



The
STRIKE CLUB
MARINE DELAY INSURANCE

Rules 2019/20

The Shipowners' Mutual Strike Insurance
Association Europe

The Shipowners' Mutual Strike Insurance Association Europe

Registered Office

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Rule 1 **Introductory**

These Rules are subject to the Constitution of The Shipowners' Mutual Strike Insurance Association Europe which shall become binding on all Members.

Words importing the singular number shall include the plural number and vice versa. Words importing any gender shall include any other gender. Words importing persons shall include individuals, corporations, partnerships, unincorporated associations, trusts and any other entity whether or not having a separate legal personality. The headings to these Rules shall not affect their construction or interpretation. A reference to any statute or statutory provision is a reference to an English statute or statutory provision and includes a reference to (a) that statute or provision as amended, re-enacted, replaced or modified from time to time and (b) any subordinate legislation made from time to time under the relevant statute or statutory provision.

Rule 2 **Definitions**

In these Rules, the words and phrases hereinafter set out shall have the following meaning if not inconsistent with the subject or context:

Contraband

Contraband is any item that is illegal to carry, such as drugs, arms, munitions, alcohol, tobacco or precious metal.

Day

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

Delay

Delay in relation to a ship includes complete or partial suspension of its commercial operations.

Directly affecting

A peril or a condition is deemed to be "directly affecting" a person, place or thing when it is the proximate cause of such person, place or thing being unable to operate normally.

Entered Ship

A ship which has been entered for any of the risks enumerated herein and accepted in the Association in the manner hereinafter provided.

Machinery

The various systems necessary for the propulsion and operation of a ship, including engines, generators, turbines, electrical machinery, propeller, shafts and boilers.

Members

Owner, owners in partnership, owners holding separate shares in severalty, managing owners, part owners, mortgagee, trustee, charterer or disponent owner of a ship which is entered in the Association or, at the discretion of the Directors, an insurer reinsured by the Association.

Midnight

Midnight GMT.

Month

Calendar month.

Noon

Noon GMT.

Policy Year 2019/20

The year from 1st February 2019 to noon GMT on 20th February inclusive.

Policy Years before 2019/20

The year from 1st February to 31st January inclusive.

Policy Years after 2019/20

The year from noon GMT on 20th February to noon GMT on following 20th February.

Ship

Ship or boat structure used in navigation or for the carriage, storage or accommodation of goods or persons or for drilling, investigating or exploiting underwater products or any part or share therein.

Strike

Strike, slow-down, work stoppage and any other form of partial or total restraint of labour.

The Association

The Shipowners' Mutual Strike Insurance Association Europe.

The Constitution

The Constitution for the time being of the Association.

The Directors

The Directors for the time being of the Association acting as a Board in accordance with the Constitution.

The Managers

The Managers for the time being of the Association.

The Order to Proceed

The order to proceed to or by way of the location where the delay is suffered or the assumption by the Member of a contractual obligation to proceed to or by way of that location.

The Standard Club

The Standard Club Limited, a company incorporated in Bermuda.

Writing

Any reference to « writing » shall include any communication effected by post, cable, telegram, fax or any comparable means including email.

Rule 3 **Entry of Ships**

3(a) Application for entry of a ship may be made at any time. Such application shall be made upon the appropriate entry form in current use by the Association duly completed and signed by or on behalf of the person applying for membership. Upon acceptance of the entry of the ship by the Association, the Managers shall issue a Certificate of Entry in such form as the Directors shall from time to time decide, and the ship shall be deemed to be entered in the Association from the time stated therein and such entry shall continue from Policy Year to Policy Year unless notice to the contrary be given as provided in Rules 18 or 20.

Every person whose application for entry of a ship in the Association is accepted shall (if not already a Member of the Association and of The Standard Club) become a member of the Association and of The Standard Club from the date of such acceptance.

3(b) The applicant:

3(b)(i) must make to the Association and the Managers a fair presentation of the risk by providing the Managers with all material particulars and information together with any additional particulars and information as the Association or Managers may require; and

3(b)(ii) must ensure that every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.

3(c) The Association shall at any time be entitled to refuse the entry of any ship.

3(d) There shall be three classes of entry to be known as Onshore Class I, Onshore Class II and Shipboard Class III. Ships may be entered in one or more classes.

3(e) The normal cover provided by the Association within a class is set out in sub-Rule (a)[i](a) of the relevant Rule (or (a)[i] in the case of Rule 10) but additional risks as set out in sub-Rule (a)[i](b) and sub-Rule (a)[ii] of Rule 8 and in sub-Rules (a)[ii] to [xv] of Rule 10 may be covered, in either case subject always to all the provisions of these Rules.

- 3(f)** If any conflict arises between the English text of these Rules and any version of them in any other language, the English text shall prevail.
- 3(g)** Notwithstanding any other provisions of these Rules or any conduct on the part of the Member, the Association, the Directors or the Managers, the rights and obligations of a Member shall be cumulative not only from Policy Year to Policy Year throughout his entire period of membership but also as regards all ships entered by that Member during that period and as regards all classes.
- 3(h)** It is a condition precedent to a Member's entitlement to recover from the Association that he shall have paid promptly each and every amount due from him to the Association on any account whatsoever, in respect of every Policy Year, in respect of every class and in respect of every entered ship; and any Member in breach of such condition shall forthwith and without notice cease to have any such entitlement PROVIDED THAT the Managers may waive the above condition and set off against such entitlement all sums due from the Member to the Association.
- 3(i)** The Association may accept applications for the entry of different interests in the same ship, but shall not thereby incur any obligation either to any one applicant in respect of the interests of any other applicant or in respect of any interest of that one applicant in such ship not entered with the Association.
- 3(j)[i]** Without prejudice to the generality of Rule 3(a), a Certificate of Entry shall contain:
- 3(j)[i](aa)** the date and time of commencement of risk;
- 3(j)[i](bb)** the entered sum;
- 3(j)[i](cc)** the names and interests of all insured persons; and
- 3(j)[i](dd)** any special terms of entry.
- 3(j)[ii]** Any variation to the terms of the Certificate of Entry shall be recorded by the issue of a fresh Certificate of Entry also recording the date upon which such variation is to take effect.

3(j)[iii] A fresh Certificate of Entry shall be issued for the new Policy Year for all entered ships whose entry continues beyond 31 January in any calendar year.

3(k) The Member is obliged to disclose to the Association and the Managers any change in any material information relating to an entry in the Association. Upon such disclosure, or failure to disclose, the Managers may amend the Member's premium rating or terms of entry, or terminate the entry in respect of such ship, with effect from the time of disclosure or failure to disclose.

