

**AMENDMENTS TO THE RULES**

**TO BE CONSIDERED BY THE MEMBERS OF THE ASSOCIATION AT THE SPECIAL GENERAL MEETING OF THE ASSOCIATION TO BE HELD IN BERMUDA ON 19<sup>th</sup> JANUARY, 2009**

AMENDMENTS TO RULES	EXPLANATORY NOTES
<p><u>RULE 1 - POLICY DEFENCES IN RESPECT OF CERTAIN PERSONAL INJURY CLAIMS</u></p> <p><i>Amend Rule 1 by addition of a new paragraph 9 in bold type below and renumbering the existing paragraph 9 as paragraph 10 accordingly:</i></p> <p><b>Notwithstanding the provisions of Rule 5A, where an Owner has failed to discharge a legal liability to pay damages or compensation for illness, personal injury or death of a seaman, the Association shall discharge or pay such claim on the Owner's behalf directly to such seaman or dependent thereof</b></p> <p><b>PROVIDED ALWAYS that</b></p> <p><b>(i) the seaman or dependent has no enforceable right of recovery against any other party and would otherwise be uncompensated,</b></p> <p><b>(ii) subject to (iii) below, the amount payable by the Association shall under no circumstances exceed the amount which the Owner would otherwise have been able to recover from the Association under the Rules and the Owner's terms of entry,</b></p> <p><b>(iii) where the Association is under no liability to the Owner in respect of such claim in accordance with Rule 31(B)(ii)(a) and (d) by reason of cancellation for non-payment of amounts due to the Association, the Association shall nevertheless discharge or pay that claim to the extent only that it arises from an event occurring prior to the date of cancellation, but as agent only of the Owner, and the Owner shall be liable to reimburse the Association for the full amount of such claim.</b></p> <p><i>Make a corresponding amendment to Rule 1, paragraph 8 by addition of the words in bold type below:</i></p> <p><b>Save as provided in Rule 1(9), the cover provided by the Association as set out in these Rules is solely for the benefit of the Owner.... It is not intended, save as provided in Rule 1(9), that rights should be acquired by any third party through the operation of the Contracts (Rights of Third Parties) Act 1999 of the United Kingdom or similar legislation.</b></p>	<p><u>RULE 1 - POLICY DEFENCES IN RESPECT OF CERTAIN PERSONAL INJURY CLAIMS</u></p> <p><i>The purpose of these proposed Rule changes is to disapply two specific defences contained in the Rules, namely the Pay to be Paid condition and the retrospective termination of cover for non-payment of calls, in respect of valid claims for personal injury and death brought by seamen or their dependants when the claimants are unable to recover against other parties and would go uncompensated if the Association were to rely on such a defence. This policy will not apply to claims by the Member seeking reimbursement and will not affect any rights of recourse which the Association may have against the Member.</i></p>
<p><u>RULE 2, SECTION 17, PROVISO (c)(ii) - DELIVERY WITHOUT PRODUCTION OF A NON-NEGOTIABLE B/L OR SIMILAR DOCUMENT OF TITLE</u></p> <p><i>Amend Rule 2, Section 17 by addition of a new proviso(c)(ii) in bold type below and renumbering the subsequent provisions accordingly:</i></p> <p><b>Delivery of cargo carried under a non-negotiable bill of lading, waybill or similar document without production of such document by the person to whom delivery is made, where such production is required by the express terms of that document or the law to which that document, or the contract of carriage contained in or evidenced by it, is subject, except where the Owner is required by any other law to which the carrier is subject to deliver, or relinquish</b></p>	<p><u>RULE 2, SECTION 17, PROVISO (c)(ii) - DELIVERY WITHOUT PRODUCTION OF A NON-NEGOTIABLE B/L OR SIMILAR DOCUMENT OF TITLE</u></p> <p><i>In order to take account of the Rafaela S decision, it is proposed that all IG club rules are changed to require that non-negotiable bills of lading be produced to the Owner in return for delivery of the cargo in the same way as for negotiable bills of lading, save where the Member is required by any other law to which the Owner is subject to deliver, or relinquish custody or control of the cargo without production of such document.</i></p>

custody or control of, the cargo, without production of such document.

