Guidance to the Rules
for Mobile Offshore Units
2026

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Preface to the 2023 edition

I am delighted to present to Members, clients, brokers and other business partners our first *Gard Guidance to the Rules for Mobile Offshore Units* (MOUs).

Gard has offered P&I insurance to owners and operators of MOUs since 1973. With the 50th anniversary for such insurance around the corner, and in pursuit of good insurance solutions both for conventional and emerging offshore energy operations, it is timely to provide this Guidance.

The insurance terms naturally reflect the special characteristics and risks pertaining to such operations. With this in mind, I hope the Guidance contributes to contract certainty and further interest both externally and internally about how our insurance is intended to work.

I wish to extend my special thanks to our former Chief Legal Counsel, Mr Kjetil Eivindstad, for having compiled and written this Guidance. Kjetil has unrivalled knowledge of the terms of P&I insurance both for ships and MOUs. I am very grateful indeed that even in retirement, his keen professional interest has been maintained and his willingness to support Gard has remained unabated.

My appreciation is also extended to colleagues who have provided input and rendered support along the way, and in particular Jan-Hugo Marthinsen, Vice President, Offshore Energy Claims, who has been in charge of the project and led the internal working group.

I hope you will all find the Guidance helpful in your work and that you do not hesitate to contact us if you have questions or comments.

Arendal, December 2022

Rolf Thore Roppestad
Chief Executive Officer
Gard AS

Acknowledgements to the 2023 edition

This *Guidance to the Rules for P&I and Defence cover for mobile offshore units* (the Guidance to the Rules for MOUs) is a new publication to be included in the comprehensive selection of various Guidances and Handbooks published by Gard for the purpose of sharing knowledge and expertise with Members and business partners.

In fact, the Gard's publication program can now celebrate its 50 year anniversary. The first edition of the Gard Handbook on P&I Insurance was published in 1972. Since then, several new editions of the traditional Rule-by-Rule commentary to the Rules for P&I and Defence cover for ships and other floating structures (*the Guidance to the Rules for Ships*) have been published and is now updated yearly and made available as a digital publication on www.gard.no.

Having been responsible for producing the text to the new Guidance to the Rules for MOUs, I am indebted to those who have produced the earlier editions of the Handbooks and Guidances. I wish to mention Richard Williams, honorary professor at the School of Law, Swansea University, and formerly a partner with Ince & Co in London specialised in maritime law, in particular. Richard has since 2006 been the lead author of the *Guidance to the Rules for Ships* and responsible for subsequent revisions and updates. His academic skills combined with practical experience have enhanced the Gard publications even further. The explanatory notes to the general insurance law sections in this new *Guidance to the Rules for MOUs* is very much based on the most recent version of Richard Williams' *Guidance to the Rules for Ships* available on www.gard.no.

I have been assisted by an internal Gard working group consisting of Jan-Hugo Marthinsen (Vice President, Offshore Energy Claims), chair, Torgeir Bruborg (Claims), Tore Andre Svinøy (Group Legal) and Gisle Brøvig (Underwriting). During the process, the working group members have contributed with many practical examples and useful comments and views which have been very much appreciated.

Furthermore, I wish to thank Patrick Michael Leahy of Gard (North America) Inc and Helenka Leary and Neil Henderson of Gard (UK) Limited. They have kindly reviewed and commented on issues involving American law and English law, respectively.

Finally, I will mention Christen Guddal and Randi Gaughan of Gard. Besides his many tasks as Chief Claims Officer, Christen has taken the time to read the whole manuscript and given useful comments and advice. As senior communication executive Randi has proofread the manuscript and assisted with several other practical details and organized the publishing. My sincere thanks to both.

Kjetil Eivindstad
October 2022

Introduction to the 2023 edition

This is the first edition of the *Gard Guidance to the Rules for P&I and Defence cover for mobile offshore units* (the Guidance to the Rules for MOUs). It is based on the same format as the existing Gard Guidance to the Rules for P&I and Defence cover for ships and other floating structures published in 2008 (Gard Guidance to the Rules for Ships) and subsequently updated and made available on www.gard.no.

Having been involved in P&I insurance of mobile offshore units since 1973, the intention with this new publication is to share Gard's collective knowledge and expertise within this niche of marine and energy insurance business with Members, customers, and other business partners. The ambition is to contribute to clarity and predictability as to how the P&I cover for mobile offshore units works in practice. The publication will be updated yearly depending on changes in the standard terms of cover and made available on www.gard.no.

When reading this Guidance to the Rules for MOUs, one should be conscious about some key features of P&I insurance in general.