Rule 4 **Entered Sum**

Each ship to be entered in a class shall be entered in that class for a specific entered sum which:

4(a) in the case of an Owner's entry, the Member warrants is a fair and reasonable estimate of the ship's daily revenue (less bunkers or other costs saved in case of a delay) or the ship's daily running costs, whichever is agreed with the Association;

4(b) in the case of a Charterer's entry, the Member warrants is a fair and reasonable estimate of the daily hire or other remuneration payable by him (less such expenses as the Member saves or ought to have saved due to the ship being delayed) or alternatively the ship's daily running costs, whichever is agreed with the Association.

The entered sum shall be approved by the Association and entered in the records of the Association. Acceptance of the entered ship by the Association shall not amount to a waiver of any breach of any of the foregoing warranties.

Rule 5 **Joint entries**

If an entry is made in the name of, or on behalf of, more than one person, they shall be deemed to be Joint Members. Joint Members shall be jointly and severally liable to pay all contributions due to the Association in respect of such entry. The receipt of any one of such persons for any sums payable by the Association in respect of such entry shall be sufficient discharge of the liability of the Association.

Only one Certificate of Entry need be issued by the Association, and its receipt by one Joint Member shall be deemed to be receipt by all. Any communication from the Association to one Joint Member shall be deemed to have been received by all, and any communication by one Joint Member to the Association shall be deemed to be made on behalf of and with the authority of all. Any failure to make a fair presentation of risk, misrepresentation or breach of these Rules by one Joint Member shall be deemed to be the failure or misconduct of all.

Rule 6 **Contributions**

Every Member who has a ship entered in a class for any Policy Year shall pay to the Association by way of premiums as described in Rule 7 a proportion of the funds which the Directors in their sole discretion decide are required to meet the undermentioned items.

- 6(a)** Any loss or claim and the expenses or other outgoings of the Association in connection therewith.
- 6(b)** The general expenses of management of the Association during the appropriate Policy Year. Such expenses shall be apportioned between the various classes as the Managers shall determine.
- 6(c)** Any debts, liabilities or other obligations of the Association not otherwise provided for which according to the determination of the Directors ought to be borne by a class.
- 6(d)** Any sums that the Directors decide should be raised to provide or add to such reserves as they may determine.
- 6(e)** Such sums as the Association may by any government legislation or regulation be required to set aside in order to establish and/or maintain an adequate solvency margin or guarantee fund in respect of any Policy Year. Contributions from Members to such sums shall be calculated pro rata to the estimated total premium (ETP) in the relevant Policy Year.
- 6(f)** Any sums which any Member makes default in paying to the Association in respect of any premium or other sum due from that Member.
- 6(g)** Any sums which may be required to meet the claims and liabilities of a previous Policy Year, whether closed or not;

PROVIDED THAT in all cases where a ship has been entered after the commencement of a Policy Year or such entry has ceased under Rules 18, 20 or 23 during a Policy Year then the Member's contribution shall be calculated pro rata to the period of entry of such ship.

Rule 7 **Payment of Premiums**

- 7(a)** Premiums shall be payable in such instalments (if any) and on such dates as the Directors shall in their sole discretion determine and specify, and without deduction or set-off of any kind whatsoever.
- 7(b)** Subject to Rule 7(a), premiums shall be made and payable as follows:
- 7(b)[i]** an estimated total premium (ETP) calculated on the basis of an agreed percentage of the entered sum which shall constitute the full annual payable premium for that vessel, subject to any supplementary or release calls which may from time to time be determined by the Association;
- 7(b)[ii]** if necessary, one or more supplementary calls;
- and the Directors may also determine a general increase or reduction in ETP rates to apply to the next Policy Year, which shall be notified to existing Members not later than 31 December and shall, subject to any other adjustments, form the basis of the rate to be applied to that next Policy Year.
- 7(c)** The Association may accept payment of premiums in any currency, but may decline to accept for such purpose any currency other than United States Dollars and Euros.
- 7(d)** A copy of the Directors' resolution to levy a premium, together with confirmation from the Managers of the amount due from a member in respect of that premium, shall be conclusive proof of the premium and the resulting amount due from that member.
- 7(e)** It shall be a condition precedent to a Member's right to dispute any aspect of any premium on any grounds whatsoever that he shall first have paid to the Association the full amount assessed by the Association to be due from him in respect of that premium.

7(f) The Directors may from time to time determine and specify the rate of interest payable to the Association on premiums or other amounts due to the Association but unpaid, and from what date such interest shall be payable, if not from the due date. Nonetheless and without prejudice to any other provisions of these Rules, no interest shall be payable on any claim due from the Association to a Member in arrears with the payment of a premium.

7(g) Any deficiency in the collection of any premium may be made good by a further premium.

Rule 8 Onshore Class I – Cover for Costs due to Onshore Events

8(a) The Association covers and shall, subject to these Rules, compensate the Member for the loss suffered by him in respect of the delay of the entered ship caused by one of the perils listed below:

Strike **8(a)[i](a)** a strike, lockout, revolution, rebellion, insurrection, riot, civil commotion, political protest, action by environmental objectors or religious zealots when such an incident deprives the entered ship of necessary goods, services or facilities; or

War & Piracy **8(a)[i](b)** war, civil war or any hostile act by or against a belligerent power, weapons of war used during the course of hostilities and any act of piracy, when such an incident deprives the entered ship of necessary goods, services or facilities; or

Other Delays **8(a)[ii]** a lack of necessary goods, services or facilities preventing or delaying the passage, arrival, berthing, loading, discharging, unberthing or departure of the entered ship due to the direct effect on a person, place or thing other than that entered ship of any:

8(a)[ii](aa) fire, explosion or mechanical breakdown on land; or

8(a)[ii](bb) storm, tempest, flood, sandstorm, snow, ice, fog or lightning; or

8(a)[ii](cc) earthquake, volcanic eruption, avalanche, heave, landslide or subsidence; or

8(a)[ii](dd) aircraft impact or accident, or delay to or misdirection of air cargo; or

- 8(a)[iii](ee)** accidental loss of or damage to any vehicle, vessel or aircraft carrying or transshipping cargo or spare parts to or from the entered ship; or
- 8(a)[iii](ff)** partial or total closure of any port, berth, sea-lane or navigable waterway, or of any airport or airspace, or of any road or railway, as a result of an order made lawfully by an authority of competent jurisdiction, after the time of the order to proceed; or
- 8(a)[iii](gg)** physical obstruction, high or low levels of water in any port, berth, sea-lane or navigable waterway for any abnormal reason, unforeseeable at the time of the order to proceed, but specifically excluding any occupation of any berth by any other vessel or floating object; or
- 8(a)[iii](hh)** closure of any border for political purposes or the imposition of any import or export controls, embargo or prohibition; or
- 8(a)[iii](ii)** physical or electronic damage caused by strikers, locked-out workmen, vandals, terrorists, saboteurs or other malicious persons; or
- 8(a)[iii](jj)** expropriation, confiscation or seizure of a cargo loaded, partially loaded or discharged, or intended to be loaded on board the entered ship; or
- 8(a)[iii](kk)** use or operation (or threat thereof), as a means of inflicting harm, of any computer, computer system, computer software program, malicious code, computer virus or process or any other electronic system.

