

# NORTH



SERVICE, STRENGTH, QUALITY



# FD&D RULES

2018-19



# THE NORTH OF ENGLAND PROTECTING AND INDEMNITY ASSOCIATION LIMITED

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**Important:** Any matter requiring attention out of office hours should be communicated by telephone/mobile.

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**North's Website** The above list of telephone numbers is correct at the time of printing. For an up-to-date list of after office hours telephone numbers please consult the 'Our People' pages on North's website: [www.nepia.com](http://www.nepia.com)

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(Effective on and from noon Greenwich Mean Time on 20 February 2018)

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# SECTION I

## Introduction

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### Rule 1 Memorandum and Articles of Association

These Rules are subject to the Memorandum and Articles of Association of The North of England Protecting and Indemnity Association Limited.

Note: In the event of any dispute as to the terms of the Rules, or in the event of any error appearing in any published version of the Rules, the applicable Rules shall be those approved for the relevant time in accordance with the Articles of Association.

### Rule 2 Interpretation and Definitions

In these Rules:

“Writing” shall include any method of reproducing words in a visible or non-transitory form, including email.

Words importing the singular number only shall include the plural number and vice versa.

Words importing the masculine gender only shall include the feminine gender.

Words importing persons shall include individuals, partnerships, corporations and associations.

The headings hereto shall not affect the construction or interpretation of the Rules.

In the Rules the following words shall have the following meanings:

#### **ADDITIONAL CALL**

Any monies payable to the Association pursuant to Rule 13(2).

#### **THE ASSOCIATION**

The North of England Protecting and Indemnity Association Limited.

#### **CALLS**

Any monies payable to the Association in respect of an Entered Ship pursuant to Rule 13(2) and Rule 16.

#### **CERTIFICATE OF ENTRY**

A document and any endorsement thereto issued by the Association in accordance with these Rules and the Articles of Association which records the names of Members interested in, and evidences the contract of insurance in respect of, an Entered Ship.

## **CHARTERERS' ENTRY**

An entry which insures (inter alia) as a Member a Charterer (other than a demise charterer) not being a Charterer Jointly Insured under an Owners' Entry.

## **CIRCULAR**

A notice in writing to a Member pursuant to Rule 24.

## **THIS CLASS**

Class 2 – Freight, Demurrage and Defence.

## **CLOSED POLICY YEAR**

The Policy Year of the Association which the Directors shall have declared to be closed in accordance with Rule 31.

## **CONTRIBUTION**

A Mutual Premium, Release Call or Additional Call levied by the Association pursuant to Rule 12, Rule 13 and Rule 16.

## **DAY**

The day of any occurrence means the day as computed according to the Greenwich Mean Time.

## **DIRECTORS**

The Directors for the time being of the Association or as the context may require those Directors present at a duly convened meeting of the Directors at which a quorum is present.

## **ENTERED SHIP**

A Ship which has been entered for insurance in this Class of the Association.

## **ENTRY**

The insurance in respect of any one Entered Ship of all parties insured under any one contract of insurance (with one Certificate of Entry) between the Association and a Member (other than an insurer reinsured by the Association) or between such reinsured insurer and its Member.

## **FIXED PREMIUM**

Any monies payable to the Association pursuant to Rule 8(1).

## **FLEET ENTRY**

The Entry of more than one Ship by one or more Members on the basis that those Ships will be treated together as a fleet for underwriting purposes.

## **GMT**

Greenwich Mean Time.



## **HULL POLICIES**

Policies effected on the hull and machinery of a Ship including any excess liability policy.

## **INSURANCE**

Any insurance or reinsurance against the risks specified in these Rules.

## **INSURED PARTIES**

The Member, joint member, co-assured or affiliated or associated person in respect of an entry.

## **THE MANAGERS**

The Managers for the time being of the Association including the Managing Director.

## **MEMBER**

A Member of the Association as defined in the Articles of Association being a Member of this Class of the Association. Where the context permits, Member shall include a former Member.

## **MEMBER OF NORTH OF ENGLAND (BERMUDA)**

A Member (as defined in and subject to the Bye-laws and Rules thereof) of North of England (Bermuda).

## **MEMBERS BOARD**

Has the meaning given in Article 2 of the Association's Articles of Association.

## **MUTUAL CALL**

The estimated total premium payable to the Association in relation to an Entered Ship and in respect of any policy year calculated in accordance with Rules 12 and 13 and with the terms of insurance agreed from time to time with the Member.

## **NORTH OF ENGLAND (BERMUDA)**

The North of England Mutual Insurance Association (Bermuda) Limited a company incorporated in Bermuda with liability limited by guarantee, without a share capital with which the Association may reinsure risks of this Class.

## **OWNERS ENTRY**

An Entry which insures (inter alia) as a Member an Owner, owner in partnership, owner holding separate shares in severalty, part owner, trustee or demise charterer of an Entered Ship, or a manager or operator having control of the operation and employment of the Entered Ship (being such control as is customarily exercised by a shipowner) or any other person in possession and control of the Entered Ship.

## POLICY YEAR

A year from noon GMT on any 20 February to noon GMT on the next following 20 February.

## RELEASE CALL

Any monies payable to the Association pursuant to Rule 16.

## RULES

The Rules and regulations for the time being in force concerning this Class of the Association.

## SHIP

A ship, boat, hovercraft or other description of vessel or structure (including any ship, boat, hovercraft or other vessel or structure under construction or contracted to be built) used or intended to be used for any purposes whatsoever in navigation or otherwise on, under, over or in water, or any part of such ship, or any proportion of the tonnage thereof, or any share therein.

## THE UNITED KINGDOM

Great Britain and Northern Ireland.

### Rule 3

#### Nature of Cover

##### 3 (1)

The cover provided by this Class of the Association is as set out in and is subject to these Rules and provides insurance for a Member against costs, expenses or liabilities for costs or expenses incurred by him which arise:

##### (a)

in respect of the Member's interest in an Entered Ship; and

##### (b)

in relation to any dispute or matter arising during the period of Entry of the Ship in the Association. For the purpose of these Rules a dispute or matter is deemed to have arisen:

(i) in claims arising out of contract (other than a building, purchase or sale agreement), in tort or under statute, when the cause of action accrues;

(ii) in claims arising out of a building, purchase or sale agreement at the date of signing the agreement;

(iii) in claims for salvage or towage services, when the agreement for the services was concluded, or the services was concluded, whichever is the earlier; and

##### (c)

in connection with the operation, ownership, management or chartering of the Ship.

3 (2) It is not intended that any benefit or rights should be acquired through the operation of the Contracts (Rights of Third Parties) Act 1999 or other similar legislation.

3 (3) The cover provided by this Class of the Association does not provide insurance for a Member against any liability that the Member may have to the Association itself, whether under these Rules or otherwise.

## Rule 4 Membership

### 4 (1) ENTRY OF A SHIP

(a) Every person whose application to enter a Ship in this Class of the Association for the insurance of his interest in that Ship shall (if not already a Member of the Association) be and shall become a Member as from the date of the acceptance of his application.

(b) Any person who becomes a Member warrants that he is, in relation to the Entered Ship:

(i) the owner, owner in partnership, owner holding separate shares in severalty, part owner, trustee, or demise charterer of the Entered Ship, or a manager or operator having control of the operation and employment of the Entered Ship (being such control as is customarily exercised by a shipowner, or any other person in possession and control of the Entered Ship), or

(ii) the charterer (other than by demise) of the Entered Ship.

### 4 (2) REINSURANCE

Whenever the Association agrees to accept the reinsurance of any risks from an insurer the Managers may in their discretion decide that the insurer reinsured by the Association and/or the person insured by such insurer is to be a Member and they may accept the application on any such basis.