- It is a "named risk" insurance meaning that the cover is restricted to liabilities and losses expressly mentioned, - or named - in the terms of entry. In contrast to a general liability insurance, the P&I insurance does not comprise the assured's liability in general.
- The cover follows the insured vessel wherever it is operating. It is a general requirement that the relevant liability or loss to be covered must have arisen in connection with the operation of the insured vessel. A liability or loss arisen without any insured vessel being involved or without any link to an insured vessel fall outside the scope of cover irrespective of the nature of the relevant claim.
- Gard, like most other P&I insurers, operates on a global basis with an international portfolio of business. The cover applies world-wide and protects the assured owner, subject to terms of entry agreed, against liabilities and losses incurred pursuant to governing law at the place or in the country where the incident giving rise to the claim has occurred. The P&I insurer runs the risk of findings and conclusions of foreign courts having jurisdiction over the claim.
- It is a condition for the insurance that the vessel is classed in an approved classification society and complies with flag state requirements. By making the right of recovery under the contract of insurance conditional upon compliance with the requirements of the vessel's flag state and classification society, the P&I insurer underpins compliance with the governing safety standards for the benefit of society at large.

The Rules for P&I and Defence cover of mobile offshore units (Rules for MOUs) and the Rules for P&I and Defence cover for ships and other floating structures (Rules for Ships), are built on the same structure. Both sets of Rules contain general parts applicable to contracts of insurance in general and specific parts listing the named risks and special exclusions and limitations. Like the Nordic Marine Insurance Plan, each set of Rules represent a complete code containing most of the regulations directly in their wording. This is important for a marine insurer with a global reach like Gard. With an international portfolio of business, the intention is to make terms of cover as easy to understand and user friendly as possible for Members, customers, and other business partners such as brokers and external lawyers having limited knowledge about Norwegian background law.

Although the Rules for Ships and the Rules for MOUs have many features in common, they differ in some important areas. Firstly, while entries subject to the Rules for Ships are made on a mutual basis and reinsured under the International Group of P&I Clubs' Pooling Agreement, P&I cover for MOUs is written on fixed premium basis and subject to an agreed sum insured. The MOU program is reinsured by Gard separately in the international reinsurance market. Secondly, there are important differences as to the list of risks covered and special exclusions and limitations. For example, an MOU is normally not involved in traditional carriage of cargo and passengers and for that reason no references are made to these categories of claims in the list of risks covered. See Part II, Chapter 1 of the Rules for MOUs. Furthermore, the Rules for MOUs contain special exclusions and limitations reflecting peculiarities of the offshore oil and gas business giving rise to risks falling outside the scope of traditional marine liability insurances. See Part II, Chapter 2 of the Rules for MOUs.

The similarities relate primarily to provisions included in Parts I and V of the Rules for MOUs containing general requirements such as duty of disclosure, alteration of risk, class and flag state warranty, termination and cesser, obligation with respect to claims, payment first by Member, amendments to the Rules, choice of law and arbitration. The explanatory notes to these clauses in this publication are to a large extent based on what has already been published in the *Guidance to the Rules for Ships.*

Part III of the Rules for MOUs contain the standard terms of entry for Defence risks. The explanatory notes in this section are very much based on the *Guidance to the Rules for Ships* save that the Defence cover for MOUs is subject to a sum insured of USD 1 million per event.

Finally, it ought to be added that Gard has developed several additional covers intended to meet special needs of Members and clients covering, for example, risks excluded under standard terms of entry. Such additional covers are written on a fixed premium basis. Reference is made to Gard Additional covers – Terms and Conditions as applicable. Further information can be provided on request.

Mobile Offshore Units - MOUs

Mobile offshore units (MOUs) include different types of units and vessels designed and equipped to perform various surface and subsea petroleum activities, and include Mobile Offshore Drilling Units (MODUs), Accommodation Units and Floating Production Units (FPUs). MOUs include units which:

1. are placed and stabilized on the seabed either on the hull bottom (submersibles) or on 3 or 4 jack-up legs (jack-ups); or
2. floating units, either ship-shaped single hull units, e.g. drillships, or column supported units on flotation pontoons which are partially submerged when operating (semi-submersibles).

MOUs are owned by oil and gas companies (operators), or by independent contractor companies (contractors). Generally, the owners manage and operate the MOU and the services it performs, although sometimes the operations are outsourced to contractors who specialize in the specific MOU operations.

Whereas ships have ploughed the oceans and waterways for thousands of years, the use of MOUs has a much shorter history. The first MOU was used in 1947 in the Gulf of Mexico by Kerr-McGee Corporation. The oil and gas company designed and built a drilling tender barge, named Kermac No. 16, which was towed to and moored alongside a pre-installed offshore fixed platform. The drilling derrick and draw-works were installed on the platform, and machinery, consumables, utilities, and crew accommodation facilities remained on board the tender barge.

