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# 2015

P&I RULES

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# Skuld P&I Rules



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For emergencies, the Association maintains a telephone service outside office hours. Although this telephone service is at all times manned by a qualified claims executive, in all cases we recommend direct contact with the appropriate staff member.

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# Skuld P&I Rules

## **PREFACE**

These Rules, which reflect the Association's membership in the International Group of P&I Associations and as a party to the International Group's Pooling Agreement, shall apply for the policy year 2015 and come into effect from 20 February 2015.





# Part I

## **MEMBERSHIP, COVER AND PREMIUMS**

## 1. MEMBERSHIP

### 1.1 Application and entry

- 1.1.1 An owner of a vessel may apply for entry of the vessel in the Association.
- 1.1.2 The Association may, in its absolute discretion, accept the application subject to specified conditions or restrictions, or reject the application, without providing any reasons.
- 1.1.3 If the entry is accepted, the owner shall become a member in the Association, the vessel shall become an entered vessel and the Association shall issue a Certificate of Entry.
- 1.1.4 Unless otherwise agreed, the entry of the vessel and the insurance cover shall commence at 12.00 hours GMT on the date the entry is accepted and continue until 12.00 hours GMT on the next 20 February, and thereafter from policy year to policy year, unless and until the cover ceases or the entry is terminated in accordance with these Rules

### 1.2 Joint members, co-assureds, affiliates and fleet entries

- 1.2.1 The Association may accept an entry of a vessel on behalf of more than one owner in which case each party shall be a joint member of the Association.
- 1.2.2 The Association may agree to extend the insurance cover provided to the member to a co-assured named in the Certificate of Entry or to an affiliate who shall not be named in the Certificate of Entry.
- 1.2.3 Co-assureds and affiliates shall not be members of the Association and their terms of entry shall be subject to the requirements of the International Group of P&I Association's Pooling Agreement, as set out in Appendix 2.
- 1.2.4 The Association may accept the entry of more than one vessel as a fleet entry.
- 1.2.5 With respect to liability for premiums and other sums due, see Rule 45.

### 1.3 Duration of membership

The member shall remain a member of the Association until the cover ceases or the entry is terminated, in respect of all vessels which the member has entered.

### 1.4 Definitions

The words "owner", "charterer", "vessel", "co-assured", "fleet entry" and "affiliate" shall have the meanings set out in Appendix 1, which also contains the definitions of other words used in the Rules.

## 2. TERMS OF COVER

### 2.1 Conditions of cover

The terms of entry and cover provided by the Association to the member are subject to the Statutes, these Rules and any special conditions agreed between the member and the Association.

Provided always that it is not intended that any third party other than those referred to in Rules 1.2 or permitted assign has any right under this Contract.

## **2.2 Risks covered**

- 2.2.1 The member is only covered for such of those risks specified in Parts II (P&I cover), III (Defence cover) and Appendix 7 (Additional Insurances) of these Rules as are expressly agreed between the member and the Association.
- 2.2.2 The cover provided in Parts II, III and Appendix 7 is subject to the limitations and other terms set out in Parts I and IV and Appendices 1 - 6.

## **2.3 Scope of cover**

- The member is only covered in respect of liabilities, losses, expenses and costs incurred by the member which arise,
- 2.3.1 in direct connection with the operation of the entered vessel by the member in the member's capacity as owner of the vessel,
  - 2.3.2 in respect of the member's interest in the entered vessel, and
  - 2.3.3 out of events occurring during the period of entry of the vessel for the relevant risk in the Association.

## **3. CESSATION OF COVER AND TERMINATION**

### **3.1 Cessation of cover**

- Unless the Association agrees otherwise, the insurance cover shall cease immediately where,
- 3.1.1 there is a change of management or ownership of the entered vessel,
  - 3.1.2 the member, being an individual, becomes bankrupt, has a receiving order made against him, or becomes insolvent,
  - 3.1.3 the member, being a corporation, is dissolved, wound up, has a receiver or liquidator appointed or commences proceedings under any bankruptcy or insolvency laws to seek protection from its creditors,
  - 3.1.4 the entered vessel becomes a total loss, or is accepted by the hull underwriters or deemed by the Association as being a constructive, compromised or arranged total loss, except in respect of liability arising out of the casualty which gives rise to the total loss,
  - 3.1.5 the vessel is missing for ten days from the date she was last heard of,
  - 3.1.6 the vessel is posted at Lloyd's as missing, or
  - 3.1.7 the vessel is requisitioned by a State or Government Authority, except that the insurance cover shall be reinstated after the period of requisition has ceased.

### **3.2 Termination by the member**

The member may terminate the entry of any vessel with effect from 12.00 hours GMT on 20 February by giving written notice of termination prior to 20 January.

### **3.3 Termination by the Association**

- 3.3.1 The Association may terminate the entry of any vessel with effect from 12.00 hours GMT on 20 February by giving written notice of termination prior to 20 January.
- 3.3.2 The Association may also terminate the entry of any or all vessels entered by the member or on behalf of more than one member,

- a) on immediate notice, where the member is in breach of his obligations under Rule 28.1 (in respect of disclosure and alteration of risk), Rule 28.2 (in respect of fraudulent, unlawful or deliberate acts) or Rule 28.4 (in respect of the classification and certification of the vessel),
- b) on three days' notice, where the member is in breach of his obligations under Rule 28.3 (in respect of the payment of premiums and other sums due to the Association),
- c) on seven days' notice, where the vessel is unseaworthy and the member has not made her seaworthy without undue delay, or where the member has not allowed the Association to carry out a survey in accordance with Rule 35, or where the member has notified the Association of any change of circumstance which materially alters the risks covered by the Association,
- d) on thirty days' notice, without giving any reason, or
- e) on such notice in writing as the Association may decide, where, in the opinion of the Association, the Member has exposed or may expose the Association to the risk of being or becoming subject to a sanction, prohibition, restriction or other adverse action by a state or international organisation or competent authority.

### **3.4 Effect of Cessation and Termination**

- 3.4.1 The Association shall be under no liability whatsoever in respect of any event occurring after cessation or termination.
- 3.4.2 Where cover ceases under Rule 3.1 (cessation of cover) or where the entry is terminated under Rule 3.3.2(c) or (d) (termination by the Association on seven or thirty days' notice), the member shall be entitled to a pro rata reduction of premiums in respect of the then policy year (for the period from cessation or termination until the end of the policy year), except that no reduction shall be allowed in respect of overspill calls.
- 3.4.3 Where cover ceases or the entry is terminated or cover is otherwise restricted or lost under these Rules, the member shall (subject to the reduction provided in Rule 3.4.2) remain liable for all premiums in respect of the then current policy year and all prior policy years.
- 3.4.4 Where cover ceases or the entry is terminated, the Association may nevertheless, in its absolute discretion, reinstate the entry and cover with effect from such time as it considers appropriate.

## **4. PREMIUMS, RESERVES AND DEDUCTIBLES**

### **4.1 Premiums Generally**

- 4.1.1 The premiums for each entered vessel shall be determined by the Association, taking into account all matters which the Association considers relevant, including the member's loss record.
- 4.1.2 The premiums determined by the Association and payable by the member may include the following,
  - a) estimated total calls
  - b) supplementary calls
  - c) overspill calls

- d) release calls
- e) additional insurance premiums.

#### **4.2 Estimated Total Calls (ETC)**

- 4.2.1 The Association shall in each policy year determine a full ETC for each entered vessel, which shall constitute the full annual payable premium for that vessel, subject to any supplementary, overspill or release calls which may from time to time be determined by the Association as set out below
- 4.2.2 The ETC for vessels entered after the commencement of the policy year shall be calculated pro rata.

#### **4.3 Supplementary Calls**

- 4.3.1 The Association may for each open policy year determine supplementary calls to cover the liabilities of the Association (excluding any liability for overspill calls as defined in Appendix 3), the Association's running costs and an appropriate allocation to reserves in respect of open and closed policy years.
- 4.3.2 Any supplementary calls shall be levied on a pro rata basis on the ETC for the policy year.
- 4.3.3 The Association may levy additional supplementary calls on open policy years if considered necessary.
- 4.3.4 Separate supplementary calls may be levied for Defence cover.

#### **4.4 Overspill Calls**

The Association may levy one or more overspill calls in respect of an overspill claim in accordance with Appendix 3.

#### **4.5 Release Calls**

- 4.5.1 Where cover ceases or the entry is terminated for any one vessel, the Association may determine a release call for open policy years.
- 4.5.2 If the member pays the release call in full, the member shall not be obliged to pay any further premiums to the Association except for overspill calls, but the member shall not be entitled to receive payment of any surplus or reimbursement of any excess premium.
- 4.5.3 The member may, instead of paying the release call, irrevocably elect to pay the supplementary calls as subsequently adopted by the General Meeting every year prior to the closing of the policy year, in which event the member must within four weeks after the Notice of Release Call deposit with the Association or provide a guarantee acceptable to the Association for the full amount of the release call. After the lapse of said four weeks, the release call shall be paid in full.

#### **4.6 Lay-up Returns**

- 4.6.1 When the entered vessel is laid up in a safe port or place approved by the Association without cargo and without crew (other than for maintenance and security) on board for 30 consecutive days or more, the member shall be entitled (subject to any special terms which may have been agreed) to a pro rata reduction

or return of premiums (other than overspill calls) in respect of the laid up period, in such proportion as the Association considers appropriate, provided that written notice of the lay-up is given to the Association no later than three months after the end of lay-up.

- 4.6.2 If the lay-up period continues into a new policy year, notice shall be given to the Association within 14 days of the start of the new policy year.

#### **4.7 Surplus**

- 4.7.1 If there is a surplus at the final closing of a policy year, the General Meeting may distribute all or part of that surplus among the members in proportion to the net annual calls paid for that policy year.
- 4.7.2 Any surplus that is not distributed shall be included in the Association's reserves.

#### **4.8 Reserves**

- 4.8.1 The Association may establish and maintain reserves as it considers appropriate, including overspill reserves in accordance with Appendix 3.
- 4.8.2 The Association may apply reserves as it considers appropriate, including the reduction of calls in any policy year.

#### **4.9 Closing of Policy Years**

- 4.9.1 The Association may decide to close a policy year at such time as it considers appropriate and taking into account unsettled claims.
- 4.9.2 When a policy year has been closed, no further premium shall be levied except for overspill calls in accordance with Appendix 3.

#### **4.10 Payment of Premiums**

- 4.10.1 Unless otherwise agreed, annual calls shall be paid in three instalments in March, July and November, except that the Association may require annual calls for less than minimum specified amounts to be paid in one instalment within 30 days of the date of the debit note.
- 4.10.2 Supplementary calls, release calls, fixed premiums and deductibles shall be paid within 30 days of the date of the debit note.
- 4.10.3 Overspill calls and, unless otherwise agreed, additional insurance premiums and all other claims which the Association may have against the member shall be paid on demand.
- 4.10.4 The member shall pay the Association on demand the amount of any tax or duty relating to premiums or other sums paid or payable by the member and for which the Association is or may become liable.
- 4.10.5 The Association shall be entitled to interest on overdue payments at such rates as it may from time to time determine.

#### **4.11 Deductibles**

Unless otherwise agreed, cover shall be subject to the Association's standard deductibles as set out in Appendix 4.

#### **4.12 Liens**

The Association shall be entitled to a lien on the Vessel or, in the case of a fleet entry, any other vessel in the fleet for payments owed to it. The lien hereby granted may be enforced by the Association by way of arrest or detention of the vessel in any jurisdiction in which the vessel may call. The member hereby irrevocably confers jurisdiction and the power to order the arrest or detention of the vessel on the court adjudicating upon the Association's application and will not challenge the jurisdiction of the court to order the arrest or detention. Any policy limit shall apply to the total amount of any claim, inclusive of the deductible.





# Part II

## **P&I COVER**

## 5. CARGO

### 5.1 Cover

- 5.1.1 The standard insurance shall cover the member's liability for cargo loss, shortage, damage, delay or other responsibility occurring in relation to the carriage of cargo on the entered vessel.

### 5.2 Exceptions

However the standard insurance shall not cover liabilities, costs and expenses arising out of any of the following,

- 5.2.1 failure to arrive or late arrival of the vessel at the port of loading, other than any such liabilities, costs and expenses arising under a bill of lading already issued.
- 5.2.2 loss, shortage, damage or delay occurring prior to loading, except insofar as loss, shortage or damage occurs in the port of loading within 21 days of the date on which loading of the cargo on the vessel commences or should commence,
- 5.2.3 loss, shortage, damage or delay occurring whilst the cargo is in the custody of another carrier or during lightering operations, except insofar as lightering is approved by the Association, or occurs in port and is customary,
- 5.2.4 failure to load or delay in loading any particular cargo in the vessel, except insofar as liabilities, costs and expenses arising under a bill of lading already issued,
- 5.2.5 the issue of a bill of lading, waybill or other document containing or evidencing the contract of carriage which
- a) is antedated or postdated,
  - b) contains a description of the cargo or its quantity or condition which the member or an officer of the vessel knows is incorrect, or
  - c) should be claused to show that the cargo is carried on deck and is not so claused,
- 5.2.6 carriage of cargo on terms less favourable to the member than the Hague or Hague-Visby Rules, except insofar as the contract of carriage is on less favourable terms solely because of the compulsory application of the Hamburg Rules by virtue of the place of loading or discharge,
- 5.2.7 carriage of cargo on terms which are contrary to terms required by the Association,
- 5.2.8 carriage of cargo under a contract providing for carriage partly in the entered vessel and partly by some other means of transport, except insofar as the Association approves the contract,
- 5.2.9 carriage of cash, banknotes or other forms of currency, bullion, works of art, precious or rare metals or stones, plate or other objects of a rare or precious nature, specie, bonds or other negotiable instruments,
- 5.2.10 carriage under an ad valorem bill of lading, waybill or other document containing or evidencing the contract of carriage in which a value in excess of USD 2,500 or the equivalent in any other currency per unit, piece or package or otherwise is declared or stated, where this deprives the member of the right to rely on defences or rights of limitation which would otherwise have been available to him, except insofar as liability does not exceed that sum,
- 5.2.11 deviation or departure from the contractually agreed voyage or adventure which deprives the member of the right to rely on defences or rights of limitation which would otherwise be available,

- 5.2.12 delay, except insofar as liability arises because of the application of the Hague or Hague-Visby Rules or compulsory law,
- 5.2.13 discharge of the cargo at a port or place other than the port or place provided for in the contract of carriage,
- 5.2.14 failure to discharge all the cargo on board, except insofar as the member takes all reasonable steps to discharge the cargo,
- 5.2.15 delivery of cargo carried under
  - a) a negotiable bill of lading or similar document of title (including an electronic bill of lading) without production (or equivalent thereof in the case of an electronic bill of lading) of that bill of lading or document by the person to whom delivery is made, except where cargo has been carried on the entered vessel either under the terms of a non-negotiable bill of lading, waybill or other non-negotiable document and has been properly delivered as required by that document, and liability arises under a negotiable bill of lading or other similar document of title issued by or on behalf of a party other than the member providing for carriage partly by a means of transport other than the entered vessel or under the terms of an approved electronic trading system and has been properly delivered to the person so entitled in accordance therewith, or
  - b) a non-negotiable bill of lading, waybill or similar document, without production of the original document by the person to whom delivery is to be made where there is a legal obligation to produce such document, except where there is also a requirement under any other applicable law obliging the carrier under the contract of carriage contained in or evidenced by that document to deliver or relinquish custody or control of the cargo without production of such document.
- 5.2.16 loss, shortage, damage or delay occurring on land after discharge, except insofar as it occurs in the port of discharge within 21 days of discharge from the vessel,
- 5.2.17 participation in or use of an electronic trading system (as defined in Appendix 1) unless such system has been approved in writing by the Association, or
- 5.2.18 loss of or damage to cargo carried on a semi-submersible heavy-lift vessel or any other vessel designed exclusively for the carriage of heavy-lift cargo, unless the cargo is carried under a contract which has been approved by the Association (as referred to in Appendix 6).