4 (3) Subject always to Rule 4(4) and Rule 6 any person who is or becomes a Member of this Class shall be and remain a member of North of England (Bermuda) subject always to the provisions of the Memorandum of Association, Bye-laws and Rules thereof for the time being in force. Accordingly, subject as aforesaid, it is a condition of:

(i) continuation of Membership of this Class; and

(ii) acceptance of any application for membership pursuant to all and any of Rules 4(1), 4(2), 7, 8 and 9

that the Managers are authorised to sign on behalf of such person all and any documents required to be signed by, or on behalf of, such person in order to be or remain (as the case may be) a Member of North of England (Bermuda).

4 (4) The provisions of Rule 4(3) shall apply if, but only if and for so long as, risks of this Class shall be reinsured with North of England (Bermuda) by the Association.

4 (5) **CESSATION OF MEMBERSHIP**

A person shall cease to be a Member if for any reason whatsoever the Entry of all Ships in respect of which his interest was insured by the Association shall have ceased or terminated.

**Rule 5 Set-Off**

Without prejudice to any other part of these Rules the Association shall be entitled to set-off any amount due from a Member against any amount due from the Association to such Member or to an Insured Party or mortgagee in respect of that Member's entry.

**Rule 6 Insurance Acts**

6 (1) These Rules and all contracts of insurance made by the Association shall be subject to and incorporate the provisions of the Marine Insurance Act 1906 and, upon its entry into force, the Insurance Act 2015 of the United Kingdom and any statutory modifications thereof except insofar as such Acts or modifications may have been expressly excluded by these Rules or by any term of such contract.

6 (2) The following provisions of the Insurance Act 2015 ("the Act") are excluded from the Rules and any contract of insurance as follows:

- (a) Section 8 of the Act is excluded. As a result any breach of the duty of fair presentation shall entitle the Association to avoid the policy, regardless of whether the breach of the duty of fair presentation is innocent, deliberate or reckless.
- (b) Section 10 of the Act is excluded. As a result all warranties in these Rules or any contract of insurance must be strictly complied with and if the Member or any Insured Party fails to comply with any warranty the Association shall be discharged from liability from the date of the breach, regardless of whether the breach is subsequently remedied.
- (c) Section 11 of the Act is excluded. As a result the Rules and all terms of the contract of insurance between the Association and the Member and any Insured Party, including terms which tend to reduce the risk of loss of a particular kind, loss at a particular location and/or loss at a particular time, must be strictly complied with and if the Member or any Insured Party fails to comply with any such term, the Association's liability may be excluded, limited or discharged in accordance with these Rules notwithstanding that the breach could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

- (d) Section 13 of the Act is excluded. As a result the Association shall be entitled to exercise its right to terminate the contract of insurance in respect of the Member and all Insured Parties in the event that a fraudulent claim is submitted by or on behalf of the Member and/or any Insured Party and/or any affiliated or associated company of the Member.
- (e) Section 13A of the Act is excluded. As a result the Rules and the insurance contract between the Association and the Member and any Insured Party shall not be subject to nor shall the Association or the Managers be in breach of any implied term that they will pay any sums due in respect of a claim within a reasonable time save where the breach is deliberate or reckless and Section 13A of the Act is excluded to this extent.
- (f) Section 14 of the Act is excluded. As a result, the contract of insurance between the Association, the Member and any Insured Party shall be deemed to be a contract of the utmost good faith, and any breach of the duty of the utmost good faith shall entitle the Association to avoid the contract of insurance.



## SECTION 2

# Entry and Contribution

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### Rule 7      **Entry**

#### 7 (1)      **APPLICATION**

Any person who wishes to enter a Ship for insurance in the Association shall apply for such Entry in such form as may from time to time be required by the Managers and shall furnish any particulars and information requested by the Managers.

#### 7 (2)      **ACCURACY OF INFORMATION**

All particulars and information given in the course of applying for insurance shall, if the Entry of the relevant Ship be accepted, be deemed to form part of the contract of insurance between the Member and the Association and it shall be a condition precedent of such insurance that all such particulars and information were true so far as was within the Member's knowledge or could with reasonable diligence have been ascertained.

#### 7 (3)      **CERTIFICATE OF ENTRY**

As soon as reasonably practicable after accepting an application for the entry of a Ship for insurance in the Association the Managers shall issue a Certificate of Entry which shall state the names of the Members on whose behalf such Ship has been entered and their interests in such Ship, the time and date of the commencement of the period of insurance and the terms and conditions on which the vessel has been accepted for insurance.

#### 7 (4)      **SUBJECT TO RULES**

The terms and conditions upon which a Ship is accepted for entry, including those relating to the nature and extent of the risks covered and the Contributions or Fixed Premiums payable by the Member, shall be those set out in the Rules hereinafter mentioned but subject to such variations within the scope of these Rules as may have been agreed in writing between the Member and the Managers and set out in the Certificate of Entry.

7 (5) **VARIATION OF COVER**

If at any time the Managers and the Member agree to vary the terms and conditions upon which a Ship is entered the Managers as soon as reasonably practicable thereafter shall issue an endorsement to the Certificate of Entry stating the nature of such variation and the date from which such variation is to be effective.

7 (6) **REFUSAL OF APPLICATION**

The Managers may in their discretion and without giving any reason refuse an application by any person for entry of a Ship in this Class whether or not that person is already a Member of the Association.

7 (7) **NEW BUILDING CONTRACTS AND MOAs**

Where protection is desired as from a date previous to the delivery of the Ship by the builder or vendor a copy of the building and/or purchase agreement or proposed agreement must be submitted to the Managers and approved by them before Entry not later than 7 days from the date of signing the agreement. Cover in respect of claims under building, purchase or sale agreements shall be limited to such sum or sums as the Directors may from time to time determine. Unless otherwise agreed between the Member and the Managers this limit will be US\$250,000 in excess of the applicable deductible or the equivalent in the currency of entry on the date of signing the building, purchase or sale agreement. This limit of liability shall apply to each claim and to the aggregate of all claims under any one agreement.

7 (8) **CHARTERERS' ENTRIES**

The Entry of a ship by a Charterer may be accepted whether the Ship is already entered by the Owner or not and the cover afforded to such charterer shall be in all respects similar to the cover afforded to an Owner Member. In the event of any dispute between an Owner Member and a Charterer Member each shall be afforded protection in such manner or form as the Directors or Managers shall determine.

For the purpose of assessing the extent of their cover under these Rules charterers shall be deemed to have taken out insurance cover equivalent to Lloyd's Marine Policy with Institute Time Clauses (Hulls) 1.10.83 and membership of a Protecting and Indemnity Association.

**Rule 8 Special Insurances**

8 (1) The Managers may accept the entry of a Ship on terms that the Member is liable to pay a Fixed Premium provided that every Member whose application for the entry of a Ship is accepted on the basis of paying a Fixed Premium shall be bound to pay and shall pay to the Association such sums as shall have been agreed with the Managers and at such time or times as the Managers shall have specified.

- 8 (2) The Managers may accept insurances including entries of Ships on special terms as to Membership and Contribution and, within the scope of these Rules, as to the nature and extent of risks covered, provided that where such insurance is accepted the person insured shall be bound to pay and shall pay to the Association such sums as shall have been agreed with the Managers and at such time or times as the Managers shall have specified. In particular the Managers may accept such insurances from other insurers.