Whereas ships engaged in operations at sea may stay at the same location for shorter periods, MOUs tend to remain in the same location for far longer when performing the purpose for which they are specially designed. They will be stationed within a defined operating radius of a few meters within which they may move or weathervane, or be moored in a fixed orientation, for weeks, months or years until they have completed the operations. They may then move away from the location to port or another offshore location for the next operation.

Mobile Offshore Drilling Unit (MODU)

The first purpose-built MODU, designed by a joint venture between Kerr-McGee and an offshore drilling contractor, Ocean Drilling and Exploration Company (ODECO), named Mr. Charlie was delivered from New Orleans Shipyard to ODECO on 15 June 1954. Mr. Charlie was designed as a submersible unit to sit on the seabed whilst drilling wells in water depths up to 14 meters. The unit was in operation along the US coast in the Gulf of Mexico drilling over 200 wells before it was retired in 1986.

Over the years as offshore drilling of wells moved into deeper waters and harsher environments the design, size and capacities of MODUs have changed

significantly. Currently, there are three main types of units in use, commercially available or under construction globally: jack-up, semi-submersible and drillship. According to Esgian Rig Analytics, at the end of January 2024, there were:

Type of unit:	Available/in use	Under Construction	Total
Jack-up	480	19	499
Semi-Submersible	93	6	99
Drillship	99	10	109
Total No. of MODUs	672	45	717

Jack-up drilling unit

The first jack-up drilling unit was constructed by a joint venture between DeLong Engineering & Construction Company and McDermott was named DeLong-McDermott No.1 and delivered to Humble Oil in 1954. This unit was designed and built with 10 legs.

The current jack-up unit designs consist of a triangular watertight hull structure with a superstructure at the bow end, three long jack-up legs, and a drilling derrick on a retractable cantilever deck. At the drilling location the legs will be lowered to the seabed and the hull preloaded for the legs to penetrate the seabed for stability during the drilling operation. The unit's hull is then raised (jacked up) on the legs out of the water to a secure 'airgap' between the hull bottom and the sea surface where the hull will be locked during its well operation. The drilling derrick is parked in the centre of the hull between the legs when not in use and during transits and will be skidded out on its cantilever deck structure over the stern of the jack-up hull when ready to commence well operation works. The utilities for the drilling operation are within the main hull structure, and the crew accommodation facilities will be in the superstructure with the helipad on top.

Jack-ups will usually not be self-propelled and will be towed to their operating or lay-up location by tugs. For long-distance and ocean transits jack-ups will be transported on semi-submersible heavy lift vessels (HLVs). The largest HLVs can carry up to 3 jack-ups simultaneously.

Jack-ups can operate in water depths up to 150 meters and can drill and provide other well services over a fixed wellhead platform installation, or drill single exploratory wells through a drilling conductor installed in the seabed with wellhead on its top, and a dry blowout preventer (BOP) connected on the wellhead immediately beneath the drilling floor.

Semi-submersible drilling unit

Shell Oil converted the first semi-submersible unit (semi), Bluewater No. 1, from a submersible hull in 1961/62. The first purpose-built semi, Ocean Driller (1963), was designed and owned by ODECO.

During the 1960s and 70s the semi designs varied widely to optimize motion, stability, structural and functional variable drilling load characteristics. From 1974 the Aker Shipyard, now Aker Solutions, designed the Aker H-3 semi and built several of these first units at its yard in Oslo for domestic and international MODU owners. The Aker H-3 design became the world's most popular semi design and has been enhanced to the current H-6e version, capable of operating in harsh environments and Arctic conditions.

Semis have been the workhorses in the North Sea oil & gas developments with the basin's water depths and seasonal and shifting weather systems. At the designated drilling location, the semis are either spread-moored by anchor lines or held on drilling station position by a dynamic thruster positioning (DP) system, principally determined by the water depth. Some semis are equipped with both anchoring and DP systems. Semis, depending on size and capacities, can work in water depths from 100 – 200 meters down to 3,600 meters. Although most semis navigate on their own propulsion they do not sail at high speed, and for trans-ocean transits they may be assisted by powerful ocean tugs or carried as deck loads on semi-submersible HLVs.

Whilst drilling wells the wellheads will be on the seabed, either as single exploratory or appraisal wells or in a wellhead template with several production well slots. A subsea blowout preventer (BOP) will be latched on the wellhead. The drilling and other well operations will be controlled and operated from the semi's drilling deck and control room through a marine drilling riser string with the lower marine riser package (LMRP) at the bottom of the riser connected to the BOP. During emergencies, extreme weather, drifting icebergs, etc., the LMRP can be unlatched from the BOP to allow the semi to evacuate from the location to a safe waiting position before returning to reconnect to the BOP and resume its well operations. For deep water and ultra-deep water drilling, the riser string sections and the LMRP will be equipped with buoyancy elements to counter the heavy weight of the riser string's load on the wellhead and the semi's riser tension system.

