



SPECIALIST  
PROFESSIONAL  
INDEMNITY  
INSURANCE

# ITIC Rules 2012

Specialist professional indemnity insurance for transport professionals everywhere.

ITIC  
IS MANAGED  
BY **THOMAS  
MILLER**





# An Introduction to ITIC

## What is ITIC?

International Transport Intermediaries Club Ltd. ("ITIC") is a mutual insurance company for professionals providing services to the transport industry.

## What does ITIC offer?

Professional indemnity insurance – cover for liabilities resulting from negligence, errors and omissions together with legal costs cover, a debt collection service, directors' and officers' (D & O) insurance, commission insurance, loss of management fee insurance, cash in transit and money insurance; advice on loss prevention, legal issues and local support from a worldwide network of correspondents.

## Why do you need ITIC?

It is difficult for many professionals to imagine a claim being made against them but the Club's experience confirms that mistakes frequently occur. Should your error or omission cause a loss to your customer or to a third party then you could be held responsible. You could even be sued when you have done nothing wrong simply because you act as an agent for somebody else. Defending such claims costs time and money. ITIC will handle them on your behalf.

## What will it cost?

The premium to be paid is calculated on an individual company basis. Factors which will be taken into account include the number of staff you employ; the amount and type of work you do; where in the world and with whom you do your business and the amount of cover you require. A variety of premium and cover options can be offered.

## What is the security?

ITIC and its predecessors have been insuring these risks for around 85 years. Financial security comes from strong reserves and sound reinsurance.

## How do you obtain a quotation?

Complete ITIC's simple proposal form and send it to the Club, or your insurance broker, together with any publicity material or background information you may have on your company. There is no obligation for you to take out the cover after you have been provided with a quotation.

## Other ITIC literature

The Wire – e-newsletter which focuses on different areas for transport industry professionals  
The Claims Review – a summary of claims reported to the Club  
Circulars – providing loss prevention advice  
ITIC's Guidelines for the Release of Cargo  
Online learning tools  
Impact of the ISPS Code  
ITIC's Standard Terms and Conditions for Marine Surveyors and Consultants

All the above are also available from

[www.itic-insure.com](http://www.itic-insure.com)

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## International Transport Intermediaries Club Limited

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### Managers

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### Directors

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#### H Gilbert (Chairman)

Wallem Ltd  
London

#### E F Davila

Maritima Davila Madrid S.A  
Madrid

#### C Döhle

Paul Günther Schiffsmakler GmbH & Co KG  
Hamburg

#### R Flynn

MJLF & Associates  
Stamford

#### P French

British Marine Technology Ltd  
London

#### G R Frith

Container Ship Management Ltd  
Bermuda

#### D Fry

Columbia Shipmanagement Ltd  
Cyprus

#### S M Jones

Empire Shipping Agency Ltd  
Vancouver

#### F A Kanoo

Yusuf Bin Ahmed Kanoo WLL  
Manama

#### A R W Marsh

Braemar Seascopes Ltd  
London

#### L Safverstrom

Gulf Agency Company Ltd  
Dubai

#### U Salerno

RINA Societa per azioni  
Genoa

#### B O Tonsberg

Wilhelmsen Maritime Services AS  
Singapore

### Preface

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This Rule book details the scope of the insurance provided by International Transport Intermediaries Club Ltd ("the Club") and sets out terms and conditions of membership. These Rules must be read in conjunction with a Member's certificate of entry or, for a potential Member, any indication for insurance.

## Part 1 Nature of the insurances

### Rule 1

#### Nature of the insurances

##### 1.1

##### **General**

Subject to the Memorandum and Articles of Association and as stated herein, these Rules govern the conduct of business of the Club and apply to and are incorporated, or deemed to be incorporated, in every insurance provided by the Club. If you become a Member you are deemed to have full knowledge of these Rules and to have agreed that you are in every respect subject to and bound by them.

##### 1.2

##### **The insurance**

##### 1.2.1

Without prejudice to the generality of Rule 1.1 above, your insurance with the Club is subject to:

- (a) the terms set out in your certificate of entry;
- (b) the terms of any Rule in Parts 2, 3 or 4 in respect of which it has been agreed that you are insured;
- (c) the general conditions and exclusions set out in Part 5 of these Rules;
- (d) the general terms set out in Parts 6 to 11 of these Rules;
- (e) the interpretations set out in Part 12 of these Rules.

##### 1.2.2

Words used in any indication for insurance by the Club or in any certificate of entry are also subject to the interpretations set out in Part 12 of these Rules.

##### 1.2.3

Headings and notes are inserted for convenience and do not affect the construction or interpretation of these Rules.

##### 1.3

##### **Insured services and risks**

##### 1.3.1

You are insured in the normal course of performing the services specified in your certificate of entry as being insured services against the risks specified in your certificate of entry as insured risks.

##### 1.3.2

Your insurance in respect of any services mentioned above shall be confined to risks within the scope of the cover provided by these Rules which are incurred in the normal course of providing the services specified in your certificate of entry and on the basis that you have contracted or have endeavoured to contract on terms and conditions usually applicable in the normal course of performing those insured services. The Directors shall have an absolute discretion to decide whether or not any risk was incurred in the normal course of providing such services and/or on terms and conditions usually applicable and any decision of the Directors as to whether any risk was so incurred shall be final and binding on you and the Club.

##### 1.3.3

The Managers may, subject to and in accordance with any general directions given by the Directors, extend, restrict or vary the risks insured in any particular case, in such manner and on such terms as may be agreed in writing between you and the Club.

##### 1.4

##### **Members not to admit liability**

You shall not admit liability to pay or settle any claim without the prior written consent of the Managers and you shall undertake that none of your employees or former employees admits any such liability.

##### 1.5

##### **Indemnity insurance**

Your insurance with the Club is on the basis of indemnity and the Club shall pay you only after you have suffered the loss or damage in respect of which you are covered or after you have already discharged any liability in respect of which you are insured by the expenditure of money in payment of a claim for which you are liable. However, the Directors may, in their absolute discretion, either generally or in an individual case, determine that you may recover monies under your insurance with the Club although you have not paid the full amount of such liabilities and costs and may impose such conditions upon such recovery as they consider appropriate.

### **1.6 Deductible**

- 1.6.1** In relation to any particular occurrence, no claim will be paid unless the total claims arising out of that occurrence exceed the deductible which applies to that occurrence.
- 1.6.2** One deductible, only will apply to each and every occurrence, whether or not one or more Joint Members are included in your insurance.
- 1.6.3** The deductible which applies will be:
- (i) the special deductible, if any, stated in your certificate of entry to be applicable to the relevant insured service or type of claim; or, if none is stated,
  - (ii) the general deductible stated in your certificate of entry; or, if none is stated,
  - (iii) US\$5,000 (or the equivalent in other currencies).
- 1.6.4** Where there are two deductibles which could apply to the same occurrence, the higher will prevail.

### **1.7 Limit of liability**

- 1.7.1** In relation to any particular occurrence, no claim will be paid to the extent that, including the amount of the deductible, it exceeds the limit of liability which applies to that occurrence.
- 1.7.2** Subject to Rule 1.7.5, one limit of liability only will apply to each and every occurrence, whether or not one or more Joint Members are included in your insurance.
- 1.7.3** The limit of liability which applies to any occurrence will be:
- (i) the special limit of liability, if any, stated in your certificate of entry to be applicable to a Rule, insured service or type of claim; or, if none is stated,
  - (ii) the general limit of liability stated in your certificate of entry; or, if none is stated,
  - (iii) US\$250,000 (or the equivalent in other currencies).
- 1.7.4** The total liability of the Club for all claims arising from one occurrence will not exceed the limit of liability which applies to that occurrence, even if you have claims in relation to that occurrence under more than one Rule.
- 1.7.5** Where one or more claims arising from one occurrence are subject to a lower limit of liability than other claims arising from the same occurrence:
- (i) the lower limit of liability will be applied to those claims to which it is applicable, but
  - (ii) the total claim, including the deductible and the part limited by the lower limit of liability, will not exceed the higher limit of liability.
- 1.7.6** In addition to the limits of liability applicable to each and every occurrence, your insurance may also be subject to a total limit of liability for each account year. The total liability of the Club in respect of all claims made, or claims occurring as the case may be, and in respect of all occurrences of whatsoever nature, in each account year, will not under any circumstances exceed the total limit of liability for that account year, whether or not one or more Joint Members are included in your insurance. The total limit of liability for each account year will be stated in your certificate of entry.

## Part 2 Professional indemnity insurances

### Rule 2 General liability and errors and omissions insurance

In the normal course of performing the insured services shown in your certificate of entry for this Rule, you are insured for your liability and costs, provided they relate to such liability, resulting from:

- (a) negligent performance of such services;
- (b) any fraudulent act of an employee (other than a controller), done in the performance of the insured services shown on your certificate of entry which does not involve the loss of cash or negotiable instruments (see Rule 13.23), provided that it was intended by the fraud to confer benefit upon the employee or another person with the collusion of the employee and not you and that the Club shall be free to exercise your rights of recovery in relation to such claim;
- (c)
  - (i) libel and slander but excluding liability resulting from publication in an independent journal, magazine, newspaper, website or electronic publication or in any pre-arranged radio or television interview;
  - (ii) alleged breach of confidentiality, infringement of copyright, patent or registered design committed in good faith by you, your employee(s) or any other person for whose conduct you are liable;
- (d) loss of or damage to documents or computer records sustained while such documents are in transit or in your custody or in the custody of any other person to whom you have entrusted them;
- (e) breach of warranty of authority where you contract on another person's behalf believing that you have authority to do so;
- (f) any contract which you entered into on another person's behalf where you intended to act as agent only and not as a principal;
- (g) any rule under which you are legally responsible for the liabilities of your principal, other than for the payment of commercial debts, notwithstanding that you act as agent only;
- (h) claims by an authority in respect of:
  - (i) costs of storage, removal, disposal or marking of any cargo, equipment or conveyance which has been abandoned or involved in an accident;
  - (ii) costs of quarantine, disinfection of any cargo, equipment or conveyance or any land, building or structure;
  - (iii) costs of repairing damage done by a ship to a port, harbour or berthing installation or other property;
  - (iv) payment under indemnities given in the normal course of business and with the prior written approval of the Managers;
  - (v) fines, penalties or customs duty (imposed on you or your employee or any person acting on your behalf) in respect of:
    - (1) non-delivery, short-delivery or over-delivery of cargo;
    - (2) smuggling by any person other than a controller for whose conduct you are responsible;
    - (3) breach of laws or regulations relating to:
      - (aa) immigration;
      - (bb) pollution by oil or other hazardous or noxious or polluting substances; or
      - (cc) export or import of any cargo, equipment or conveyance.
- (i)
  - (1) physical loss of and damage to third party property;
  - (2) death, bodily injury or illness (including hospital, medical and funeral expenses) of any third party;
  - (3) consequential loss arising from (1) and (2) above; provided that such third party liabilities are non contractual, and from your fault or negligence.