### 5.3 Miscellaneous

In exceptional cases, the Board of Directors may cover, in its absolute discretion, all or part of the member's liability which would otherwise be excluded by Rule 5.2.1-5.2.8, Rules 5.2.10-5.2.18, provided that the Board is satisfied that the member took all reasonable steps to avoid the event or the circumstances giving rise to such liability.

### 5.4 Additional Covers

If separately agreed, the Association can arrange additional insurance to cover liability arising out of the following,

- 5.4.1 cargo loss, shortage, damage or delay occurring whilst the cargo is in the custody of another carrier pursuant to a contract of carriage for through transport or transshipment providing for carriage to be performed partly by the entered vessel (excluded from the standard insurance under Rule 5.2.3 or 5.2.8),

- 5.4.2 cargo loss, shortage or damage occurring more than 21 days before loading or more than 21 days after discharge from the vessel (excluded from the standard insurance under Rules 5.2.2 and 5.2.16),
- 5.4.3 carriage of cash, banknotes or other forms of currency, bullion, works of art, precious or rare metals or stones, plate or other objects of a rare or precious nature, specie, bonds or other negotiable instruments (excluded from the standard insurance under Rule 5.2.9),
- 5.4.4 carriage of cargo under an ad valorem bill of lading, waybill or other document containing a stated or declared value in excess of USD 2,500 per unit, piece or package (excluded from the standard insurance under Rule 5.2.10), or
- 5.4.5 unauthorised carriage of cargo on deck, deviation and some other types of departure from the contractually agreed voyage or adventure (excluded from the standard insurance under Rule 5.2.5(c) and Rule 5.2.11).

## **6. EXTRA CARGO HANDLING COSTS**

### **6.1 Cover**

The standard insurance shall cover the member's extra costs, and liability for extra costs, in connection with or as a consequence of handling and disposing of cargo, where such costs are necessarily, reasonably and solely incurred, as a direct result of,

- 6.1.1 damage to cargo on board the entered vessel,
- 6.1.2 damage to the vessel which is of a type that would be covered under a standard hull policy, or
- 6.1.3 the consignee's rejection of cargo carried on board the vessel.

### **6.2 Exceptions**

However the standard insurance shall not cover costs or liability for costs, which, are claimable in general average or for which the member has a right of recourse against any other party,

- 6.2.2 result from the vessel being overloaded or improperly stowed,
- 6.2.3 are incurred in order to make the vessel seaworthy to receive the cargo,
- 6.2.4 form part of the daily running costs and expenses of the vessel,
- 6.2.5 are for work which could have been carried out by the crew or by reasonable use of the vessel and her equipment,
- 6.2.6 are in respect of packing, rebagging, sorting and other measures taken in order to comply with ordinary obligations under the contract of carriage, or
- 6.2.7 result from any of the matters referred to in Rules 5.2.1 - 5.2.18 (cargo liability exceptions).

## **7. CREW**

### **7.1 Cover**

The standard insurance for crew shall cover the member's liability for, injury, illness or death,

- 7.1.1 hospital and medical expenses arising from injury, illness or death,

- 7.1.3 loss of or damage to personal effects,
- 7.1.4 costs of repatriation and maintenance ashore resulting from injury, illness or death, or a major casualty to the vessel which renders the vessel unseaworthy and necessitates the signing off of the crew,
- 7.1.5 the costs of the funeral and sending home of the coffin or ashes, and personal effects of a deceased crew member,
- 7.1.6 costs of repatriation incurred as a result of leave to attend a close relative, or the funeral of a close relative who has died or become seriously ill after the crew member signed on,
- 7.1.7 costs of repatriation under a statutory obligation, including the Maritime Labour Convention 2006 or equivalent domestic legislation by a State Party to MLC,
- 7.1.8 wages to serving crew members or, if deceased, their dependants as a result of injury, illness or death,
- 7.1.9 compensation for loss of employment to serving crew members as a result of being signed off due to a major casualty to the vessel which renders the vessel unseaworthy, and necessitates the signing off of the crew, and
- 7.1.10 costs of providing a substitute crew member required as a result of the injury, illness or death of a crew member, or repatriation in accordance with Rule 7.1.6.

## **7.2 Exceptions**

However the standard insurance shall not cover liabilities, costs and expenses which arise,

- 7.2.1 under the terms of a crew contract or other agreement, unless those terms have been approved by the Association,
- 7.2.2 as a result of expiry, termination or breach by the member of a crew contract or other agreement, or expiry of the crew member's period of service, or sale of the vessel, or any other act of the member in respect of the vessel,
- 7.2.3 out of the carriage of cash or valuable objects as referred to in Rule 30.1.6, or
- 7.2.4 in respect of catering crew when the vessel is moored (otherwise than on a temporary basis) and is open to the public as a hotel, restaurant, bar or other place of entertainment.

## **7.3 Limitation**

Cover under this Rule is subject to the limitations contained in Appendix 5 A.

## **7.4 Additional Cover**

If separately agreed, the Association can arrange additional insurance to cover liability,

- 7.4.1 for permanently employed crew members who are ashore or supervisory crew serving on new buildings or on vessels which are about to be delivered to the member, or
- 7.4.2 arising out of the carriage of cash or other valuable objects (excluded from the standard insurance under Rule 7.2.3).

## 8. PASSENGERS

### 8.1 Cover

The standard insurance for passengers shall cover the member's liabilities, costs and expenses arising in respect of passengers carried on board the insured vessel and in respect of or consequent upon:

- 8.1.1 injury, illness or death,
- 8.1.2 hospital and medical expenses arising from injury, illness or death,
- 8.1.3 loss of or damage to baggage belonging to such a passenger,
- 8.1.4 costs of repatriation and maintenance ashore and funeral expenses resulting from injury, illness or death,
- 8.1.5 costs of return to port of embarkation or forwarding to port of destination for embarked passengers and maintenance ashore as a result of an incident stated in 8.1.8,
- 8.1.6 costs of repatriation under a deportation order,
- 8.1.7 delay arising solely because of the application of compulsory law, and
- 8.1.8 a casualty involving either collision, stranding, explosion, fire or other similar cause affecting the physical condition of the insured vessel so as to render it incapable of safe navigation to its intended destination or a threat to the life, health or safety of passengers in general.

### 8.2 Exceptions

However the standard insurance shall not cover liabilities, costs and expenses

- 8.2.1 which are in excess of the liability which would have arisen under the contract of carriage had the member restricted liability to the maximum extent permitted under the applicable law,
- 8.2.2 which arise out of the carriage of cash or valuable objects as referred to in Rule 30.1.6,
- 8.2.3 which arise in respect of carriage of the passenger by any other carrier (including by air) unless such liability arises during....
  - a) repatriation under Rule 8.1.4 or return to port of embarkation or forwarding to port of destination under Rule 8.1.5, or
  - b) transportation to and from the vessel by boats, or
- 8.2.5 which arise under a contract in respect of an excursion from the vessel where,
  - a) a separate contract has been entered into by the passenger, whether with the member or not, or
  - b) the member has waived any rights of recourse against any party.

### 8.3 Limitation

Cover under this Rule is subject to the limitations contained in Appendix 5 A.

### 8.4 Additional Cover

If separately agreed, the Association can arrange additional insurance to cover liability arising out of the carriage of cash or other valuable objects (excluded from standard insurance under Rule 8.2.2).

## 9. OTHER PERSONS CARRIED ON BOARD THE VESSEL

### 9.1 Cover

The standard insurance shall cover the member in respect of the liabilities, costs and expenses referred to in Rules 7.1.1 - 7.1.7 arising out of the carriage on board the vessel of,

- 9.1.1 close relatives of serving crew members, or
- 9.1.2 persons other than crew or passengers provided that their presence on board
  - a) is required in connection with the routine operation of the vessel, or
  - b) has been approved by the Association.

### 9.2 Exceptions

However, the standard insurance shall not cover liabilities, costs and expenses which

- 9.2.1 result from any of the matters referred to in Rules 7.2.1 to 7.2.4, or
- 9.2.2 arise in respect of personnel (other than marine crew) on board the vessel (being an accommodation vessel) employed otherwise than by the member, where there has not been a contractual allocation of risks between the member and the employer of the personnel which has been approved by the Association.

### 9.3 Limitation

Cover under this Rule is subject to the limitations contained in Appendix 5 A.

## 10. PERSONS NOT CARRIED ON BOARD

### 10.1 Cover

The standard insurance shall cover the member in respect of liability for injury, illness or death of persons other than crew, passengers or other persons carried on board the vessel.

### 10.2 Exceptions

However, the standard insurance shall not cover liabilities, costs and expenses which arise,

- 10.2.1 under a contract or indemnity unless approved by the Association,
- 10.2.2 in respect of hotel and restaurant guests and other visitors and catering crew when the vessel is moored (otherwise than on a temporary basis) and is open to the public as a hotel, restaurant, bar or other place of entertainment or
- 10.2.3 in respect of personnel referred to in Rule 9.2.2.

## 11. STOWAWAYS, DIVERSION AND RELATED COSTS

### 11.1 Cover

The standard insurance shall cover the member's extra net costs (in excess of those which would have been incurred but for the presence on board or the diversion) necessarily, reasonably and solely incurred,



- 11.1.1 as a result of the presence on board the vessel of stowaways, refugees or persons saved at sea provided that the member is legally liable for such costs or they are incurred with the approval of the Association, or
- 11.1.2 for fuel, insurance, wages, stores, provisions and port charges in diverting the vessel for the purpose of,
  - a) obtaining necessary medical treatment for an injured or ill person on board the vessel,
  - b) embarking a necessary substitute for a crew member who is injured, ill or deceased,
  - c) landing stowaways, refugees or persons saved at sea, or
  - d) assisting in the search for or rescue of persons in distress at sea.

## 11.2 Exceptions

However the insurance shall not cover costs

- 11.2.1 which are recoverable from another party or insurer, or
- 11.2.2 which are incurred in respect of
  - a) the loss of freight or hire for the entered vessel, or
  - b) demurrage on, detention of or delay to the vessel.

## 12. COLLISION AND CONTACT LIABILITY

### 12.1 Cover

The standard insurance shall cover the member's liability,

- 12.1.1 a) arising out of a collision between the entered vessel and another vessel, or
- b) arising out of a contact between the entered vessel and a fixed or moveable object, but only if and to the extent that such liability exceeds the sum recoverable under the vessel's hull policies solely by reason of the fact that the liability exceeds the valuation of the vessel in those policies, and
- 12.1.2 for the removal of wrecks arising out of such collision or contact insofar as such liability may be covered under Rule 15.

### 12.2 Limitation

If, in the opinion of the Association, the entered vessel is not insured for her proper value under the hull policies, the Association's liability shall be limited to the amount by which the Association considers that the member's liability exceeds the proper value for which the vessel should have been insured, as determined by the Association in its absolute discretion.

### 12.3 Additional cover - collision liability (RDC)

If separately agreed, the Association shall cover, in the following proportions, the member's liability for loss of or damage to another vessel, her cargo, equipment, stores and supplies, arising out of a collision between that vessel and the entered vessel, if and to the extent that such liability is not covered under the entered vessel's hull policies,

- a) one fourth of the liability,
- b) four fourths of the liability, or
- c) any other fraction of the liability agreed with the Association.

**12.4 Additional cover - contact liability (FFO)**

If separately agreed, the Association shall cover the member's liability for loss of and damage to a fixed or moveable object, arising out of contact between that object and the entered vessel, provided that such liability is not covered under the vessel's hull policies.

**12.5 Miscellaneous**

- 12.5.1 If a collision occurs involving two or more vessels belonging to the same member, the member shall be entitled to recover from the Association and the Association shall have the same rights as if the vessels had belonged to different owners.
- 12.5.2 Unless otherwise agreed between the member and the Association, if both vessels involved in a collision are to blame, then where the liability of either or both of the vessels in collision becomes limited by law, claims under Rule 12 shall be settled upon the principle of single liability, but in all other cases claims under this Rule shall be settled upon the principle of cross-liabilities, as if the owner of each vessel had been compelled to pay the owner of the other vessel such proportion of that owner's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the member in consequence of the collision.

**13. PROPERTY LIABILITY****13.1 Cover**

The standard insurance shall cover the member's liability for loss of and damage to property which is not specified elsewhere in these Rules.

**13.2 Exception**

However the standard insurance shall not cover liability insured under another insurance policy.