Exceptions and limitations

- 8(b)** Claims made under this Rule shall be limited to the period of delay suffered while the direct effects of the relevant perils persist.
- 8(c)** No claim shall lie under this Rule for any delay which is recoverable by way of hire, demurrage, damages or which can be avoided by placing the entered ship off-hire, or which is within the scope of the protection and indemnity cover offered by any member of the International Group of P&I Clubs or the cover offered by associated freight demurrage and defence associations. No claim shall lie under Rule 8(a)[i](b) for any delay if and to the extent that it is covered by any war or piracy loss of hire insurance and in any such instance regardless of act or omission on the part of the Member vitiating such insurance or would be so covered but for the entry of the ship in the Association.

- 8(d)** There shall be no cover under this Rule, and in particular Rule 8(a)[ii](ff), where any passage, arrival, berthing, loading, discharging, unberthing or departure is delayed by reason of weather conditions directly affecting the normal operation of the entered ship even if such weather conditions are also directly affecting a person, place or thing other than the entered ship.
- 8(e)** There shall be no cover under Rules 8(a)[ii](ff) and 8(a)[ii](gg) for delay arising out of any congestion, dredging, maintenance or tidal feature of any port, berth, sea-lane or navigable waterway.

Rule 9 **Onshore Class II – Cover for Consequential Costs due to Onshore Events**

Subject to the other provisions of Rule 8 (except Rule 8(b)), the Association covers the Member in respect of delay suffered by a ship after the termination of the direct effects of the perils listed in Rule 8 PROVIDED THAT:

- 1) the entered ship was in the affected port or area during the time the relevant peril was in operation; or
- 2) arrived at such port or area within fifteen days of the end of the direct effects of such relevant peril.

There shall be no cover under this Rule where consequential delay arises out of an incident that would have been excluded under either Rule 8(d) or Rule 8(e) had entered ship been in the port area at the time of the relevant incident and suffered the direct effects of the relevant perils.

Rule 10 **Onshore Class III – Cover for Costs due to Shipboard Related Events**

- 10(a)** The Association covers the delay suffered by a ship caused by one of the named perils below:

Strike **10(a)[i]** strike of crew and officers on board the entered ship; or

Collision, Grounding **10(a)[ii]** unintentional collision, stranding or grounding of the entered ship or striking any fixed or floating object by the entered ship; or

<i>Other Damages</i>	10(a)[iii]	damage to the vessel caused by stevedores, heavy weather, fire or explosion onshore, violent theft, jettison, barratry, contact with aircraft, earthquake, volcanic eruption and lightning; or
<i>Illness, Injury or Death</i>	10(a)[iv]	illness, injury or death on board or directly caused by the entered ship; or
<i>Contraband</i>	10(a)[v]	actual or alleged presence of contraband on board the entered ship, which neither the Member nor the master, officers and crew could reasonably be expected to have prevented, PROVIDED THAT the Member shall have both complied fully with all relevant legislation and regulations and co-operated fully and at all times with the relevant anti-trafficking agencies of all countries between which the ship trades; or
<i>Pollution</i>	10(a)[vi]	actual or alleged pollution emanating from the entered ship; or
<i>Desertion</i>	10(a)[vii]	desertion from such ship of any or all of her officers and/or crew; or
<i>Action of Authorities</i>	10(a)[viii]	any action by an authority of competent jurisdiction against such ship or her officers or crew in respect of: 1) a crime or an alleged crime committed on board such ship; or 2) any incident or occurrence as specified in Rule 10(a)[ii] to [viii] involving any other entered ship in the same beneficial ownership or management; or
<i>Stowaways</i>	10(a)[ix]	stowaways on board, rescuing refugees or saving of life at sea by the entered ship; or
<i>Quarantine</i>	10(a)[x]	lawful quarantine imposed upon the entered ship; or
<i>Fire, Explosion and Machinery Damage</i>	10(a)[xi]	fire or explosion on board the entered ship; or breakdown of onboard machinery excluding: (a) breakdown resulting from ordinary wear and tear or want of due diligence on the part of the Member; (b) damage to propeller(s), rudder(s), associated steering and propulsion components and other equipment routinely below the waterline, if the ship uses berths where it intentionally takes the ground; (c) deterioration of coatings and painted surfaces as a result of poor preparation or improper application; or

<i>Off-spec bunkers</i>	10(a)[xii]	removal and replacement of bunkers (including the necessary and consequential cleaning of on board machinery, tanks, pipelines and/or other similar affected areas) because they are not in accordance with the specifications agreed in the charter party or in the orders to the bunker supplier, provided that such removal and replacement is to avoid or minimise physical damage to on board machinery; or
<i>Piracy, Kidnap and Ransom</i>	10(a)[xiii]	piracy and/or kidnap and ransom and/or abduction of persons on board the entered, including when happening during revolution, rebellion, insurrection, riot, civil commotion, political protest, or action of environmental objectors or religious zealots; or
<i>War</i>	10(a)[xiv]	war, civil war or any hostile act by or against a belligerent power, weapons of war used during the course of hostilities; or capture, seizure, arrest, restraint or detainment during the course of hostilities, and the consequences thereof or any attempt thereat but excluding such actions or confiscation, requisition (for title or use), pre-emption or expropriation by or under the order of the government or any public local authority of the country in which the vessel is owned or registered and excluding the operation of ordinary judicial process, failure to provide security or to pay any fine penalty or any financial cause; or
<i>Cyber</i>	10(a)[xv]	<p>any use or operation (or threat thereof), as a means of inflicting harm, of any computer, computer system, computer software program, malicious code, computer virus or process or any other electronic system on board the entered ship; or virus (or threat thereof) preventing the use of any computer, computer system, computer software program, computer process or any other electronic system on board the entered ship.</p> <p>If the event under this Rule directly or indirectly causes an incident which is insurable under Rule 10 (a)(i-xii), then:</p> <ol style="list-style-type: none"> 1) if the risk under Rule 10(a)(i-xii) is insured by the Member, the deductible applicable to that risk shall apply, and 2) if the risk under Rule 10 (a) is not insured by the Member, the claim shall be excluded.