### Rule 3 Exclusions and qualifications applicable to Rule 2

#### 3.1 Application

Your insurance under Rule 2 is subject to the provisions of Rules 3 and 13.

#### 3.2 Claims made

You are only insured if the risk arises directly from:

- (a) a claim first made or intimated to you and notified to the Managers during the period of insurance; or
- (b) a claim made against or intimated to you after the period of insurance, arising out of circumstances notified to the Managers during the period of insurance as circumstances which might give rise to such a claim.

#### 3.3 Negligence and Liability under Statute

You are insured under Rule 2(a) for negligent performance of the insured services shown on your certificate of entry irrespective of the operation of any statute which provides for strict liability but only to the extent that you have been negligent.

#### 3.4 Loss of or damage to property

You are not insured in respect of any risk arising from the loss of or damage to any property which is:

- (a) owned, leased, operated or used by you or on your behalf;
- (b) in your care, custody or control other than expressly provided for under Rule 2.

#### 3.5 Indemnities and obligations

You are not insured in respect of any risk that you incur as a result of:

- (a) any indemnity given by you or agreement not to rely on any defence or limitation of liability except as provided for in Rule 2 (h) (iv), or
- (b) any liability arising from any contractual obligation undertaken by you which imposes on you a higher duty than to perform your services with reasonable skill and care, or that would otherwise be implied by law.

#### 3.6 Protection of rights to cargo, equipment or conveyance

You are insured under Rule 2 (h) (i) provided that if you have, or acquire, any rights in relation to the cargo, equipment or conveyance;

- (a) such rights shall not be surrendered, transferred or otherwise disposed of without the prior written approval of the Managers; and
- (b) the value of such rights shall be deducted from any claim against the Club or paid to the Club by you.

#### 3.7 Customs bonds and guarantees

You are not insured for any risk arising directly or indirectly as a result of your customs bond or guarantee being made available to a third party otherwise than in relation to assistance provided by the third party to you or by you to the third party in respect of your insured services.

### **3.8 Failure to commence, or abandonment of, or delay in performance of any service**

You are not insured for any risk that you incur arising from the failure to commence, or abandonment of, or delay in the performance of any service except where you perform the service as agent to a principal.

### **3.9 Costs insured**

If the liability insured under Rule 2 exceeds the deductible applicable to such liability, then you are insured for the following costs incurred by you provided they relate to such liability:

- (a) investigating the occurrence and protecting your interests in relation to such liability (for example, the fees of a lawyer, surveyor or expert);
- (b) avoiding or minimising such liability;
- (c) replacing or restoring lost or damaged documents or computer records which are insured under Rule 2 (d);
- (d) disposing of damaged or worthless cargo;
- (e) complying or attempting to comply with an order by an authority, in respect of any of the matters for which you are insured under Rules 2 (h) (i), (ii), (iii) and 2 (h) (v) (3) (bb).

### **3.10 Approval of costs**

You are not insured for costs unless the Managers have agreed that they be incurred or the Directors decide that they were properly incurred.

### **3.11 Disposal costs**

**3.11.1** You are not insured for the costs of disposing of damaged or worthless cargo unless:

- (a) such costs were incurred during the period of insurance; and
- (b) there is no reasonable prospect of recovery, or further recovery, from any other person.

**3.11.2** The amount recoverable for costs of disposing of damaged or worthless cargo is limited to the costs of disposal less any costs saved as a result of such disposal.

## Part 3 Cargo and related liabilities

### Rule 4 Liability insurance – physical loss of or damage to cargo

In the normal course of performing the insured services shown in your certificate of entry for this Rule, you are insured for:

- (a) your liability for physical loss of or damage to cargo;
- (b) your liability for consequential loss resulting from physical loss of or damage to cargo;
- (c) costs in relation to your liabilities insured under (a) or (b) above.

### Rule 5 Errors and omissions insurance for transport operators

In the normal course of performing the insured services shown in your certificate of entry for this Rule, you are insured for your liability for financial loss incurred by your customer arising from:

- (a) delay in performing your contractual obligations;
- (b) delivery of cargo contrary to your contractual obligations;
- (c) failure to perform your contractual obligations – except for that financial loss arising from physical loss of or damage to cargo or property;
- (d) your liability for physical loss of or damage to cargo to the extent that it is incurred or increased by an incorrect statement in, or omission from, your bill of lading or other contract of carriage or handling documentation;
- (e) costs in relation to your liabilities insured under (a) to (d) above.

### Rule 6 Third party liabilities

In the normal course of performing the insured services shown in your certificate of entry for this Rule, you are insured for:

- (a) your non-contractual liability for physical loss of or damage to third party property and consequential loss resulting from such loss or damage;
- (b) your non-contractual liability for death, bodily injury or illness (including hospital, medical and funeral expenses) of any third party and consequential loss resulting from such death, injury or illness;
- (c) your contractual liability to compensate another person, other than yourself or a Joint Member, for third party liabilities that he incurs, where you incur such liability solely by reason of one of the following:
  - (i) a contract for the lease or sale to you of equipment for use in your insured services;
  - (ii) a contract with your subcontractor;
  - (iii) a contract with your joint service partner;
- (d) your contractual liability to compensate your subcontractor or joint service partner for physical loss of or damage to his property, including consequential loss arising from such loss or damage, where you incur such liability solely by reason of your contract with him;
- (e) costs in relation to your liabilities insured under (a) to (d) above.

### Rule 7 Liabilities for fines, penalties and duty

In the normal course of performing the insured services shown in your certificate of entry for this Rule, you are insured for the following risks arising from a breach of any of the regulations set out in (e) below:

- (a) your liability for fines or other penalties imposed by an authority on you or any person acting on your behalf;
- (b) your liability for customs duty, sales or excise tax or similar fiscal charges which are imposed by an authority on you or any person acting on your behalf; and which would not have been payable but for the breach of any regulations at (e);
- (c) your liability arising from confiscation by an authority of any property belonging to a third party;
- (d) costs in relation to your liabilities insured under (a) to (c) above.
- (e) The regulations referred to in this Rule 7 are those made by an authority relating to:

- (i) import or export of any cargo;
- (ii) import or export of any conveyance or equipment;
- (iii) immigration;
- (iv) safety of working conditions;
- (v) pollution, but only where it arises from physical loss of or damage to cargo or equipment.

### **Rule 8 Exclusions and qualifications applicable to Rules 4, 5, 6 and 7**

#### **8.1 Application**

Your insurance under Rules 4, 5, 6 and 7 is subject to the provisions of Rules 8 and 13.

#### **8.2 Claims made or claims occurring**

Your certificate of entry will specify the basis of your cover under Rules 4, 5, 6 and 7. If not so specified you are only insured if the risk arises directly from:

- (a) a claim first made or intimated to you and notified to the Managers during the period of insurance; or
- (b) a claim made against or intimated to you after the period of insurance, arising out of circumstances notified to the Managers during the period of insurance as circumstances which might give rise to such a claim.

#### **8.3 Law and customer contracts**

You are only insured under Rules 4 and 5 if your liability arises by virtue of any of the following:

- (a) any international transport convention or national transport law which imposes on you a compulsorily applicable regime of liability in respect of the carriage in question; or
- (b) any contract approved by the Managers as set out in your certificate of entry.

Note: If you seek to rely on a defence or limitation of liability provided for in any convention, law or contract referred to in this Rule, but a competent court or tribunal decides that you are not entitled to do so, you will be insured against the resulting liability, subject always to the terms and conditions of your insurance.

#### **8.4 Declared value and incorrect documentation**

You are not insured to the extent that your liability is incurred or increased by:

- (a) a declaration of value by your customer; or
- (b) package/unit enumeration in your subcontractor's bill of lading\* which fails to correspond with the enumeration in your bill of lading\*  
\*or other contract of carriage or handling documentation

#### **8.5 Valuable cargoes**

**8.5.1** Unless specifically included in your certificate, you are not insured for liabilities:

- (a) in respect of cargoes of bullion, precious stones, precious jewellery, precious metal, or cash/securities; or
- (b) arising from unexplained losses discovered on inventory/stocktaking.

**8.5.2** Unless otherwise stated in your certificate, a special limit of US\$100,000 each occurrence applies to claims in respect of:

- processed tobacco/tobacco products
- bottled spirits or wines
- precious stones/precious jewellery/precious metal
- valuable works of art
- thoroughbred horses
- computers/handheld electronic products/mobile telephones (and electronic components of these).

**8.5.3** For the purposes of Rule 8.5.2, two or more consignments of such cargoes consolidated in the same item of carrying equipment or stored in one warehouse or depot will be treated as one consignment.

### 8.6 Personal effects

You are only insured for your liability in respect of personal effects if:

- (a) you could not, with the exercise of reasonable care, have known the consignment consisted of personal effects; or
- (b) your customer is a transport operator; or
- (c) you specifically offer in writing to arrange cargo insurance.

### 8.7 Incorrect completion of bills of lading

To the extent that your liability is incurred or increased by an incorrect statement in, or omission from, your bill of lading or other contract of carriage or handling documentation, you are not insured under Rule 4.

Note: In certain circumstances you may be insured for such liability if you are insured under Rule 5.

### 8.8 Delay and operational loss

You are not insured under this Rule:

- (a) to the extent that your liability for delay is increased by special instructions by your customer; or
- (b) for your own operational loss

### 8.9 Subcontracting in certain territories

You are only insured for liabilities in respect of cargo destined for: Afghanistan, Iran, Iraq, Lebanon, Syria, Yemen (entire territory), all countries in Africa and all countries in the Commonwealth of Independent States (CIS) if:

- (a) you subcontract the carriage under a single contract which covers at least the same period of responsibility as your contract – for example a “back-to-back” bill of lading,
- (b) your subcontractor is not your agent.

### 8.10 Special limit of liability applicable to claims under Rule 5

A special limit of liability for claims under Rule 5 will apply as stated in your certificate of entry. If, for any reason, it is not so stated, the total limit of liability under Rule 5 each account year will be US\$50,000 (or the equivalent in other currencies).

### 8.11 Chassis and trailers in USA and Canada

You are not insured for any risk arising out of an occurrence in the USA or Canada involving a chassis or trailer which is owned or leased by you for use on public roads.

### 8.12 Equipment

You are not insured for any liability that you incur:

- (a) in respect of your carrying or handling equipment leased to someone else, other than your joint service partner for use in the joint service; or
- (b) in respect of your carrying or handling equipment used with your consent by someone else; or
- (c) in respect of loss or damage to your carrying or handling equipment.