**14. POLLUTION****14.1 Cover**

- The standard insurance shall cover the member in respect of,
- 14.1.1 liability other than fines or other penalties arising out of the actual or threatened escape or discharge of oil or other polluting substance,
- 14.1.2 costs of measures reasonably taken for the purpose of preventing or minimising pollution or any resulting damage together with any liability for loss or damage caused by the taking of such measures,
- 14.1.3 costs incurred in order to comply with an order of any government or authority for the purpose of preventing or minimising actual or threatened pollution, and
- 14.1.4 liability and costs incurred by the member as a result of his participation in the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) or the Tanker Oil Pollution Indemnification Agreement (TOPIA) or any other agreement approved by the Association for the purpose of this Rule.

## 14.2 Exceptions

However the standard insurance shall not cover under this Rule or any other Rule,

- 14.2.1 costs which are required as part of the normal operation, salvage or repair of the vessel, or
- 14.2.2 costs and expenses which would be recoverable in general average if the member had incorporated the York-Antwerp Rules 1994.

## 14.3 Limitation

Cover under this Rule and all other Rules in respect of any liabilities, losses, costs, expenses and fines arising out of or in respect of actual or threatened oil pollution is subject to the limitations contained in Appendix 5.

## 14.4 TOPIA and STOPIA

A member insured in respect of a vessel which is a relevant ship as defined in the Tanker Oil Pollution Indemnification Agreement (TOPIA) shall, unless the Association otherwise agrees in writing, be a party to such Agreement for the period of entry of that vessel in the Association. A member insured in respect of a vessel which is a relevant ship as defined in the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) shall, unless the Association otherwise agrees in writing, be a party to STOPIA for the period of entry of that vessel in the Association. There is no cover under this Rule or Rule 19.1.3 in respect of any event arising during a period when the member is not in compliance with such requirements unless the Association agrees in writing, or unless the Board of Directors otherwise determines.

## 15. WRECK REMOVAL

### 15.1 Cover

The standard insurance shall cover liability and costs arising out of the raising, removal, destruction or marking of the wreck of the entered vessel, or any other vessel, or their equipment, bunkers or cargo lost as a result of a casualty, insofar as the raising and other operations are compulsory by law or necessary to avoid or remove a hazard or obstruction to navigation or the costs are legally recoverable from the member under a contract approved by the Association.

### 15.2 Exceptions

However the cover insurance shall not cover liability, costs, or expenses

- 15.2.1 which are covered under the vessel's hull policies, or
- 15.2.2 where the member transfers his interest in the wreck or other property saved otherwise than by abandonment, or
- 15.2.3 arising out of removal of cargo carried on a semi-submersible heavy-lift vessel or any other vessel designed exclusively for the carriage of heavy-lift cargo, unless the cargo is carried under a contract which has been approved by the Association (as referred to in Appendix 6).

**15.3 Miscellaneous**

The realised value of the wreck and other property saved shall be credited to the Association.

**16. OBSTRUCTION****16.1 Cover**

The standard insurance shall cover liability to the owners of harbours, wharves, canals or similar structures or to the owners of other vessels, arising out of the entered vessel causing an obstruction as a result of a casualty.

**17. GENERAL AVERAGE CONTRIBUTIONS - CARGO****17.1 Cover**

The standard insurance shall cover the member's loss in respect of general average expenditure, salvage and special charges which should be paid by the cargo interests or some other party to the maritime adventure but which are not legally recoverable solely by reason of a breach of the contract of carriage.

**17.2 Exceptions**

However the standard insurance shall not cover loss which results from any of the matters referred to in Rules 5.2.1-5.2.18 (cargo liability exceptions).

**18. GENERAL AVERAGE CONTRIBUTIONS - HULL****18.1 Cover**

The standard insurance shall cover the member's loss in respect of general average expenditure, salvage and special charges which are not recoverable under the vessel's hull policies solely by reason of the value of the vessel being assessed for contribution to general average or salvage in excess of her insured value.

**18.2 Exception**

However the standard insurance shall not cover general average expenditure, salvage and special charges which are not recoverable solely by reason of the value of the entered vessel being assessed for contribution to general average or salvage at a value in excess of the sums insured under the Hull Policies, provided that cover shall only be available under this Rule 18 in any particular case if the Association shall in its absolute discretion so determine.

**19. FINES****19.1 Cover**

The standard insurance shall cover the member's liability for fines or other penalties imposed,

- 19.1.1 for breach of any immigration law or regulation,
- 19.1.2 for short delivery or over-delivery of cargo, or failure to comply with regulations concerning the declaration of goods on board other than cargo, or documentation of cargo, provided the member is insured for cargo liability under Rule 5,
- 19.1.3 in respect of the accidental escape or discharge of oil or other polluting substance or threat thereof, provided the member is insured for pollution liability under Rule 14, and
- 19.1.4 for smuggling or any infringement of any customs law or customs regulation other than in relation to cargo carried on the entered vessel.

## **19.2 Exception**

However the standard insurance shall not cover fines arising out of any of the matters referred to in Rules 5.2.1-5.2.18 (cargo liability exceptions).

## **19.3 Limitation**

Liability in respect of fines in respect of oil pollution shall be subject to the limitations contained in Appendix 5.

## **19.4 Discretionary cover**

The Association may cover, in its absolute discretion, in whole or in part, the member's liability for fines

- 19.4.1 other than those set out in Rule 19.1, provided that the Association is satisfied that the member took all reasonable steps to prevent the infringement of the law or regulation giving rise to the fine, or
- 19.4.2 imposed on a crew member or any other party in respect of the entered vessel
  - a) provided that the member is under a legal obligation to reimburse the crew member or other party, or
  - b) to the extent that the Association determines that it was reasonable for the member to reimburse the crew member or other party.

## **20. CONFISCATION**

### **20.1 Discretionary cover**

The Association may cover, in whole or in part, in its absolute discretion, the member's loss in respect of the confiscation of the vessel by any legally empowered authority by reason of the infringement of any customs law or customs regulation.

### **20.2 Limitations**

However, discretionary cover shall not be available,

- 20.2.1 for an amount exceeding the market value of the vessel without commitment at the date of the confiscation or fine,
- 20.2.2 unless the Association is satisfied that the member took all reasonable steps to prevent the infringement of the law or regulation giving rise to the confiscation or fine, and

- 20.2.3 unless, where there is a confiscation, the member has taken all reasonable steps to have the confiscation cancelled, the confiscation has lasted at least 6 months from the time the Association was notified of the confiscation, and the member has been irrevocably deprived of his interest in the vessel.

## **21. QUARANTINE AND DISINFECTION REQUIREMENTS**

### **21.1 Cover**

The standard insurance shall cover the member's extra costs where such costs are necessarily, reasonably and solely incurred, as a result of infectious disease on board the entered vessel, in order to comply with quarantine orders or requirements for the disinfection of the vessel, the cargo or persons aboard.

### **21.2 Exceptions**

However the standard insurance shall not cover costs,

- 21.2.1 which form part of the daily running costs of the vessel, or  
 21.2.2 when the member orders the vessel to a port at which he knows or should know that the vessel would be quarantined, except where such orders are unavoidable.

## **22. SALVAGE**

### **22.1 Cover**

The standard insurance shall cover the member's liabilities, costs and expenses in respect of,

- 22.1.1 life salvage payable to third parties as a result of saving or attempting to save the life of a person on or from the entered vessel, to the extent that payment is not recoverable from hull insurers or cargo owners or underwriters,  
 22.1.2 salvage operations conducted by the entered vessel for the purpose of saving life at sea, and  
 22.1.3 special compensation payable to a salvor under Article 14 of the 1989 Salvage Convention, including when applicable by virtue of incorporation in Lloyd's Open Form of Salvage Agreement or in any other standard form salvage contract approved by the Association, or under the Special Compensation P&I Clubs Clause (SCOPIC).

### **22.2 Exception**

However the standard insurance shall not cover risks which are outside the scope of cover available under other Rules.

### **22.3 Limitation**

Liabilities, costs and expenses in respect of oil pollution shall be subject to the limitations contained in Appendix 5.

#### **22.4 Additional cover**

If separately agreed, the Association can arrange cover for an owner member who is a professional salvor for liabilities, costs and expenses arising out of salvage operations,

- 22.4.1 in connection with the operation of and in respect of the member's interest in the entered vessel, or
- 22.4.2 in the absence of an entered vessel,
  - a) in respect of the escape or discharge of oil in accordance with Rule 14 (Pollution), and
  - b) for risks covered under Part II of the Rules, other than under Rule 14 (Pollution).

### **23. TOWAGE**

#### **23.1 Cover - towage of the entered vessel**

The standard insurance shall cover the member's liability arising out of towage of the entered vessel,

- 23.1.1 under a contract entered into in the ordinary course of trading
  - a) for the purpose of entering, leaving or manoeuvring within a port when customary, or
  - b) when the vessel is entered as a barge or other vessel which is habitually towed from place to place, or
- 23.1.2 under a contract which has been approved by the Association (as referred to in Appendix 6) and upon such terms as the Association may require.

#### **23.2 Exception**

However the standard insurance shall not cover risks which are outside the scope of cover available under other Rules.

#### **23.3 Limitation**

Liabilities, costs and expenses in respect of oil pollution shall be subject to the limitations set out in Appendix 5.

#### **23.4 Additional cover - towage by the entered vessel**

If separately agreed, the Association can arrange additional insurance for liabilities arising out of towage by the entered vessel on contractual terms which have been approved by the Association (as referred to in Appendix 6),

- a) where the vessel is entered as a tug or other vessel engaged in towage in the ordinary course of business, or
- b) where cover has been agreed prior to the commencement of the towage.

## **24. MITIGATION COSTS (SUE AND LABOUR)**

### **24.1 Cover**

The standard insurance shall cover the member's extraordinary costs which are necessarily, reasonably and solely incurred, on or after a casualty or event liable to give rise to a claim against the Association, in avoiding or minimising any liability or loss of the member covered under these Rules.

### **24.2 Exceptions**

However the standard insurance shall not cover,

- 24.2.1 costs which are claimable in general average,
- 24.2.2 costs which result from the vessel being overloaded or improperly stowed,
- 24.2.3 costs which are incurred in order to make the vessel seaworthy to receive the cargo,
- 24.2.4 costs which form part of the daily running costs of the vessel,
- 24.2.5 costs for work which could have been carried out by the crew or by reasonable use of the vessel and her equipment, or
- 24.2.6 costs which are not either approved in advance by the Association, where it is practicable to obtain such approval, or determined by the Association in its discretion to have been reasonably incurred.

### **24.3 Miscellaneous**

The Association shall also cover any liabilities, loss, expenses or costs which the member incurs at the direction of the Association given in writing and referring to this Rule.

## **25. LEGAL AND ASSOCIATED COSTS**

### **25.1 Cover**

The standard insurance shall cover legal and associated costs reasonably incurred, in agreement with the Association, in relation to claims for which the member is covered under these Rules.

### **25.2 Discretionary cover**

The Association may cover, in whole or in part, in its absolute discretion, legal and associated costs reasonably incurred in connection with a formal enquiry into a casualty involving the entered vessel.

## **26. MEMBER'S OWN PROPERTY LOSS**

### **26.1 Cover**

The standard insurance shall cover loss suffered by the member as a result of the loss of or damage to his own property, to the extent that the Association would have been obliged to indemnify the member in respect of liability had the property been owned by a third party.



## **26.2 Exceptions**

However, subject to Rule 12.5.1 (sister ships involved in a collision), the standard insurance shall not cover,

- 26.2.1 loss in respect of loss of or damage to the entered vessel, her equipment, stores, bunkers, supplies, lashings or containers, or
- 26.2.2 loss in respect of cargo owned by the member or other property which could have been insured under any other customary insurance.

## **26.3 Additional cover**

If separately agreed, the Association as agent of the member can arrange additional insurance to cover the member's loss in respect of containers owned or leased by the member.

# Part III

## **DEFENCE COVER**

## 27. DEFENCE COVER

### 27.1 Cover

The Association shall cover the member's reasonable costs for necessary legal assistance in relation to disputes which are directly connected with the operation of the entered vessel and which are in respect of any of the following:-

- 27.1.1 the carriage of cargo,
- 27.1.2 the carriage of passengers,
- 27.1.3 contracts with port agents,
- 27.1.4 crew employment contracts,
- 27.1.5 contracts with brokers,
- 27.1.6 charterparties, and, provided agreed at the time the relevant contract is entered into, contracts of affreightment,
- 27.1.7 the use of port facilities,
- 27.1.8 loss, damage or delay to the vessel,
- 27.1.9 general average,
- 27.1.10 salvage and towage,
- 27.1.11 insurance contracts in respect of the vessel,
- 27.1.12 damage to property,
- 27.1.13 personal injuries or loss of life,
- 27.1.14 supplies to the vessel,
- 27.1.15 contracts for the repair of the vessel,
- 27.1.16 conversion, alteration, building, purchase, mortgaging or sale of the vessel (subject to Rules 27.2.8 and 27.4).

