceedings, **and** where a Member is domiciled within a State which is an original and/or acceding party to the Brussels Convention (**1968**) and/or Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (**1988 or 2007**) 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 Company 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.**



- RULE 14 FLEET ENTRY

N.B. The proposed amendment brings the Rule more closely in line with the wording of the equivalent North of England Rule and expressly makes reference to Joint Members.

OLD RULE

Where one or more Ships **are** entered as a Fleet Entry then the debts of any one Member in respect of any such Entered Ship shall be treated as the debt of all the other Members whose Ships are entered as part of the same Fleet Entry and the Company shall be entitled to act as if all the Ships forming the Fleet Entry were entered by the same Member.

NEW RULE

Where one or more Ships **have been** entered as a Fleet Entry then the debts of any one Member **or Joint Member** in respect of any such Entered Ship shall be treated as the debt of all the other Members **and Joint Members** whose Ships are **or were** entered as part of the same Fleet Entry and the Company shall be entitled to act as if all the Ships forming the Fleet Entry were entered by the same Member.

- OLD RULE 18, NEW RULE 17 PAYMENT FIRST BY THE MEMBER

N.B. In contrast to the Rule above, this is clearly a case where Hull and P&I Rules should differ. The Rule should not apply to cases of total loss or unrepaired damage, and it is proposed that it should be amended accordingly.

OLD RULE

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

NEW RULE

Except in the case of claims for total loss or unrepaired damage, 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 Company in respect of any liabilities, losses, costs or expenses that he shall first have discharged or paid the same.

- RULE 25 OBLIGATIONS IN RESPECT OF CLAIMS ON THE COMPANY

N.B. The Committee undertook a lengthy review of the Notice provisions and decided that Rule 25(1), in particular, was no longer appropriate. It is proposed that changes be made in this respect following the provisions of the International Hull Clauses. As old sub-rule 25(2) has been absorbed into 25(1), subsequent sub-rules will require re-numbering although otherwise unaltered.

OLD RULE

25(1) Notice

In the event of accident whereby loss **or** damage may result in a claim **under this insurance**, notice **shall** be given to the Company **prior to survey and also, if the Ship is abroad, to the nearest Lloyd's Agent**, so that a surveyor may be appointed **to represent** the Company **should they** so desire.

NEW RULE

25(1) Notice

(a) In the event of **an accident or occurrence** whereby loss, damage, **liability or expense** may result in a claim, notice **must** be given to the Company **as soon as possible after the date on which the Member becomes aware of such loss, damage, liability or expense** so that a surveyor may be appointed **if** the Company so desire.



OLD RULE

25(2) In the event of damage being discovered which cannot be related to any specific event, immediate notice of discovery shall be given. Whenever damage repairs are likely to form a claim on the Company notice of the intention to commence such repairs must be given to the Company.

NEW RULE

(b) If notice is not given to the Company within 180 days of the Member becoming aware of such loss, damage, liability or expense no claim shall be recoverable under this insurance in respect of any loss, damage, liability or expense arising out of or resulting from any such accident or occurrence, unless the Company agree to the contrary in writing.

(c) Whenever damage repairs are likely to form a claim on the Company notice of the intention to commence such repairs must be given to the Company.

- **RULE 26 POWERS OF THE MANAGERS RELATING TO THE HANDLING AND SETTLEMENT OF CLAIMS**

N.B. The words proposed to be deleted have been found to be otiose and inaccurate.

OLD RULE

26(1) The Managers shall have the right, if they so decide, to control or direct the conduct of any claim or legal or other proceedings relating to any matter which may result in loss, damage, expense or liability in respect of which the Member is or may be insured **under these Rules and the Certificate of Entry** and to require the Member to settle, compromise or otherwise dispose of such claim or proceedings in such manner and upon such terms as the Managers see fit.

NEW RULE

26(1) The Managers shall have the right, if they so decide, to control or direct the conduct of any claim or legal or other proceedings relating to any matter which may result in loss, damage, expense or liability in respect of which the Member is or may be insured and to require the Member to settle, compromise or otherwise dispose of such claim or proceedings in such manner and upon such terms as the Managers see fit.

- **RULE 27 POWERS OF THE DIRECTORS RELATING TO THE SETTLEMENT OF CLAIMS ON THE COMPANY**

N.B. The change has already been agreed by the Board and is presently incorporated by endorsement.

OLD RULE

27(3) Interest

In no case shall a Member be entitled to be paid interest on his claim against the Company.

NEW RULE

27(3) Interest **and Consequential Losses**

In no case shall a Member be entitled to be paid interest on his claim against the Company. **Unless the Directors in their discretion shall otherwise determine, a Member shall have no right to recover any losses suffered as a consequence of delay or failure on the part of the Company to reimburse a Member.**



- RULE 28 CESSER OF ALL INSURANCES

N.B. The proposed express additional basis for cesser follows recent directives from the U.K. government, and a consequent amendment to the Rules of North of England P&I Association which it is felt should be adopted in substance.