### 8.13 Limit of Liability

In the event that it is held in any court or tribunal that under the applicable law anyone, other than you, or a named Joint Member, using or legally responsible for the use of any carrying or handling equipment, is entitled to be insured under this insurance, then the general limit of liability in respect of such claim or claims will not exceed the minimum insurance requirements under the applicable law for injury to or death of a person or damage to property.

### 8.14 **Transfer of interest in equipment**

You are not insured for any liability that you incur in respect of an item of equipment after your interest in it has been transferred to another person under a contract of sale.

### 8.15 **Insured locations**

You are not insured for any risk you incur as the owner or lessee of land or buildings unless the locations are specifically noted as being insured locations in your certificate of entry.

### 8.16 **Air carriage of restricted articles**

You are not insured for any third party liabilities that you incur arising out of the carriage by air of "Dangerous Goods" as defined in the IATA regulations.

### 8.17 **Customs bond and claims from authorities**

**8.17.1** You are not insured for any liability or confiscation which results from your making your customs bond or guarantee available to another operator unless this arises in relation to:

- (a) customs clearance of cargo which you perform as part of your insured services; or
- (b) your provision of insured services to the operator.

**8.17.2** You are not insured for liabilities to authorities which you incur as an indirect declarant or fiscal representative.

### 8.18 **Costs insured**

If the liability insured under Rules 4, 5, 6 and 7 exceeds the deductible applicable to such liability, then you are insured for the following costs incurred by you, provided they relate to such liability:

#### **Investigations and defence**

- (a) investigating an occurrence which may give rise to a claim and protecting your interests in relation to it (including legal and survey fees) – including the costs of recovering a debt if payment is withheld solely because of a claim against you for which you are insured by the Club.

#### **Mitigation**

- (b) avoiding or minimising such liability;

#### **Disposal**

- (c) disposing of cargo following an accident to it;

#### **Quarantine and disinfection (including fumigation)**

- (d) quarantine, fumigation or disinfection arising other than in the normal course of business;

#### **Misdirection**

- (e) sending to the correct destination cargo that has been misdirected subject to such costs exceeding US\$1,000 (or equivalent in other currencies) calculated as in Rule 8.22 below;

#### **General Average and Salvage**

- (f) meeting cargo's contribution in general average or salvage for which you are liable and which you are unable to recover from your customer;

#### **Uncollected Cargo**

- (g) extra costs incurred solely by the total failure of the consignee to collect or remove cargo at the place of delivery; less
  - (i) costs which you would have incurred in any event;
  - (ii) proceeds from the sale of cargo;
  - (iii) sums which you can recover from anyone else.

#### **Completion of carriage**

- (h) costs, additional to costs which you would have incurred in any event, incurred to complete your contractual obligation to transport the cargo to the place of delivery and arising solely by reason of the failure of your subcontractor (or a person acting on his behalf) to pay (or pay promptly) his debts.

- 8.19 Approval of costs**  
You are not insured for the costs set out in Rule 8.18 (a) to (e) and (g) to (h) unless the Managers have agreed that they be incurred or the Directors decide that they were properly incurred.
- 8.20 Investigation and defence Limits**
- 8.20.1** Costs incurred by you, or by the Club on your behalf, in investigating or protecting your interests in relation to an occurrence are subject to the Club's limit of liability applicable to the risks arising from such occurrence, except that the limit of liability for costs in relation to Rules 8.18 (g) and (h) will be restricted to US\$25,000 each occurrence and in the aggregate each account year.
- 8.20.2** Claims for costs of avoiding or minimising a liability are subject to both the Club's limit of liability and deductible that would have applied if the claim had not been avoided or minimised.
- 8.21 Disposal costs**
- 8.21.1** You are not insured for the costs of disposing of damaged or worthless cargo unless such costs were incurred during the period of insurance and there is no reasonable prospect of recovery, or further recovery, from any other person.
- 8.21.2** The amount recoverable for costs of disposing of damaged or worthless cargo is limited to the costs of disposal less any costs saved as a result of such disposal.
- 8.22 Calculation of misdirection costs**
- (a) The costs incurred by you in sending to the correct destination cargo that has been misdirected are to be calculated as follows:
- (i) the costs of transporting the cargo from the place at which you originally received it ("place of receipt") to the place which it was misdirected ("incorrect destination"), plus
  - (ii) the costs of transporting the cargo from the incorrect destination to its correct place of delivery, less
  - (iii) the freight and other charges due to you for the transport of that cargo.
- (b) The cargo will not be transported by air from the incorrect destination to the correct place of delivery unless:
- (i) the transport from the place of receipt to the correct place of delivery was agreed to be by air, or
  - (ii) the Managers so agree.
- 8.23 General average and salvage guarantees**
- (a) In addition to the insurance under Rule 8.18 (f) the Club will assist you to obtain the release of the cargo from any person who is entitled to lien it for general average or salvage contributions.
- (b) The Club will usually give such assistance either by arranging with the cargo underwriters that they give, or by itself giving, a guarantee to the person entitled to such lien.
- (c) Where the Club gives a guarantee, you must obtain a completed valuation form for the cargo and, prior to delivery of the cargo, obtain from the consignee or his cargo underwriters counter-security that is acceptable to the Club.

## Part 4 Ancillary insurances

### Rule 9 Inability of ship agents to recover port disbursements

**9.1** You are insured against loss resulting from your inability to recover from your principal the amount of any freight tax, berthing dues or other disbursements, but not your own fees or overheads, reasonably incurred by you during the period of insurance whilst acting as a ship agent.

**9.2** Your insurance under Rule 9.1 is subject to the provisions of Rule 13 and the following exclusions and qualifications:

#### **9.2.1 Liner operators, laid-up or scrapped ships**

You are not insured for any loss incurred:

- (a) on behalf of the operator of a liner service; or
- (b) in relation to a ship which is laid up or proceeding to lay-up or demolition.

#### **9.2.2 Funds in advance and recourse**

You are only insured if you satisfy the Directors that:

- (a) before you incurred any disbursements you procured sufficient funds in advance from your principal to meet all disbursements likely to be incurred; and
- (b) where you have incurred additional disbursements, which could not reasonably have been anticipated in time to procure funds in advance, you took all reasonable steps to obtain payment or security from your principal before the ship concerned sailed from the jurisdiction in which such disbursements were incurred; and
- (c) you diligently pursued your rights of recourse against your principal to the point where there is no reasonable prospect of recovery or further recovery.

#### **9.2.3 Special limit of liability**

**9.2.3.1** A special limit of liability for claims under Rule 9.1 will apply as stated in your certificate of entry. If, for any reason it is not so stated, the total limit of liability under Rule 9.1 each account year will be US\$50,000 (or the equivalent in other currencies).

**9.2.3.2** For the purposes of the limit of liability for a claim under Rule 9.1 all losses in respect of disbursements incurred in relation to a single call at any port or place will be treated as arising from one occurrence.

### Rule 10 Additional legal expenses insurance and debt collection

**10.1** In the normal course of performing the insured services shown in your certificate of entry for this Rule, you are insured for costs incurred during the period of insurance in collecting any debt, or in pursuing or defending any claim, provided the Managers are notified within twelve months of the debt or claim arising, but not including costs incurred in relation to any risk which is insured under any other Rule, or which would be insured under any other Rule but for the operation of any deductible, franchise, co-insurance provision, limit of liability, exclusion, condition or qualification which is applicable.

**10.2** Your insurance under Rule 10.1 is subject to the provisions of Rule 13 and the following exclusions and qualifications.

#### **10.2.1 Minimum sum in dispute**

You are only insured if the sum in dispute exceeds the minimum specified in your certificate of entry. If, for any reason it is not so stated, the minimum sum in dispute will be US\$3,500 (or the equivalent in other currencies).

### 10.2.2 Approval of costs

You are not insured for costs unless the Managers have agreed that they be incurred.

### 10.2.3 Costs excluded

You are not insured in respect of the following:

- 10.2.3.1 costs incurred in relation to any dispute between you and:
- (a) a customer in relation to the collection of freight and other charges owed to you or your principal;
  - (b) any tax or licensing authority;
  - (c) your legal or financial advisers;
  - (d) any of your directors or employees; or employees of your sub-agents or subcontractors;
  - (e) any trade organisation to which you belong;
  - (f) the Club or Managers or any of their employees or agents;
  - (g) any joint venture partner;
  - (h) any other provider of goods and services not directly related to your performance of the insured services.
- 10.2.3.2 costs incurred in relation to any actual or alleged violation of any penal statute or regulation;
- 10.2.3.3 costs incurred in relation to any dispute with your customer or principal as to the reconciliation of accounts on termination of your services or your customer or principal becoming insolvent.
- 10.2.3.4 costs incurred in relation to any claim by you for libel and slander.

### 10.2.4 Property

You are only insured for costs incurred in relation to any claim for loss of, damage to, or loss in connection with property owned by you or in your possession if you satisfy the Directors that you have taken reasonable steps to protect your interest in such property by insurance and that such costs are not recoverable under such insurance.

### 10.2.5 Costs of recovering monies advanced or remuneration for services rendered

You are only insured for costs incurred in relation to claims for monies advanced by you, remuneration for services rendered by you, or financial loss arising out of the rendering of such services if you satisfy the Directors that:

- (a) you took reasonable steps to establish that the financial standing and business reputation of your customer were satisfactory before you agreed to render him any services; and
- (b) the extent of any credit given by you to such other person was reasonable; and
- (c) any obligation incurred by you on behalf of such person was prudent and reasonable; and
- (d) you took reasonable steps where appropriate, to obtain payment in advance or satisfactory security; and
- (e) you did not render services beyond the scope usually provided by a person acting in the same capacity as you.

### 10.2.6 Contractual claims

You are only insured for costs incurred in relation to any claim in contract, other than a claim referred to in Rule 10.2.5, if you satisfy the Directors that it was prudent and reasonable to enter into such a contract.

### 10.2.7 **Weak claims and defences**

If, in the opinion of the Managers, the claim being pursued by you is likely to fail or the claim being defended by you is likely to succeed, or the claim cannot be pursued or defended without the expenditure of costs that are disproportionate to the amount of such claim or the prospects of success, or any such claim is capable of being and ought to be settled, the Club may by notice to you terminate your insurance under Rule 10.1 in respect of that claim, provided always that your rights in respect of costs incurred before such termination will not be prejudiced.

### 10.2.8 **Average**

In the event that any dispute or debt to be collected includes items which are not incurred in the normal course of performing the insured services or which are specifically excluded under this Rule, the Managers may, at their sole discretion, agree to assist in the collection of the uninsured portion of the claim, subject to the costs being apportioned accordingly between you and the Club.