### 27.2 Exceptions

However, the Association shall be under no liability to reimburse members for costs:

- 27.2.1 which are incurred before the member notifies the Association of the dispute or in relation to a claim which is or can be covered under the P&I Rules,
- 27.2.2 where the member fails to carry out any of his obligations under the Rules,
- 27.2.3 where the dispute is with the Association or the Association's servants, agents or representatives, or is between joint members, co-assureds or parties with joint interests in the vessel,
- 27.2.4 where the dispute is in respect of a class action or other legal proceedings in which one or more persons sue or are sued as representatives of a group of persons with a common interest,
- 27.2.5 where the dispute arises out of damage to the vessel, to the extent that the cost of repairs exceeds the deductible or one per cent of the insured value of the vessel under the hull policies,
- 27.2.6 where the dispute arises under a management agreement,
- 27.2.7 where the vessel is not entered with the Association at the time the cause of action arises and, in the case of disputes arising out of the alteration, building, purchase, mortgage or sale of the vessel, at the time the relevant contract is entered into,
- 27.2.8 where the dispute arises under Rule 27.1.16 (the conversion, alteration, building, purchase, mortgage or sale of the vessel) unless cover has been separately agreed in writing,

- 27.2.9 where the member appoints a lawyer without the approval of the Association, or
- 27.2.10 which, in the opinion of the Association, should not be covered on any of the following grounds:-
- a) there is no reasonable relationship between the amount in dispute and the costs which are likely to be incurred,
  - b) there is no reasonable relationship between the prospects of successfully obtaining an award or judgment and the costs which are likely to be incurred,
  - c) there is no reasonable relationship between the prospects of successfully obtaining payment (due to the financial position of the other party or otherwise) and the costs which are likely to be incurred,
  - d) there is no reasonable relationship between the prospects of successfully defending a claim and the costs which are likely to be incurred,
  - e) the member has failed to take reasonable care in the chartering, control or management of the vessel, or the position adopted by the member is unreasonable or the member's conduct has been imprudent, improper or tainted with illegality,
  - f) the member fails to provide information or documentation which is necessary for the dispute to be properly evaluated or handled,
  - g) the member refuses to handle or settle the case in accordance with recommendations of the Association,
  - h) the member makes concessions or enters into a settlement without the approval of the Association,
  - i) the member takes steps to initiate legal action or arbitration, or makes an application to any court or arbitration tribunal, or takes any other material step in a dispute, without seeking the prior approval of the Association, or
  - j) any other reason which the Association decides, in its absolute discretion, is sufficient reason for cover not to apply

### **27.3 Miscellaneous**

- 27.3.1 The Association may at any stage of a dispute withdraw or limit the extent of cover for any of the reasons set out in Rule 27.2. or in any of the circumstances referred to in Rules 3.1.2 and 3.1.3.
- 27.3.2 In the event that cover is withdrawn, the member is liable to reimburse the Association for any costs which the Association has previously incurred.
- 27.3.3 Where the costs of a dispute are only partly covered, the Association shall decide in its absolute discretion, on the applicable apportionment of costs.
- 27.3.4 Insofar as the member's costs are covered, the Association shall be entitled to any sum which the member recovers in respect of costs pursuant to any award, judgment or settlement agreement, and in the event that a settlement agreement does not provide, or does not provide adequately for recoverable costs, the Association shall be entitled to such sum as it considers should have been attributable to costs pursuant to such an agreement.
- 27.3.5 Where a dispute involves two or more members of the Association, the Association shall be entitled at any stage of the dispute to recommend the members to submit to mediation with a recognised international shipping mediator to be appointed by

agreement among those members. Failing agreement among those members on the appointment of a mediator, the Association shall be entitled to recommend appointment of such a mediator on their behalf.

- 27.3.6 Where a separate agreement has been reached in respect of disputes arising out of the repair, alteration, conversion, building, purchase or sale of the entered vessel (pursuant to Rule 27.2.8), any limit agreed shall apply in the aggregate to all disputes arising out of one contract or series of contracts.
- 27.3.7 The Association shall decide in its absolute discretion whether a case involves one or more disputes to which a deductible applies.

#### **27.4 Limitation**

Cover under this Rule is limited to USD 5 million per dispute, except for disputes arising under Rule 27.1.16 (alteration, conversion, building, purchase, mortgage or sale of the vessel) where the limit shall be USD 300,000 per dispute unless a different limit is agreed. Any policy limit shall apply to the total amount of any claim, inclusive of the deductible.

# Part IV

## **GENERAL PROVISIONS**

## **28. CONDITIONS PRECEDENT**

### **28.1 Disclosure and alteration of risk**

The member shall,

- 28.1.1 make full and correct disclosure to the Association, before the contract of insurance is concluded, of every circumstance,
  - a) which is known to the member or any agent effecting the insurance on his behalf, or which, in the ordinary course of business, ought to be known by the member or agent, and
  - b) which would influence the Association in deciding whether and on what terms to provide cover,
- 28.1.2 make full, correct and prompt disclosure to the Association, of every change in circumstance which is or ought to be known to the member and which alters the risk covered by the Association, and
- 28.1.3 refrain from causing or agreeing, without the Association's prior approval, to any change in circumstance which alters the risk covered by the Association.
- 28.1.4 In the event of any failure to comply with any of the above requirements, the member shall not be entitled to any recovery from the Association in respect of any event occurring after the time of the failure, except insofar as there has only been a failure to comply with Rules 28.1.2 - 28.1.3 and the Association would have provided the cover at the same premium had the Association known of the changed circumstances prior to the conclusion of the contract.

### **28.2 Fraudulent, unlawful and deliberate acts**

The member shall not,

- 28.2.1 make any fraudulent claim on the Association,
- 28.2.2 knowingly allow the vessel to be used for illegal purposes, or
- 28.2.3 deliberately cause or attempt to cause a casualty.
- 28.2.4 In the event of any failure to comply with any of the above requirements, the member shall not be entitled to any recovery from the Association in respect of any event occurring at or after the time of the failure.

### **28.3 Premiums**

- 28.3.1 The member shall pay all premiums and other sums due to the Association as they fall due.
- 28.3.2 In the event of any failure to comply with the above requirement, the member shall not be entitled to any recovery from the Association in respect of any event occurring during the period when any premium or other sum was outstanding and the Association shall be entitled to cease handling all or any of the cases the Association is for the time being handling for the member.

### **28.4 Classification & certification**

It shall be a condition precedent of the insurance cover,

- 28.4.1 that the entered vessel remains fully classed with a classification society approved by the Association,
- 28.4.2 that the vessel's classification society is not changed without the Association's prior consent, and

- 28.4.3 that the member shall maintain the validity of all statutory certificates issued by or on behalf of the state of the vessel's flag in relation to the ISM Code and ISPS Code.
- 28.4.4 In the event of any failure to comply with any of the above requirements, the member shall not be entitled to any recovery from the Association in respect of any event occurring during the period of non-compliance.

## **28.5 Pay to be paid**

- 28.5.1 Unless the Association shall in its absolute discretion otherwise determine, it shall be a condition precedent of the member's right to claim against the Association that the liabilities, losses, expenses or costs (which are the subject of the claim) have actually been paid or discharged by the member, joint member or co-assured and that, in the event of a liability, the liability has been discharged pursuant to:
- a) a court order or judgment, other than a default judgment,
  - b) an award, other than a default award, of an arbitration tribunal appointed with the consent of the Association or in accordance with an arbitration agreement entered into before the event giving rise to the claim arose, or
  - c) a settlement approved by the Association.
- 28.5.2 Notwithstanding Rule 28.5.1, where a member has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a crew member, or costs of repatriation under the Maritime Labour Convention 2006, the Association shall discharge or pay such claim on the member's behalf directly to such crew member or dependent thereof, provided always that
- a) the crew member or dependent has no enforceable right of recovery against any other party and would otherwise be uncompensated,
  - b) the amount payable by the Association shall under no circumstances exceed the amount which the member would otherwise have been able to recover from the Association under the Rules and the member's terms of entry,
  - c) where the Association is under no liability to the member in respect of the claim by reason of termination under Rule 3.3.2 (b) for non-payment of premiums or other sums due to the Association, the Association shall discharge or pay the claim to the extent only that it arises from an event occurring prior to the date of termination, and
  - d) any payment under c) or in respect of costs of repatriation under Rule 28.5.2 (unless arising under Guideline B2.5 (c) (i) or (ii) of Regulation 2.5 of the Maritime Labour Convention 2006) shall be made by the Association as agent only of the member and the member shall be liable to reimburse the Association for the full amount of such payment.

## **29. OTHER CONDITIONS**

### **29.1 The member shall,**

- 29.1.1 comply with any recommendations made by the Association following a survey,
- 29.1.2 comply with any directions or safety regulations issued by the Association or any applicable public authority,
- 29.1.3 comply with all rules, regulations, recommendations and requirements of the classification society,



- 29.1.4 comply with all statutory requirements of the state of the vessel's flag, relating to the construction, adaptation, condition, fitment, equipment, manning, operation, security and management of the entered vessel (including applicable requirements of the ISM and ISPS codes) and maintain the validity of all statutory certificates issued by or on behalf of the vessel's flag state in relation to such requirements,
- 29.1.5 provide the Association, on request, with any necessary authorisation to enable the Association to inspect and be provided with any information or documents, in the possession of the vessel's current and previous classification societies, relating to the maintenance of class,
- 29.1.6 enable the Association, at any time, to carry out a survey in accordance with Rule 35,
- 29.1.7 provide the Association with any information or documents requested by the Association in respect of the condition, manning, operation or management of the vessel,
- 29.1.8 incorporate into all contracts and indemnities any terms required by the Association (as referred to in Appendix 6), and
- 29.1.9 exclude from all contracts and indemnities any terms which are prohibited by the Association.
- 29.1.10 In the event of any failure to comply with the requirements set out in Rules 29.1.1 - 29.1.9, the member shall not be entitled to any recovery from the Association, except insofar as the member can prove that liabilities, losses, expenses or costs would have been incurred in any event and would have been covered by the Association if the member had complied with those requirements.

## **30. EXCLUSIONS**

### **30.1 General exclusions**

The insurance shall not cover liabilities, losses, expenses or costs,

- 30.1.1 which the Association excludes under Rule 35.4 (exclusion of cover following a survey),
- 30.1.2 which are recoverable under the vessel's hull policies or which, in the opinion of the Association, would have been recoverable had the vessel been properly insured for her uncommitted market value on standard terms without deductible or franchise (with the proper insured value to be determined by the Association in its absolute discretion), subject only to Rule 27 (Defence cover),
- 30.1.3 which are recoverable by the member under another insurance policy, or which would have been recoverable under another standard insurance policy but for any term in such a policy providing for deductibles or excluding or limiting liability on the grounds of double insurance,
- 30.1.4 which relate to a person performing work in the service of the entered vessel covered by social insurance or by public or private insurance required by the legislation or a collective wages agreement governing the contract of employment, or which would have been covered had such insurance been effected,
- 30.1.5 which arise out of irrecoverable debts or the insolvency of any party, including the member, or out of the fraud of agents or of an associated company or of employees of the Member acting as agent,

- 30.1.6 which arise out of the carriage of cash, bank notes or other forms of currency, bullion, works of art, precious or rare metals or stone, plate or other objects of a rare or precious nature, specie, bonds or other negotiable instruments, whether carried as cargo or as passengers' baggage or as crew effects or otherwise and whether the value is declared or not,
- 30.1.7 which result from the member knowingly sending the vessel to sea in an unseaworthy condition,
- 30.1.8 which arise in circumstances where there has been wilful misconduct (namely an act intentionally done, or a deliberate omission by the member, with knowledge that the performance or omission will probably result in injury, loss or damage, or an act done or omitted in such a way as to allow an inference of a reckless disregard of the probable consequences) on the part of the member, or
- 30.1.9 which arise out of a default judgment or default award.

## **30.2 Excluded losses**

The insurance shall not cover, except under Rule 24 (mitigation costs) or Rule 27 (Defence), liabilities, losses, expenses or costs,

- 30.2.1 which would not have arisen but for the terms of a contract or an indemnity entered into by, or on behalf of, the member, unless the contract or indemnity is accepted or approved by the Association,
- 30.2.2 which arise in respect of salvage, towage or services in the nature of salvage provided to the entered vessel, or which arise out of salvage, wreck removal, or towage operations performed by the member or by an entered vessel, subject to Rules 17 and 18 (general average), Rule 22 (salvage) or Rule 23 (towage),
- 30.2.3 which are incurred in respect of the loss of or damage to the entered vessel or any part of the vessel, subject only to Rule 20 (confiscation),
- 30.2.4 which are in respect of the loss of or damage to any equipment or any containers, lashing, stores or fuel on board insofar as they are owned or leased by the member or by any party associated with or under the same management as the member,
- 30.2.5 which are incurred in respect of the cost of repairs to the vessel or any charges or expenses in connection with such repairs, subject only to Rules 17 and 18 (general average),
- 30.2.6 which are incurred in respect of
  - a) the loss of freight or hire for the entered vessel, or
  - b) demurrage on, detention of or delay to the vessel, except insofar as they form part of a third party claim for liabilities in respect of cargo,
- 30.2.7 which arise out of the cancellation of a charter or other engagement of the vessel,
- 30.2.8 which are in respect of consequential loss of profit or depreciation arising from the rescue of refugees, or
- 30.2.9 which are incurred in respect of general monetary loss, consequential loss, market fluctuations, loss of market, loss of production, depreciation, loss of time, loss of opportunity, loss of profit, loss of reputation, or any similar loss, as a result of delay or the abandonment of a voyage, except where the member is legally liable to a third party for such loss and such liability is covered under these Rules.

### 30.3 Excluded operations

The insurance shall not cover, except under Rule 27 (Defence), liabilities, costs and expenses, 30.3.1 which are incurred in respect of an entered vessel carrying out drilling or production operations (as defined in Appendix 1) and which arise out of or during drilling or production operations,

- 30.3.1 which are incurred in respect of a drilling or production vessel (as defined in Appendix 1) and which arise out of or during drilling or production operations,
- 30.3.2 which are incurred in connection with any claim brought against the member arising out of waste disposal activities (as defined in Appendix 1) or sub-sea activities (as defined in Appendix 1), and
- 30.3.3 which arise during the course of specialist operations (as defined in Appendix 1) as a consequence of:
  - a) claims brought by any party, for whose benefit the work has been performed, or by any third party (whether connected with any party for whose benefit the work has been performed or not), in respect of the specialist nature of the operation, or
  - b) the failure to perform such specialist operations by the member or the fitness for purpose or quality of the member's work, products or services, or
  - c) loss of or damage to the contract work,
 except that this exclusion shall not apply to loss of life, injury of crew and other personnel on board the vessel, the wreck removal of the vessel, or oil pollution from the vessel insofar as covered under the Rules.