Drillship

The first drillship, CUSS 1, was built for Global Marine Drilling Company in 1956.

Up until the late 1990s, not many drillships were built, but from then on, the number of newbuilds increased as the demand for deepwater and ultra-deepwater drilling units increased. Between 2006 and 2018, approximately 115 drillships were built. Some of these relatively new drillships have already been taken out of the market for recycling or have been converted for other usage.

Drillships are preferred over semis because of their higher transit speed, variable load capacity, large storage space and capacity to store produced fluids. Their drilling equipment is the same as for semis.

In October 2021, TotalEnergies drilled the world's deepest offshore well in a water depth of 3,628 meters in Block 48 offshore Angola, utilizing the seventh-generation drillship Maersk Voyager.

Accommodation Units

Accommodation units and vessels, also known as Flotels, are designed and built to accommodate personnel engaged in offshore construction, installation, maintenance, or decommissioning projects, when there is need for more personnel on board (POB) than the available accommodation at the project location. The capacity of these units varies from 150 up to 800 POB. The most recent estimate of total available offshore accommodation capacity is about 42,000 POB. In addition to the accommodation capacity, the units will also have deck storage space and crane capacity.

The early generation of accommodation units were designed like or converted from semi-submersible drilling units and jack-ups. These anchor or jack up next to the offshore fixed installation that is the subject of the project works with a gangway connection between the unit and the installation which can be disconnected for safety/emergency reasons.

The later generations of accommodation units are dynamically positioned, DP3 or DP4 units, designed as semi-submersible, mono-hull vessel, or double hull barge type units which can provide accommodation services to both fixed offshore installations and floating offshore units. The gangways of the modern units are more advanced and automated than the earlier generations.

Floating Production Units (FPUs)

FPUs, also known as Floating Production Systems (FPS), include 8 types in use, available or under construction worldwide at the end of 2023. These comprise around 230 Floating Production Storage and Offloading (FPSO) vessels, over 100 Floating Storage and Offloading (FSO) vessels, 5 Mobile Offshore Production Unit (MOPU), around 40 Semi-submersible production units (SSPU), almost 30 Tension Leg Platforms (TLP), over 20 Spar Platforms, and 5 Floating Liquefied Natural Gas (FLNG) units.

The first FPU deployed was Transworld 58, a converted semi-submersible unit (built 1966), which was installed on the Argyll Field in the UK sector of the North Sea and commenced production on 11 June 1975.

As the oil and gas developments moved into more remote areas and deeper waters in the 1970s where conventional fixed platforms were not considered to be commercially or technically viable solutions, the operators and the offshore industries looked to deploy floating production, storage and offloading systems.

Floating Production Storage and Offloading (FPSO)

In 1977, Shell deployed the first FPSO, Castellon, on the Castellon Field in the Mediterranean. Since then, over 270 FPSO projects have been and are currently developed. During the early years of FPSO projects, about 68% of the vessels were converted crude oil carriers, and in the last decade the projects have been equal between conversions and newbuilds. To date, the ownership of FPSOs has been 55% field operators and 45% contractors, whereas contractors have managed just over 50% of the FPSOs.

FPSOs have four main components:

1. the hull containing storage tanks for stabilized petroleum products, produced water for treatment before disposal, main engine and machinery rooms, and fuel tanks;
2. topsides for oil and gas separation and processing, power generation, water or gas injection, compression, and offloading equipment;
3. mooring and riser connection system(s); and
4. accommodation quarters with control room and helipad.

FPSOs are either spread moored in a fixed orientation, where subsea production or injection risers and control umbilicals (flexible bundle cables with electrical power, electronic and fibre optical cores, and hydraulic and chemical fluid pipes) are tied in on a balcony on the side of the vessel, or they weathervane with mooring lines, risers and umbilicals being connected to a rotating turret located either internally in the hull or externally at the bow. When turret-moored, the vessel will be station and heading controlled by dynamic positioning propulsion (POSMOOR or TAMS).

FPSOs operating in areas with seasonal severe weather conditions that may make it unsafe for the vessel to stay on the location, for example hurricane or drifting icebergs, will be connected to a turret buoy from which they can disconnect and escape to a safe location.

Most FPSOs are ship-shaped, some are Sevan cylindrical shape, and others are shaped as giant barges. The choice is determined by which vessel type is most suited for type of production and the location where the FPSO is destined to operate.

The world's deepest offshore production unit is the FPSO Turritella, a converted crude carrier owned by a joint venture contractor group, is turret buoy moored in 2,896 meters water depth at the Shell Stones field in the US sector of the Gulf of Mexico.