### 10.2.9 **Approval of settlements**

You shall not settle or compromise any claim or proceedings without the prior approval of the Managers, or without complying with the Managers' requirements regarding the recovery of any costs or expenses insured by the Club. In the event you settle or compromise without such approval or without complying with any such requirement, the Club may by notice to you terminate your insurance under Rule 10.1 in respect of that claim and you shall become liable to repay to the Club all of the costs and expenses paid or reimbursed by the Club or such proportion of those costs and expenses as the Directors in their discretion shall determine.

## **Rule 11 Discretionary insurance**

**11.1** In addition to the insurance you have under any other Rule, you are insured, if and to the extent that the Directors so decide, for any risk that you may incur:

**11.1.1** which is, in the opinion of the Directors, similar or incidental to the provision of the insured services specified in your certificate of entry and within the scope of the cover provided by the Club including, but not limited to, any ex gratia payment properly and reasonably made in the normal course of your business;

**11.1.2** in defending your interests or in obtaining redress in respect of any interference by an international organisation or authority which the Directors consider to be unwarranted or to require investigation;

**11.1.3** by special direction of the Club at the behest of the Directors in the interests of the Club or its Members.

## **Rule 12 Other Insurances**

The Managers may agree, by way of an endorsement to your certificate of entry, to insure you in respect of other risks in relation to the services provided by you.

## Part 5 General conditions and exclusions

### Rule 13

#### General conditions and exclusions

##### 13.1

##### **Application**

The provisions of this Rule 13 will apply to all insurances provided by the Club.

##### 13.2

##### **Dishonest, intentional or reckless conduct**

You are not insured (unless the Directors otherwise decide) for any risk arising directly or indirectly from:

- (a) your own dishonest act or omission or that of any employee or other person for whose conduct you are liable except as provided for in Rule 2 (b);
- (b) your own intentional or reckless act or omission or that of any employee or other person for whose conduct you are liable.

##### 13.3

##### **Ship, craft or aircraft**

You are not insured (unless otherwise agreed in writing by the Managers) for any risk arising directly or indirectly from the navigation, removal, disposal, marking of the wreck, operation or management of any ship, craft or aircraft which is owned, chartered or leased by you or on your behalf.

##### 13.4

##### **Employers' liability**

You are not insured for any risk arising directly or indirectly from:

- (a) the breach of any obligation owed by you as an employer to your employees;
- (b) the death, bodily injury or illness of any person employed or seconded to you or any sub-agent or subcontractor

##### 13.5

##### **Road and other vehicles**

You are not insured for any risk arising directly or indirectly from the ownership, lease, operation or use of any road vehicle or (unless otherwise agreed in writing by the Managers) any other means of transport.

##### 13.6

##### **Products liability**

You are not insured for any risk arising directly or indirectly from the manufacture, construction, alteration, repair, servicing, installation, maintenance or treating of any goods or products sold, supplied or distributed by you or your sub-contractor even though these activities might be carried on by you in conjunction with the services specified in your certificate of entry as being insured services.

##### 13.7

##### **Senior and Joint Members**

You are not insured for any risk arising directly or indirectly from any claim by the Senior Member against any other Joint Member or by a Joint Member against the Senior or another Joint Member.

##### 13.8

##### **Associated, parent or subsidiary companies**

You are not insured (unless otherwise agreed in writing by the Managers) for any claim made against you by any associated, parent or subsidiary company or by any person or entity having a financial or executive interest in your operation.

##### 13.9

##### **Double insurance**

If you are insured by the Club and another insurer for the same risk, your insurance with the Club will exclude any claim if, and to the extent that, it is, or would be, recoverable from such other insurer.

### 13.10 Insured services

You are not insured where, in providing insured services, either directly or through your subcontractors, you incur a risk, and such risk also arises from a service provided by you for which you are not insured.

### 13.11 Extension of credit

You are not insured for any risk arising directly or indirectly from the extending of credit except as provided for in Rules 8.18 (a), 9 and 10.

### 13.12 Failure to pay or collect debts

You are not insured for any risk arising directly or indirectly from your, your sub-agent's or your subcontractor's inability or failure promptly or at all to pay or collect money for your own account except as provided for in Rules 8.18 (a), 9 and 10.

### 13.13 Insolvency

You are not insured for any risk if, and to the extent that, it arises or results from your, your sub-agent's or your subcontractor's insolvency, trading whilst insolvent or any other financial default.

### 13.14 Salvage and residual value

The amount of any claim will be reduced by:

- (a) the proceeds of any salvage that you receive or to which you are entitled;
- (b) your interest in the residual value (if any) of the subject matter of the claim.

### 13.15 Radioactive and nuclear risks

You are not insured for any loss, damage, liability or expense directly or indirectly caused by, or contributed to by, or arising from:

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or nuclear assembly or nuclear components thereof;
- (c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.
- (e) any chemical, biological or electromagnetic weapon.

### 13.16 Pollution

You are not insured for any risk arising from pollution:

- (a) caused by an occurrence which takes place outside the period of insurance; or
- (b) in respect of which a claim is made against you more than twelve months after the date of the occurrence which caused the pollution; or
- (c) which is not sudden, unintended and unexpected; or
- (d) if you are not aware of the pollution within seven days after it has occurred, or first occurred, unless the pollution arises from cargo not in your possession.

### 13.17 Waste

You are not insured for any risk arising out of the following operations performed or permitted by you:

- (a) land fill;
- (b) the operation or use of a dump site;
- (c) disposing of waste, other than the carriage, handling or storage of cargo prior to its disposal.

- 13.18 Dangerous cargoes**  
You will use your best endeavours to ensure compliance with all relevant regulations relating to the carriage, handling and storage of dangerous cargoes.
- 13.19 Dredging operations**  
You are not insured for any risk arising out of:
- (a) dredging operations, whilst such operations are being performed;
  - (b) the dumping of spoil.
- 13.20 Illegal trading**  
You are not insured for any risk arising from the handling, storage or carriage of cargo in an illegal trade; or cargo which is contraband, except as provided for in Rule 2 (h) (v) (2).
- 13.21 Punitive or exemplary damages and liquidated damages or contractual penalties**  
You are not insured for:
- (a) punitive, exemplary or multiple damages;
  - (b) any risk arising directly or indirectly from any contractual penalty or liquidated damages awarded against you or a person for whose conduct you are liable.
- 13.22 Fines and penalties**  
Except as provided for in Rules 2 (h) (v) and 7, you are not insured for any risk which arises, either directly or indirectly, from the imposition upon your principal, you, your employee or any person acting on your behalf by any authority, of any fines, penalties, customs duties, sales or excise tax or similar fiscal charges in respect of any breach or contravention of any laws, rules or regulations. Such laws, rules or regulations include, but are not limited to, those relating to:
- (a) a liner conference; or
  - (b) competition or a competition agreement; or
  - (c) a freight tariff or other similar agreement registered or which should be registered with a regulatory body or authority; or
  - (d) the structure or operation of your business or that of any person acting on your behalf.
- 13.23 Cash and negotiable instruments**  
You are not insured for any risk you incur in respect of the loss of cash or negotiable instruments (unless otherwise agreed in writing by the Managers).
- 13.24 War and civil war, etc**  
You are not insured for any risk directly or indirectly caused or contributed to by war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, acts of terrorism or sabotage, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalisation or requisition or destruction of or damage to property by or under the order of any authority.
- 13.25 Strikes**  
You are not insured for any risk arising from strikes, riots, civil commotions, lockouts, stoppages and/or restraints of labour of whatsoever nature or kind whether partial or general and whether or not involving your employees.
- 13.26 Rights of recourse**  
It is a condition of this insurance that, unless the Managers otherwise agree in writing, you will preserve all rights of recourse.

- 13.27 Distribution of Third Party Recoveries**  
It is a condition of this insurance that amounts recovered from third parties in respect of a claim will be credited to the Club to the full extent of its liability in respect of such claim (including the costs of making the recovery); any balance will be credited to you to the extent of any amount borne by you in respect of such claim; any excess will be distributed equitably between the Club and you, taking into account amounts paid/incurred and the relevant dates.
- 13.28 Paperless trading**  
You are insured, subject to all other terms of your certificate of entry, for risks insured under this insurance arising from your participation in the Bolero system, and in any other system of paperless trading documentation approved by the Managers and entered into your certificate of entry.
- 13.29 Occupiers liability**  
You are not insured for any risk arising directly or indirectly from the condition or maintenance of any land, building or structure owned, leased or occupied by you.
- 13.30 Supervision and control**  
Unless the Directors otherwise decide, your insurance is subject to your satisfying the Directors that the liability did not arise from a failure by you to take reasonable steps to establish proper systems and controls to exercise proper supervision.
- 13.31 Sanctions clause**  
You are not insured to the extent that the provision of such cover would expose the Club to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.
- 13.32 Asbestos**  
You are not insured for any risk directly or indirectly caused or contributed to by the actual, alleged or threatened presence of or exposure to asbestos in any form whatsoever.
- 13.33 Unexplained losses**  
You are not insured for liabilities arising from unexplained losses discovered on inventory / stocktaking.

## Part 6 Entry and period of insurance

### Rule 14

#### Entry

##### 14.1

##### **Applications**

If you wish to enter for insurance in the Club you shall apply for such entry in such form as may from time to time be required by the Managers and shall furnish such information to the Club concerning your business as may be required by the Managers and all other information and particulars which may be material to your application for insurance.

##### 14.2

##### **Warranty**

All particulars and information given by you in the course of applying for insurance shall, if your entry is accepted, be deemed to form part of the contract of insurance between you and the Club and it shall be a condition precedent of such insurance that all such particulars and information are true so far as the same are within your knowledge or could have been ascertained by you with reasonable diligence.

##### 14.3

##### **Certificate of entry**

As soon as reasonably practical after the acceptance of any such application the Managers shall issue a certificate of entry which (subject to any special terms upon which you may be entered) shall state:

- (a) your name or in the case of a joint entry the names of the Senior Member and the other Joint Members;
- (b) the period of insurance;
- (c) the insured services provided by the firm;
- (d) the risks against which the firm has been entered for insurance in the Club;
- (e) the limits of liability of the Club and any deductible to which the insurance is subject;
- (f) any special conditions attaching to the insurance;
- (g) the advance premium payable and/or any special terms as to premium;
- (h) the currency in which premium is calculated and which shall be the currency in which transactions between you and the Club are conducted, subject to the provisions of Rule 21.5.

##### 14.4

##### **Subject to Rules**

The terms and conditions upon which you are accepted for insurance in the Club including those relating to the nature and extent of the risks covered and the premium payable by you, shall be those set out in the Rules but subject to such variations, within the scope of these Rules, as may be agreed between you and the Managers and as set out in your certificate of entry.

##### 14.5

##### **Variation of cover**

If at any time the Managers agree to vary the terms and conditions upon which you are insured, 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.