## Rule 9 Joint Members, Co-Assured, Affiliated and Associated Companies

### 9 (1) ENTRY OF A SHIP

- (a) The Managers may accept an application from a Member for another person or persons to become joint member(s) in respect of that Member's entry. In such a case, the Managers may agree that none, one or more of such persons may become Members of the Association.
- (b) In the event that the application is accepted by the Managers, the Member who has made the application (or such other person as may be agreed in writing) shall be designated the Senior Member and shall be the person who is deemed irrevocably to have full power and authority to act in the name of and/or on behalf of all the joint members, and neither the Association nor the Managers, their servants or agents, shall be liable in any other manner whatsoever to any joint member in the event that the Senior Member did not, in fact, have such power and authority.
- (c) Unless otherwise agreed in writing with the Managers, the Member and all joint members shall be jointly and severally liable to pay all amounts due to the Association in respect of such Entry.
- (d) In relation to such application from a Member within Rule 4(1)(b)(i) for any person or persons to become a joint member, the Senior Member and each joint member warrants that the joint member is, in relation to the Entered Ship:
- (i) another person within Rule 4(1)(b)(i), or
  - (ii) interested in the operation, management or manning of the Entered Ship, or
  - (iii) the holding company or the beneficial owner of the Senior Member or any joint member falling within Rule 9(1)(d)(i) or (ii), or



(iv) the charterer (other than by demise) of the Entered Ship and affiliated to or associated with the Senior Member or any joint member falling within Rule 9(1)(d)(i) and, except where the Senior Member or that joint member is wholly owned by the charterer or where both are under common ownership, that the Senior Member or that joint member either owns at least 50% of the shares in and voting rights of the charterer or can procure that the charterer is managed and operated in accordance with the wishes of the Senior Member or that joint member, or

(v) a mortgagee of the Entered Ship.

(e) In relation to such application from a Member within Rule 4(1)(b)(ii) for any person or persons to become a joint member, the Senior Member and each joint member warrants that the joint member is, in relation to the Entered Ship:

(i) the holding company or beneficial owner of the Senior Member, or

(ii) another charterer (other than by demise) of the Entered Ship and affiliated to or associated with the Senior Member and, except where the Senior Member is wholly owned by the charterer or where both are under common ownership, that the Senior Member either owns at least 50% of the shares in and voting rights of the charterer or can procure that the charterer is managed and operated in accordance with the wishes of the Senior Member.

9 (2)

#### CO-ASSURED

(a) The Managers may accept an application from a Member (or, where there are joint members, the Senior Member or any joint member under Rule 9(1)(d)(i)) for another person or persons to become co-assured.

*PROVIDED ALWAYS THAT* in Rule 9(2)(a):

(A) such person is named on the Certificate of Entry; and

(B) such person is not a charterer other than by demise.

(b) In the event that the application is accepted by the Managers, the Member who has made the application (or such other person as may be agreed in writing) shall be the person who is deemed irrevocably to have full power and authority to act in the name of and/or on behalf of all the co-assured, and neither the Association nor the Managers, their servants or agents, shall be liable in any other manner whatsoever to any co-assured in the event that the Member did not, in fact, have such power and authority.

- (c) The liability of the Association to all co-assureds shall only extend insofar as they may be found liable to pay in the first instance for loss or damage which is properly the responsibility of the Member, (or, where there are joint members, the Senior Member or any joint member under Rule 9(1)(d)(i) and nothing herein contained shall be construed as extending cover in respect of any amount which would not have been recoverable from the Association by the Member (or, where there are joint members, the Senior Member or any joint member under Rule 9(1)(d)(i)) had the claim in respect of such loss or damage been made or enforced against him. Once the Association has made indemnification to such co-assured it shall not be under any further liability and shall not make any further payment to any person whatsoever, including the Member, or Senior Member, in respect of that loss or damage.

### 9 (3) **AFFILIATED AND ASSOCIATED PERSONS**

In the case of a claim which would be recoverable from the Association being made or enforced through a person (not being a joint member) affiliated to or associated with a Member (or, where there are joint members, the Senior Member or any joint member under Rule 9(1)(d)(i)) the Association shall, if so requested by the Member (or, where there are joint members, the Senior Member) in writing, indemnify such person against any loss which as a consequence thereof such person shall have incurred in that capacity but only to the extent to which the Member (or, where there are joint members, the Senior Member or any joint member under Rule 9(1)(d)(i)) to or with which he is affiliated or associated would have been entitled to recover if the claim had been made or enforced against him. Once the Association has made such indemnification it shall not be under any further liability and shall not make any further payment to any person whatsoever, including the Member or Senior Member, in respect of the loss or damage in respect of which the claim was brought.

*PROVIDED ALWAYS THAT* in Rule 9 the following shall apply to any Member, joint member, co-assured or affiliated or associated person (the Insured Parties):

#### **(A) SCOPE OF COVER**

The Association shall only insure an Insured Party against liabilities, costs or expenses which arise out of operations and/or activities customarily carried on by or at the risk and responsibility of a shipowner (or, in the case of a charterers' Entry, a charterer) and which are within the scope of the cover afforded by the Rules and any special terms set out in the Certificate of Entry;

#### **(B) LIMIT OF COVER**

Except where expressly provided to the contrary, any limits on the cover provided by the Association and set out in the Certificate of Entry, or these Rules, shall apply to Insured Parties in the aggregate;

#### **(C) PAYMENTS**

The receipt by any Insured Party of any payment by the Association shall be deemed to be the receipt by all Insured Parties jointly and shall fully discharge the obligations of the Association in respect of such payment;

#### **(D) DISCLOSURE**

Failure by any Insured Party to disclose any material information within his knowledge shall be deemed to have been failure of all of the Insured Parties;

#### **(E) APPLICATION OF RULES**

These Rules and any special terms set out in the Certificate of Entry shall apply to all Insured Parties as if they were all Members. Conduct of any Insured Party which would have entitled the Association to decline to indemnify him shall be deemed the conduct of all Insured Parties;

#### **(F) COMMUNICATIONS**

Unless the Managers have otherwise agreed in writing, the contents of any communication from or on behalf of the Association to any Insured party shall be deemed to be within the knowledge of all the Insured Parties, and any communication from any Insured Party to the Association, the Managers or their agents shall be deemed to have been made with the full approval and authority of all Insured Parties;

#### **(G) DISPUTES**

Disputes between Insured Parties are excluded from cover under these Rules.

## **Rule 10 Fleet Entry**

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 Association shall be entitled to act as if all the Ships forming the Fleet Entry were entered by the same Member.

## Rule 11 Period of Insurance

11 (1) Subject as otherwise provided in these Rules the insurance by the Association of a Ship entered in the Association otherwise than for a fixed period shall commence at the time and date specified in the Certificate of Entry and shall continue until noon GMT of 20 February next ensuing and thereafter, unless terminated in accordance with these Rules, from Policy Year to Policy Year.

11 (2) The insurance by the Association of each Ship entered for insurance for a fixed period shall, subject as otherwise provided in these Rules, cease at the expiry of such fixed period.

### 11 (3) CHANGE OF CONDITIONS

The insurance shall continue for the next Policy Year upon the same terms and conditions as those in force for the current Policy Year, 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 on 20 January in any year that the insurance (not being for a fixed period) specified in the notice is to cease. In either event the insurance shall cease at the end of the then current Policy Year or unless;

(b) the Managers shall have given notice not later than noon GMT on 20 January that the terms of the insurance by the Association for the next following Policy Year are to be changed. In the event of such notice being given the insurance for the next following Policy Year shall continue upon such terms as may be agreed between the Member and the Managers before noon GMT on 20 February immediately following such notice and if no terms shall by then have been agreed the insurance shall thereupon cease.

*PROVIDED ALWAYS THAT* in Rule 11(3) if before the end of any Policy Year these Rules shall have been altered in any respect which affects the terms and conditions of the contract of insurance between the Member and the Association, then such alteration shall be binding upon the Member and for all purposes take effect as from the commencement of the next ensuing Policy Year.

11 (4) The Directors or Managers may at any time by thirty days' notice to a Member terminate the Entry of any Ship in this Class.

11 (5) An Entered Ship shall not be withdrawn from the Association at any time or in any manner except under the provisions of Rule 11(3) or with the consent of the Directors or Managers.