Floating Storage and Offloading (FSO)

FSOs, also known as Floating Storage Units (FSUs) are like FPSOs, except for the production facilities and connection to production wells. Some are purpose-built whereas others are converted Crude Carriers.

The FSOs provide offshore storage and offloading of stabilized crude oil in fields with production on FPUs without or with limited storage capacity, or fixed offshore production platforms which are not connected to an oil pipeline for the export of produced crude oil.

Liquefied Natural Gas (LNG)

Until the late 1990s natural gas was considered economically unimportant unless the fields were near existing gas export pipeline systems. The large volumes of natural gas at atmospheric pressure and temperature made it unpractical to store and transport by other means than pipelines.

As global energy demand increased and climate change concerns grew, natural gas attracted more interest as a cleaner energy source than coal for generation of electricity. LNG is a purified gas consisting mainly methane (>90%) cooled down to -162°C (-260°F) condensed into a non-toxic, non-corrosive, odourless and colourless liquid at near atmospheric pressure.

Floating Liquefied Natural Gas (FLNG)

In April 2017, Petronas, the Malaysian National Oil Company, commenced production at its PFLNG Satu, the first FLNG vessel to begin offshore production of LNG at the Kanowit Field in Malaysian waters. The first FLNG project, however, was Shell's Prelude FLNG which is the biggest ship/vessel built, 488 meters long with a beam of 74 meters and height of 105 meters and a crew of 220 – 240. It began production on 26 December 2018 at the Prelude Field offshore Western Australia.

Four of the five producing FLNGs are new-built vessels, and one is a converted LNG carrier.

The liquefaction process involves removing acidic molecules, mercury, carbon dioxide (CO^2), and other impurities from the gas before the gas stream is separated into liquefied gases (butane and propane) and the lighter gases ethane and methane, which are cooled down to LNG for shipping by LNG carriers to an LNG terminal/regasification facility.

Other types of Mobile Offshore Units and Vessels

In addition to the above-mentioned types of MOUs there are a number of specialist offshore vessels and units which are eligible for P&I and Defence cover under the International Group of P&I Clubs' Pooling Agreement (ref. Introduction chapter, paragraph 5). These include offshore construction, pipelay, and crane vessels and units.

Part I
Availability of cover

Chapter 1

Introductory provisions

Rule 1 Interpretation

1 In these Rules the following words or expressions shall mean:

Affiliate

a person insured pursuant to Rule 59.

Agent

for entries with Assuranceforeningen Gard - gjensidig - or Gard P. & I. (Bermuda) Ltd. the 'Agent' means Gard AS and its subsidiaries.

Articles of Association

for entries with Assuranceforeningen Gard - gjensidig -, the Statutes of Assuranceforeningen Gard - gjensidig - and for entries with Gard P. & I. (Bermuda) Ltd, the Bye-Laws of Gard P. & I. (Bermuda) Ltd.

Association

for entries with Assuranceforeningen Gard - gjensidig- the 'Association' means Assuranceforeningen Gard - gjensidig and for entries with Gard P. & I. (Bermuda) Ltd the 'Association' means Gard P. & I. (Bermuda) Ltd.

Certificate of Entry

a document issued by the Association pursuant to Rule 5.1, including (where the context permits) any endorsement note in respect of the relevant entry issued pursuant to Rule 5.3, which evidences the terms and conditions of the contract of insurance in respect of the Vessel.

Co-assured

any person who is insured pursuant to Rule 58.1.

Crew

officers, including the platform manager or master, and workers contractually obliged to serve on board the Vessel, including substitutes and including such persons while proceeding to or from the Vessel.

Defence Cover and Defence Entry

insurance by the Association for risks specified in Part III, chapter 1 of the Rules and the entry of a Vessel for such cover.

Hull Policies

the insurance policies effected on the hull and machinery of the Vessel, including any excess liability policy.

Insurance Premium Tax

Any taxes or other dues payable in respect of an entry of a Vessel in the Association in the country where the Vessel is registered, the country where the Member is resident, the country where the Member has a permanent place of business or in the country where the risk is located.

Joint Members

where the Vessel is entered in the names of more than one Member, the named Members.

Member
an owner, operator or charterer of a vessel entered in the Association who according to the Articles of Association and these Rules is entitled to membership of the Association, provided that, where the context allows, the term "Member" shall, in these Rules, include a Co-assured and an Affiliate.

P&I Cover and P&I Entry
insurance by the Association for risks specified in Part II, chapter 1, of the Rules and the entry of a Vessel for such cover.

Policy Year
a year from noon GMT on 20th February in any year to immediately prior to noon GMT on the next following 20th February.

Premium Rating
the fixed premium payable to the Association according to the terms of the Vessel's entry.

Protective Co-assured
any person who is insured pursuant to Rule 58.3.