Exceptions and limitations

- 10(b)** No claim shall lie under this Rule for any delay which is recoverable by way of hire, demurrage or damages, or under any guarantee.
- 10(c)** No claim shall lie under Rules 10(a)[ii] to 10(a)[xv] for any delay if and to the extent that it:
- could be covered by any hull & machinery, protection & indemnity, war hull & machinery, war protection & indemnity or freight demurrage & defence insurance, and in such instance regardless of any deductible or limit on cover, special terms or act or omission on the part of the Member vitiating such insurance; or
 - is covered by any other insurance and in such instance regardless of act or omission on the part of the Member vitiating such insurance or would be so covered but for the entry of the ship in the Association.
- 10(d)** No claim shall lie under Rule 10(a)[ii], 10(a)[iii], 10(a)[xi], 10(a)[xii], 10(a)[xiii], 10(a)[xiv] or 10(a)[xv] in respect of any period of delay:
- 10(d)[i]** commencing 12 months or more after the original incident; or
 - 10(d)[ii]** resulting from any ship becoming an actual, constructive or economic total loss;
 - 10(d)[iii]** resulting from any ship slow steaming solely as a result of one or more of the above events beyond her immediate next port of call or refuge;
 - 10(d)[iv]** resulting from any general average contribution.
- 10(e)** No claim shall be allowed under Rules 10(a)[ii] to [xii] and 10(a)[xv] if at the time of the incident giving rise to the claim or at any time during the three preceding months the Member or the entered ship:
- 10(e)[i]** is not or has not been in full compliance with all statutory requirements; or
 - 10(e)[ii]** does not have or has not had in a valid state all statutory certificates relating to such requirements

the relevant requirements being those of the State of the ship's flag relating to the construction, adaptation, condition, fitment, equipment, manning and safety management of the vessel as well as the International Safety Management Code;

- 10(e)[iii]** is not fully classed with a Classification Society that is a member of IACS.
- 10(f)** Where damage repairs arising from a risk covered under Rule 10(a)[ii], 10(a)[iii], 10(a)[xi], 10(a)[xii], 10(a)[xiii], 10(a)[xiv] or 10(a)[xv] are undertaken concurrently with other work that is not so covered, the time in excess of the deductible period that is common to both categories of work will be split equally.
- 10(g)** No claim shall be allowed under Rule 10(a)[xii] unless the continued drip method of sampling procedure and retention of samples as set out in Annex VI of MARPOL has been complied with and one sample sent immediately to a bunker sample analysis laboratory approved by the Managers.

If the continued drip method is not used, confirmation shall be obtained from a sample analysis laboratory that there have been no issues of inadequate quality of bunkers involving the nominated bunker supplier within the prior three months and that the Member has SMS procedures for the entered ship regarding a hierarchy of approvals for loading bunkers when the continued drip method is not used.

There shall be no cover for delay arising from bunkers not complying with regulations regarding sulphur content or arising from commingling or inadequate segregation of bunkers. There shall be no cover unless the failure to meet specification is notified to the Managers within 60 days of the loading of the bunkers. There shall be no claim if the specifications agreed in the charter party or in the orders to the bunker supplier are of a lower standard than ISO 8217:2005. There shall be no claim in respect of LNG bunkers. The bunker sample analysis laboratories approved by the Managers are FOBAS, VPS, VeriFuel and NKCS, Maritec, Viswa Lab, Intertek ShipCare and Parker Kittiwake.

Rule 11 General Exceptions and Limitations

A claim may be made by a Member either in respect of a single continuous period of delay or in respect of a series of intermittent delays during any one visit to a port, which delays arise from the same single incident or occurrence covered under Rules 8(a), 9 or 10(a)[i] or 10(a)[iv] to 10(a)[x], 10(a)[xiv] and 10(a)[xv] inclusive. Any claim under Rules 8(a), 9 or 10(a) shall be subject to the following exceptions and limitations:

- 11(a) Each claim under Rules 8(a), 9 or 10(a) shall be subject to such deductible (if any) as may be agreed with the Managers.
- 11(b) Each claim shall be limited as regards the number of days covered as provided in the Certificate of Entry.
- 11(c) The sum recoverable shall be limited to the amount of the entered sum in the case of a ship for each day (and pro rata for any part of a day) such ship was delayed and for which a claim under Rules 8(a), 9 or 10(a) is allowed by these Rules.
- 11(d) No claim shall be allowed in excess of the loss due to delay actually suffered by the Member during the period in respect of which the claim is made.
- 11(e) No claim shall be payable unless:
 - 11(e)[i] the incident, under Rules 8(a)[i], 9 or 10(a)[i]; or
 - 11(e)[ii] the direct effects, under Rules 8(a)[ii] or 9; or
 - 11(e)[iii] the delay under Rules 10(a)[iii] to [xv]
giving rise to the claim has or have lasted for a continuous period of not less than twenty-four hours. Thereafter, such claims shall be payable from the commencement of such incident and shall be subject to any applicable deductible and limit of days covered according to the Member's terms of entry.
- 11(f) No claim shall be allowed if it arises from the entered ship carrying contraband or blockade running or being employed in any unlawful, prohibited or sanctionable carriage, trade, voyage or operation or if

the provision of insurance for a carriage, trade, voyage or operation becomes unlawful, prohibited or sanctionable, or if the board determines that the carriage, trade, voyage or operation was imprudent, unsafe, unduly hazardous or improper.

The Member shall in no circumstances be entitled to recover from the club that part of any compensation which is not recovered by the club from any reinsurance(s) by reason of any sanction, prohibition or adverse action against them by any state or international organisation or the risk thereof if payment were to be made by such reinsurers.

- 11(g)** The Association reserves the right to notify Members of any voyage or trade which in its opinion is unsafe or improper. If a Member having been given this notice then employs his ship on such voyage or transit or trade, no claim will be allowed for the period during which the same is so employed.

*Pre-existing
Circumstances* **11(h)**

No claim shall be allowed if in the opinion of the Directors the loss was due to circumstances existing at the time the ship was entered in the Association.