##### 14.6

##### **Contract of insurance**

Every certificate of entry issued by the Club shall (except in the case of manifest error) be conclusive evidence of insurance between you and the Club.

##### 14.7

##### **Refusal of application**

The Club may in its absolute discretion, and without giving any reason therefore, refuse an application by any person to enter a firm for insurance in the Club.

### Rule 15

#### Membership of the Club

##### 15.1

##### **Becoming a Member**

Upon acceptance of your application for entry, subject to the Memorandum and Articles of Association of the Club, you become a Member of the Club.

##### 15.2

##### **Joint Members – liability for payments**

Where two or more firms are the subject of the joint entry the Senior Member and each Joint Member shall be jointly and severally liable to pay all premium and other sums due to the Club in respect of such entry, and payment by the Club to the Senior Member or any other Joint Member shall be deemed to be the receipt by the Senior Member and all Joint Members jointly and shall fully discharge the obligations of the Club in respect of such payment.

##### 15.3

##### **Joint Members – disclosure**

Failure by the Senior Member or any other Joint Member to disclose material information within his knowledge shall be deemed to be failure of the Senior Member and all the Joint Members.

##### 15.4

##### **Joint Members – conduct**

Conduct of the Senior Member or any other Joint Member which would have entitled the Club to decline to indemnify him shall be deemed to be the conduct of the Senior Member and all the Joint Members.

##### 15.5

##### **Joint Members – termination of membership**

Where two or more firms are the subject of a joint entry, termination of the insurance of the Senior Member or of any other Joint Member will automatically terminate the insurance of the Senior Member and all of the Joint Members unless otherwise agreed by the Managers.

##### 15.6

##### **Communications**

Unless the Managers have otherwise agreed in writing, all communications from or on behalf of the Club shall in the case of a joint entry be sent to the Senior Member named on the certificate of entry and shall be deemed to be made to and within the knowledge of all the other Joint Members and any communication from such Senior Member to the Club or to the Managers and any agreement made with or consent given to the Club or the Managers by such Senior Member shall be deemed to have been made or given with the full approval and authority of all the other Joint Members named on the relevant Member's certificate of entry.

### Rule 16 Period of insurance and notice of termination

#### 16.1 Period of insurance

Subject as otherwise provided for in these Rules, or as may be agreed between you and the Managers and stated in your certificate of entry, any insurance provided by the Club shall be for a complete policy year and shall continue from policy year to policy year thereafter, unless terminated in accordance with the Rules.

16.2 Where the Managers agree that your period of insurance is to be a period of twelve months commencing part of the way through a policy year and continuing into the next policy year, you shall be treated for the purposes of these Rules as being insured during the first such policy year so that your liability to pay premium shall be determined by reference to the first such policy year.

#### 16.3 Amendments to Rules

If any alteration or addition to these Rules has been made, the Managers shall give you notice in writing of such alteration or addition at least 60 days before the commencement of the policy year in which the alteration or addition was made and such amendment or addition shall only take effect from the commencement of your next period of insurance. You may give the Managers notice in writing at least 30 days before the end of the period of insurance that your insurance with the Club shall cease at the end of the then current period of insurance.

#### 16.4 Renewal

At any time prior to the expiry of a period of insurance the Managers may require you to provide such information concerning your business as may be required by the Managers and, after receiving such information, the Managers may at any time prior to expiry of your current period of insurance notify you that a change is required in the terms and conditions of your insurance with effect from the start of the following period of insurance.

If no agreement has been reached between you and the Managers in relation to such change within 90 days of the expiry of the current period of insurance, then your insurance will cease with effect from the expiry of that period of insurance or such other date as the Managers may decide. Pending either agreement between you and the Managers as to the new terms and conditions of the insurance, or termination of the insurance in accordance with the provisions of this Rule, you will be held covered on the terms of the last-issued certificate of entry, subject to the payment of any amounts which the Managers may in their discretion require.

#### 16.5 Termination of insurance by the Club

The Directors may, not less than 60 days before the end of the period of insurance and without being obliged to give any reasons therefore, give you notice in writing that your insurance with the Club shall cease at the end of your current period of insurance and you shall cease to be insured by the Club with effect from the end of such period of insurance.

#### 16.6 Termination of insurance by the Member

Not later than 30 days before the end of your current period of insurance, you may give the Managers notice in writing that your insurance shall cease at the end of such period of insurance and, you shall cease to be insured by the Club with effect from the end of such period of insurance.

#### 16.7 Variation of time limits

Subject to the agreement of the Managers in writing other periods may be substituted for those specified in Rule 16.2, 16.3 and 16.4 above.

16.8 This Rule 16 is without prejudice to the provisions of Rules 17, 18 and 19.

### Rule 17

#### Disclosure obligations

##### 17.1

##### **Non-disclosure of material information**

You are under a duty to ensure that any material information contained in any application for insurance by a firm (or by two or more firms jointly) or given to the Club at any time during the negotiations leading to the issue of any certificate of entry or any endorsement thereon is in all material respects complete and accurate.

##### 17.2

##### **Continuing obligations**

You shall notify the Club in writing forthwith of:

- (a) any material change in, or addition to, the information given to the Club pursuant to Rule 17.1;
- (b) any merger, amalgamation or division affecting the insured firm or firms or the insured services;
- (c) the opening or closing of any office premises of the insured firm or firms from which the insured services have been or will be carried on;
- (d) the occurrence of any of the matters listed in Rule 18.1;
- (e) any other matter which it would be appropriate for you (as an insured) to disclose to the Club (as the insurer) from time to time.

##### 17.3

##### **Effect of non-disclosure of material information**

If the Directors discover that you have failed to comply with your obligations under this Rule 17 they may (without prejudice to the provisions of Rules 18 and 19) treat the insurance as void and unenforceable by you in relation to any claim whatsoever or they may give notice to you terminating the insurance with effect from a specified date (whereupon the provisions of Rule 19.1 shall apply as if there had been a cesser of insurance under Rule 18.3) or they may at their discretion reject any claim, which is in any way related to circumstances which ought to have been disclosed or are the subject of inaccurate or misleading information and impose such other conditions on the continuance of your insurance as may be notified.

### Rule 18

#### Cesser of insurance

##### 18.1

##### Events leading to automatic cesser of insurance

You shall cease to be insured by the Club if:

- (a) being a partner in a firm:
  - (i) such firm is dissolved save as a result of the retirement or death of any partner;
  - (ii) such firm ceases to carry on all of its insured services;
  - (iii) an application is made for the dissolution of such firm by the court;
  - (iv) an application is made for the appointment by the court of a receiver of such firm;
  - (v) a receiving order or winding up order is made against such firm;
  - (vi) such firm makes any composition or arrangement with its creditors generally;
  - (vii) you cease to be a partner in such firm;
- (b) being an individual partner in a firm or being an individual who is the sole proprietor of a firm:
  - (i) such firm ceases to carry on all of its insured services;
  - (ii) such individual is declared bankrupt;
  - (iii) such individual enters into a voluntary arrangement or composition with his creditors;
  - (iv) such individual dies or is declared mentally unsound;
- (c) being a company:
  - (i) such company is dissolved or ceases to carry on its insured services;
  - (ii) such company passes a resolution or has an order made for the winding up of the company;
  - (iii) such company makes any composition or arrangement with its creditors;
  - (iv) such company has a receiver, administrative receiver, or administrator appointed over its assets or undertaking;
  - (v) such company commences or has commenced against it proceedings under any bankruptcy or insolvency laws in any jurisdiction or otherwise seeks protection against its creditors.
- (d) your insurance is terminated in accordance with Rule 16.

##### 18.2

##### Cesser of insurance at option of Club

The Directors may in their discretion determine that you shall cease to be insured by the Club upon such date as they notify to you in writing (being not less than fourteen days after the date of the notice) if the Club is notified under Rule 17.2 of any matter which the Directors consider in their absolute discretion significantly adversely affects the nature of the risk undertaken by the Club in your insurance. Alternatively the Directors may, if they consider it appropriate, agree that the Club will continue to insure you for the remainder of the period of insurance upon such terms and conditions as they shall determine and provided that you indicate acceptance of such terms and conditions within seven days of notification, you shall continue to be insured until the end of that period of insurance.

##### 18.3

##### Cesser of insurance for failure to pay

Where you fail to pay, either in whole or in part, any amount due to the Club, the Managers may give notice in writing requiring payment of such amount by the date specified in such notice, not being less than fourteen days from the date on which such notice is despatched. If you fail to make such payment in full on or before the date so specified, your insurance may be cancelled forthwith by the Directors without further notice or other formality, and such cancellation shall be without prejudice to any other remedies available to the Club by virtue of these Rules or by law.

### **18.4 No set-off**

For the purposes of determining whether any (and if so, what) sum is due for the purposes of Rule 18.3 above, or otherwise under these Rules, no account shall be taken of any amount due or alleged to be due by the Club to you on any ground whatsoever, and no set-off of any kind (including set-off which might otherwise have arisen by reason of your bankruptcy or liquidation) shall be allowed against such sum (whether or not any set-off 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 may have already allowed for a set-off or credit in your favour.

### **18.5 Continuation of insurance for retiring partner**

Where your insurance has terminated by virtue of Rule 18.1 (a) (vii), the Club may at its discretion continue to provide insurance to you on such terms as it shall determine.

## **Rule 19 Effect of cesser of insurance**

### **19.1 Cesser for failure to pay**

If the cesser of insurance shall have occurred by virtue of Rule 18.3 the Club shall not be liable for any claim or circumstances giving rise to such claim notified in relation to the period of insurance to which such failure to pay relates. You shall be and shall remain liable for all amounts due to the Club in respect of the period of insurance in which the date of cessation occurs, pro rata for the period up to the date of cessation, and in respect of any previous period of insurance including any supplementary premium levied in respect of any such period of insurance.

### **19.2 Cesser for any other reason**

If the cesser of insurance shall have occurred for any other reason, the Club shall remain liable for all claims under these Rules arising out of any claim or circumstances validly notified under these Rules before the date of cesser but shall be under no liability whatsoever by reason of any claim or circumstances not so notified. You shall be and shall remain liable for all amounts due to the Club in respect of the period of insurance in which the date of cessation occurs, pro rata for the period up to the date of cessation, and in respect of any previous period of insurance including any supplementary premium levied in respect of any such period of insurance.

### **19.3 Directors' discretion to cover claims**

The Directors may in their discretion admit either wholly or partly any claim for which the Club is under no liability under this Rule whether the notification giving rise to such claim was made before or after the cesser of insurance.

### **19.4 Waiver and forbearance**

Without prejudice to the generality of Rule 33 no act, omission, course of dealing, forbearance, delay or indulgence of any kind by or on behalf of the Club nor the granting of time, nor the acceptance by the Club (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 19.1 or be treated as a waiver of any of the Club's rights thereunder.