OLD RULE

A Member shall cease to be insured by the Company in respect of any and all Ships entered by him or on his behalf (or in a Fleet Entry in which any one or all of his Ships are entered) upon the happening of any of the following events:

NEW RULE

A Member shall cease to be insured by the Company in respect of any and all Ships entered by him or on his behalf (or in a Fleet Entry in which any one or all of his Ships are entered) upon the happening of any of the following events:

.....
(d) where by operation of law the Company is prohibited or prevented from providing Insurance to the Member (the reference to “operation of law” includes any direction, regulation, sanction or other measure issued or implemented by any government, authority or power in a position to require, compel or enforce compliance therewith by the Company or its Members, Directors, Managers, officers, employees, servants or agents).

- RULE 30 EFFECT OF CESSER OF INSURANCE

N.B. The proposal to delete the highlighted words follows a similar move by North of England P&I Association Ltd.. It is felt that no exception should be made for Members who fail to pay sums due simply because the Policy Year has closed.

OLD RULE

30(1) For failure to pay

If the cesser of insurance shall have occurred by virtue of Rule 28(c) (Failure to pay sums due) the Company 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 at the time of the cesser of insurance.**

NEW RULE

30(1) For failure to pay

If the cesser of insurance shall have occurred by virtue of Rule 28(c) (Failure to pay sums due) the Company 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.

- RULE 31 CONTRIBUTIONS DUE ON CESSER OF INSURANCE

N.B. The proviso to Rule 31(1) now has two parts to accommodate the addition of Rule 28(d) above. The reference to Rule 29(a) becomes a reference to Rule 29(b) solely as a result of re-organisation of that Rule (see above). The proposed addition of Rule 31(3) reflects an equivalent P&I Rule of some years' standing.



OLD RULE

31(1) A Member whose Entered Ship or Ships cease to be insured by the Company for any reason, shall be and remain liable to pay to the Company all Contributions in respect of such Ship or Ships for the Policy Year in which the insurance ceases which such Member would have been liable to pay had the insurance of such Ship or Ships not ceased.

Provided always that:
the Member shall be liable for Contributions for such Policy Year pro rata only for the period beginning with the date of entry and ending with the happening of the event that occasioned the cesser of insurance if such cesser arises upon the happening of the events specified under Rule 29 excluding 29(a) (Total Loss) and the Member gives notice of the event in writing to the Managers within one month of the date thereof.

NEW RULE

31(1) A Member whose Entered Ship or Ships cease to be insured by the Company for any reason, shall be and remain liable to pay to the Company all Contributions in respect of such Ship or Ships for the Policy Year in which the insurance ceases which such Member would have been liable to pay had the insurance of such Ship or Ships not ceased.

Provided always that:
the Member shall be liable for Contributions for such Policy Year pro rata only for the period beginning with the date of entry and ending with the happening of the event that occasioned the cesser of insurance if such cesser arises:

- (i) upon the happening of the events specified under Rule 29 excluding 29(b) (Total Loss) and the Member gives notice of the event in writing to the Managers within one month of the date thereof, or

(ii) by virtue of Rule 28(d).

31(3) A Member whose Entered Ship or Ships cease to be insured by the Company for any reason shall immediately become liable to pay to the Company a sum equivalent to any deductible under the terms of entry for any claim for which bail or other security has been provided by the Company under Rule 26(4).

- **RULE 35 INVESTMENT**

N.B. Although not dissimilar in effect, the North of England P&I Rule appears preferable and has been adopted with logical amendments. In 35(1) the words “Managing Director and Secretary” have been replaced with the more appropriate “Managers”.

OLD RULE

35(1) The funds of the Company may (subject to the general supervision of the Directors) be invested by the **Managing Director and the Secretary** 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 as the **Managing Director and the Secretary** may think fit. The funds of the Company may also be invested by such other method as the Directors may approve.

.....
35(3) Investment income arising on the **Company's funds shall be allocated to the Policy Year in which it is earned or in such other manner as the Directors may decide including but not limited to crediting it to any reserve or account maintained by the Company.**

NEW RULE

35 (1) The funds of the Company may (subject to the 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 as the **Managers** may think fit. The funds of the Company may also be invested by such other method as the Directors may approve.

.....
35 (3) **When funds are pooled as provided in Rule 35(2) the investment income arising on the pooled funds (including capital gains and losses and gains and losses on foreign exchange transactions) may be applied to or apportioned between one or more Policy Years, reserve, fund or account at the Directors' sole discretion, irrespective of the Policy Year from which the funds originated.**

35 (4) Without prejudice to Rule 35(3), the Directors may direct that after the closing of any Policy Year that Year shall not be credited with any share of the apportionments made under that paragraph and that its share shall instead be credited to any reserve or account maintained by the Company.



- RULE 36 FORBEARANCE

N.B. There is a title change only to Rule 36(2) which more accurately reflects its effect.

OLD RULE

36(2) Waiver by Directors

(a) The Directors and/or the Managers may...

NEW RULE

36(2) Waiver by Directors **& Managers**

(a) The Directors and/or the Managers may...

- RULE 38 DISPUTES AND DIFFERENCES

N.B. The proposed change to 38(3) arises from a recent court case. Section 69 of the Arbitration Act 1996 provides that, “unless otherwise agreed by the parties, a party to arbitration proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings”. The change is made to make it clearer that an appeal to the court on this ground is not permitted.