- 11(i)** In the case of a ship entered in Onshore Classes I and II having suffered one continuous period of delay during and after the effects of either the perils set out in Rules 8(a)[i] and 9 or the perils set out in Rules 8(a)[ii] and 9 for which two claims are made and allowed under these Rules, a single deductible shall be applied to all such claims and, further, a single limit shall be applied to claims under Rules 8(a)[ii] and 9.

- 11(j)** A Member shall notify the Managers in writing when an entered ship is:

11(j)[i] trading under time charter (Onshore Classes I and II only); or

11(j)[ii] unemployed and laid up.

- 11(k)** No claim shall be allowed if the ship was on time charter or other equivalent contract and the Member was entitled to collect hire during the period of delay or if the ship was unemployed or laid up.

- 11(l)** Claims payable under the Rules of the Association arising from delay which spans two or more Policy Years shall be treated as a single claim and, subject to the terms and conditions of entry, including as to the applicable limit of cover and deductible, prevailing at the commencement of the delay PROVIDED THAT for purposes of the Member's claims record the Managers may apportion the claim over the Policy Years which the delay spans according to the delay occurring in each Policy Year.
- 11(m)** In the event of the entry of a ship terminating or a Member ceasing to be a Member in accordance with the Rules, claims payable hereunder shall only be payable in respect of delay suffered prior to the date of termination or cessation.
- 11(n)** Save as provided in Rules 8(a)[i](b), 9 and 10(a)[xiv] where those Rules are applicable to the entered ship, no claim shall be allowed for any delay caused by:
- 11(n)[i]** war, civil war or any hostile act by or against a belligerent power;
- 11(n)[ii]** capture, seizure, arrest, restraint or detainment during the course of hostilities, and the consequences thereof or any attempt thereat; or
- 11(n)[iii]** weapons of war used during the course of hostilities including, but not limited to, mines, torpedoes, bombs, rockets, shells and explosives.
- 11(o)** No claim shall be allowed if it arises from:
- 11(o)[i]** ionising radiation, radioactivity, any nuclear fuel, any nuclear waste or the combustion of nuclear fuel;
- 11(o)[ii]** radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor, or other nuclear assembly or nuclear component thereof;
- 11(o)[iii]** the use, whether actual or threatened, of any weapon or device employing (or alleged by a person threatening its use to employ) atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;

- 11(o)[iv]** the use, whether actual or threatened, of any weapon or device employing (or alleged by a person threatening its use to employ) chemical compounds or biological materials;
- 11(o)[v]** an outbreak of war (whether there be a declaration of war or not) between any of the following countries: France, the People's Republic of China, the Russian Federation, the United Kingdom, the United States of America.
- 11(p)** No claim shall be allowed if it arises directly or indirectly or in any way out of the insolvency of the Member or of any person, association of persons or body corporate.
- 11(q)** Without prejudice to Rules 8(c), 9 and 10(c), there shall be no cover, nor any recovery from the Association, for:
- 11(q)[i]** loss of or damage to the entered ship, her stores or fuel, or any equipment or item used in connection with her; or
- 11(q)[ii]** loss, cost or expense arising wholly or partly from the Member's failure for any reason whatever to discharge any financial obligation of any kind in connection with the proper prosecution of a voyage; or
- 11(q)[iii]** interest on any claim brought either under the Rules or by way of legal or arbitration proceedings; or
- 11(q)[iv]** any loss not expressly covered by these Rules
- PROVIDED THAT such exclusions shall not apply where the loss in question results directly from the compliance by the Member with a requirement or direction of the Association.
- 11(r)** There shall be no cover for delays directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

This exclusion shall not apply to claims for delay which fall within the cover set out in Rules 8(a)[i](b), 8(a)[ii](kk), 10(a)[xiii] and 10(a)[xiv] and 10(a)[xv] arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

Rule 12 **Special Entries**

Notwithstanding any other provision of these Rules the Association may accept entries:

- 12(a)** upon such special terms as to contribution and premium (including the payment of a fixed premium) and as to the nature and extent of risk covered as it shall think fit; or
- 12(b)** which are reinsurances of original risks which in all respects it might have insured directly itself; or
- 12(c)** covering two or more ships in which the beneficial interests are different on terms that such ships shall be deemed for the purposes of the Association to be a specified fleet to be dealt with collectively as if a single entry, in consideration of which all Members interested in the ships comprising a fleet accept joint and several liability for all amounts whatsoever due to the Association in respect of each and every individual ship forming part of that fleet

and the Association may effect reinsurance of the whole or part of any risk insured or reinsured by it under this Rule or otherwise.

Rule 13 Notice of Claims

- 13(a)** Except in relation to claims arising under Rules 8(a)[ii](kk), 10(a)[ii], 10(a)[iii], 10(a)[xi] and 10(a)[xv], where notice must be given immediately, notice in writing of every event likely to lead to a claim upon the Association must be given as soon as reasonably practicable, and notice of all subsequent material developments, including all information, documents or reports coming into the possession or control of a Member or his agent (including any lawyer) must be given to the Managers as soon as reasonably practicable.
- 13(b)** Details of each claim must be supplied on the appropriate claim form currently in use by the Association and be duly signed by or on behalf of the Member within six months after the incident.
- 13(c)** If details of any claim shall not have been notified to the Managers within six months after the incident which gave rise to the claim, the Directors shall have power to reject the claim or to reduce the sum payable by the Association in respect thereof.
- 13(d)** A Member shall not compromise any claim or make any admission in respect of any matter relating to any delay for which he is insured without the written consent of the Managers.
- 13(e)** If any of the Member's obligations under this Rule are not complied with, the Directors may in their sole discretion reject the claim or reduce the sum payable by the Association in respect thereof.
- 13(f)** Without prejudice to the earlier provisions of this Rule, if a Member fails to notify the Association in writing of a claim within one year after acquiring knowledge of the delay giving rise to such claim, any and all that Member's right(s) to recover in respect of such delay shall be extinguished.

Rule 14 Handling and Proof of Claims

- 14(a)** The Association shall have the right, but not the duty, to control the interests of a Member relating to a claim, including:

- 14(a)[i]** the appointment on behalf of the Member and the Association jointly (subject to professional rules) of lawyers, surveyors or other experts;
- 14(a)[ii]** the conduct of any claim or legal or other proceedings and the compromise thereof;
- 14(a)[iii]** the appointment of a surveyor to survey an entered ship prior to any repair being effected where a claim may be or has been made under Rules 10(a)[ii], [iii], [xi] and [xii].
- 14(b)** The Member shall produce and supply to the Association such information, documents or reports as the Managers may reasonably request in connection with any claim.
- 14(c)** If any of the Member's obligations under this Rule are not complied with, the Directors may in their sole discretion reject the claim or reduce the sum payable by the Association in respect thereof.
- 14(d)** The Association shall determine what evidence is required to satisfy it that a claim is payable.