### Rule 20 Contribution by way of premium

#### 20.1 Insurance all of same class

All insurances given by the Club against the risks set out or insured in accordance with Parts 2, 3, 4 and 5 of these Rules shall fall into a single class, regardless of any difference in the services or insured interest as between you and another Member or between one group of Members and another, and contribute to and are a charge against a common fund of that class.

#### 20.2 Premium

Members entered for insurance in the Club for the whole or any part of a policy year shall, through the Club, insure each other as hereinafter set out against liabilities, loss, damage, costs and expenses which they or any of them may incur or may become liable to pay, and for this purpose the said Members shall contribute by means of advance premium and, when necessary or appropriate, supplementary premium to the funds required to meet:

- (a) the liabilities, expenses and other outgoings of the Club (whether incurred, accrued or anticipated) which in the opinion of the Directors necessarily and properly fall upon the Club in respect of such policy year;
- (b) such transfer to reserves or provisions as the Directors may deem is 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;
- (c) such sums as the Club 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.

20.3 The said fund shall be raised by means of advance and supplementary premium in accordance with the provisions of Rule 21.

### Rule 21 Premium

#### 21.1 Advance Premium

- (a) Your advance premium shall be set by the Directors and shall be stated in your certificate of entry. The total amount of all advance premium levied on all Members shall be calculated with the intention that the funds so raised will be adequate to meet the foreseeable liabilities, expenses and outgoings of the Club for the policy year.
- (b) Where an advance premium is levied in respect of a period of insurance which covers more than one policy year, the advance premium shall be treated as being payable and paid wholly in relation to the earlier of those policy years.

#### 21.2 Supplementary premium

At any time or times during or after the end of each policy year (but not after such policy year has been closed) the Directors may decide to require in respect of that year one or more supplementary premium of such amount or amounts as they may determine if they consider that the advance premium paid in respect of such policy year are (notwithstanding the original intention) insufficient to meet the liabilities, expenses and outgoings of the Club for such policy year. The supplementary premium so levied shall be calculated pro rata to all advance premium levied for such policy year.

#### 21.3 Premium payable as Directors determine

Every advance or supplementary premium shall be payable at such rates and in such instalments and on such dates as the Directors may specify.

#### 21.4 Notification

As soon as reasonably practical after the advance or supplementary premium shall have been fixed the Managers shall notify you:

- (a) of the amount of such premium; and
- (b) of the date on which the premium concerned is payable or, if such premium is payable by instalments, of the amounts of such instalments and the respective dates on which they are payable.

### **21.5 Currencies**

Notwithstanding Rule 14.3 (h) the Managers may require you to pay all or any part of any sums payable in such currencies as the Managers may specify in writing.

### **21.6 Set-off**

You shall not be entitled to set-off the whole or any part of any claim on the Club against the premiums or other sums of whatsoever nature due to the Club nor shall you be entitled to withhold or delay payment of any such premiums or other sums.

### **21.7 Interest on late payment**

Without prejudice to the rights and remedies of the Club under any of these Rules or otherwise, if any premium or instalment or part thereof of any other sum of whatsoever nature due from you is not paid on or before the date specified for payment thereof the Directors may order you 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.

### **21.8 Non payment**

If any premium or other payment due from you to the Club 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 Club shall be deemed to be expenses of the Club for which, as the Directors may decide, premiums may be levied in accordance with this Rule or the reserves may be applied in accordance with Rule 24.5.

### **21.9 Forecasts of premiums**

Any forecast given by the Directors, Managers, their servants or agents as to the level of premiums in any policy year shall be indicative only and shall be without prejudice to the right of the Directors to levy premiums for that year in accordance with these Rules at a higher or lower level than that forecast, or not to levy such premiums at all, and no liability whatsoever in respect of any inaccuracy in any such forecast shall fall upon the Club, the Directors, the Managers or their servants or agents.

## **Rule 22 Fixed premium**

If the Managers so agree, and it is noted in your certificate of entry, your insurance may be provided for a fixed premium, in which case the provisions of Rule 21.2 shall not apply.

## **Rule 23 Recovery of premium**

All monies from time to time due and payable by you to the Club may be recovered by action commenced on the instructions of the Managers in the name of the Club.

## **Rule 24 Closing of policy years**

- 24.1** 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.
- 24.2** After any policy year shall have been closed, no further supplementary premiums shall be made in respect of that policy year.
- 24.3** The Directors may declare that any policy year is closed notwithstanding that it is known or anticipated that there are in existence or may in the future arise claims, expenses or outgoings in respect of such policy year which have not yet accrued or whose validity, extent or amount have yet to be established.

### 24.4 Disposal of excess funds

If upon or after the closing of any policy year it shall appear to the Directors that the whole of the premiums and other receipts in respect of such policy year are unlikely to be required to meet the liabilities, expenses and outgoings arising in respect of that policy year then the Directors may decide to deal with 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 Club in accordance with Rule 26.4 (b);
- (b) by returning the excess or any part thereof to the Members who paid such premium in proportion to their respective premiums save that no return shall be made in respect of any Member who has been subject to a release under Rule 22 or the insurance of whom ceased by reason of the application of Rule 18.3.

### 24.5 Shortfall of funds

If at any time after a policy year shall have been closed, it shall appear to the Directors that the liabilities, expenses and outgoings arising in respect of that policy year exceed or are likely to exceed the totality of the premiums 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 Club;
- (b) by levying an advance premium or supplementary premium in respect of any open policy year with the intention of applying a part thereof to meet any such deficiency.

If the Directors shall resolve as set out in Rule 24.5 (b), then the Club shall so inform the firms insured for such policy year on or before the time that payment is demanded.

### 24.6 Amalgamation of policy years

On closing a policy year, or at any time thereafter, 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 25 Reinsurance

**25.1** The Directors may reinsure or cede on behalf of the Club the whole or any part of the risks of the Club with such reinsurers and on such terms as the Directors shall consider appropriate.

**25.2** In addition, the Directors may reinsure on behalf of the Club the whole or any part of the risks arising in connection with any Member upon such terms and with such reinsurers as the Directors shall consider appropriate.

**25.3** The Club may also accept reinsurance from other insurers on such terms as the Managers may determine.

## Rule 26 Reserves

### 26.1 Directors may establish reserves

The Directors may establish and maintain such reserve funds or other accounts for such contingencies or purposes as they in their discretion think fit.

### 26.2 General reserves

In particular without prejudice to the generality of the above the Directors may establish and maintain reserves or other accounts to provide a source of funds which may be applied for any general purpose of the Club including the following:

- (a) to stabilise the level of supplementary premiums and to eliminate or reduce the need to levy a supplementary premium in respect of any policy year, past, present or future;
- (b) to eliminate or reduce a deficiency which has occurred or may be thought likely to occur in respect of any closed policy year;

- (c) to protect the Club against any actual or potential losses whether realised or unrealised in connection with its investments.

**26.3** The Directors may apply the sums standing to the credit of any reserve for any of the purposes for which such reserve was maintained even though the sum may be applied in respect of a different policy year or years from that which the funds in such reserve originated. The Directors may also apply the sums standing to the credit of any reserve for any other different purposes whenever the Directors consider this to be in the interests of the Club or its Members. The Directors may also at any time transfer sums from one reserve to another.

**26.4** The funds required to establish such reserves or accounts may be raised in any of the following ways:

- (a) the Directors, when deciding on the rate of any advance premium or supplementary premium for any policy year, may resolve that any specified amount or proportion of such premium shall be transferred to and applied for 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;

**26.5** If the Directors resolve as set out in Rule 26.4 (a) then the Managers shall so inform the firms insured for such policy year on or before the time that payment is demanded.

### Rule 27 Investments

#### 27.1 Investment management

Subject to the general supervision of the Directors the funds of the Club may be invested by the Managers or by any investment manager or agent appointed by the Managers. The Directors may from time to time and at any time lay down such guidelines for the investment of the funds of the Club as they shall think fit.

#### 27.2 Investment media

Such investments may be made 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, or by such other method, whether producing income or not, as the Directors may approve.

#### 27.3 Pooling of funds

Unless the Directors otherwise decide the funds standing to the credit of all policy years and of any reserve or account, shall be pooled and invested as one fund.

#### 27.4 Gains and losses

Unless otherwise determined by the Directors when funds are so pooled any dividends, interest or accruals of interest and any realised investment gains (including dividends or accruals of interest) or losses, arising on the pooled funds shall be credited or debited, as the case may be, to such policy year or years as the Directors may decide.

- (a) Any such gains may be used to meet:
- (i) the liabilities, expenses, losses and other outgoings (whether incurred, accrued or anticipated) which, in the opinion of the Directors, necessarily and properly fall on the Club in respect of such policy year; or
  - (ii) 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 likely to occur in respect of any closed policy year as the Directors think fit.
- (b) Any such losses shall be treated as an expense of the Club and may be made up either by a transfer from the general reserve of the Club or by premiums under Rule 26.4 (a).

### Rule 28

#### Obligations in respect of claims

##### 28.1

##### Notification of claims

- (a) You shall give to the Club notice in writing immediately of:
- (i) any claim made against you during the period of insurance;
  - (ii) the receipt by you of notice from any person of any intention to make such a claim against you or of a complaint against you which may lead to such a claim;
- (b) You shall give to the Club notice in writing immediately on becoming aware of any circumstances which may give rise to a claim under your insurance.

##### 28.2

##### Late notification

If the Directors consider that you have not given notice to the Club in accordance with Rule 28.1, they may, in their discretion, reject the claim or reduce the sum which might otherwise be recovered by you from the Club or they may treat the claim as having fallen within the period of insurance in which the claim was notified but subject to the terms and conditions which would have applied had the claim been notified to the Club in accordance with Rule 28.1.

##### 28.3

##### Mitigation of loss

When circumstances arise which give rise or may give rise to a claim under these Rules, you shall take all reasonable measures for the purpose of averting or minimising any liability, loss, costs, damages or expenses in respect of which you may be insured.

##### 28.4

##### Information and cooperation

You will provide all reasonable cooperation in the handling of a claim. You must promptly give the Managers any information, accounts, or documents available to you or in the possession or power of your agents relevant to any claim, or circumstances referred to under this Rule. Such information, accounts or documents must be provided to the Managers in good order and in a form appropriate for the efficient conduct of such a claim. Further, you shall, whenever so requested by the Managers, give the Club, or its representatives, facilities to conduct a survey, or to inspect and copy documents and other records or to interview any of your officers, servants or agents who may, in the opinion of the Club, be in possession of information relevant to the said claim or circumstances.