### 30.4 Excluded risks

The insurance shall not cover,

- 30.4.1 war risks' liabilities, costs or expenses (as defined in Appendix 1),
  - a) except that this exclusion shall not apply to liabilities, costs and expenses of a member insofar only as they are discharged by the Association on behalf of the member pursuant to a demand made under
    - (i) a FMC undertaking or
    - (ii) an undertaking given by the Association to the International Oil Pollution Compensation Fund 1992 in connection with STOPIA,
    - (iii) a CLC Certificate,
    - (iv) a Bunkers Convention Certificate,
    - (v) a non-War Athens Convention/PLR Certificate, or
    - (vi) a Wreck Removal Convention Certificate
 to the extent such liabilities, costs and expenses are not recovered by the member under any other policy of insurance or any extension to the cover provided by the Association,
  - b) where any such guarantee, undertaking or certificate is provided by the Association on behalf of the member as a guarantor or otherwise, the member 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 by way of loan and that 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 member under any other insurance and against any third party, and
- c) the member 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 Member complied with the terms and conditions thereof.
- 30.4.2 nuclear risks' liabilities, costs and expenses (as defined in Appendix 1),
- a) except that this exclusion shall not apply to liabilities, costs and expenses of a member insofar only as they are discharged by the Association on behalf of the member solely pursuant to a demand under a guarantee, undertaking or certificate as referred to in Rule 30.4.1(a) to the extent such liabilities, costs and expenses are not recovered by the member under any other policy of insurance or any extension to the cover provided by the Association,
- b) where any such guarantee, undertaking or certificate is provided by the Association on behalf of the member as a guarantor or otherwise, the member 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 by way of loan and that 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 member under any other insurance and against any third party, and
- c) the member 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 Member complied with the terms and conditions thereof.
- 30.4.3 liabilities, costs or expenses which arise out of or are consequent upon the vessel carrying contraband, blockade running or being employed in a trade or on a voyage which is unlawful or which the Board of Directors considers to be imprudent unsafe, improper or unduly hazardous,
- 30.4.4 liabilities, costs or expenses which arise out of or in consequence of the member's participation in or use of an electronic trading system (as defined in Appendix 1) unless such system has been approved in writing by the Association,
- 30.4.5 liabilities, costs or expenses which arise as a result of the presence in or the actual or threatened escape or discharge from any land based dump, site, storage or disposal facility of any substance previously carried on the entered vessel as cargo, fuel, stores, waste or otherwise, save that the Association may, in its absolute discretion, decide to cover such liabilities, costs or expenses in whole or in part, or
- 30.4.6 liabilities, costs or expenses where payment by the Association or the provision of cover in respect thereof may expose the Association to the risk of being subject to a sanction, prohibition or any adverse action by a state or international organisation or competent authority.

## **31. BURDEN OF PROOF**

- 31.1** The member shall have the burden of proving that any claim against the Association results from a risk covered under the insurance.
- 31.2** Where the claim results from a combination of a cause in respect of which liabilities, losses, expenses or costs are covered and a cause in respect of which liabilities, losses, expenses or costs are excluded, the member shall have the burden of proving that the cause covered by the insurance is the dominant cause, failing which the entire claim shall be excluded.

## **32. LIMITATIONS**

### **32.1 Limitation of liability - general**

- 32.1.1 The Association insures the member's liability as may ultimately be determined and fixed by law, including any laws relating to the limitation of liability, and the Association shall not be liable for any sum in excess of such legal liability.
- 32.1.2 Where a member or co-assured is entitled to limit any liability covered by the Association, there shall be no recovery in respect of such liability for more than the amount to which liability could have been limited.
- 32.1.3 Where a specified insured amount is agreed, the Association's liability shall not exceed that amount per event.
- 32.1.4 For the purposes of Rule 32, any occurrence or occurrences arising out of an event shall be treated as part of that event.
- 32.1.5 Where more than one limit applies, the Association's liability shall not exceed the lowest applicable limit.
- 32.1.6 Any liabilities of the Association arising in respect of or in connection with the actual or threatened escape or discharge of oil shall be subject to the provisions of Appendix 5.
- 32.1.7 Any liabilities of the Association under Rules 7, 8 or 9 or under any other Rule arising in respect of or in connection with liabilities to passengers, crew or other persons carried on board a vessel shall be subject to the provisions of Appendix 5 A.

### **32.2 Limitation of liability - owners**

- 32.2.1 Where the member is an owner, the Association's liability shall be subject to the limitations set out in the overspill provisions in Appendix 3.

### **32.3 Limitation of liability - joint members, co-assureds and affiliates**

- 32.3.1 Where the insurance cover is extended to any joint member, co-assured or affiliate, the total liability of the Association shall in no circumstances exceed the sum that would have been recovered by the owner of the vessel had he been the sole assured.
- 32.3.2 Where the member is an owner but the member's co-assured or affiliate is a charterer, any insurance cover extended to the charterer or affiliate shall be limited to USD 350 million in the aggregate for any one vessel arising out of any one event.

### **32.4 Limitation of liability under separately agreed additional insurances (Appendix 7) in case of reinsurance default**

In any case, the liability of the Association for any and all liabilities, losses, costs and expenses incurred by all members, co-assureds and affiliates under any one entry and which arise out of any one event, shall be limited to the sum insured in the terms of entry, provided always that to the extent the Association has reinsured the risks insured under any one entry, the Association shall (with the exception of insurance for War Risks and for Chemical, Bio-Chemical Electromagnetical Weapons and Computer Virus Risks) only be obliged to pay any amount in excess of USD 10 million or 10% of the cover limit per event whichever is the lowest as and when such funds are received by the Association from the reinsurer(s).

### **32.5 Limitation of liability - consortiums**

Where the member is a party to a consortium agreement, there shall be no recovery in excess of USD 350 million arising out of any one event in respect of all insured parties and all vessels operating under such consortium. Where the member and any other party or parties to the consortium agreement are insured under entries with the Association or any other insurer which participates in the Pooling Agreement or the International Group Re-insurance policies, the aggregate for all claims brought against the Association and other insurers shall be limited to USD 350 million for any one event and the Association's liability shall be limited to that proportion of USD 350 million that the claim bears to the aggregate of all the claims recoverable from the Association and the other insurers.

### **32.6 Sanctions**

The Member shall in no circumstances be entitled to recover from the Association that part of any liabilities, costs and expenses which is not recovered by the Association under the Pooling Agreement, General Excess Loss Contract or any reinsurance(s) arranged by the Association because of a shortfall in recovery from such parties or reinsurers thereunder by reason of a sanction, prohibition or adverse action against them by a state, international organisation or other competent authority or the risk thereof if payment were to be made by such parties or reinsurers. For the purpose of this Rule 32.6, "shortfall" includes any failure or delay in recovery by the Association by reason of the parties or reinsurers making payment into a designated account in compliance with the requirements of any state, international organisation or other competent authority.

## **33. PART TONNAGE AND PART COVER**

Where a vessel is entered with the Association for less than its full tonnage or for a fraction of the member's liability, the Association shall only be liable to the member for a corresponding proportion of any liability, loss, expense or costs.

## **34. THE OBLIGATION TO MITIGATE**

**34.1** The member shall, upon the occurrence of any event which may give or has given rise to a claim upon the Association, take and continue to take all reasonable steps

(including the preservation of any right of recourse against a third party or any right to limit liability) for the purpose of averting or minimising any liability, loss, expense or costs which may be covered by the Association.

**34.2** If the member fails to comply with the requirements set out in Rule 34.1, the Association shall, in its absolute discretion, be entitled to refuse to cover all or part of the claim.

## **35. SURVEYS**

**35.1** The Association may, in its absolute discretion, conduct a survey of the condition, manning, operation or management of the entered vessel at any time.

**35.2** Any such survey shall be carried out for the sole benefit of the Association.

**35.3** Any such survey shall initially be carried out at the Association's expense.

**35.4** However if the survey demonstrates that the condition of the vessel or standards of manning, operation or management are such that the vessel is unseaworthy or that the risk covered by the Association is altered,

- a) the Association shall be entitled to exclude any risk which the Association considers, in its absolute discretion, appropriate to exclude in the light of the survey, until the condition, manning, operation and management of the vessel are confirmed by the Association to be acceptable, and
- b) the member shall indemnify the Association in respect of the expense of the survey.

**35.5** Where a vessel is entered subject to a survey, the Association shall be entitled to refuse to cover the member in respect of any event occurring prior to the survey, except insofar as the member can prove that liability, loss, expense or costs would have been incurred in any event and would have been covered by the Association, had such a survey taken place.

**35.6** The member hereby authorises the Association to obtain all available information and documentation

- a) relating to the maintenance of class of the vessel and in the possession of the classification society with which the vessel is or has been classed, and
- b) relating to the issue of certificates under the ISM Code and in the possession of the administration of the vessel's flag state or an organisation recognised by the flag state for the purposes of the ISM Code.

**35.7** The member or prospective member

- a) consents to and authorises the disclosure by the Association to any other insurer which participates in the Pooling Agreement any survey of a vessel undertaken on behalf of the Association either pursuant to an application for, or after entry in, the Association, and

- b) waives any rights or claims against the Association or its Managers of whatsoever nature arising in respect of or relating to the contents or opinions expressed in any survey so disclosed.

Provided always that

- (i) such survey may only be disclosed to another insurer which participates in the Pooling Agreement when an application for an entry of such vessel is made thereto, and
- (ii) the disclosure of the survey shall be for the limited purpose only of that insurer considering an application to enter such vessel for insurance.

## **36. CLAIMS HANDLING**

**36.1** The Association shall be entitled,

- 36.1.1 to handle or take over the handling of any claim or legal or other proceedings in respect of any liability, loss, cost or expense for which the member is or may be wholly or partly covered under these Rules and to conduct such proceedings in the name of the member,
- 36.1.2 to employ or appoint lawyers, advisers, experts and other parties to handle any claim on behalf of the member,
- 36.1.3 to require the member to settle, compromise or otherwise dispose of any claim or proceedings in such manner and upon such terms as the Association considers appropriate, and
- 36.1.4 to exercise its discretion under these rules without being under any obligation to give reasons for the decision reached pursuant to the exercise of such discretion.

**36.2 The member shall be obliged,**

- 36.2.1 to inform the Association immediately of any claim made against the member and of any event which might give rise to a claim,
- 36.2.2 to provide the Association as soon as possible with all available information and documentation relating to any claim or to any event which might give rise to a claim,
- 36.2.3 to obtain information, undertake calculations, prepare reports and assist in all aspects of claims handling, at the member's own expense, in accordance with the Association's reasonable recommendations, requirements or directions,
- 36.2.4 to refrain from admitting liability or settling any claim or waiving any right of recourse or recovery from any third party without the prior approval of the Association,
- 36.2.5 to authorise the Association to employ or appoint lawyers, advisers, experts and other parties as agents on behalf of the member but under the control, direction and instructions of the Association, and
- 36.2.6 to undertake to secure prior approval from the Association for any lawyer appointed by the member, or their representatives, for any claim subject to these Rules, and to ensure that such appointed lawyer is under the control, direction and instruction of the Association.



**36.3** If the member fails to allow the Association to exercise its rights as set out in Rule 36.1.1-36.1.3 or if the member fails to comply with the requirements set out in Rule 36.2.1-36.2.6, the Association shall, in its absolute discretion, be entitled to refuse to cover all or part of the claim.

### **37. TIME LIMITS**

**37.1** The member shall lose any right to compensation unless the member gives notice to the Association of any event which may give rise to a claim on the Association within six months of the member becoming aware of it.

**37.2** In addition and in any event, any claim on the Association shall be waived and time barred unless the member commences proceedings against the Association in respect of that claim before whichever of the following dates first occurs:-

- a) six months from the receipt of written notice from the Association stating that the claim has been rejected; or
- b) three years from the date on which the member first received sufficient information to enable a claim to be submitted to the Association; or
- c) ten years from the date of any event which may give rise to a claim on the Association, unless the claim is dependent upon litigation or a general average adjustment still in progress at the expiry of the ten year period, in which case that period will be extended until one year after issue of the final judgment or adjustment.

### **38. PROVISION OF SECURITY**

The Association shall be under no obligation to provide security in respect of any liability of the member or any claim against the member or the entered vessel. If the Association provides security, the applicable deductible shall be paid by the Assured, irrespective of whether any payment has been made or not.

### **39. WAIVER AND RECOVERY**

**39.1** In the absence of an express and specific written confirmation of cover given by the Association, no act, omission, inaction or conduct of any kind by the Association, including the provision of any security, payment of any sum or the handling of any claim or the survey of any vessel, shall be treated as a waiver of any of the Association's rights or an acceptance that the Association covers any particular claim.

**39.2** If the Association provides security, certificate or guarantee, pays any sum or incurs any expense in respect of any claim which turns out not to be covered by the Association, the member shall indemnify the Association in respect of all liability, loss, expense and costs incurred by the Association.

- 39.3** Where the Association makes any payment in respect of any liability, loss, expense or costs, the Association shall be subrogated to any rights of recourse which the member, co-assured or affiliate may have against any third party in respect of the liability, loss, expense or costs.
- 39.4.1 Where the Association has made a payment in respect of any liability, loss, expense or costs to or on behalf of the member, any co-assured or affiliate, the whole of the recovery from a third party in respect of that liability, loss, expense or costs shall be credited and paid to the Association up to an amount equivalent to the payment made by the Association to or on behalf of the member, co-assured or affiliate, plus any costs incurred by the Association in connection with the right of recourse.
- 39.4.2 The balance (if any) of any recovery shall be credited and paid to the member up to an amount equivalent to any deductible.
- 39.4.3 The remaining balance (if any) shall be apportioned between the Association and the member in proportion to the respective amounts credited to them under Rule 39.4.1-Rule 39.4.2.
- 39.5** The Association shall, in its absolute discretion, assess the sums attributable in any recovery to costs.

#### **40. EXCLUSION OF LIABILITY**

- 40.1** The Association, its officers and employees shall not be liable in respect of any advice, survey, error or omission of the Association or any officers, employees, agents, representatives, lawyers, experts, surveyors, or other party employed or appointed by the Association, whether or not any negligence is involved.
- 40.2** The Association shall not be liable in respect of any monies which are unaccounted for either after collection by agents, representatives or lawyers employed by the Association or in respect of any monies which are entrusted to such parties for the account of the member.
- 40.3** Any recommendation, advice or findings of any lawyers, surveyors or other experts shall not, in any way, bind the Association or prejudice the Association's rights under the Rules.

#### **41. SAVINGS OF THE MEMBER**

Where the member as a consequence of an event which is covered by the Association, obtains extra revenue, saves expense or avoids liability or loss which would otherwise have been incurred and which would not have been covered by the Association, the Association may deduct and retain from the sum otherwise payable to the member, an amount which the Association considers, in its absolute discretion, equivalent to the benefit obtained by the member.

## **42. ASSIGNMENTS AND MORTGAGES**

- 42.1** The member shall not assign or otherwise transfer any rights under these Rules or under any contract with the Association, without the prior consent of the Association.
- 42.2** The Association may, in its absolute discretion, consent to an assignment or transfer of the member's rights, subject to such terms as the Association considers appropriate.
- 42.3** An assignment or transfer without the Association's written consent shall not bind the Association.
- 42.4** In no circumstances, shall any assignee or mortgagee have a greater right than the member.