Rule 15 **Directors' Powers**

- 15(a)** The Directors may waive or relax any of the Rules under such conditions and on such terms as they may think fit PROVIDED THAT the exercise of their discretion, whether under this Rule or under any other, shall not result in any Member being placed in a position financially less favourable than he would be by a strict application of the Rules.
- 15(b)** Any claim submitted to the Association shall be liable to rejection or deduction if the Directors shall be of the opinion that the Member has not taken such steps to protect his interest, whether before, around the time of, during or after the incident giving rise to the claim, as he would have done if the ship had not been entered in this Association. Any deduction shall be of such an amount as the Directors in their sole discretion decide.

15(c) Where the possibility exists of a claim being made under more than one class in respect of the same period of delay; the Directors shall have the power to decide in their absolute discretion under which class the claim falls to be paid.

Substitute Expenses

15(d) Where a Member, in order to avoid or reduce a claim on the Association, has incurred reasonable expenses or suffered any provable loss in avoiding or minimising delay to an entered ship, the Directors may, at their sole discretion, agree to reimburse the Member to such extent as they see fit, but any such reimbursement shall exclude any element of profit and will be subject to any applicable deductible and limit of days covered according to the Member's terms of entry.

Rule 16 Settlement of Claims

The Directors shall meet as often as may be required for the consideration of claims which shall be paid by the Association as the Directors may determine in accordance with these Rules. No Director shall act as such during the consideration of any claim in which he is interested. The Directors may from time to time authorise the Managers to settle and pay claims, without prior reference to them, of such types and up to such financial limits as they may in their sole discretion determine.

Rule 17 Assignment

No assignment of any interest under these Rules shall have any effect unless and until the assignor shall have notified the same to the Managers and the Managers shall have approved the assignment in writing. On receipt of notice of such assignment, the Association shall be entitled to cancel the entry in respect of which such assignment has been made by giving ten days' notice in writing to the assignor and to the assignee, and upon expiry of such notice, the cover afforded shall cease. Alternatively the Association may in its absolute discretion approve the proposed assignment only upon specified conditions and without giving any reasons. Where approval is given, it shall be on terms that the assignee be, and the assignee shall automatically become, jointly and severally liable with the assignor for the payment of all sums whatsoever due from the assignor to the Association and for the

performance of all the assignor's obligations towards the Association, in either case whether arising before, at the time of or after the assignment. In any event, the Association shall be entitled in settling any claim presented by the assignee to deduct or retain such amount as the Managers may then estimate to be sufficient to discharge any liabilities of the assignor existing at the time of the assignment or likely to arise thereafter.

Rule 18 **Cessation of Entry**

Unless otherwise agreed by the Association in writing, the entry of a ship and any further entitlement to claim under these Rules shall cease upon:

- 18(a)** the Member parting with or assigning his interest in her; or
- 18(b)** the entered ship becoming an actual total loss, or being accepted by underwriters as a constructive or compromised total loss; or
- 18(c)** the entered ship being posted at Lloyd's as missing, or the expiry of ten days from the date on which she was last heard of, whichever is the earlier; or
- 18(d)** upon the termination of a charter, in the case of a charterer's entry

and the Member shall give written notice of any such event to the Managers promptly, but in any event within one month. Further, the Association may terminate the entry of a ship, and any entitlement to claim under these Rules shall cease if there is any change in her management or operation.
- 18(e)** The entered ship being employed in the carriage, trade, voyage or operation which will thereby in any way howsoever expose the club 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, or if the provision of insurance for a carriage, trade, voyage or operation is or becomes unlawful, prohibited or sanctionable, unless the Managers shall otherwise determine.

Rule 19 Closing of Policy Years

- 19(a)** No sooner than 18 months after its commencement, the Directors may in their sole discretion declare a Policy Year closed in accordance with the procedure set out in sub-Rules (b) and (c) below notwithstanding that there are or may in the future be claims against that Policy Year and related costs which are as yet uncertain in their validity, amount and extent.
- 19(b)** If the Policy Year to be closed appears to the Directors to be in surplus after making all appropriate provisions for items of the types set out in Rule 6 which may in future be incurred in respect of that Policy Year, then the Directors may in their sole discretion apply such surplus in one or more of the following ways:
- 19(b)[i]** to the reserves of the Association;
- 19(b)[ii]** to meet an actual or prospective deficit on any other closed Policy Year;
- 19(b)[iii]** to those Members who contributed the funds of the relevant Policy Year pro rata to their current obligation to contribute to any deficit.
- 19(c)** If the Policy Year to be closed appears to the Directors to be in deficit after making all appropriate provisions for items of the types set out in Rule 6 which may in future be incurred in respect of that Policy Year, then the Directors may in their sole discretion provide for such deficit in one or more of the following ways:
- 19(c)[i]** by making a supplementary call;
- 19(c)[ii]** by transfer from the reserves of the Association;
- 19(c)[iii]** by transfer from any surplus on any other closed Policy Year.
- 19(d)** The Directors may resolve to amalgamate the accounts of two or more contiguous closed Policy Years and, if they do, such Policy Years shall thereafter be treated as a single closed Policy Year.

Rule 20 **Notice of Withdrawal**

- 20(a)** A Member may terminate the entry of an entered ship by giving to the Managers not less than one month's notice in writing expiring on the last day of any Policy Year.
- 20(b)** The Association may at any time discontinue the insurance of a Member in respect of an entered ship by giving him one month's notice in writing to that effect.
- 20(c)** An entered ship shall not be withdrawn from the Association at any other time or in any other manner except with the consent of the Directors.
- 20(d)[i]** The cover provided by Rules 8(a)[i](b), 9 and 10(a)[xiv] (delays resulting from war and other perils as mentioned in the respective Rules) may be cancelled by the Association or the Managers giving seven days' notice of cancellation to the Member (such cancellation becoming effective on the expiry of seven days from midnight on the day on which notice of cancellation is issued).
- 20(d)[ii]** Whether or not a notice of cancellation has been given, the cover provided by Rules 8(a)[i](b), 9 and 10(a)[xiv] (delays resulting from war) shall terminate automatically:
- upon the outbreak of war (whether there be a declaration of war or not) between any of the following countries: France, the People's Republic of China, the Russian Federation, the United Kingdom, the United States of America; or
- in the event of the entered ship being requisitioned either for title or use.
- 20(e)** Nothing in this Rule shall preclude the termination of an entry in accordance with the provisions of Rule 18.