### Rule 29

#### Fraudulent claims

If you make any claim against the Club knowing the same to be false or fraudulent the insurance provided by the Club shall become void and all claims by you shall be forfeited provided that all claims by the Club in respect of such insurance shall remain enforceable.

### Rule 30

#### Powers of the Managers relating to claims

##### 30.1

##### Managers' power to conduct proceedings

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

### 30.2 **Appointment of experts**

Without prejudice to any other provision of these Rules and without waiving any of the Club's rights hereunder the Managers may at any and all times appoint on your behalf, 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 liability, loss, damage, costs or expenses in respect of which you are or may be insured, including taking or defending legal or other proceedings in connection therewith. The Managers may also at any time discontinue such appointment if they think fit.

**30.3** All lawyers, surveyors or other persons appointed by the Managers on your behalf, or appointed by you with the prior consent of the Managers, shall at all times be and be deemed to be appointed on the terms:

- (a) that they have been instructed by you at all times to give advice and to report to the Managers in connection with the matter without prior reference to you and to produce to the Managers without prior reference to you 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 Club;
- (b) that any advice they may give to you is that of an independent contractor appointed by you and shall in no way bind the Club.

### **Rule 31** **Powers of the Directors relating to recoveries**

#### **31.1** **Payment of claims**

No claim shall be paid by the Club without the approval of the Directors but the Directors shall have power from time to time to authorise the Managers to effect payment of claims without prior reference to the Directors. No Director shall act as such in considering or approving the settlement of any claim in which he is interested.

**31.2** Without prejudice to any other provisions of these Rules the Directors shall have power in their discretion to reject a claim or reduce the sum payable by the Club in respect thereof, if:

- (a) in the opinion of the Directors you have not taken such steps before, at the time of, or after you had knowledge of the circumstances giving rise to the claim, to protect your interests as you should have done or as you would have done if you had not been insured by the Club;
- (b) a claim against you shall have been settled, or any liability shall have been admitted, by you or on your behalf without the prior consent in writing of the Managers;
- (c) you have failed to comply with a recommendation or direction made at any time to you by the Directors or the Managers, in connection with the handling or settlement of a claim or potential claim against you or otherwise in relation to the matter giving rise to the claim against the Club;
- (d) you shall have failed to comply with any of your obligations under Rule 17.

#### **31.3** **Interest**

In no case shall you be entitled to be paid interest on your claim against the Club.

#### **31.4** **Currency**

When claims against the Club are paid in currencies other than United States dollars, or the currency in which your certificate of entry is underwritten, any applicable limits of liability and deductibles expressed in United States dollars, or other underwriting currency, shall be converted as at the date of payment.

### Rule 32

#### Bye-laws

##### 32.1

##### **Making of bye-laws and recommendations by Directors**

The Directors shall have power to pass bye-laws prescribing the form of contractual or other obligations which may be incurred by you and which relate to liabilities, costs and expenses covered by these Rules.

##### 32.2

The Directors may also recommend the use of any particular form of contract for any particular service. If you are engaged in providing such services you shall endeavour to use the appropriate forms of contract when the circumstances of your engagement permit.

##### 32.3

##### **Notification to Members**

Notice by way of a circular shall be sent by the Managers to all Members upon the passing of any such bye-law or issue of such recommendation. The bye-laws or recommendation shall come into operation on the date stated in the circular and shall thereupon be assumed to be incorporated in these Rules and shall be included in, or with, every copy of these Rules issued by the Club as soon as may be conveniently possible.

##### 32.4

##### **Breach of bye-laws**

If you commit a breach of such bye-law the Directors may reject or reduce any claim made by you to the extent to which it would not have arisen if you had complied with the bye-law and the burden of proving in each case that the claim (or portion thereof) could not have been avoided by such a compliance shall be on you. The Directors may further impose such terms upon you as they may think fit as a condition of the continuance of your entry in the Club.

### Rule 33

#### Forbearance and waiver

##### 33.1

No act, omission, forbearance or conduct of the Club whatsoever and whensoever occurring, whether by or through its officers, servants or agents or otherwise, shall constitute any admission or promise that the Club will forego any of its rights.

##### 33.2

Any person appointed under Rule 30.2 is appointed to assist you and, any recommendations and advice which he may give shall in no way bind, prejudice or affect the rights and remedies of the Club.

##### 33.3

Notwithstanding any neglect or non-compliance with, or breach of, any of these Rules by you, the Directors may in their sole discretion waive any of the Club's rights arising therefrom and may pay in full or in part any claim which it thinks fit. The Club shall nevertheless at all times and without notice be entitled to insist on the strict application of these Rules.

##### 33.4

##### **Subrogation**

If any payment is made by the Club to you in respect of your insurance the Club shall be subrogated to all your rights of recovery against any person in relation to the relevant matter provided always that the Club shall not exercise any rights of subrogation against any of your employees save in cases where there is an allegation of a dishonest, fraudulent, criminal or malicious act or omission by the employee. The term employee shall include your ex-employees and any person acting or who has acted as an employee of or consultant to you without a contract of service or employment.

### Rule 34

#### Assignment

##### 34.1

No insurance by the Club, and no interest under these Rules or under any contract between you and the Club, 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 therefore or to give such consent upon any such terms or conditions as they may think fit.

- 34.2** The Club 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 your liabilities or potential liabilities.

### **Rule 35**      **Delegation**

#### **35.1**      **Delegation by Directors**

Whenever any power, duty or discretion is stated in these Rules to be vested in the Club or 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, in accordance with the provisions as regards delegation contained in the Memorandum and Articles or pursuant to a resolution of the Directors in which event the power, duty or discretion may be exercised by any person to whom the same shall have been so delegated. In the exercise of any such power, duty or discretion the Directors or Managers respectively shall be entitled to act or refrain from acting at their absolute discretion and without giving any reasons or explanation for such conduct.

- 35.2** Whenever any power, duty or discretion is conferred or imposed upon the Managers by virtue of these Rules, such power, duty or discretion may, subject to any terms, conditions or restrictions contained in these Rules, be exercised by the Managers or by any employee of the Managers to whom the same shall have been delegated.

### **Rule 36**      **Disputes and differences**

#### **36.1**      **Adjudication**

If any difference or dispute between you and the Club shall arise out of or in connection with these Rules or your certificate of entry, such difference or dispute shall in the first instance be referred to and adjudicated by the Directors notwithstanding that the Directors may have already considered the matter before any such differences or dispute arose. Such reference and adjudication shall be on written submissions only. The Directors shall not be obliged to give reasons for their decisions.

#### **36.2**      **Arbitration**

Subject thereto any such dispute or difference shall be determined by arbitration in London in accordance with the Arbitration Act 1996 as amended. For the avoidance of doubt, the arbitrators shall not have the power to reopen any decision of the Directors which is final and binding, including a decision under Rule 1.3.3.

#### **36.3**      **Sole remedy**

You shall not be entitled to maintain any action or other legal proceedings against the Club otherwise than in accordance with the procedures laid down in this Rule and may only commence proceedings, other than arbitration under Rule 36.2, 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 Club. The sole obligation of the Club to you under these Rules, and the 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 37**      **Set-off**

Without prejudice to any other provisions of these Rules the Club shall be entitled to set-off any amount due from you against any amount due to you from the Club.

### Rule 38

#### Notices

##### 38.1

##### To the Club

A notice required under these Rules to be served on the Club may be served by sending it through the post in a pre-paid letter or by sending it by facsimile message addressed to the Club at the Club's registered office for the time being or by email to [itic@thomasmiller.com](mailto:itic@thomasmiller.com).

##### 38.2

##### To Members

A notice required under these Rules to be served on you may be served by sending it through the post in a pre-paid letter or by sending it by facsimile message addressed to you at your address as appearing in the register of Members of the Club or to the Member's email address. In the case of Joint Members a notice shall be served on the Senior Member and such service shall be sufficient service upon all Joint Members.

##### 38.3

##### Addresses

Any Member described in the register of Members of the Club by an address not within the United Kingdom who shall from time to time give the Club an address within the United Kingdom at which notices may be served upon him, shall be entitled to have notices served upon him at such address, which shall be deemed to be his address as appearing in the register for purposes of Rule 38.2.

##### 38.4

##### Date of service

Any notice or other document if served by post shall be deemed to have been served on the second day following the day on which the letter containing the same was posted, if sent to an address in the United Kingdom and otherwise on the seventh day following the day on which the said letter was posted and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post in a pre-paid envelope. Any notice served by facsimile shall be deemed to have been served on the day it was despatched and in proving such service it shall be sufficient to prove that such facsimile message was duly despatched. Any notice served by email will be considered served on the day it is sent.

##### 38.5

##### Successors

Your successor shall be bound by a notice or other document served as aforesaid notwithstanding that the Club may have notice of your death, disability, bankruptcy or liquidation.

### Rule 39

#### Insurance Brokers

##### 39.1

Where you employ an insurance broker, consultant or advisor to handle your insurance with the Club such insurance broker, consultant or advisor acts in all respects as your agent and not as the agent of the Club.

Note: An insurance broker is not responsible as a principal for the payment of premium to the Club and therefore your liability for premium or any other monies is not discharged until the broker pays them to the Club. However, payments made by the Club to your insurance broker discharges its liability to you in respect of such payments.

##### 39.2

No insurance broker has any authority to issue certificates of entry to any person on behalf of the Club.

### Rule 40

#### Governing law

These Rules, and any indication of insurance, certificate of entry and contract of insurance between you and the Club shall be governed by and construed in accordance with English law.

## Part 11 Rights of third parties under this insurance

### Rule 41

#### **Rights of third parties under this insurance**

The insurance provided by the Club to you shall not confer any right or benefit to any party who is not a Member or a Joint Member on your certificate of entry under the Contracts (Rights of Third Parties) Act 1999 or any other similar provision or enactment contained in the laws of any state.

### Rule 42

#### Interpretations

In these Rules, and any certificate of entry or indication for insurance, the following words and phrases shall each have the meanings set out below, if not inconsistent with the subject or context:

##### **account year**

The annual period of your insurance commencing each year on the date shown in the certificate of entry.

##### **adjustment date**

The date on which the declaration of your gross freight receipts, gross annual income or similar earnings, movements, handling or any other agreed adjustment factor is to be made to the Club.

##### **adjustment rate**

- 1 a rate on your gross freight receipts or gross annual income or similar earnings during an account year;
- 2 a rate per movement of handling during an account year;
- 3 any other rate agreed by the Managers.

##### **advance premium**

The premium payable to the Club in accordance with Rule 21.1 and your certificate of entry.

##### **aircraft**

includes aeroplane, airship, helicopter and balloon.