38(3) Sole Remedy

OLD RULE

No Member shall be entitled to maintain any action, suit or other legal proceedings against the Company 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 Company. The sole obligation of the Company to such Member under these Rules and any policy in respect of such difference or dispute shall be to pay such sum as may be directed by such an award....

NEW RULE

No Member shall be entitled to maintain any action, suit or other legal proceedings against the Company otherwise than in accordance with the procedures laid down in this Rule 38. **The right to appeal to the Courts is excluded under these procedures and the Member** 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 Company. The sole obligation of the Company to such Member under these Rules and any policy in respect of such difference or dispute shall be to pay such sum as may be directed by such an award...

- RULE 39 NOTICES

N.B. A review of the Notices Rule has resulted in several proposed changes. References to out-dated methods of communication have been deleted. Reference to the “Register” now more properly is to the “Company’s records”. Notice to Members and Joint Members also now includes reference to their brokers or agents. In 39(4) a document served by post is now deemed to have been served on the day after posting rather than the second day after posting, in line with the North of England Rule.



OLD RULE

39(1) On the Company

A notice or other document required under these Rules to be served on the Company may be served 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 Company at the Company's registered office for the time being.

39(2) On a Member

A notice or other document required under these Rules to be served on a Member may be served 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 **such** Member at his address appearing in the **Register**. In the case of Joint Members notice shall be served on any such Member and such service shall be sufficient upon all Joint Members.

39(3) Addresses

(a) Any Member described in the **Register** by an address not within the United Kingdom who shall from time to time give the Company an address within the United Kingdom at which notices may be served upon him, or an address to which notice may be sent using electronic communication, shall be entitled to have notices or other documents served upon him at such address which shall be deemed to be his address as appearing in the **Register** for the purpose of Rule 39(2).

(b) In this Rule 39 "address", in relation to electronic communication, includes any number or address for the time being notified for that purpose to the person giving the notice.

39(4) Date of Service

Any notice or other document, if served by post, shall be deemed to have been served on the **second** day following the day on which the letter containing the same was put in the post or handed to the courier and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and put into the post in a pre-paid letter or handed to the courier. Any such notice or other document served by **telegram, cable, telex or facsimile** or other electronic communication shall be deemed to have been served on the day on which it was **handed into the relevant office or in the case of telex, facsimile or other electronic communication** despatched and in proving such service it shall be sufficient to prove that **such telegram or cable was duly handed in, or, in the case of telex, facsimile or other electronic communication, that** the notice was duly despatched.

NEW RULE

39(1) On the Company

A notice or other document required under these Rules to be served on the Company may be served **in writing** by sending it through the post in a pre-paid letter or by sending it by courier, facsimile or other electronic communication addressed to the Company at the Company's registered office for the time being.

39(2) On a Member

A notice or other document required under these Rules to be served on a Member may be served **in writing** by sending it through the post in a pre-paid letter or by sending it by courier, facsimile or other electronic communication addressed to **the** Member at his address appearing in the **Company'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.

39(3) Addresses

(a) Any Member described in the **Company's records** by an address not within the United Kingdom who shall from time to time give the Company an address within the United Kingdom at which notices may be served upon him, or an address to which notice may be sent using electronic communication, shall be entitled to have notices or other documents served upon him at such address which shall be deemed to be his address as appearing in the **Company's records** for the purpose of Rule 39(2).

(b) In this Rule 39 "address", in relation to electronic communication, includes any number or address for the time being notified for that purpose to the person giving the notice

39(4) Date of Service

Any notice or other document, if served by post **or courier**, shall be deemed to have been served on the day following the day on which the letter containing the same was put in the post or handed to the courier and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and put into the post in a pre-paid letter or handed to the courier. Any such notice or other document served by facsimile or other electronic communication shall be deemed to have been served on the day on which it was despatched and in proving such service it shall be sufficient to prove that the notice was duly despatched.



OLD RULE

39(5) Successors

The successors of anyone who is or was at any time a Member of the Company shall be bound by a notice or other document served as aforesaid if sent to the last such address of **such** Member notwithstanding that the Company may have notice of the Member's death, disability, lunacy, bankruptcy or liquidation

NEW RULE

39 (5) Successors

The successors of anyone who is or was at any time a Member of the Company shall be bound by a notice or other document served as aforesaid if sent to the last such address of **the Member or of his broker or agent** notwithstanding that the Company may have notice of the Member's death, disability, lunacy, bankruptcy or liquidation.

- **RULE 40 JURISDICTION**

N.B. The equivalent North of England Rule has been found to be better and it is proposed it be adopted with logical amendments.

OLD RULE

40 These Rules and any contract of insurance between the Company and a Member shall be governed by and construed in accordance with English law.

NEW RULE

These Rules and any contract of insurance between the Company and a Member shall be governed by and construed in accordance with English law, **subject to the right of the Company under Rule 38(3) to enforce its right of lien in any jurisdiction in accordance with the local law of such jurisdiction.**