RULE 5(U) – CERTIFICATES AND UNDERTAKINGS,  
RULE 5(E) – EXCLUSION OF WAR RISKS, and  
RULE 5 (F) – EXCLUSION OF NUCLEAR RISKS

*Amend Rule 5 by addition of a new paragraph 5(U) in bold type below:*

**Notwithstanding the exclusions in Rule 5(E) and 5(F), the Association will discharge on behalf of the Owner liabilities, costs, expenses arising under a demand made pursuant to the issue by the Association on behalf of the Owner of**

**(a) a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777, or**

**(b) a certificate issued by the Association in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereof, or**

**(c) an undertaking given by the Association to the International Oil Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement (STOPIA), or**

**(d) a certificate issued by an Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001**

**PROVIDED ALWAYS THAT:**

**(i) The Owner shall indemnify the Association to the extent that any payment under any such guarantee, undertaking or certificate in discharge of the said liabilities, costs and expenses is or would have been recoverable in whole or in part under a standard P&I war risk policy had the Owner complied with the terms and conditions thereof, and**

**(ii) The Owner agrees that:**

**(a) any payment by the Association under any such guarantee, undertaking or certificate in discharge of the said liabilities, costs and expenses shall, to the extent of any amount recovered under any policy of insurance or extension to the cover provided by the Association, be by way of loan; and**

**(b) there shall be assigned to the Association to the extent and on the terms that it determines in its discretion to be practicable all the rights of the Insured Owner under any other insurance and against any third party.**

**For the purpose of this Rule 5(U), the Directors shall have the sole discretion to determine what constitutes a standard war risk policy**

*Corresponding amendment to Rule 5(E) by deletion of proviso (b) and (c) below and adjusting the subsequent alphabetical order:*

~~b The exclusions in this paragraph (E) shall not apply to liabilities, costs or expenses of an Owner insofar only as they are discharged by the Association on behalf of the Owner pursuant to a demand made under~~

~~(i) a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777, or~~

~~(ii) a certificate issued by the Association in compliance with Article VII of the International Conventions on Civil Liability for~~

RULE 5(U) – CERTIFICATES AND UNDERTAKINGS  
RULE 5(E) – EXCLUSION OF WAR RISKS, and  
RULE 5 (F) – EXCLUSION OF NUCLEAR RISKS

*The purpose of these proposed Rule changes is to determine and clarify the terms upon which the Association may make payment of liabilities incurred directly by the Association under a Bunkers Convention certificate, or certain other named certificates or undertakings.*

*Those terms, contained in the new Rule 5(U), provide for the Association to discharge on behalf of the Owner liabilities under Bunkers Convention certificates, CLC certificates, FMC guarantees and STOPIA undertakings, even where arising from an excluded war risk or nuclear risk.*

*The Owner is required to indemnify the Association in respect of payment made under such guarantee, certificate or undertaking to the extent that the payment would have been recoverable under a standard war risks or other insurance policy. An existing provision for the rights of the owner under such other policies to be assigned to the Association is ameliorated by giving the Association the discretion to determine what assignment or other mechanism is practicable.*

*As a number of these points had already arisen in relation to Rule 5(E) ( Exclusions of War Risks), it is proposed that those parts of 5(E) which are now addressed by 5(U) should be deleted accordingly.*