## Rule 12 Contributions

- 12 (1) Subject to Rule 8 Members who have entered Ships for insurance in this Class of the Association for any part of a Policy Year shall through the Association insure each other as hereinafter set out against 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 make contributions to the funds required to meet:
- (a) the claims, expenses and other outgoings (whether incurred, accrued or anticipated) which in the opinion of the Directors necessarily and properly fall upon this Class of the Association in respect of such Policy Year.
  - (b) Such of the general expenses of the Association as the Directors may from time to time think fit to charge against the insurance business of this Class in respect of such Policy Year.
  - (c) Such transfers to reserves or provisions as the Directors may deem it expedient to make, including transfers to reserves and provisions in respect of any deficiency which has occurred or which may be thought likely to occur in respect of any closed Policy Year as the Directors think fit.
  - (d) The proportion attributable to this Class of such sums as the Association may by any governmental legislation or regulation be required to set aside in order to establish and/or maintain an adequate solvency margin and/or guarantee fund in respect of any Policy Year.
- 12 (2) Contributions shall be levied by means of Mutual Premium, Release Call and Additional Call in accordance with the provisions of Rule 13 and Rule 16.

## Rule 13 Provisions Relating to Premiums and Calls

### 13 (1) GENERAL CHANGE

Before the start of a Policy Year the Directors shall decide the percentage (if any) by which there is to be a general change in the rates of all Members which are to be levied upon their Ships (subject to any special terms upon which such Ships may be entered) and which are to be paid by way of Mutual Premium or Fixed Premium in respect of such Policy Year.

### 13 (2) ADDITIONAL CALL

The Directors may at any time or times during or after the end of each Policy Year (but not after such Policy Year has been closed in accordance with Rule 31(1)) direct that an Additional Call shall be paid by each Member in respect of Ships entered for such Policy Year of such amount as the Directors in their sole discretion think fit. All Additional Calls so made shall be calculated pro rata to the Mutual Premium (less any returns) in the relevant Policy Year.

## **Rule 14      Payment**

**14 (1)**            Subject to Rule 8(2), every Contribution or Fixed Premium shall be payable in such instalments and on such dates as the Directors may specify.

### **14 (2)            NOTIFICATION**

As soon as reasonably practicable after the rate of any Contribution or Fixed Premium shall have been fixed the Managers shall notify each Member concerned:

- (a)**                of such rates,
- (b)**                of the date on which the Contribution or Fixed Premium concerned is payable or, if such Contribution or Fixed Premium is payable by instalments, of the amounts of such instalments and the respective dates on which they are payable, and
- (c)**                of the amount payable by such Member in respect of each Ship entered by him.

### **14 (3)            SET-OFF**

No amount of any kind whatsoever due or alleged to be due by the Association to the Member (or for the avoidance of doubt by North of England (Bermuda) to the Member in his capacity as a member of North of England (Bermuda)) shall contribute any set-off against the Contributions, Fixed Premium or other sums of whatsoever nature due to the Association or shall entitle a Member to withhold or delay payment of any such Contributions, Fixed Premium or sums.

### **14 (4)            INTEREST FOR LATE PAYMENT**

Without prejudice to the rights and remedies of the Association under Rule 27(c) any Contribution, Fixed Premium or 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.

### **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 (6) EFFECT OF A MEMBER'S NON-PAYMENT

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 15 Laid Up Returns

When a Ship shall have been laid up in any safe port approved by the Managers for a period of thirty or more consecutive days after finally mooring there the Member shall be entitled to an allowance at a rate fixed by the Managers.

*PROVIDED ALWAYS THAT* in Rule 15:

**(A)** A Ship shall not be treated as laid up if she is being built, is under repair or has either crew members (other than for her maintenance or security) or cargo on board.

**(B)** No return of Contribution or Fixed Premium shall be made under this Rule unless the claim is submitted to the Association within three months of the end of the Policy Year concerned.

### Rule 16 Release

#### 16 (1)

Upon the cesser of insurance in respect of an Entered Ship for any reason, or at any time thereafter, the Managers may at their sole discretion demand an amount to release the Member from liability for further Contribution in respect of such Ship. Such an amount, which shall be assessed at the sole discretion of the Managers, shall be payable as a Release Call by the Member on demand without any set-off.

In the event that all or part of the amount assessed hereunder remains unpaid the Member shall remain liable for further Contributions and the Managers shall have the power to reassess the amount due to the Association in which event the original assessment shall be superseded by the revised assessment which shall be payable on demand.

#### 16 (2)

As from the date of the release of an Entered Ship under Rule 16(1) the Member shall be under no further liability for Contributions in respect of that Ship under Rule 12 nor shall he have any right to share in any return of Contributions or other receipts under Rule 31(2)(b) in respect of that Ship.

## Rule 17 Non-Payment

- 17 (1) 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 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 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.

## Rule 18 Mortgagees

At the request of a mortgagee and with the consent of the Member, the Managers may in their discretion and subject to the provisions of Rule 36, agree:

- (a) To pay to the mortgagees or to their order any recovery the Member is entitled to receive from the funds of the Association in respect of any liability costs or expenses incurred by the Member on receipt of notice from the mortgagees that the Member is in default under the mortgage.
- (b) To inform the mortgagees if notice is given to the Member in respect of the Entered Ship under Rule 11(4) that his insurance in the Association in respect of such Ship is to cease.
- (c) To give the mortgagees 14 days' notice of the Association's intention to cancel the insurance of the Member by reason of his failure to pay when due and demanded any sum due from him to the Association.



# SECTION 3

## Risks Covered

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### Rule 19 Risks Covered

The business of this Class is the enforcement of all proper claims and the defence of all claims improperly brought in respect of any Ship entered in this Class which fall within Rule 3 relating to:

- 19 (1)
- (i) Freight, dead freight and demurrage.
  - (ii) General average, insurance monies and salvage.
  - (iii) Breach of charter or contract of affreightment or hire.
  - (iv) Detention through collision or any other cause.
  - (v) The supply of short, defective or improper outfit, equipment, bunker fuel or other necessities.
  - (vi) Loading, stowing, trimming, or discharge of cargo.
  - (vii) The building, purchase, sale, or negligent repair, alteration or conversion of the Ship, save that cover shall be limited to such sum or sums as the Directors may from time to time determine. Unless otherwise agreed between the Member and the Managers this limit will be US\$250,000 in excess of the applicable deductible or the equivalent in the currency of entry on the date of signing the building, purchase, sale, repair, alteration or conversion agreement. This limit of liability shall apply to each claim and to the aggregate of all claims arising from the building, purchase, sale or negligent repair, alteration or conversion of the Ship.
  - (viii) Disputes with any mortgagee of the Ship.
- 19 (2)
- The defence and protection of Members (in respect of any Ship entered in this Class) from any wrongful or improper action taken or instigated against them or their servants, or their ship by the crew of any such Ship, and the prosecution of or recovering of damages and other claims from any such crew in respect of any improper act, breach of duty, neglect or default on their part.