## **43. SET-OFF**

- 43.1** The Association shall be entitled to set off any amount due from the member against any amount due to the member, any co-assured or affiliate.
- 43.2** Unless the Association agrees, a member shall only set off, against any amount due to the Association, any sum which has previously been awarded to the member from the Association by an Arbitration Tribunal appointed under Rule 47.

## **44. INTEREST**

In no case whatsoever shall interest be paid on any amount due from the Association.

## **45. JOINT MEMBERS, CO-ASSURED, AFFILIATES AND FLEET ENTRIES**

- 45.1** Joint members and co-assureds named on any one Certificate of Entry shall be jointly and severally liable in respect of all premiums, calls and other sums due to the Association in respect of the entered vessel.
- 45.2** Any payment by the Association to the member, or any joint member, or any co-assured, or any affiliate, shall be deemed to be payment to the member and to all joint members, co-assureds and affiliates jointly and shall fully discharge the obligations of the Association in respect of that payment.
- 45.3** The contents of any communication between the Association and the member, or any joint member, or any co-assured, or any affiliate, shall be deemed to be within the knowledge of the member and all joint members, co-assureds and affiliates.

- 45.4** Any failure by the member, or any joint member, or any co-assured or any affiliate, to comply with any of the obligations under these Rules, shall be deemed to be a failure of the member and all joint members, co-assureds and affiliates.
- 45.5** Any conduct or omission by the member, or any joint member, or any co-assured or any affiliate, which would have entitled the Association to reject or reduce any claims shall be deemed to have been the failure of the member and all joint members, co-assureds and affiliates.
- 45.6** The Association shall not cover any liability, loss, expense or costs in respect of any dispute between the member and any joint member, co-assured or affiliate, or between joint members, or between co-assureds or affiliates.
- 45.7** The total liability of the Association in respect of any one event, to the member, and to any joint member, co-assured and affiliate shall not exceed such sum as would have been recoverable from the Association only by the member.
- 45.8** In the event that the total liability of the Association is less than the total sum claimed by the member and by any joint member, co-assured and affiliate, the Association shall be entitled to apportion payment in proportion to the respective amounts claimed.
- 45.9** Members or joint members named in a Certificate of Entry for one or more ships forming part of a fleet entry shall be jointly and severally liable in respect of premiums, calls and other sums due to the Association for any or all vessels in the fleet.

#### **46. OMNIBUS RULE**

- 46.1** The Association may cover, in its absolute discretion, the member's liability, loss, expense or costs which would not otherwise be covered under the Rules, to the extent that the Association considers that such cover would be appropriate and consistent with the purpose of the Association.
- 46.2** The Association, in exercising its discretion under this Rule may, in exceptional circumstances, cover liability, loss, expense or costs, which are otherwise expressly excluded.
- 46.3** The Association, in exercising its discretion under this or any other Rule may, if it wishes to do so, take into account the Rules of other Clubs of the International Group of P&I Associations or the terms and guidelines of any Pooling Agreement between any such Clubs, but the Association shall not be obliged to take into account any previous case in which the Association or any other Club exercised its discretion in a particular manner.

**46.4** The exercise of discretion under the Rules shall be exercised by the Board of Directors, who shall delegate to the President and Chief Executive Officer and other employees of the Association or Managers insofar as the Board considers it appropriate to do so.

#### **47. ARBITRATION AND LAW**

**47.1** Unless otherwise agreed, any dispute between the Association and any member, co-assured, affiliate, former member, or any party making a claim on the Association, shall be determined by Arbitration in Oslo.

**47.2** Each party shall appoint one Arbitrator who shall together appoint a chairman of the arbitration tribunal, although if the two arbitrators fail to reach agreement on the appointment of a chairman, the chairman shall be appointed by the Chief Justice of the Oslo City Court.

**47.3** The Rules and any arbitration proceedings shall be governed by Norwegian Law, except that the Insurance Contracts Act of 1989 shall not apply.

# APPENDICES

## APPENDIX 1 DEFINITIONS

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

### **Affiliate**

A person other than a co-assured who is affiliated to or associated with the member and to whom the Association has agreed (subject to restrictions) to extend the cover afforded to the member.

### **Ante dated or post dated bill of lading, etc.**

A bill of lading, waybill or other document containing or evidencing the contract of carriage which records the loading or shipment or receipt for shipment on a date prior or subsequent to the date on which the cargo was in fact loaded, shipped or received.

### **Billion**

One thousand million

### **Bunkers Convention Certificate**

A certificate issued by the Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001

### **Charterer**

A charterer (other than a bareboat or demise charterer) of an entered vessel, or a charterer of part of an entered vessel provided that:-

- (i) in the determination of the Association that party charters part of the entered vessel for the purposes of a regular liner service provided by him; or
- (ii) in addition to his entry with the Association as a charterer of part of the entered vessel, he has a separate entry with the Association or other insurer which is party to the International Group's Pooling Agreement as an owner, or as a charterer of an entered vessel.

A charterer cannot become a member where an owner or another charterer is insured under the same entry.

### **Chemical, Bio-Chemical Electromagnetical Weapons and Computer Virus Risks**

Loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from

- (i) any chemical, biological, bio-chemical or electromagnetic weapon
- (ii) the use or operation, as a means of inflicting harm, of any computer virus.

### **CLC Certificate**

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.

### **Co-assured**

A party, other than the member, who is named on the Certificate of Entry, to whom the Association has agreed (subject to restrictions) to extend the cover afforded to the member.

**Consortium Agreement**

Any arrangement under which a member agrees with other parties to the reciprocal exchange or sharing of cargo space on the entered vessel and on a vessel or vessels other than the entered vessel,

**Crew**

Persons, including the master, contractually obliged to serve on an entered vessel including substitutes for such persons and including such persons while proceeding to or from the vessel.

**Drilling or production operations**

Drilling or production operations in connection with oil or gas exploration or production, including any accommodation unit moored or positioned on site as an integral part of any such operations.

A vessel shall be deemed to be carrying out production operations if (inter alia) it is a storage tanker or other vessel engaged in the storage of oil, and either:

- a) the oil is transferred directly from a producing well to the storage vessel; or
- b) the storage vessel has oil and gas separation equipment on board and gas is being separated from oil whilst on board the storage vessel other than by natural venting.

**Electronic trading system**

Any system which replaces or is intended to replace paper documents used for the sale of goods and/or their carriage by sea or partly by sea and other means of transport and which

- a) are documents of title, or
- b) entitle the holder to delivery or possession of the goods referred to in such documents, or
- c) evidence a contract of carriage under which the rights and obligations of either of the contracting parties may be transferred to a third party.

For the purpose of this definition, a "document" shall mean anything in which information of any description is recorded, including, but not limited to, computer or other electronically generated information.

**Event**

Any event, including any occurrence or occurrences arising out of any such event unless the Association elects to treat each occurrence as a separate event. An event shall be deemed to have taken place at the time of the first occurrence which results in a claim or claims.

**FMC Undertaking**

A guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777.

**Fleet entry**

The entry of more than one vessel by one or more members on the basis that those vessels shall be treated together as a fleet for underwriting purposes.



**General Excess Loss Contract**

The General Excess Loss Contract effected by the parties to the Pooling Agreement.

**Hague Rules**

The International Convention for the Unification of Certain Rules Relating to Bills of Lading signed at Brussels on 25 August 1924.

**Hague-Visby Rules**

Hague Rules as amended by the Protocol signed at Brussels on 23 February 1968.

**Hamburg Rules**

The United Nations Convention on the Carriage of Goods by Sea done at Hamburg on 31 March 1978.

**Hull policies**

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

**ISM Code**

International Safety Management Code.

**ISPS Code**

The International Ship and Port Facility Security Code.

**MLC**

Maritime Labour Convention 2006

**Non-war Athens Convention/PLR Certificate**

A non-war Certificate issued by the Association in compliance with either Article IV bis of the Athens Convention relating to Carriage of Passengers and their Luggage by Sea 2002 and Guidelines for its implementation or Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009.

**Nuclear Risks liabilities, costs and expenses**

Liabilities, costs and expenses 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 or from the combustion of nuclear fuel,
- b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof,
- c) any weapon or device employing nuclear fission and/or fusion or other like reaction or radioactive force or matter, or
- d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter

other than liabilities, losses, costs or expenses arising out of carriage of "excepted matter" (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulations made thereunder) as cargo in an entered vessel.

**Owner**

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

**Passenger**

Any person carried on board an entered vessel pursuant to a ticket of passage.

**Person**

A person shall include, unless the context otherwise requires, any individual or any body corporate or unincorporate.

**Personal effects**

Personal property including clothes, documents, navigation and other technical instruments and tools but excluding valuables and any other articles which, in the opinion of the Association, are not reasonably required by a crew member.

**Policy year**

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

**Pooling Agreement**

An Agreement, to which the Association is a party, between certain Protection and Indemnity Associations dated 20 February 2002 and any addendum to, or variation or replacement of such agreement.

**Specialist operations**

Operations including and not limited to dredging, blasting, pile-driving, well-stimulation, cable or pipelaying, construction, installation, removal or maintenance work, core sampling, depositing of spoil, professional oil spill response or professional oil spill response training and tank cleaning (otherwise than on the entered vessel) but excluding fire fighting.

**STOPIA**

Small Tanker Oil Pollution Indemnification Agreement including STOPIA 2006 or any other amendment thereof.

**Sub-Sea activities**

The operation by the member of submarines, mini-submarines or diving bells, or the activities of professional or commercial divers where the member is responsible for such activities (other than activities arising out of salvage operations being conducted by an entered vessel where the divers form part of the crew of that entered vessel (or of diving bells or other similar equipment or craft operating from the entered vessel) and where the member is responsible for the activities of such divers).

**TOPIA**

Tanker Oil Pollution Indemnification Agreement 2006 or any amendment thereof.

**Vessel**

Any ship, boat, hydrofoil, hovercraft or other description of vessel (including a lighter, barge or similar vessel howsoever propelled but excluding (a) a unit or vessel constructed or adapted for the purpose of carrying out drilling operations in connection with oil or gas exploration or production and (b) a fixed platform or fixed rig) used or intended to be used for any purpose whatsoever in navigation or otherwise on, under, over or in water or any part of such ship, boat, hydrofoil, hovercraft or other description of vessel or any proportion of the tonnage thereof or any share therein.

**War Risks' liabilities, costs or expenses**

Liabilities, costs or expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the member or his servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or cost or expense is incurred, was caused by:

- a) war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power, or any act of terrorism (provided that, in the event of any dispute as to whether or not, for the purposes of this paragraph (a), an act constitutes an act of terrorism, the decision of the directors of the Association shall be final);
- b) capture, seizure, arrest, restraint or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat;
- c) mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war, provided that this exclusion shall not apply to liabilities, costs and expenses which arise solely by reason of
  - (i) the transport of any such weapons whether on board or not, or
  - (ii) the use of any such weapons, either as a result of government order or with the agreement in writing of the Association where the reason for such use was the avoidance or mitigation of liabilities, costs or expenses which would otherwise give rise to a claim covered under these Rules.

**Waste disposal activities**

Waste incineration or disposal operations carried out by the entered vessel (other than any such operations carried out as an incidental part of other commercial activities not being specialist operations).

**Wilful misconduct**

An act intentionally done, or a deliberate omission by the member, with knowledge that the performance or omission will probably result in injury, loss or damage, or an act done or omitted in such a way as to allow an inference of a reckless disregard of the probable consequences.

**Wreck Removal Convention Certificate**

A certificate issued by the Association in compliance with Article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007

**APPENDIX 2 TERMS OF ENTRY FOR CO-ASSURED AND AFFILIATES****1. Co-assurance**

- 1.1 The Association may agree to extend the cover afforded to the member to a co-assured named in the Certificate of Entry who is
  - a) a person interested in the operation, management or manning of the entered vessel,
  - b) the holding company or the beneficial owner of the member or of any co-assured referred to in (a), or
  - c) the mortgagee of the vessel.
- 1.2 The cover afforded to a co-assured referred to in paragraph 1.1 shall extend only to risks, liabilities and expense arising out of operations and/or activities customarily carried on by or at the risk and responsibility of shipowners and which are within the scope of cover afforded by the Rules and any special terms set out in the Certificate of Entry.

**2. Charterer's co-assurance**

- 2.1 The Association may agree to extend the cover afforded to the member to a co-assured who is named in the Certificate of Entry and who is a charterer of the entered vessel and also being affiliated to or associated with the member insured under the same entry.
- 2.2 A co-assured referred to in paragraph 2.1 shall only be covered for the risks, liabilities and expenses in respect of which the affiliated or associated member has cover and shall be limited by Rule 32.3.2 (charterers' limitation of liability).

**3. Contractor's co-assurance**

- 3.1 The Association may agree to extend the cover afforded to the member to a co-assured named in the Certificate of Entry who is a person (a "contractor") who has entered into a contract (a "knock for knock" contract as customarily used in the offshore activity) with the member for the provision of services to or by the vessel, and any of the contractor's affiliates, other contractors and co-licensees and its and their sub-contractors and any of their personnel, provided that the contract has been approved by the Association and the contract is on terms no less favourable to the insured owner than that each party shall be responsible for loss of or damage to, or injury or death of, its own property and personnel and property and personnel of its affiliates and other contractors (and in the case of off-shore operators, co-licensees) and its and their sub-contractors, irrespective of any fault or neglect of that party or its affiliates, contractors or co-licensees or its or their sub-contractors or of any of their personnel.
- 3.2 A co-assured referred to in paragraph 3.1 above shall only be covered for liabilities, costs and expenses which are to be borne by the member under the terms of the contract and which would, if borne by the member, be recoverable by the member from the Association.

**4. Affiliate cover**

- 4.1 The Association may agree to extend the cover afforded by the Association to the member to any affiliate who is affiliated to or associated with the member but who is not specifically named in the Certificate of Entry.