~~Oil Pollution Damage 1969 or 1992 or any amendments thereof, or (iii) an undertaking given by the Association to the International Oil Pollution Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006), to the extent that such liabilities, costs and expenses are not recovered by the Owner under any other policy of insurance or extension to the cover provided by the Association, and~~  
~~e where any such guarantee, undertaking or certificate is provided by the Association on behalf of the Owner as guarantor or otherwise, the Owner agrees that any payment by the Association thereunder in discharge of the said liabilities, costs and expenses shall, to the extent of any amount recovered under any other policy of insurance or extension to the cover provided by the Association, be deemed to be by way of loan and that there shall be assigned to the Association all the rights of the Owner under any other insurance and against any third party.~~

RULE 14 – MEMBERSHIP

*Amend Rule 14 by the addition of new paragraphs E and F in bold type below:*

**E. Any Owner who is or becomes a Member shall be and remain a Member of The United Kingdom Mutual Steam Ship Assurance Association (Isle of Man) Limited (“the IOM Company”) (or its successors or assigns) subject always to the provisions of the Memorandum and Articles of the Association (or the constitutional documentation of any successor or assign) from time to time in force. It is a condition of membership of the Association and of acceptance of any application for membership of the Association that the aforesaid terms apply.**

**F. In the event that the Directors determine, in their discretion, that for the protection and security of the Association’s undertaking and property and the interests of the Members of the Association against loss, damage or injury, the Association transfers its funds and business to the IOM Company, of which the Owner is also a Member under Rule 14E, then any certificate of entry present and in force, issued to each Owner shall be transferred, assigned and conveyed to the IOM Company immediately whereupon the IOM Company shall provide the same coverage afforded under the applicable certificate of entry on the same terms and conditions as the certificate of entry present and in force issued by the Association. Entry of the ship with the IOM Company shall be on the same terms and conditions as entry with the Association.**

RULE 27 – LAID-UP RETURNS

*Amend Rule 27 by deletion of the words below and by addition of the words in bold type below:*

Subject to any terms and conditions which may have been agreed, if an entered ship shall be laid-up **without cargo on board** in any safe port or place for a period of thirty or more consecutive days after finally mooring there (such period being computed from the day of arrival to the day of departure, one only being excluded) the Owner shall be allowed a return of Calls **payable in respect of such ship for the period of lay-up**, calculated at the such rate of 95 per cent of his total Calls payable ~~in respect of such ship for the period of lay-up~~ **and** after deduction of such allowance for reinsurance, administrative

RULE 14 – MEMBERSHIP

*This proposed Rule change is to enable Members of the Association to be Members of The United Kingdom Mutual Steam Ship Assurance Association (IOM) Limited (“the IOM Company”) in the event that it is decided to transfer the Association’s funds to another jurisdiction in circumstances where it is considered that the funds might be at risk in Bermuda. Section 8 of the principal Act provides for such arrangements to be put in place, and the proposed change is intended to facilitate such a move with minimal time and disruption to the business. The change would allow the existing Certificates of Entry to be transferred. There is, of course, no current expectation that such steps will ever be necessary and the proposed arrangements are simply a precaution.*

RULE 27 – LAID-UP RETURNS

*The purpose of the proposed Rule change is to give the Managers discretion to determine rates of laid-up return that are more reflective of the degree to which the lay-up reduces risk.*

*The Managers’ policy on laid-up returns, including their criteria for the calculation of rates and deductions, taking into account factors such as the numbers of crew on board and safety of the location, will be put before the Board for approval at its next meeting on 29 Jan 2009 and will be published to the Members thereafter.*

expenses and other outgoings as the Managers may from time to time determine, save that there shall be no laid-up returns in respect of Overspill Calls.

~~For the purpose of this Rule a ship shall not be treated as laid up if she has either crew members (other than for her maintenance or security) or cargo on board, unless the Directors shall in their discretion otherwise determine.~~

- a. the Managers shall have sole discretion in deciding whether the port or place involved is a safe port or place within the meaning of this Rule, and**
- b. no claim for laid-up returns relating to any policy year shall be recoverable from the Association unless written notice thereof has been given to the Association within six months of the end of the policy year concerned.**