- 19 (3) The defence and protection of Members in respect of any Ship entered in this Class against improper action on the part of any Department of the State or any Public Body charged with or assuming the control of the Mercantile Marine whether such improper action be in the nature of personal proceedings (civil or criminal) against the Members or their Servants, or the detention of or interference with such Ships and also in respect of the improper action, neglect or default of any port, harbour or lighthouse authority, dock or railway undertaking, or any Corporation or Authority acting under statutory powers, and the recovery of damages arising out of or consequent upon any of the matters mentioned in this clause.
- 19 (4) Subject to the discretion of the Members Board the enforcement of all proper claims and the defence of all claims improperly brought in respect of Ships entered in this class for damages sustained by any such Ships where the amount is not covered by the policies on Hull and Machinery (or in the case of Charterer Members the policies on Charterers' liability for Damage To Hull), or, if covered, is (apart from detention) below the franchise for the time being in force on Members' Policies, which for the purposes of this Rule shall be deemed not to exceed one percent of the Ship's insured value for Owner Member claims, and not to exceed US\$25,000 for Charterer Member claims.
- 19 (5) The enforcement of all proper claims and the defence of all other proceedings improperly brought in respect of any Ship entered in this Class, the true intent of these Rules being that the Members shall be afforded aid and protection in all legal proceedings which in the opinion of the Members Board arise out of the ownership and management of Ships entered in this Class (other than co-ownership matters or disputes), except such as are covered or protected by Lloyd's Marine Policy with Institute Time Clauses (Hulls) 1.10.83 or equivalent, and the Protecting and Indemnity Associations.
- 19 (6) The legal representation of the Members upon Coroner's Inquests, formal investigations or other inquiries into casualties, or the conduct of their servants relating to any Ship entered in this Class.
- 19 (7) The procuring and supplying information and advice as to all matters affecting Shipowners with respect to their rights and liabilities either towards the Government or any Department thereof or any public body charged with the control of the Mercantile Marine, and also by co-operating with any of the above public authorities in all matters affecting the interests of Shipowners.
- 19 (8) Procuring the alteration and improvement of existing law, usages, and customs at home or abroad, which are prejudicial to Shipowners, and delaying and preventing the enactment of such laws or the establishment of such usages and customs.

# SECTION 4

## Conditions, Exclusions, Limitations and Warranties

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Subject to the provisions of Rule 35 (Forbearance), Rules 20 to 24 apply to every risk insured by the Association and override any part of these Rules which may be inconsistent with their application.

### Rule 20     **Deductibles**

Unless otherwise agreed between the Member and the Managers in writing as part of the terms upon which the Ship is entered in the Association the Member's recovery from the Association shall be subject to a deductible of 25% with a minimum of US\$10,000 and a maximum of US\$150,000 per claim.

### Rule 21     **Imprudent or Hazardous Operations, Contraband, Blockade Running, Unlawful Trading, Wilful Misconduct or Privity**

No claim on the Association shall be allowed:

- 21 (1)     if it arises out of or is consequent upon an Entered Ship carrying contraband, blockade running or being employed in an unlawful trade, or
- 21 (2)     if the Members Board, having regard to all the circumstances, shall be of the opinion that the nature of the carriage, trade or voyage in which the Ship was engaged was imprudent, unsafe, unduly hazardous or improper, or
- 21 (3)     if the Members Board, having regard to all the circumstances, shall be of the opinion that the claim arose out of the wilful misconduct of any Insured Party or his managers or managing agents, (being an act intentionally done, or a deliberate omission with knowledge that the performance or omission will probably result in loss, damage or injury, or an act done or omitted in such a way as to allow an inference of a reckless disregard of the probable consequences), or if the Members Board, having regard to all the circumstances, shall be of the opinion that the claim arose out of the sending to sea of the Entered Ship in an unseaworthy state with the privity of the Member or his managers or managing agents.

## Rule 22 Classification and Statutory Requirements

Unless otherwise agreed in writing between the Member and the Managers, the following are conditions of the insurance of an Entered Ship.

- (a)
- (i) The Ship must be and remain throughout the period of entry fully classed with a classification society approved by the Managers, and
  - (ii) The Member must promptly report to that classification society any incident or condition in respect of which it might make recommendations as to repairs or other action to be taken by the Member.
  - (iii) The Member authorises the Managers to inspect any information, relating to the maintenance of class of the Entered Ship, in the possession of any classification society with which that Ship is or at any time has been classed and will where necessary authorise such classification society or societies to disclose and make available that information to the Managers upon request by the Managers and for whatsoever purposes the Managers may consider necessary.
  - (iv) The Member must immediately inform the Managers if, at any time during the period of Entry, the classification society with which the Entered Ship is classed is changed and advise the Managers of all outstanding recommendations, requirements or restrictions specified by any classification society relating to that Ship as at the date of such change.
  - (v) A Member shall cease to be insured by the Association in respect of an Entered Ship from the happening of any failure to comply with this Rule 22(a) in relation to such Ship.
- (b)
- (i) The Member must comply with all statutory requirements of the flag state of the Ship relating to the manning, construction, adaptation, condition, fitment and equipment of the Entered Ship and must at all times maintain the validity of all statutory certificates as are issued by or on behalf of the flag state of the Ship in relation to such requirements and in relation to safety management systems and maritime security.
  - (ii) A Member shall not be entitled to any recovery from the Association in respect of any claim arising in respect of the Entered Ship during a period when that Member is not complying with or has not complied with Rule 22(b) (i) in relation to such Ship.

*PROVIDED ALWAYS THAT* in Rule 22:

**(A)** the Member shall not be relieved from compliance with the requirements of this Rule nor shall the Association be deemed to have waived such compliance by the Association's knowledge by any means whatsoever of any circumstance obliging the Member to comply with this Rule.

**(B)** where the entry is a Charterer's Entry, the liability of the Association shall not be dependent on compliance with Rule 22(a)(ii), (iii), (iv) or Rule 22(b)(f).

## Rule 23 Double Insurance

23 (1) The Association shall not, unless and to the extent that the Members Board in its discretion otherwise decides, be liable for any liabilities, costs or expenses recoverable under any other insurance or which would have been so recoverable:

**(i)** apart from any terms in such other insurance excluding or limiting liability on the ground of double insurance; and

**(ii)** if the Ship had not been entered in the Association with cover against the risks set out in these Rules.

23 (2) The Association shall not be liable for any costs, liabilities or expenses of any claim against the Association itself, its subsidiaries, agents, representatives or servants.

## Rule 24 Circulars

24 (1) The Directors or the Managers may from time to time issue a Circular in respect of any matter as they see fit.

24 (2) The Directors or the Managers may from time to time make a recommendation to any Member or to all Members in connection with the operation of any or all Entered Ships. Notice of such a recommendation shall be given by Circular either at the commencement of or during the period of insurance and shall take effect as set out in Rule 39(3) unless the Circular specifies some later date.

24 (3) A Member shall use his best endeavours to comply with such a recommendation and the Members Board may, at its absolute discretion, reject or reduce any claim made by the Member to the extent to which it would not have arisen if the Member had complied with the recommendation and the burden of proving in each case that the liability, cost or expense (or portion thereof) could not have been avoided by such a compliance shall be on the Member.

*Note: Copies of Circulars should be viewed at or downloaded from the 'News' section of the Association's website: [www.nepia.com](http://www.nepia.com)*



# SECTION 5

## Claims

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### Rule 25 Obligations of the Member in Respect of Claims

#### 25 (1) NOTICE

Every Member shall be bound to give prompt notice in writing to the Managers of any matter falling within these Rules and shall furnish the Managers as soon as reasonably possible with all documents or information relevant thereto.

#### 25 (2) MITIGATION OF CLAIMS UNDER RULES

Upon the occurrence of any matter falling within these Rules, the Member shall take such steps as at the time shall appear proper for the purpose of averting or minimising any loss, damage, expense or liability in respect of which the Member may be insured under these Rules.

#### 25 (3) INFORMATION

A Member must at all times promptly notify the Managers of any information, documents or reports in his or his agents' possession or knowledge relevant to any matter referred to under Rule 25(1). Further he shall, whenever so requested by the Managers, give the Association or its representatives free access to such information, documents or reports with liberty to inspect and copy. Such free access shall include the right to conduct a survey, or to interview any officer, servant or agent of the Member who may in the opinion of the Association be in possession of information relevant to the said matter.

#### 25 (4) TIME LIMIT FOR NOTICE

Every matter referred to in Rule 25(1), shall be notified to the Association as soon as possible, but in no case later than three months after the Member becomes aware of the existence of such matter.