Vessel
any offshore unit, any other ship or vessel or mobile or temporarily fixed craft, including the mooring systems, as entered in the Association, provided that the term 'Vessel' shall, in these Rules, include other items and equipment used as an integral part of the unit's operation when agreed in each particular case and noted in the Certificate of Entry..

2 Headings and notes are for reference only and shall not affect the construction of these Rules.

3 Any reference to a person shall be deemed to include a reference to an individual or a body corporate or unincorporate, as the context requires.

4 A Vessel shall only be deemed to be US owned, operated or managed for the purposes of these Rules if it is identified as such in the terms of entry.

5 A person shall be deemed to be the manager or the operator of a Vessel for the purposes of these Rules if the Association in its discretion shall so determine.

6 Where any matter requires the agreement, approval or consent of the Association, agreement, approval or consent shall only be deemed given if in writing.

Guidance

(A) …the following words or expressions… (Rule 1.1)
Certain words and expressions used in the Rules are defined in Rule 1.1. To the extent possible defined words and expressions in these Rules are given the same meaning as in the Rules for Ships. Any such definitions will be applied in the interpretation of these Rules, notwithstanding any other meaning that the relevant word or expression may have when used elsewhere.

Affiliate… (Rule 1.1)
An affiliate is a legal entity to whom P&I cover shall be extended pursuant to Rule 59 in respect of a claim although the company is not specifically named in the terms of entry for the vessel and is therefore not a Member or a co-assured. Affiliates include persons and companies affiliated to or associated with the Member, but not those affiliated to or associated with a co-assured. The words 'affiliated' and 'associated' are not defined but will include the ultimate holding company of the Member and any other subsidiary of that ultimate holding company. For example, a company shall be deemed to be affiliated to or associated with the Member if both the Member and the relevant legal entity have the same parent or one of them is the parent of the other. A parent is a company which directly or indirectly owns at least 50 per cent of the shares in and voting rights of another company. A company will also be treated as a parent if it otherwise has the ability to procure that another company is managed and operated in accordance with its (the parent's) wishes.

Agent… (Rule 1.1)
The expression "Agent" means in this context Gard AS and all its subsidiaries, including but not limited to Gard (UK) Limited, Gard (Greece) Ltd or and Gard (HK) Ltd. Gard AS is a Norwegian joint stock company established in Arendal, Norway, and a wholly owned subsidiary of Gard P. & I. (Bermuda) Ltd.

Gard AS is registered with the Norwegian Financial Supervisory Authority as an insurance agent in accordance with governing insurance intermediary legislation based on Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution. Gard AS has entered into separate agency agreements with Assuranceforeningen Gard – gjensidig -, and Lingard Limited, respectively, giving Gard AS power to conclude contracts of insurance on behalf of the two associations and to handle claims falling within the scope of cover. Gard AS has also entered into agency agreements with Gard Marine & Energy Insurance (Europe) AS. Lingard Limited has in turn entered into agency agreements with the Bermuda risk carrying entities in the Gard group including Gard P. & I. (Bermuda) Ltd and Gard Marine & Energy Limited.

The expression "Agent" is restricted merely to comprise Gard AS and its subsidiaries. It means that the word "Agent" in this context will not comprise any other person or company not being a subsidiary of Gard AS even if such other person or company actually is acting as agent in general or on a case-by-case basis on behalf of Assuranceforeningen Gard – gjensidig – or Gard P. & I. (Bermuda) Ltd.

Articles of Association... (Rule 1.1)
This definition recognises the fact that the provisions which govern the rights and obligations of the Members of Assuranceforeningen Gard -gjensidig- and Gard P. & I. (Bermuda) Ltd. are currently found in different governing instruments. A common definition is introduced to enable reference to be made to the governing instrument of the relevant Association in the relevant circumstances. Any reference in these Rules to the Articles of Association is to be construed as a reference to the Statutes of Assuranceforeningen Gard -gjensidig- and/or the Bye-Laws of Gard P. & I. (Bermuda) Ltd. as the context requires. The Statutes and Bye-Laws are available on www.gard.no.

Association... (Rule 1.1)
Any reference in these Rules to the Association is to be construed as a reference to Assuranceforeningen Gard -gjensidig- or Gard P. & I. (Bermuda) Ltd. as the context requires.

Certificate of Entry… (Rule 1.1)
The certificate of entry is the document issued by the Association to evidence the terms and conditions of the contract of insurance in respect of a vessel or a fleet of vessels. The certificate will also include any endorsement notes in respect of the relevant entry setting out variations in the terms and conditions as agreed between the Association and the Member, as well as the date from which such variations take effect.