4.2 The cover afforded to a person referred to in paragraph 4.1 shall be restricted to cover where the Certificate of Entry expressly extends cover generally to affiliates, but without specifically naming the affiliate or affiliates. The cover shall also be restricted only to cover a claim in respect whereof the member named in the Certificate of Entry is insured by the Association, is made or enforced through a person or company affiliated or associated with the member. The Association shall then, if so requested by the member, indemnify such person or company against any loss which as a consequence thereof such person or company shall have incurred in that capacity provided always that nothing herein contained shall be construed as extending to any amount which would not have been recoverable from the Association by the member had such claim been made or enforced against him. Once the Association has made such indemnification under the above cover, it shall not be under any further liability and shall not make any further payment to any person or company whatsoever, including the member, in respect of the loss or damage in respect of which the claim was brought.

#### **5. Miscellaneous**

Where cover is extended as set out in paragraphs 1-4 above, conduct of any one of the parties insured which is sufficient to bar that insured's right under the policy shall bar the rights of recovery of all the said insured.

## APPENDIX 3 OVERSPILL CLAIMS AND CALLS

### 1. Interpretation

- 1.1 In this Appendix the following words and expressions shall have the following meanings:

#### **"Convention Limit"**

in respect of a vessel, the limit of liability of the shipowner of that vessel for claims (other than claims for loss of life or personal injury) at the Overspill Claim Date, calculated in accordance with Article 6 paragraph 1(b) of the International Convention on Limitation of Liability for Maritime Claims 1976 (the "Convention") and converted from Special Drawing Rights into United States Dollars at the rate of exchange conclusively certified by the Association as being the rate prevailing on the Overspill Claim Date provided that,

- a) where a vessel is entered for a proportion (the "relevant proportion") of its tonnage only, the Convention Limit shall be the relevant proportion of the limit of liability calculated and converted as aforesaid, and
- b) each vessel shall be deemed to be a seagoing ship to which the Convention applies, notwithstanding any provision in the Convention to the contrary.

#### **"Group General Excess Loss Contract"**

the excess of loss reinsurance policies effected by the parties to the Pooling Agreement.

#### **"Group Reinsurance Limit"**

the amount of the smallest claim (other than any claim arising in respect of oil pollution) incurred by the Association or by any other party to the Pooling Agreement which would exhaust the largest limit for any type of claim (other than a claim arising in respect of oil pollution) from time to time imposed in the Group General Excess Loss Contract.

#### **"Overspill Call"**

a call levied by the Association pursuant to paragraph 5 for the purpose of providing funds to pay part of an Overspill Claim.

#### **"Overspill Claim"**

that part (if any) of a claim (other than a claim arising in respect of oil pollution) incurred by the Association or by any other party to the Pooling Agreement under the terms of entry of a vessel which exceeds or may exceed the Group Reinsurance Limit.

#### **"Overspill Claim Date"**

in relation to any Overspill Call, the time and date on which there occurred the incident or event giving rise to the Overspill Claim in respect of which the Overspill Call is made or, if the policy year in which such incident or event occurred has been closed in accordance with the provisions of paragraphs 6.1 and 6.2, noon GMT on 20th August of the policy year in respect of which the Association makes a declaration under paragraph 6.3.

**"Pooling Agreement"**

the agreement, to which the Association is a party, between certain protection and indemnity associations dated 20 February 1998 and any addendum to or variation or replacement of the said agreement.

- 1.2 All claims (other than claims or parts of claims arising in respect of oil pollution) incurred by the Association or by any other party to the Pooling Agreement under the entry of any one vessel arising from any one incident or event including any claim in respect of liability for the removal or non-removal of any wreck shall be treated for the purposes of this Appendix as if they were one claim.
- 1.3 Any reference to a claim incurred by the Association or by any other party to the Pooling Agreement shall be deemed to include the costs and expenses associated therewith.

**2. Recoverability of Overspill Claims**

- 2.1 Without prejudice to any other applicable limit, any Overspill Claim incurred by the Association shall not be recoverable from the Association in excess of the aggregate of
  - a) that part of the Overspill Claim which is eligible for pooling under the Pooling Agreement but which, under the terms of the Pooling Agreement, is to be borne by the Association; and
  - b) the maximum amount that the Association is able to recover from the other parties to the Pooling Agreement as their contributions to the Overspill Claim.
- 2.2 The aggregate amount referred to in paragraph 2.1 shall be reduced to the extent that the Association can evidence
  - a) that costs have been properly incurred by it in collecting or seeking to collect
    - (i) Overspill Calls levied to provide funds to pay that part of the Overspill Claim referred to in paragraph 2.1 (a), or
    - (ii) the amount referred to in paragraph 2.1 (b); or
  - b) that it is unable to collect an amount equal to that part of the Overspill Claim referred to in paragraph 2.1 (a) which it had intended to pay out of the levy of Overspill Calls because any Overspill Calls so levied, or parts thereof, are not economically recoverable, provided that if, due to a change in circumstances, such amounts subsequently become economically recoverable, the aggregate amount referred to in paragraph 2.1 shall be reinstated to that extent.
- 2.3 In evidencing the matters referred to in paragraph 2.2 (b) the Association shall be required to show that
  - a) it has levied Overspill Calls in respect of the Overspill Claim referred to in paragraph 2.1 on all members entered in the Association on the Overspill Claim Date in accordance with and in the maximum amounts permitted under paragraph 5; and
  - b) it has levied those Overspill Calls in a timely manner, has not released or otherwise waived a member's obligation to pay those calls and has taken all reasonable steps to recover those calls.

**3. Payment of Overspill Claims**

- 3.1 The funds required to pay any Overspill Claim incurred by the Association shall be provided

- a) from such sums as the Association is able to recover from the other parties to the Pooling Agreement as their contributions to the Overspill Claim,
  - b) from such sums as the Association is able to recover from any special insurance which may, in the discretion of the Association, have been effected to protect the Association against the risk of payments of Overspill Claims, and
  - c) from such proportion as the Association in its discretion determines of any sums standing to the credit of such Overspill Reserves as the Association may in its discretion have established, and
  - d) by levying one or more Overspill Calls in accordance with paragraph 5, irrespective of whether the Association has sought to recover or has recovered all or any of the sums referred to in paragraph 3.1 (b) but provided the Association shall first have made a determination in accordance with paragraph 3.1 (c), and
  - e) from any interest accruing to the Association on any funds provided as aforesaid.
- 3.2 The funds required to pay such proportion of any Overspill Claim incurred by any other party to the Pooling Agreement which the Association is liable to contribute under the terms of the Pooling Agreement shall be provided in the manner specified in paragraph 3.1 (b)-(e).
- 3.3 To the extent that the Association intends to provide funds required to pay any Overspill Claim incurred by it in the manner specified in paragraph 3.1 (d), the Association shall only be required to pay such Overspill Claim as and when such funds are received by it, provided that it can show from time to time that, in seeking to collect such funds, it has taken the steps referred to in paragraph 2.3 (a) and (b).

#### **4. Overspill Claims - Expert Determinations**

- 4.1 Any of the issues referred to in paragraph 4.2 on which the Association and a member cannot agree shall be referred to a panel (the "Panel") constituted in accordance with arrangements established in the Pooling Agreement which, acting as a body of experts and not as an arbitration tribunal, shall determine the issue.
- 4.2 This paragraph 4 shall apply to any issue of whether, for the purpose of applying any of paragraphs 2.2, 2.3 and 3.3 in relation to any Overspill Claim (the "relevant Overspill Claim") ,
- a) costs have been properly incurred in collecting or seeking to collect Overspill Calls, or
  - b) any Overspill Call or part thereof is economically recoverable, or
  - c) in seeking to collect the funds referred to in paragraph 3.3, the Association has taken the steps referred to in that paragraph.
- 4.3 If the Panel has not been constituted at a time when a member wishes to refer an issue to it, the Association shall, on request by the member, give a direction for the constitution of the Panel as required under the Pooling Agreement.
- 4.4 The Association may (and, on the direction of the member, shall) give such direction as is required under the Pooling Agreement for the formal instruction of the Panel to investigate any issues and to give its determination as soon as reasonably practicable.
- 4.5 The Panel shall in its discretion decide what information, documents, evidence and submissions it requires in order to determine an issue and how to obtain these, and the Association and the member shall co-operate fully with the Panel.



- 4.6 In determining any issue referred to it under this paragraph 4 the Panel shall endeavour to follow the same procedures as it follows in determining issues arising in respect of the relevant Overspill Claim which are referred to it under the Pooling Agreement.
- 4.7 In determining an issue the members of the Panel
- a) shall rely on their own knowledge and expertise, and
  - b) may rely on any information documents, evidence or submission provided to it by the Association or the member as the Panel sees fit.
- 4.8 If the three members of the Panel cannot agree on any matter, the view of the majority shall prevail.
- 4.9 The Panel shall not be required to give reasons for any determination.
- 4.10 The Panel's determination shall be final and binding upon the Association and the member (subject only to paragraph 4.11) and there shall be no right of appeal from such determination.
- 4.11 If the Panel makes a determination on an issue referred to in paragraph 4.2 (b) or (c) the Association or the member may refer the issue back to the Panel, notwithstanding paragraph 4.10, if it considers that the position has materially changed since the Panel made its determination.
- 4.12 The costs of the Panel shall be paid by the Association.
- 4.13 Costs, indemnities and other sums payable to the Panel by the Association in relation to any Overspill Claim, whether the reference to the Panel has been made under this paragraph 4 or under the Pooling Agreement, shall be deemed to be costs properly incurred by the Association in respect of that Overspill Claim for the purposes specified in paragraph 2.2 (a).

## **5. Levying of Overspill Calls**

- 5.1 If
- a) The Association shall at any time determine that funds are or may in future be required to pay part of an Overspill Claim (whether incurred by the Association or by any other party to the Pooling Agreement), and
  - b) the Association shall have made a declaration under 6.1 or 6.3 that a policy year shall remain open for the purpose of levying an Overspill Call or Calls in respect of that Overspill Claim, the Association in its discretion, at any time or times after such declaration has been made, may levy one or more Overspill Calls in respect of that Overspill Claim in accordance with paragraph 5.2.
- 5.2 The Association shall levy any such Overspill Call
- a) on all members entered in the Association on the Overspill Claim Date in respect of vessels entered by them at that time, notwithstanding the fact that, if the Overspill Claim Date shall be in a policy year in respect of which the Association has made a declaration under paragraph 6.3, any such vessel may not have been entered in the Association at the time the relevant incident or occurrence occurred, and
  - b) at such percentage of the Convention Limit of each such vessel as the Association in its discretion shall decide.

- 5.3 An Overspill Call shall not be levied in respect of any vessel entered on the Overspill Claim Date with an overall limit of cover equal to or less than the Group Reinsurance Limit.
- 5.4 The Association shall not levy on any member in respect of the entry of any one vessel an Overspill Call or Calls in respect of any one Overspill Claim exceeding in the aggregate two and one half per cent (2.5%) of the Convention Limit of that vessel.
- 5.5 If at any time after the levying of an Overspill Call upon the members entered in the Association in any policy year, it shall appear to the Association that the whole of such Overspill Call is unlikely to be required to meet the Overspill Claim in respect of which such Overspill Call was levied, the Association may decide to dispose of any excess which in the opinion of the Association is not so required in one or both of the following ways:
  - a) by transferring the excess or any part thereof to the Overspill Reserve in accordance with paragraph 8; or
  - b) by returning the excess or any part thereof to those members who have paid that Overspill Call in proportion to the payments made by them.

## **6. Closing of Policy Years for Overspill Calls**

- 6.1 If at any time prior to the expiry of a period of thirty-six months from the commencement of a policy year (the "relevant policy year"), any of the parties to the Pooling Agreement sends a notice (an "Overspill Notice") in accordance with the Pooling Agreement that an incident or occurrence has occurred in the relevant policy year which has given or at any time may give rise to an Overspill Claim, the Association shall as soon as practicable declare that the relevant policy year shall remain open for the purpose of levying an Overspill Call or Calls in respect of that claim and the relevant policy year shall not be closed for the purpose of making an Overspill Call or Calls in respect of that claim until such date as the Association shall determine.
- 6.2 If at the expiry of the period of thirty-six months provided for in paragraph 6.1, no Overspill Notice as therein provided for has been sent, the relevant policy year shall be closed automatically for the purpose of levying Overspill Calls only, whether or not closed for any other purposes, such closure to have effect from the date falling thirty-six months after the commencement of the relevant policy year.
- 6.3 If at any time after a policy year has been closed in accordance with the provisions of paragraphs 6.1 and 6.2, any of the parties to the Pooling Agreement sends an Overspill Notice in accordance with the Pooling Agreement that an incident or occurrence has occurred in that Policy Year which has given or at any time may give rise to an Overspill Claim, the Association shall as soon as practicable declare that the earliest subsequent open policy year (not being a policy year in respect of which the Association has already made a declaration in accordance with paragraph 6.1 or 6.3) shall remain open for the purpose of levying an Overspill Call or Calls in respect of that claim and such open policy year shall not be closed for the purpose of making an Overspill Call or Calls in respect of that claim until such date as the Association shall determine.
- 6.4 A policy year shall not be closed for the purpose of levying Overspill Calls save in accordance with this paragraph 6.

## **7. Security for Overspill Calls on Termination or Cessor**

- 7.1 If
- a) the Association makes a declaration in accordance with paragraphs 6.1 or 6.3 that a policy year shall remain open for the purpose of levying an Overspill Call or Calls, and
  - b) a member who is liable to pay any such Overspill Call or Calls as may be levied by the Association in accordance with paragraph 5 ceases or has ceased to be insured by the Association for any reason, or the Association determines that the insurance of any such member may cease,
- the Association may require such member to provide to the Association by such date as the Association may determine (the "due date") a guarantee or other security in respect of the member's estimated future liability for such Overspill Call or Calls, such guarantee or other security to be in such form and amount (the "guarantee amount") and upon such terms as the Association in its discretion may deem to be appropriate in the circumstances.
- 7.2 Unless and until such guarantee or other security as is required by the Association has been provided by the member, the member shall not be entitled to recovery from the Association of any claims whatsoever and whensoever arising in respect of any and all vessels entered in the Association for any policy year by him or on his behalf.
- 7.3 If such guarantee or other security is not provided by the member to the Association by the due date, a sum equal to the guarantee amount shall be due and payable by the member to the Association on the due date, and shall be retained by the Association as a security deposit on such terms as the Association in its discretion may deem to be appropriate in the circumstances.
- 7.4 The provision of a guarantee or other security as required by the Association (including a payment in accordance with paragraph 7.3) shall in no way restrict or limit the member's liability to pay such Overspill Call or Calls as may be levied by the Association in accordance with paragraph 5.