Rule 21 **Release from Liability for Premiums**

On or after the termination of the entry of an entered ship, the Association may release the relevant Member from further liability under Rule 6 in respect of open Policy Years in the following manner:

- 21(a)** The Association has the right, but no obligation, to require the Member to pay a release call in lieu of any supplementary calls in respect of the entered ship.
- 21(b)** The amount of the release call shall be such percentage of the ETP as the Directors in their sole discretion shall from time to time determine, provided that the Managers may increase such percentage to take account of any adverse claims developments occurring after the relevant Directors' determination and for no other purpose.
- 21(c)** Once a release call has been paid, the relevant Member shall have no liability to the Association for any subsequent call of any kind, but he shall cease to have any right to share in any surplus for any Policy Year during which he was a Member, and there shall be no reduction or rebate of his release call under any circumstances, even if the general levels of release calls is subsequently reduced.
- 21(d)** Any Member who has been required to pay a release call but has neither done so nor adopted the procedure in Rule 21(e) below for more than thirty days after the date of such release call shall be liable to pay not only the original release call but also any increase in it resulting from a decision of the Directors or Managers as set out in Rule 21(b) above, and any and all further calls imposed after the expiry of those thirty days on any Policy Year during which he is or has been a Member.
- 21(e)** If any Member who has been required to pay a release call wishes instead to continue to be liable to pay supplementary calls as may be made in respect of any Policy Years during which he is or has been a Member, he shall be deemed to have satisfied his obligation to pay such release call and to have elected to remain liable for such supplementary calls if he provides to the Association a bank guarantee from a first-class bank acceptable to the Association and in a form acceptable to the Association for an amount equal to the release call.
- 21(f)** At any time before a release call, having been imposed on a Member, is paid by him, the Association may by notice in writing to the Member cancel the release call, whereupon the Member shall once again be liable to pay such supplementary calls as may be made on any Policy Years during which he is or has been a Member.

Rule 22 **Return of Premium**

- 22(a)** A Member shall be entitled to claim a return of up to 95 per cent of the premium paid in respect of an entered ship if the entered ship is:
- 22(a)[i]** unemployed and laid up (except for repair and/or overhaul) in any safe port or place for a period of fifteen or more consecutive days;
- 22(a)[ii]** trading under time charter (only allowable under Onshore Classes I and II).
- Such return shall be calculated pro rata per consecutive day for the total period during which such ship was so laid up or time chartered.
- 22(b)** If a Member fails to claim for a return of premium within six months of such claim arising, the Directors shall have power to reject the claim or reduce the sum payable by the Association.
- 22(c)** No claim for a return of premium shall be allowed for any period in respect of which the Member is allowed a claim for delay to the same ship under Rules 8, 9 or 10.

Rule 23 **Termination of Insurance**

- A Member shall cease to be insured by the Association automatically:
- 23(a)** in the case of an individual, upon acceptance by the Directors of his resignation or any step, application, order, proceeding or appointment being taken or made by or in respect of him for distress, execution, composition or arrangement with his creditors, or for bankruptcy, or being unable to pay his debts, or upon his dying or suffering mental disorder within the meaning of the Mental Health Act 1983, or upon the occurrence in respect of him of any event in any jurisdiction to which he is subject having a similar or identical effect;
- 23(b)** in the case of a corporation, or partnership or other form of unincorporated association, upon any step, application, order, proceeding or appointment being taken or made by or in respect

of it for distress, execution, composition or arrangement with creditors, winding-up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or being unable to pay its debts, or upon the occurrence in respect of it of any event in any jurisdiction to which it is subject having a similar or identical effect;

- 23(c)** upon withdrawal, sale or loss of all ships entered by the Member in the Association;
- 23(d)** if he shall fail to pay when due and demanded by the Managers any amounts due from him to the Association provided that the Managers have given written notice to the defaulting Member of such termination.

Provided always that such Member, his or its estate, legal personal representatives or trustee in bankruptcy or liquidators, receiver or administrators as the case may be, or equivalent or counterpart in any jurisdiction to which he or it is subject, shall be and remain liable to pay to the Association all such contributions and monies as under these Rules such Member would have been liable to pay (had he not ceased to be a Member) in respect of claims, expenses or outgoings arising or obligations incurred up to and including the date of cessation of membership.

And provided always that where an entry ceases under Rule 18 or a Member ceases to be a Member under this Rule, and any amount whatsoever remains due to the Association, it is agreed that the Association is hereby granted and entitled to exercise a lien over the former entered ship or ships.

Rule 24 **Membership of Other Bodies**

The Directors may cause the Association, in respect of such of the Members of the Association as are eligible, to become a Member of, or affiliated to, such shipping associations or organisations and for the purpose may authorise the payment by the Association to these bodies of such subscriptions or grants as the Directors may think fit.

Rule 25 **Reserves**

- 25(a)** The Directors may in their sole discretion establish and maintain reserves for application for any or all of the following purposes:
- 25(a)[i]** to stabilise the level of premiums from one Policy Year to the next;
- 25(a)[ii]** to reduce the level of any otherwise unusually high premium, or to eliminate any otherwise unusual requirement to make a supplementary call, on any Policy Year;
- 25(a)[iii]** to reduce or eliminate any actual or prospective deficiency on any closed Policy Year;
- 25(a)[iv]** to protect against any actual or prospective loss arising out of transactions involving the Association's investments;
- 25(a)[v]** for any other purpose beneficial to the Association.
- 25(b)** The whole or part of any reserve fund may be applied in the sole discretion of the Directors for any or all of the purposes set out in Rule 25(a) regardless of the purposes for which it has been established or maintained and regardless of the Policy Year or Years from which its funds have been drawn, and likewise the Directors may in their sole discretion determine that funds should be transferred between one reserve fund and another.
- 25(c)** Reserve funds may be created or increased by a resolution of the Directors that there be applied or transferred to such funds a specified proportion or amount of:
- 25(c)[i]** ETP when the rate for such call is being determined; or
- 25(c)[ii]** any funds surplus to the requirements of a Policy Year, when that Policy Year is being closed.

Rule 26 **Investments**

- 26(a)** The funds of the Association may be invested in such stocks, shares, bonds, debentures, securities, funds, accounts, currencies, commodities, property (real or personal) or other vehicles, and on

such terms and in such manner or by such method, as the Directors in their sole discretion determine and direct.