#### 25 (5) TIME LIMIT FOR REIMBURSEMENT

All requests by a Member for reimbursement of any losses, costs or expenses recoverable from the Association under these Rules and the Certificate of Entry must be made to the Association within twelve months of the incurring of the loss or the payment of the cost or expense by the Member.

*PROVIDED ALWAYS THAT* in Rule 25, unless and to the extent that the Members Board in its discretion otherwise decides, compliance with the provisions of this Rule shall be a condition precedent to a Member's right to recover from the funds of the Association.

## Rule 26 Conduct of Cases

26 (1) The business of this Class shall be managed by the Directors or, where so delegated to it, the Members Board, as provided by the Articles of Association and these Rules.

26 (2) No legal steps or other proceedings of any kind shall be undertaken at the expense of this Class, without the sanction of the Members Board, or of a local or special committee appointed by them, but the Members Board may, in its discretion, adopt any steps or proceedings of whatsoever kind which may have been already taken by any Member. All subsequent steps or proceedings shall be conducted by lawyers appointed and retained on behalf of the Member by the Association under the control of the Members Board, and at the expense of this Class. The lawyers appointed and retained on behalf of the Member may either be lawyers in private practice or lawyers employed by the Association.

*PROVIDED ALWAYS THAT* where legal steps or other proceedings have been, are, or will be undertaken on behalf of the Member by lawyers employed by the Association the Members Board may, at any time and in its entire discretion, whether prospectively or retrospectively, require the Member to pay the Association for such legal services (whenever such services have been, are or will be rendered) and the Member shall be under a liability to the Association in respect of the same. The amount payable shall be determined by the Managers of the Association at the conclusion of the legal steps or other proceedings. If any difference or dispute shall arise between the Member and the Association as to the reasonableness of the amount payable as determined by the Managers, such difference or dispute shall, in the first instance, be referred to an independent legal costs draughtsman to be appointed by the Association who will rule upon such dispute or difference, and determine the extent (if any) to which the amount for which the Member is liable is to be reduced. Such reference and determination shall be on written submissions only.

26 (3) Notwithstanding anything in these Rules to the contrary, the Members Board shall have entire discretion as to what actions, proceedings, defences, matters and things shall be undertaken by this Class, or at its cost and expense, and has an unfettered control over every matter that may be undertaken. The Members Board may direct and require any such proceedings to be taken, or act to be done by any Member, or any course to be pursued in every matter so undertaken as it shall from time to time think proper. The Members Board shall, nevertheless, keep in view the objects of this Class, so that the same may as far as practicable be effectually attained, and the Managers shall from time to time keep the Members Board advised of the special circumstances and cases in which the Members Board has determined in the interests of the Association that it will in its discretion decline to afford protection.

- 26 (4) The Association is under no obligation to provide security for costs on behalf of any Member, but the Members Board shall have entire discretion as to whether such security for costs shall be provided and on such terms as it may consider appropriate. Unless the Members Board, in the exercise of its discretion, shall otherwise determine in no case shall security for costs be provided by way of cash deposits by the Association. Furthermore, the Members Board shall have entire discretion to pay the actual costs incurred by a Member in giving security for costs where the same is given with its approval.
- 26 (5) The Members Board may, by notice in writing given by the Managers on its behalf, require any proceedings to be discontinued and this Class shall thereupon cease to be liable in any way whatever for anything done subsequent to such notice, but the Members Board shall be at liberty, having regard to the peculiar circumstances of each case, to authorise the continuance of any proceedings upon such terms as it may consider desirable and proper.
- 26 (6) The Members Board shall have full power to require the compromise of any proceedings whenever it deems it reasonable or prudent, or may require such proceedings to be abandoned or to be submitted to arbitration or mediation and if the Member declines to act in accordance with the Members Board's decision, he shall then take upon himself the entire risk and expense of all past and future proceedings without any claim whatsoever for reimbursement out of the funds of this Class.
- 26 (7) No Member shall be entitled to the benefits of this Class who has not complied with all the requirements of the Members Board, or who shall make any false statement, or wilfully or negligently withhold any documents or material information, respecting any matter undertaken by this Class, or cause or knowingly permit any other person to do so, and any Member so offending shall be liable to pay, and, on demand, shall pay to this Class all costs and expenses which may have been incurred or paid by this Class in consequence thereof and in relation thereto.



- 26 (8) Where the Association has provided cover for any dispute or matter:
- (a) The Member shall be liable to pay to the Association any amount recovered as costs, or where, for any reason, no sum is recovered in respect of costs or the sum so recovered is less than the total amount paid and payable by the Association under these Rules then the Member shall pay such other amount or such additional amount as is fixed by the Members Board to represent a fair recovery of costs for the Association from the principal amount recovered by the Member.
  - (b) The Members Board is entitled to and may direct any third party which holds or is liable to pay (i) any amount recoverable as costs; or (ii) any principal sum which may be applied as costs in accordance with (a) above, to make payment of such sum to the Association;
  - (c) Any amount recovered as costs shall be applied first against costs incurred by the Association (or costs for which the Association may be liable) in excess of those which attract the Member's maximum deductible, and second pro rata to the Association's remaining costs and costs liabilities and any deductible paid by the Member in excess of its minimum deductible, and third against the Member's minimum deductible.

The provisions of this Rule 26(8) shall apply whenever the Association has provided cover for any dispute or matter, whether wholly or in part, and shall continue to apply notwithstanding withdrawal or cessation of membership or cover.

- 26 (9) When a Member seeks to recover through this Class damage by collision or otherwise, he must give to the Directors a written undertaking to be responsible for such proportion of the costs of any legal or other proceedings taken as does not attach to or become payable by this Class under the Rules for the time being.

- 26 (10) In any case of improper detention by the Government or any department thereof, or by any such public authority or Corporation as aforesaid of any ship entered in the Association, or where such ship has been unavoidably or wrongfully detained by reason of the false or unjustifiable reports or complaints of any of her crew or other persons, the Members Board (or those duly authorised on its behalf) shall, where it considers that in the interests of the Members generally such ship shall remain under such detention for the purpose of testing the legality or propriety of the action taken by such public authority, corporation, crew or person, pay to the Member whose vessel has been so detained, such reasonable sum as compensation for the loss or damage which the Members Board shall consider he has actually sustained in consequence of such detention.

26 (11)

**APPOINTMENT**

**(a)**

Without prejudice to any other provision of these Rules and without waiving any of the Association's rights hereunder, the Managers may at any and all times appoint and retain on behalf of the Member, upon such terms as the Managers may think fit, lawyers, surveyors or other persons with a view to advising them upon, investigating or dealing with 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, including taking or defending legal or other proceedings in connection therewith. The Managers may also at any time discontinue such appointment and retainer if they think fit.

**(b)**

All lawyers, surveyors or other persons appointed and retained by the Managers on behalf of the Member, or appointed and retained by the Member with the prior consent of the Managers, shall at all times be and be deemed to be appointed, retained and employed on the terms:

**(i)** that they have been instructed by the Member at all times (both while so acting and after having retired from the matter) to give advice and to report to the Association in connection with the matter without prior reference to the Member and to produce to the Association without prior reference to the Member any documents or information in their possession or power relating to such matter, all as if such person had been appointed to act and had at all times been acting on behalf of the Association;

**(ii)** that any advice they may give to the Member is that of an independent contractor employed by the Member pursuant to a contract of retainer with the Member and shall in no way bind the Association.

**(c)**

Without prejudice to the generality of Rule 35, nothing said, seen or done by the surveyor appointed by the Association or advice given prior to, during, or after survey and/or inspection shall be taken as in any way derogating from the Member's responsibility for the safety and seaworthiness of the Ship and its mandatory compliance with any classification, statutory, flag state or port state requirement or any other issues relating to the safety of the Ship, its crew, cargo and any other person, places or entities which may be affected by the operation of the Ship.