Co-assured… (Rule 1.1)
A co-assured is any person who is insured pursuant to Rule 58.1 and will be named in the certificate of entry as such. Subject to the terms of Rule 58, a co-assured has a right of recovery from the Association for covered liabilities, losses, costs and expenses. Save if the co-assured is named as a protective co-assured pursuant to Rule 58.3, the co-assured has joint and several liability under Rule 60 to pay all sums due to the Association in respect of such entry. However, unlike a Member, a co-assured cannot exercise any membership rights such as voting at the general meetings of the Association.

Crew… (Rule 1.1)
The term crew encompasses officers, including the platform or offshore installation manager or master and other workers contractually obliged to serve on board the vessel as a part of its regular complement under the terms of a contract of service or employment. However, not all persons working on board the vessel are crew. A pilot, for example, would not form part of the

crew as defined, although he is obliged to serve on the vessel under the terms of his employment contract, he is not part of the regular complement of the vessel. The same will be the case with regard to on board representatives of the licensee and personnel of an external service provider engaged to carry out defined maintenance or repair works on board.

Defence cover and Defence entry… (Rule 1.1)
Defence cover is insurance in respect of legal and other costs necessarily and reasonably incurred in establishing or resisting claims as set out in Part III of these Rules. A Defence entry is the entry of a vessel for Defence cover.

Hull Policies… (Rule 1.1)
The hull policies are the insurance policies that cover the hull and machinery of the vessel and include any excess liability policy that covers liabilities that may be incurred by a vessel in excess of the maximum amounts recoverable under such policies because the liabilities exceed the valuation of the vessel under such policies. Depending on the terms and conditions of the hull policies, e.g. the Nordic Marine Insurance Plan, Institute Time Clauses or International Hull Clauses, the term 'hull and machinery' may also include the vessel's materials, equipment, spare parts and other items regularly on board the vessel.

Insurance Tax Premium... (Rule 1.1)
A number of countries have laws and regulations that provide that certain taxes and dues are imposed in respect of insurance premiums payable to the Association as insurer. Such taxes and dues are usually referred to as Insurance Premium Tax (IPT).

The Member's obligation to pay IPT may vary depending on the scope of the governing IPT legislation in the relevant country.

Joint Members… (Rule 1.1)
This includes the named Members for an entry where the vessel is entered in the names of more than one Member. All joint members have the same rights and obligations under the contract of insurance, but will together exercise the same number of voting rights as if there had been only one Member in respect of the entry.

Member… (Rule 1.1)
Unless the context suggests otherwise a Member is an assured who has full cover with the Association and who (unlike a co-assured) is entitled to membership of the Association including the right to vote at the general meetings of the Association.

Where the context allows, the term Member will also include other parties insured under an entry, e.g. any co-assured as well as any affiliate to whom cover has been extended under Rules 58 and 59, respectively. The wider interpretation of the term 'Member' applies throughout the Rules in

relations to the rights and obligations of those insured. For example, the duty of disclosure under Rule 6 is equally binding on a co-assured who is the manager of the vessel as on the Member who is the owner of the vessel.

In certain circumstances the acts or omissions of the person effecting the insurance, such as a broker, an officer or employee in the Member's organisation or independent contractors to whom the Member has delegated important functions in the management and operation of the vessel, may be deemed to be the acts or omissions of the Member.

P&I cover and P&I entry… (Rule 1.1)
P&I cover is the insurance for P&I risks as specified in the terms of entry for the vessel. A P&I entry is a vessel entered in the Association for P&I cover. See Part II, Chapter 1, of the Rules.

Policy Year… (Rule 1.1)
The twelve months from 20 February each year have historically been used as the standard period of insurance or policy year by all clubs in the International Group of P&I Clubs. Even if the P&I cover for mobile offshore units is not reinsured through the International Group of P&I Clubs, the Associations use 20 February as the commencement date for the policy year also for P&I insurance of mobile offshore units.

Premium Rating... (Rule1.1)
All vessels insured for P&I or Defence cover under these Rules are entered on a fixed premium basis. The premium rating will reflect the Association's overall assessment of the risks the vessel represents in terms of future claims exposure. The premium rating is agreed as a rate per gross ton for the vessel or as a lump sum.

Protective Co-assured... (Rule 1.1)
This includes any person named as co-assureds pursuant to Rule 58.3. A Member may wish to give protection to the other party to the contract, against liabilities, losses, costs and expenses for which the Member would have had a right of recovery from the Association if the claim had been made against the Member. Such protection can be achieved by naming the contractual party as a 'Protective Co-assured' in the Member's certificate of entry for the vessel to or from which that party may render or receive services.

Vessel... (Rule 1.1)
A mobile offshore unit is a unit constructed or adapted for the purpose of carrying out drilling, production, storage or other operations in connection with oil or gas exploration and production. Such vessels or units are not eligible for P&I cover under the International Group of P&I Clubs' Pooling Agreement (the "Pooling Agreement"). See also Rule 60.1 in the Rules for P&I and Defence cover for ships and other floating (the "Rules for Ships").