- 26(b)** Unless the Directors decide otherwise, any and all funds shall be pooled and invested as a single fund, regardless of the Policy Year or reserve or other source from which they originate.
- 26(c)** The gains or losses (whether income or capital in nature) arising on pooled investments shall be apportioned between the various Policy Years, reserves and other sources from which the funds invested in them originated in the sole discretion of the Directors.
- 26(d)** In the exercise of their discretion under Rule 26(c), the Directors may determine that gains arising from the investment of the funds of a closed Policy Year shall be credited to any one or more of the Association's reserve funds.

Rule 27 **Expenses**

The Association shall pay to the Managers out of its funds such amounts and at such intervals as the Directors in their sole discretion determine to be appropriate remuneration for the services provided and expenses incurred by the Managers in promoting and fulfilling the Association's purposes.

Rule 28 **Regulations**

The Directors shall have power to make, alter or repeal regulations affecting or restricting the employment or use of entered ships and give due written notice thereof to the Members when the same shall be and become binding upon and be observed by the Members. The accidental omission to give such notice to or the non-receipt of such notice by any Member shall not invalidate such regulations or any alteration thereof.

The due observance of such regulations may be enforced against any Member by penalties either of money and/or disallowance of the whole or a specified part or portion of the claims to which any such Member may become entitled.

Rule 29 **Use of Special Clauses**

The Directors may from time to time prescribe clauses in conformity with the requirements of Protection and Indemnity Associations and of the British Chamber of Shipping or any other similar authority to be used by Members in Bills of Lading, Charterparties or other contracts entered into by them. The Directors shall have power to make a deduction not exceeding 50 per cent from any claim payable if they shall be of the opinion that a Member has failed without good reason to adopt such clauses or has not taken such steps to protect his interests as a prudent owner would have done if he had not been insured by the Association.

Rule 30 **Arbitration**

Any difference or dispute whatsoever between the Association and any Member, his representative or assigns shall, unless it be mutually agreed to the contrary, be referred to arbitration in London of two arbitrators (one to be appointed by the Association and the other by the Member) and an umpire to be appointed by the arbitrators. 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. No Member, his representative or assign shall be entitled to maintain any action or other proceedings against the Association in respect of any claim unless and until the claim shall have been submitted to the Directors and they shall have given their decision thereon, and if such decision be disputed, unless and until the claim shall have been referred to arbitration in the manner herein provided and the award shall have been published, and then only for the sum so awarded to be paid by the Association.

Rule 31 **Notices**

- 31(a)** The Association may serve any notice or other document on a Member in connection with this Agreement in writing, addressed to the Member at any location which the Association reasonably considers to be the place of business or care of any broker who has placed the relevant entry on behalf of the Member or any

other address (including a fax number) notified to the Association in writing in accordance with this clause as an address to which notices and other documents may be sent.

- 31(b)** A Member shall serve any notice or document on the Association at its registered office, and may do so by any of the methods set out in Rule 31(a).
- 31(c)** Any notice or document sought to be served pursuant to Rule 31(a) or (b) shall be deemed to have been served:
- 31(c)[i]** if delivered by hand, at the time of the delivery;
- 31(c)[ii]** if posted, on the seventh day after posting;
- 31(c)[iii]** if sent by telegram or cable, on the day after handing in;
- 31(c)[iv]** if sent by fax or electronically, on the day of transmission
- and in each case proof of delivery, posting, handing in or transmission shall be proof of service.

Rule 32 **Law of Contract**

- 32(a)** These Rules and any contract between the Member and the Association incorporating them shall be governed by and construed in accordance with English law, and shall be subject to and incorporate the Marine Insurance Act 1906 and upon its entry into force the Insurance Act 2015 save to the extent such Acts are modified or excluded by the Rules or by the terms of any contracts of insurance. Subject only to Rule 30, the English courts shall have exclusive jurisdiction over any difference or dispute, including as to the construction, interpretation and application of Rule 30. Provided always that it is not intended, save as otherwise provided in these Rules, that any benefit or rights should be acquired through the operation of the contracts (Rights of Third Parties) Act 1999 or other similar legislation.
- 32(b)** Upon its entry into force, the following provisions of the Insurance Act 2015 (the Act) are excluded from these Rules and the contract of insurance between the Association and the Member (or any party afforded the benefit of cover by the Association) as follows:

- 32(b)[i]** 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.
- 32(b)[ii]** Section 10 of the Act is excluded. As a result, if the Member or any party afforded the benefit of cover by the Association 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.
- 32(b)[iii]** Section 11 of the Act is excluded. As a result, if the Member or any party afforded the benefit of cover by the Association fails to comply with any term in these Rules and/or the insurance contract, the Association's liability may be excluded, limited or discharged in accordance with these Rules and/or the insurance contract notwithstanding that the breach could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.
- 32(b)[iv]** 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 any party afforded the benefit of cover by the Association) in the event that a fraudulent claim is submitted by or on behalf of the Member or any party afforded the benefit of cover by the Association.
- 32(b)[v]** Section 13A of the Act is excluded. As a result, the Rules and the insurance contract between the Association and the Member (and any party afforded the benefit of cover by the Association) shall not be subject to any implied term that the Association will pay any sums due in respect of a claim within a reasonable time save that the Association may not deliberately or recklessly fail to do so.
- 32(b)[vi]** Section 14 of the Act is excluded. As a result, any breach of the duty of the utmost good faith shall entitle the Association to avoid the contract of insurance.

Rule 33 **Subrogation**

When a claim is made under these Rules, the Association shall be subrogated to all the rights and remedies in respect of that claim which the Member may have against any third party. The Association shall be entitled to use the name of the Member in bringing, defending, enforcing or settling any legal proceedings (including proceedings in any arbitration) and the Member shall give all necessary information and assistance, and produce and forward all documents to enable the Association to substantiate, settle or resist any claim. The Association shall, however, where it uses the name of any Member, indemnify him against all costs, charges, expenses and liabilities arising therefrom.

Rule 34 **Enforcement of Rules**

The Association shall at all times and without giving any special notice to that effect be entitled to insist on the strict application of these Rules and on the strict enforcement of its contract with a Member. No act, omission, course of dealing, forbearance, delay or indulgence by the Association or any of its servants or agents in enforcing any of these Rules or any of the terms or conditions of its contract with a Member nor any granting of time shall prejudice or affect the rights and remedies of the Association under these Rules or under such contract, and no such matter should be treated as any evidence of waiver of the Association's rights thereunder, nor shall any waiver of a breach of such Rules or contract operate as a waiver of any subsequent breach thereof.

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