## **8. Overspill Reserve**

- 8.1 The Association may, in its discretion, establish and maintain a reserve (an "Overspill Reserve") to provide a source of funds which may be applied towards meeting any Overspill Claim or Claims.
- 8.2 Funds to be applied to the Overspill Reserve may be raised in any of the following ways:
- a) the Association, when deciding on the rate of any advance call or supplementary call for any policy year, may resolve that any specified amount or proportion of such call shall be transferred to and applied for the purposes of the Overspill Reserve;
  - b) the Association 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 the Overspill Reserve;
  - c) the Association may transfer to the Overspill Reserve any balance of an Overspill Call not required to satisfy the Overspill Claim in respect of which it was levied, as contemplated in paragraph 5.5 (a).

**APPENDIX 4 DEDUCTIBLES****1. Deductibles - P&I cover**

Unless otherwise agreed, compensation shall be subject to the following deductibles per category:

- 1.1 For Rules other than those referred to in paragraphs 1.2 to 1.6:

USD 10,000

- 1.2 Rules 5 (cargo liability), 6 (extra cargo handling costs), 17 - 18 (general average) and 19.1.2 (cargo fines) applicable per cargo voyage:

USD 15,000

For vessels under 2500 GT, USD 10,000

The deductibles applicable to cargo claims under the Rules referred to in this paragraph (whether for standard or separately agreed amounts) shall be doubled when the loss or liability is due to water damage resulting from leaky cargo hatches or tank hatches on account of inadequate maintenance.

- 1.3 Claims under Rules 7, (crew), 8 (passengers), 9 (other persons carried on board) and 10 (persons not carried on board):

USD 10,000

- 1.4 Rules 14 (pollution), 19.1.3 (pollution fines) and 22.1.3 (salvage - special compensation):

USD 10,000

- 1.5 Rules 12 (collision and contact liability) and 13 (property liability):

Rule 12.1 (standard cover)

USD 45,000

Rule 12.3 (additional cover)

RDC (4/4): USD 45,000

RDC (1/4): USD 45,000

Rule 12.4 (additional cover)

FFO: USD 45,000

Rule 13 (property liability)

USD 15,000

- 1.6 Rules 25 (legal and associated costs such as correspondents' fees) and 24 (mitigation costs) shall be subject to the deductible applicable to the claim in respect of which the costs have been incurred.

**2. Deductibles - defence cover**

Unless otherwise agreed, cover under Rule 27 (Defence cover) shall be subject to the following deductible per dispute: 25% of the total costs with a minimum of USD 10,000 per dispute.

**3. Miscellaneous**

- 3.1 Unless otherwise agreed or stipulated otherwise in these Rules, the applicable deductibles shall apply to any one event (as defined in Appendix 1) any one vessel any one category listed under paragraph 1 of this Appendix.
- 3.2 Where deductibles apply per port of call and the vessel is staying for an unbroken period in the same port, the deductibles shall apply for a two-month period and for coasters and vessels engaged in local trade, for a one-month period.
- 3.3 The deductible for claims in respect of cargo referred to in paragraph 1.2, and crew personal effects (Rule 7.1.3) and passengers' baggage (Rule 8.1.3) shall apply per any one voyage.
- 3.4 The deductibles may be paid in any currency at the USD rate at the date of payment.
- 3.5 If a claim under Rule 11.1.2(a) or (b) arises out of the same event as a claim under Rules 7, 8 or 9, a separate deductible shall not apply to the costs under Rule 11.1.2 (a) or (b).

**APPENDIX 5 OIL POLLUTION****1. Limitation - owners' entries**

- 1.1 Cover in respect of all claims arising in respect of the actual or threatened escape or discharge of oil, including claims by charterers co-assured under an owners' entry, shall be subject to a limit of USD 1 billion for any one event.
- 1.2 Cover for charterers' co-assured under an owner's entry shall be subject to a limit for any one event of USD 350 million in the aggregate for all claims arising in respect of the actual or threatened escape or discharge of oil.
- 1.3 Where the member and/or any other party or parties interested in the operation of the vessel are insured under separate owners' entries with the Association or any other insurer which participates in the Pooling Agreement and/or the International Group Re- Insurance policies, the aggregate of all claims brought against the Association and/or other insurers shall be limited to the sum set out in paragraph 2.1. The liability of the Association in respect of each such claim shall be limited to that proportion of the sum referred to in paragraph 2.1. that the claim recoverable from the Association bears to the aggregate of the claims recoverable from the Association and the other insurers.
- 1.4 Where the entered vessel provides salvage or other assistance to another vessel following a casualty, a claim by the member in respect of oil pollution arising out of the salvage or other assistance or the casualty shall be aggregated with any claims in respect of oil pollution by any other vessel similarly engaged in connection with the same casualty when such other vessels are insured for pollution risks under owner's entries in the Association or any other insurer which participates in the Pooling Agreement and/or the International Group Re-Insurance policies. In such circumstances, the Association's liability shall be limited to such proportion of the sum referred to in paragraph 2.1 as the claim by the member bears to the aggregate of all the said claims.

**2. Other insurance**

Where the member has insurance for liability, loss, costs and fines arising out of oil pollution which would otherwise fall within the cover provided by these Rules, such cover shall be excluded up to the stated limit of such insurance and the sum insured under such other insurance shall be deducted from the amount to which the Association is entitled to limit its liability.

**APPENDIX 5A PASSENGERS, CREW AND OTHER PERSONS CARRIED ON BOARD**

1. For the purposes of this Appendix, and without prejudice to anything else contained in these Rules, a "Passenger" shall mean a person carried on board a vessel under a contract of carriage or who, with the consent of the carrier, is accompanying a vehicle or live animals covered by a contract for the carriage of goods and "Crew" shall mean any other person on board a ship who is not a Passenger.
2. Unless otherwise limited to a lesser sum, the Association's aggregate liability arising under any one owner's entry shall not exceed
  - (1) in respect of liability to Passengers USD 2 billion any one event; and
  - (2) in respect of liability to Passengers and Crew USD 3 billion any one event.
3. Provided always that where there is more than one owner's entry in respect of the same ship in the Association and/or by any other insurer which participates in the Pooling Agreement
  - (1) the aggregate of claims in respect of liability to Passengers recoverable from the Association and/or such other insurers shall not exceed USD 2 billion any one event and the liability of the Association shall be limited to such proportion of that sum as the claim recoverable by such persons from the Association bears to the aggregate of all such claims otherwise recoverable from the Association and all such insurers; and
  - (2) the aggregate of all claims in respect of liability to Passengers and Crew recoverable from the Association and/or such other insurers shall not exceed USD 3 billion any one event and the liability of the Association shall be limited
    - (i) where claims in respect of liability to Passengers have been limited to USD 2 billion in accordance with proviso (1) to such proportion of the balance of USD 1 billion as the claims recoverable by such persons in respect of liability to Crew bears to the aggregate of all such claims otherwise recoverable from the Association and all such insurers; and
    - (ii) in all other cases, to such proportion of USD 3 billion as the claims recoverable by such persons in respect of liability to Passengers and Crew bears to the aggregate of all such claims otherwise recoverable from the Association and all such insurers.
4. Where liabilities to passengers include liabilities arising under a Non-war Athens Convention/PLR Certificate issued by the Association and such liabilities ("Certified Liabilities") exceed or may exceed in the aggregate the limit of cover specified in this Appendix 5A:
  - (1) the Association may in its absolute discretion defer payment of a claim in respect of those liabilities or any part thereof until the Certified Liabilities, or such part of the Certified Liabilities as the Association may decide, have been discharged, and
  - (2) if and to the extent any Certified Liabilities discharged by the Association exceed the said limit any payment by the Association in respect thereof shall be by way of loan and the Member shall indemnify the Association in respect of such payment.
5. The Association's liability in respect of costs of repatriation under MLC pursuant to Rule 7.1.7 shall be limited to an amount equivalent to the Association's retention under the Pooling Agreement.

## APPENDIX 6 CONTRACTS AND CONTRACTUAL TERMS

### 1. Terms required by the Association in contracts

of carriage of cargo

- 1.1 The Association requires the member to incorporate the Hague Rules or the Hague-Visby Rules or corresponding provisions in all contracts of carriage where permitted by relevant law.
- 1.2 Association requires the member to incorporate the "New Jason Clause" and "Both to Blame Collision Clause" in all contracts of carriage used in international trade.

### 2. Other terms

The Association may during the policy year require the member (for the purposes of Rule 29.1.8) to incorporate into any contract or indemnity any term which the Association in its discretion considers should be so incorporated.

### 3. Towage contracts approved by the Association

- 3.1 Towage of the entered vessel (Rule 23.1.2)

It is a requirement of approval under Rule 23.1.2 that the contract incorporates a term to the effect that the member and the owner of the towing vessel shall each be responsible for any loss or damage to his own vessel and for loss of life or personal injury on his own vessel without any recourse whatsoever against the other.

- 3.2 Towage by the entered vessel (Rule 23.4)

Where the vessel is engaged in towage under Rule 23.4 under an owners' entry,, the Association approves the following contracts:-

- a) Scandinavian, UK or Netherlands standard towage conditions,
- b) "Towcon" or "Towhire",
- c) Lloyd's Standard Form of Salvage Agreements, and
- d) other contracts containing similar exclusions of liability clauses to those in the contracts specified in (a), (b) and (c) or incorporating a term between (i) the member and (ii) the owner of the tow and the owners of any cargo or other property on board the tow, that each shall be responsible for loss of or damage to, or injury or death of, its own property and personnel and property and personnel of its affiliates and other contractors (and in the case of off-shore operators, co-licensees) and its and their sub-contractors, irrespective of any fault or neglect of that party or its affiliates, contractors or co-licensees or its or their sub-contractors or of any of their personnel (i.e. a knock-for knock).

### 4. Heavy lift contracts approved by the Association

The "Heavycon" charterparty is approved by the Association under an owners' entry provided it is not materially amended.



## APPENDIX 7 ADDITIONAL INSURANCES

If separately agreed, the Association can arrange insurance for additional risks. The following is a brief description of some of the covers available. Full details of these additional insurances (including applicable limits) can be obtained from the Association on request

These insurances shall be subject to the provisions contained in the Rules, unless otherwise agreed.

### 1. Charterers' liability for loss of or damage to the entered vessel

The Association can arrange insurance for charterers' liability to the entered vessel, including for loss of or damage to the entered vessel, her equipment, stores and supplies, demurrage or loss of use of the entered vessel and contributions to general average and salvage.

### 2. Combined charterers' cover

The Association can arrange combined insurance for charterers to cover P&I insurance in accordance with Part II of the Rules and liability for loss of or damage to the entered vessel.

### 3. Charterers' bunkers

The Association can arrange for insurance of charterers' bunkers carried on board the entered vessel.

### 4. Deviation

The Association can arrange additional insurance to cover members' liability arising out of:-

- 4.1 geographical deviation or other departure from the contractually agreed voyage (such as transshipment, dry-docking with cargo on board, or lightering) which deprives the member of the right to rely on defences or rights of limitation which would otherwise be available, and
- 4.2 carriage of cargo on deck on under deck bills of lading or similar documents which should have been, but were not, claused to show that the cargo was carried on deck. The insurance is subject to the following conditions,
  - a) the member must notify the Association before the deviation takes place or as soon as he becomes (or should become) aware of it,
  - b) the Association must approve the deviation, and
  - c) the member must pay any additional premium required.

### 5. Storage of cargo

The Association can arrange insurance to cover members' liability for cargo loss, damage or shortage occurring more than 21 days before loading or after discharge while the cargo is stored on a wharf or in a warehouse or lighter. The member must notify the Association as soon as he becomes (or should become) aware that cargo is likely to be stored in the circumstances described above, and pay any additional premium required.

**6. Container risks**

The Association can arrange insurance for

- 6.1 loss of or damage to containers owned or leased by the member, and
- 6.2 the member's liability to third parties arising from an accident during use of the container.

**7. Through transport**

The Association can arrange insurance to cover the member's liability for loss, shortage, damage or delay to cargo whilst in the custody of another carrier. Cover is limited to liabilities which arise under a contract which provides for carriage to be performed partly by the entered vessel, and has been approved by the Association.

**8. Crew familiarisation and superintendents**

The Association can arrange insurance to cover the member's liability to third parties (excluding employers' liability) arising out of the presence on board of officers or crew prior to or after delivery for purposes of familiarisation, or as superintendents on a new building which is to be entered in the Association.

**9. Salvage**

The Association can arrange insurance for an owner member who is a professional salvor for liability costs and expense arising out of salvage operations

- 9.1 in connection with the operation of and in respect of the member's interest in the entered vessel, or
- 9.2 in the absence of an entered vessel, in respect of
  - a) oil pollution risks, and
  - b) risks other than oil pollution.

**10. Supply and diving support vessels**

The Association can arrange insurance to cover liabilities for supply, diving support and similar vessels.

**11. Freight**

The Association can arrange insurance for loss of freight.

**12. Kidnap & ransom**

Kidnap and ransom insurance - including a loss of hire extension.

**13. War Risks**

The Association has arranged additional insurance to cover war risks liabilities which are excluded by Rule 30.4.1, and are in excess of the USD equivalent of the proper value of the entered vessel or the amount recoverable from the vessel's War Risks Underwriters whichever is the greater. The cover is subject to a minimum deductible of USD 50,000. For the purpose of this cover, where the proper value exceeds USD 100 million, the proper value shall be deemed to be USD 100 million.

The insurance excludes claims recoverable under

- a) Hull insurance,
- b) Marine war risks and any P&I inclusion clauses attached, and
- c) Norwegian or similar state or government schemes or specific policies covering liabilities to crew.

The insurance may be terminated on 7 days' notice or, in some circumstances automatically.

**14. Chemical, Bio-Chemical Electromagnetical Weapons and Computer Virus Risks**

The Association has arranged cover for

- a) damages, compensation or expenses in consequence of the personal injury to or illness or death of crew, and
- b) legal costs and expenses incurred solely for the purpose of avoiding or minimising any other P&I liability (other than under the Omnibus Rule) arising out of chemical, biological, bio-chemical, electromagnetical weapons and computer virus risks (as defined in Appendix 1).

Cover is subject to aggregation for all interests in the vessel and is subject to limits, cancellation and geographical exclusions.

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