# SECTION 6

## Cesser of Insurance

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### Rule 27 Cesser of All Insurances

A Member shall cease to be insured by the Association 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:

- (a) where the Member, being a company or corporation:
- (i) has a receiver, manager, administrator, administrative receiver, liquidator (provisional or otherwise) supervisor or nominee proposed or appointed; or
  - (ii) passes a resolution for winding up (otherwise than for the purpose of a solvent amalgamation or reconstruction); or
  - (iii) proposes, enters into or is subject to any composition or arrangement with his creditors; or
  - (iv) has an administration order made in relation to him; or
  - (v) becomes the subject of a voluntary arrangement; or
  - (vi) makes or is the subject of an application to a court (or its equivalent) of competent jurisdiction for protection from his creditors; or
  - (vii) is the subject of a court order to the effect stipulated in (i) to (vi) above; or
  - (viii) files a petition, passes any resolution or takes any other step to procure the commencement of any proceedings or process of a nature described in (i) to (vii) above or there commences any similar proceeding against him or his assets under applicable bankruptcy or insolvency laws in any jurisdiction; or
  - (ix) ceases to trade, is struck off or dissolved.

- (b)** where the Member, being an individual or partnership:
- (i)** applies for an interim order; or
  - (ii)** proposes or enters into an individual voluntary arrangement or is made bankrupt; or
  - (iii)** proposes, enters into or is subject to any composition or arrangement with his creditors; or
  - (iv)** has a receiver or manager appointed over any of his assets, business or income; or
  - (v)** proposes, makes or is the subject of an application to or order by a court for his winding up or administration; or
  - (vi)** makes or is the subject of an application to a court (or its equivalent) of competent jurisdiction for protection from his creditors; or
  - (vii)** files a petition, passes any resolution or takes any other step to procure the commencement of any proceedings or process of a nature described in (i) to (vi) above or there commences any similar proceeding against him or his assets under applicable bankruptcy or insolvency laws in any jurisdiction; or
  - (viii)** ceases to trade and where the Member is a partnership, is dissolved; or
  - (ix)** dies or becomes incapable by reason of mental disorder of managing and administering his property and affairs (and if a partnership, all of the partners die or become mentally incapable).
- (c)** if having failed to pay when due and demanded by the Managers any sum due from him to the Association, he is served with a notice by or on behalf of the Managers or the Association requiring to pay such sum on or before any date which may be specified in such notice and he fails to pay such sum in full on or before the date so specified.

## Rule 28 Cesser of Ship Entry

A Member shall cease to be insured by the Association in respect of an Entered Ship upon the happening of any of the following events in relation to such Ship.

### TRANSFER OF INTEREST

- (a) If the Member shall cease to have a legal, beneficial or other interest in the Ship, or if entire control and possession is transferred whether by demise charter or otherwise.
- (b) If the Managers or operators of the Ship shall be changed;

*PROVIDED ALWAYS THAT* the Managers at their sole discretion may waive this Rule 28(b).

### TOTAL LOSS

- (c) If the Ship becomes a total loss or is accepted by the hull underwriters as being a constructive, compromised or arranged total loss, except as regards liabilities covered by these Rules and flowing from the casualty which gave rise to such total loss of the Ship.
- (d) If the Ship shall be missing for ten days from the date she was last heard of or from her being posted at Lloyd's as missing, whichever shall be the earlier.

### MORTGAGE

- (e) If the Ship be mortgaged or otherwise hypothecated, unless an undertaking or guarantee approved by the Managers is given to pay all Contributions due or to become due in respect of the Ship.

*PROVIDED ALWAYS THAT* in Rule 28 the Managers may waive Rule 28(e).

### CLASSIFICATION

- (f) If the Member fails to meet the requirements of Rule 22(a) (Classification).

### TERMINATION

- (g) If the Entry of the Ship shall have been terminated in accordance with Rule 11(3) (Termination at the end of the Policy Year) or Rule 11(4) (Termination by Directors or Managers) or if the entry of the ship in Class 1 – Protecting & Indemnity of this Association shall have been terminated in accordance with Rule 30 (Obligations of the Member in Respect of Surveys) of Class 1.

### SANCTIONS, PROHIBITION AND ADVERSE ACTIONS

- (h) If the Entered Ship is employed by the Member in a carriage, trade or on a voyage which, or the provision of insurance for which, will thereby in any way howsoever expose the Association to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation.

## **Rule 29      Effect of Cesser of Insurance**

### **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(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.

*PROVIDED ALWAYS THAT* in Rule 29 the Members Board may in its discretion admit either wholly or partly any claim for which the Association is under no liability under this Rule whether the incident giving rise to such claim occurred before or after the cesser of insurance.

### **29 (3)      NO WAIVER OF RIGHTS**

Without prejudice to the generality of Rule 35 (Forbearance) no act, omission, course of dealing, forbearance, delay or indulgence of any kind by or on behalf of the Association nor the granting of time, nor the acceptance by the Association (whether express or implied) of liability for, or the recognition of, any claim and whether occurring before or after the cesser of insurance, shall derogate from the effect of Rule 27 and Rule 28 (Cesser of Insurance) or be treated as a waiver or any of the Association's rights thereunder.

## **Rule 30      Amounts Due on Cesser of Insurance**

### **30 (1)**

Subject to his liability being otherwise agreed or assessed under Rule 16 (Release), a Member whose Entered Ship or Ships cease to be insured by the Association for any reason, shall be and remain liable to pay to the Association all Contributions in respect of such Ship or Ships for the Policy Year in which the insurance ceases which, under Rule 12 (Contribution) such Member would have been liable to pay had the insurance of such Ship or Ships not ceased.

*PROVIDED ALWAYS THAT* in Rule 30(1) 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:

**(i)** such cesser arises by virtue of Rule 11(4) (Termination of Cover by Directors or Managers), or

(ii) such cesser arises upon the happening of the events specified under Rule 28(a), Rule 28(b), Rule 28(c), Rule 28(d), Rule 28(e), or Rule 28(f) and the Member gives notice of the event in writing to the Managers within one month of the date thereof, or

(iii) such cesser arises by virtue of Rule 28(h).

30 (2)

#### SET-OFF

For the purpose of determining whether any (and if so, what) sum is due for the purposes of Rule 30(1) or otherwise under these Rules no account shall be taken of any amount due or alleged to be due by the Association or, for the avoidance of doubt, by North of England (Bermuda) to the Member in his capacity as a member of North of England (Bermuda) for any reason whatsoever, and no set-off of any kind (including any set-off which might otherwise have arisen by reason of the bankruptcy or winding up of the Member) shall be allowed against such sum (whether or not any set-off against Contributions or Fixed Premiums has been allowed at any time in the past) except to the extent (if any) to which any sum demanded by the Managers as due, and required to be paid in a notice served under Rule 27(c) (Cesser for Non-Payment) may (in the Managers' discretion) in itself have already allowed for a set-off or credit in favour of the Member.

30 (3)

A Member whose Entered Ship or Ships cease to be insured by the Association for any reason shall immediately become liable to pay to the Association a sum equivalent to any deductible under the Member's terms of Entry for any claim for which security for costs has been provided by the Association under Rule 26(4).