##### **authority**

- 1 any central or local government or agency of such government;
- 2 any body or person empowered to make regulations or issue directions in relation to:
  - the administration of any seaport, airport or railway
  - the import, export or transport of any cargo
  - safety of working conditions
  - immigration
  - the imposition of any tax or duty
  - the control of pollution
- 3 A duly constituted court or tribunal of competent jurisdiction acting within legal powers.

##### **breakbulk**

Cargo, other than bulk cargo, which is not in carrying equipment when carried on board a ship.

##### **broker**

An insurance broker, consultant or other intermediary or agent directly or indirectly involved in dealing on your behalf as regards your insurance.

##### **bullion**

Gold, silver or platinum in bars or similar bulk form.

##### **bulk**

Unpackaged goods of an homogeneous nature.

**cargo**

Goods, including anything (other than carrying equipment supplied by you) used or intended to be used to pack or secure goods, carried from one place to another place in respect of which you contract to provide services, or in which you have an insurable interest.

**carried**

Includes intended for carriage and having been carried.

**carrying equipment**

Any container, chassis, trailer, rolling stock, genset, swap body, igloo or similar equipment used for carrying cargo.

**cash**

Bank notes, coins (whether or not currently legal tender), travellers and bank cheques, drafts, credit and charge cards and any cards or documents entitling the holder to receive cash, goods or services.

**certificate of entry**

A certificate and any endorsement thereto issued by the Club in accordance with Rule 14 which evidences the contract of insurance between you and the Club.

**charter**

Any form of charterparty including, but not limited to, a bareboat, time, voyage, space or slot charter.

**chassis**

- 1 a chassis of any description other than a trailer, towed or intended to be towed on private or public roads;
- 2 a part, including spares and accessories, of a chassis; and
- 3 plant, tools or materials for the maintenance or repair of a chassis.

**claim**

A claim against a firm in respect of which insurance is available under these Rules.

**closed policy year**

A policy year of the Club which the Directors shall have declared to be closed in accordance with Rule 24.1.

**the Club**

International Transport Intermediaries Club Limited

**commercial debt**

The sum due for the provision of goods, services or facilities to your principal.

Note: This would include such charges as those made for the use of port facilities, berths, pilotage, tugs and for the provision of bunkers, stores and repairs.

**container**

- 1 an article of transport of permanent character fitted with corner castings specifically designed to facilitate transport by more than one mode of carriage;
- 2 a part, including spares and accessories of such article of transport; and
- 3 plant, tools or materials for the maintenance or repair of such article of transport.

**contraband**

Anything forbidden to be supplied by neutrals to belligerents in time of war.

**contract**

Includes, but not limited to, a port statute, port tariff and port regulations to which you are subject.

**controller**

Any director, board member, commissioner, president, vice president, senior managerial employee, partner, including salaried partner, or sole trader.

**conveyance**

Any ship, aircraft, road vehicle or rail wagon used or intended to be used for the carriage of cargo.

**costs**

Includes expenses.

**customer**

Any person for whom you provide, either directly or through your subcontractors, insured services.

**declaration**

Declaration of information which is to be provided by you to the Club in order to calculate a premium.

**deposit**

The part of the advance premium payable each account policy year in advance, which shall be adjusted at the adjustment rate on the adjustment date, subject to any applicable minimum.

**the Directors**

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

**electronic components**

Integrated circuits, system boards and SIM cards, computer memory and computer processors, CD-ROM drives, DVD drives, sound cards, video cards, modems and other similar equipment.

**equipment**

Carrying or handling equipment.

**firm**

An individual, partnership or company (or any combination thereof) which provides any or all of the services referred to in the certificate of entry.

**fiscal representative**

As defined in the European Customs Code or, if that Code is not applicable, the relevant national or international law or convention governing the matter.

**fixed premium**

The price for your insurance calculated on a fixed basis in accordance with the provisions of Rule 22.

**general average**

Sacrifice or expenditure to save property involved in a sea voyage, to which, in principle, all owners of the saved property contribute proportionately.

**general deductible**

The deductible applying to each claim, but subject to any special deductible.

**general limit of liability**

The limit of liability of the Club, applying to each claim, but subject to any special limit of liability.

**gross freight receipts**

Gross revenue plus payments to agents and subcontractors in respect of transport services, but excluding customs duty, sales tax, or similar fiscal charges paid on behalf of customers.

**handheld electronic products**

Products designed primarily for the storage, management, use or transmission of information by electronic means (for example: organisers, computer games, remote control devices) but not products in which the electronic component only controls another, mechanical or other, function (for example toothbrushes, power tools).

**handling equipment**

- 1 an item of machinery or other apparatus (not being an aircraft, container, locomotive, ship or trailer) used for the handling, movement or storage of cargo or carrying equipment and operations incidental to such activities;
- 2 a part, including spares and accessories, of handling equipment; and
- 3 plant, tools or materials for the maintenance or repair of handling equipment or of any customer's equipment.

**indirect declarant**

As defined in the European Customs Code or, if that Code is not applicable, the relevant national or international law or convention governing the matter.

**in writing/written**

Visibly expressed, including telegram, telefax and electronic means.

**insurance**

Any insurance or reinsurance against the risks covered on the terms and conditions specified in these Rules.

**insured location**

The location at which you provide any insured services and in respect of which the Managers may agree in your certificate of entry that you are insured.

**insured services**

The provision of services referred to in the certificate of entry which the Club has agreed to insure and is recorded in your certificate of entry.

**Joint Members**

Where two or more firms are the subject of a joint entry, those firms whose names appear on the certificate of entry under the designation "Joint Members".

**joint service partner**

A ship operator or NVOG with whom you operate a joint service.

**lease, leased, leasing**

Includes to rent and to hire but excluding to own or the repositioning of carrying equipment in respect of which you do not receive or make any payment.

**lessee**

A person who leases.

**liquidated damages**

A fixed sum agreed in advance under your contract with your customer as payable in the event of a breach of contract.

**the Managers**

The Managers for the time being of the Club including each director of the Managers.

**material information**

Information which you know or ought to know, and which would influence the Club in fixing the amount of the premium or determining whether the Club will take the risk or accept an amendment which you seek, and, if so, on what terms.

**Member**

A firm which has been accepted for insurance in the Club, including in the case of a joint entry, the Senior Member and any Joint Member.

**Memorandum and Articles**

The Memorandum and Articles of Association of the Club.

**NVOG**

Non-vessel owning carrier, being a carrier who provides freight forwarding services as a principal, usually under a bill of lading, but is not a ship operator.

**occurrence**

An event or happening or a series of events or happenings attributable to the same cause or resulting from continuous or repeated exposure to the same or similar conditions.

**own, owned, ownership**

Includes to hire-purchase.

**period of insurance**

The period of insurance as stated in your certificate of entry.

**policy year**

A twelve month period currently from any 1 June to the next following 31 May during which the Club writes insurance business.

**pollution**

The emission, discharge, dispersal, release or escape of smoke, vapour, soot, dust, liquid, gas, oil, petroleum substance or derivative, chemical or waste material into or upon land, sea, the atmosphere, or any watercourse or body of water.

**port authority**

Includes port operator, harbour board, harbour authority or harbour operator.

**precious jewellery**

Jewellery made from precious stones or precious metal.

**precious metal**

Gold (any carat and any colour), palladium, platinum, silver and objects made of or plated with precious metal (as defined herein).

**precious stones**

Diamonds, emeralds, sapphires and rubies – except where made up into precious jewellery.

**principal**

Any person for whom you act or attempt to act as agent.

**project cargo**

Cargo carried under a contract which requires you to accept liability:

- 1 if delivery is not made within a time limit specified in such contract, except if such liability is calculated by reference to the freight in respect of such cargo; or
- 2 for loss of or damage to cargo without a financial limit of liability based on the weight or the number of packages of the cargo.

**risk**

Liability, loss, damage and costs.

**road vehicle**

Any vehicle with integral means of mechanical or electrical propulsion for use on public roads.

**rolling stock**

Railway wagon without integral means of mechanical or electrical propulsion.

**the Rules**

The Rules of the Club for the time being in force.

**sabotage**

Deliberate damage to property or disruption to communications.

**securities**

Includes bonds, negotiable instruments or securities of any kind.

**Senior Member**

Where two or more firms are the subject of a joint entry, the firm so designated in the certificate of entry.

**ship**

Includes boat (whether self propelled or not) hovercraft and any other description of vessel or structure for use in navigation on, under, over or in water.

**ship operator**

The owner, part owner, operator, charterer or manager of a ship.

**special deductible**

A deductible applying to claims in respect of certain specified risks.

**special limit of liability**

A limit of liability of the Club, applying to claims in respect of certain specified risks.

**supplementary premium**

The premium payable by you to the Club in accordance with Rule 21.2. terms and conditions  
Includes exclusions, qualifications and, where applicable, price.

**terrorism (terrorist)**

(An act of) any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s) committed for political, religious or ideological purposes to:

- 1 overthrow or influence any government (de facto or de jure), or
- 2 put the public in fear for such purposes by force or violence.

**third party**

Any person other than you, a Joint Member or the Club.

**third party liability**

- 1 liability for physical loss of or damage to third party property and for consequential loss resulting from such loss or damage;
- 2 liability for death, bodily injury or illness (including hospital, medical and funeral expenses) of any third party, and for consequential loss resulting from such death, injury or illness.

**third party property**

Any property of a third party except:

- 1 cargo;
- 2 any property leased to you or a Joint Member, for example, equipment, land or buildings.

**trailer**

- 1 a trailer or semi-trailer of any description, towed or intended to be towed on private or public roads excluding any chassis;
- 2 a part, including spares and accessories, of a trailer; and
- 3 plant, tools or materials for the maintenance or repair of a trailer.

**transit storage**

Storage of cargo during or immediately prior to or after carriage (which is other than solely local distribution), if at the commencement of such storage it was intended that the storage would not exceed 30 days.

**transport operator**

A person (such as a freight forwarder, haulage operator, NVOC, or rail operator) undertaking transport of cargo, either directly or through a subcontractor, which may include transit storage and incidental handling.

**transport services**

The transport of cargo, including storage and handling incidental to the transport.

### **United Kingdom**

Great Britain and Northern Ireland

### **valuable works of art**

Includes antiques, paintings, furniture, sculptures, tapestries, collectibles or objects for display, if the value exceeds US\$20,000 (or the equivalent in other currencies) each item or set of items.

### **wear and tear**

Wastage, wearing away or wearing out of any material or part caused by or resulting from ordinary usage or working, or other gradual deterioration, rust, oxidisation, corrosion, or erosion, including slowly developing deformation, distortion, cracks or other flaws.

### **you**

The Member and, where the context permits, any Joint Member.

### **your country**

Any country in which:

- 1 you are incorporated;
- 2 the management of your business is conducted; or
- 3 your principal place of business is situated.

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, associations and bodies of persons whether incorporated or not.











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