# SECTION 7

## The Funds of the Association

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### Rule 31 Closing of Policy Years

- 31 (1) The Directors shall, with effect from such date after the end of each Policy Year as they think fit declare that such Policy Year shall be closed.
- 31 (2) If upon the closing of any Policy Year it shall appear to the Directors that the whole of the Contributions, Fixed Premium and other receipts in respect of such Policy Year (and of all transfers from reserves and provisions made for the credit of or in respect of such Policy Year) are unlikely to be required to meet the claims, expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 12) then the Directors may decide to dispose of any excess which, in their opinion, is not so required in one or both of the following ways:
- (a) by transferring the excess or any part thereof to the reserves of the Association in accordance with Rule 33;
  - (b) by returning it in whole or in part to the Members who paid such Contributions in proportion to their respective Contributions save that no return shall be made in respect of any Ship which has been subject to a release under Rule 16 or which was entered on special terms which expressly excluded liability to contribute to Additional Calls or the entry of which ceased by reason of the application of Rule 27(c) (Cesser for Non-Payment).
- 31 (3) If at any time or times after a Policy Year shall have been closed it shall appear to the Directors that the claims, expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 12) exceed or are likely to exceed the totality of the Contributions and other receipts in respect of such Policy Year (and of all transfers from reserves and provisions made for the credit of or in respect of such Policy Year) then the Directors may decide to provide for such deficiency in any one or more of the following ways:
- (a) by transferring funds from the reserves of the Association;
  - (b) by transferring funds standing to the credit of any different closed Policy Year;



- (c) by making an Additional Call in respect of an open Policy Year with the intention (as permitted by Rule 12(1)(c)) of applying a part thereof to meet any such deficiency.

If the Directors shall resolve as set out in sub-paragraph (c) above, then the Managers shall inform the Members entered for such Policy Year on or before the time that payment is demanded.

- 31 (4) At any time after any Policy Year shall have been closed the Directors may resolve to amalgamate the accounts of any two or more closed Policy Years and to pool the amounts standing to the credit of the same. If the Directors shall so resolve then the two or more closed Policy Years concerned shall for all purposes be treated as though they constituted a single closed Policy Year.

## Rule 32 Reinsurance

The Managers may reinsure or cede on behalf of the Association the whole or any part of the risks of the Association with such re-insurers and on such terms as the Managers shall consider appropriate.

## Rule 33 Reserves

- 33 (1) The Directors may establish and maintain such reserve funds or other accounts for such contingencies or purposes as they think fit including, but not limited to a contingency account:
- (a) to provide a source of funds which can be applied for any general purposes of the Association including the following;
  - (b) to stabilise the level of the Additional Calls and to eliminate or reduce the need to levy an Additional Call in respect of any Policy Year, past, present or future;
  - (c) to eliminate or reduce a deficiency which has occurred or maybe thought likely to occur in respect of any closed Policy Year;
  - (d) to protect the Association against any actual or potential losses on exchange, or in connection with its investments, realised or unrealised.
- 33 (2) The Directors may apply the sums standing to the credit of any reserve for any of the purposes for which that reserve was maintained even though the sum be paid in respect of any different Policy Year or Years from that from which the funds originated. The Directors may also apply the sums standing to the credit of that reserve for any other or different purposes whenever the Directors consider this to be in the interests of the Association or its Members. The Directors may also at any time transfer sums from one reserve to another.

- 33 (3) The funds required to establish such reserves or accounts may be raised in either or both of the following ways:
- (a) the Directors, when deciding on the rate of any Contribution or Fixed Premium for any Policy Year, may resolve that any specified amount or proportion of such Contribution or Fixed Premium shall be transferred to and applied to the purposes of any such reserve or account;
  - (b) the Directors may on the closing of any Policy Year or at any time or times thereafter resolve that any specified amount or proportion of the funds standing to the credit of that Policy Year shall be transferred to and applied for the purposes of any such reserve or account.
- 33 (4) If the Directors shall resolve as set out in Rule 33(3)(a) then the Managers shall inform the Members entered for such Policy Year on or before the time that payment is demanded.

## Rule 34 Investment

- 34 (1) The funds of the Association 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 Association may also be invested by such other method as the Directors may approve.
- 34 (2) Unless the Directors otherwise decide, all the funds standing to the credit of any Policy Year or of any reserve or account shall be pooled and invested as one fund.
- 34 (3) When funds are pooled as provided in Rule 34(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 Year, reserve, fund or account at the Directors' sole discretion, irrespective of the Policy Year from which the funds originated.
- 34 (4) Without prejudice to Rule 34(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 Association.

# SECTION 8

## General Terms and Conditions

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### Rule 35 Forbearance

35 (1) No act, omission, course of dealing, forbearance, delay, indulgence or conduct (including negligence) of the Association whatsoever and whensoever occurring, whether by or through its officers, servants or agents or otherwise, shall constitute any admission or promise that the Association will forego any of its rights under these Rules or relevant statutory enactments.

### 35 (2) WAIVER BY DIRECTORS AND MANAGERS

(a) The Directors and/or the Managers may in their sole discretion reinstate insurance (whether retroactively or otherwise) where such insurance has ceased pursuant to the provisions of these Rules from such date and to such extent and upon such terms and conditions as the Directors and/or the Managers may determine.

(b) Although the Association shall at all times and without notice be entitled to insist on the strict application of these Rules or relevant statutory enactments, the Directors and/or the Managers may in their sole discretion waive any of the Association's rights arising from any neglect or non-compliance therewith, or breach thereof by a Member, and may pass and pay in full or in part any claim which they think fit.

*PROVIDED ALWAYS THAT* in Rule 35(2)(b) where such neglect, non-compliance or breach of any of these Rules by a Member has resulted in his insurance ceasing, the Directors and/or the Managers shall have first determined that such insurance should be reinstated in accordance with Rule 35(2)(a).

### Rule 36 Assignment

36 (1) No insurance given by the Association and no interest under these Rules or under any contract between the Association and any Member, may be assigned without the written consent of the Managers who shall have the right in their discretion to give or refuse such consent without stating any reason or to give such consent upon any such terms or conditions as they may think fit.

### 36 (2) SET-OFF

The Association shall be entitled before making any payment to an assignee to deduct or retain such amount as the Managers may then estimate to be sufficient to discharge any liabilities or potential liabilities of the Member to the Association.

## **Rule 37 Delegation**

37 (1) Whenever any power, duty or discretion is stated in these Rules to be vested in the Directors such power, duty or discretion shall be exercisable by the Directors unless the same shall have been delegated to any sub-committee of the Directors or to the Managers or to the Members Board (as the case may be) in accordance with the provisions as regards delegation contained in the Memorandum and Articles of Association of the Association in which event the power, duty or discretion may be exercised by any person to whom the same shall have been so delegated.

37 (2) Whenever any power, duty or discretion is stated in these Rules to be vested in the Members Board such power, duty or discretion shall be exercisable by the Members Board unless the same shall have been delegated to any committee of the Members Board or to the Managers (as the case may be) in accordance with the provisions as regards delegation contained in the Memorandum and Articles of Association of the Association in which event the power, duty or discretion may be exercised by any person to whom the same shall have been so delegated.

## **Rule 38 Disputes, Differences and Debt**

38 (1) Except as provided in the proviso to Rule 26(2) and Rule 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), (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 (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 39 Notices

### 39 (1) ON THE ASSOCIATION

A notice or other document required under these Rules to be served on the Association may be served in writing by sending it through the post in a prepaid letter or by sending it by courier, facsimile, email (to [general@nepia.com](mailto:general@nepia.com)) or other electronic communication addressed to the Association at the Association's registered office for the time being.

**39 (2) ON AN INSURED PARTY**

A notice or other document required under these Rules or the Articles of Association 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 courier, facsimile, email or other electronic communication addressed to the Member at his address appearing in the Association's records or to his broker or agent. In the case 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.

**39 (3) 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, email 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 such facsimile, email or other electronic communication was duly despatched.

**39 (4) SUCCESSORS**

The successors of anyone who is or was at any time an Insured Party of the Association 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 Association may have notice of the Insured Party's death, disability, lunacy, bankruptcy or liquidation.

**Rule 40 Jurisdiction**

These Rules and any contract of insurance between the Association and a Member shall be governed by and construed in accordance with English law, subject to the right of the Association under Rule 38(2) to enforce its right of lien in any jurisdiction in accordance with the local law of such jurisdiction.

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