There is no universally agreed definition of the term mobile offshore unit. It

will comprise a wide variety of floating structures ranging from traditional drilling rigs to floating storage, production and offloading units having features in common with traditional merchant ships. However, a mobile offshore unit will typically be stationary at the offshore field for a period of time when performing its intended operation.

The Association has the discretion under Article 2 of the Statutes of Assuranceforeningen Gard and/or Article 1 of the Bye-Laws for Gard P. & I. (Bermuda) Ltd. to consider whether a floating structure shall be eligible for cover on terms that the Association deems appropriate. A vessel or unit being eligible for P&I cover under the Rules for Ships and reinsured under the Pooling Agreement (see the Pooling Agreement Appendix II) will not be entered under the Association's Rules for P&I and Defence cover for mobile offshore units (the "Rules for MOUs") and reinsured separately in the market outside the International Group structure.

Whether a vessel is eligible for ordinary P&I cover on mutual terms under the Rules for Ships or should be covered under fixed premium cover as set out in the Rules for MOUs and reinsured separately in the market will depend on the operation or activity the vessel is engaged in. However, even if a vessel seen in isolation may qualify to be insured under the Rules for Ships, for example, when the vessel no longer is carrying out production operations, it cannot automatically be moved from the fixed premium program under the Rules for MOUs to the mutual cover as set out in the Rules for Ships. During the agreed period of insurance, the vessel cannot be transferred from one insurance program to another solely depending on what the relevant vessel is doing or engaged in at any given time. If a vessel is entered for P&I risks under the Rule for MOUs, it must remain entered under those Rules during the agreed period of insurance unless the entry is lawfully terminated pursuant to the governing terms of cover. See for example Rules 15 and 16

...including the mooring systems..., (Rule 1.1)
Anchoring and positioning installations or structures assisting the vessel, referred to as mooring systems, will be deemed to be a part of the vessel for the purpose of the cover while used by the insured vessel. For example, if the anchoring or positioning structure should cause any damage while assisting the vessel, such damage will be deemed to be caused by the vessel for the purpose of the P&I cover for mobile offshore units even if the vessel itself has not been directly involved. This will be the case regardless of whether it has been agreed in advance and noted in the certificate of entry that the mooring systems shall be included as opposed to other equipment used as an integral part of the vessel's operation. See below. On the other hand, mooring systems permanently disconnected from the vessel, or no longer used by the vessel, will not be treated as a part of the insured mobile offshore unit for the purpose of the cover.

...the term 'Vessel' shall...include other items and equipment used as an integral part of the unit's operation... (Rule 1.1)
Special equipment or items are frequently used as an integral part of the operation of a mobile offshore unit. For that reason, the definition of the term 'vessel' codifies established underwriting practice inasmuch as such equipment or items can be covered if agreed in the terms of entry in each particular case. If agreed in advance and noted in the certificate of entry, such equipment or items can be deemed to be a part of the vessel for the purpose of the P&I cover. See for example Rule 36. The practical effect of extending the cover to include such special equipment or items is to clarify that liabilities and losses of a P&I nature arising out of the use of such equipment or items will be covered regardless of whether the vessel as such is directly involved.

(B) Headings and notes are for reference only… (Rule 1.2)
The purpose of this provision is to make clear that the headings and notes to the Rules do not form part of, and therefore shall not materially affect the rights and obligations of the parties to the contract of insurance. The headings and notes are included simply to make it easier to 'navigate' the Rules.

(C) Any reference to a person… (Rule 1.3)
Where there is a reference to a person this is deemed to include humans as well as corporate and unincorporated bodies. A 'body corporate' is an entity which is distinct and separate in law from its owners, e.g. a limited liability partnership or a company incorporated under the Norwegian Limited Liability Company Act or the English Companies Act or similar legislation in the country where the corporate entity is registered. An unincorporated body is any other body or group of persons, for example an unlimited partnership under English law.

(D) A Vessel shall only be deemed to be US owned, operated or managed... (Rule 1.4)
Vessels deemed to be US owned, operated, or managed are subject to special restrictions in the scope of cover. For example, liabilities resulting from occupational diseases in respect of employees are excluded (see Rule 43). The special restrictions will only apply if the relevant vessel or unit is identified as US owned, operated or managed in the terms of entry, i.e. the certificate of entry. However, if the unit or vessel is described by the Member (or his broker) as US owned, operated, or managed in the correspondence leading up to the conclusion of the contract of insurance with the Association, the relevant vessel or unit will be deemed to be US owned, operated or managed for the purpose of the cover with the effect that the special exclusions will apply.

(E) A person shall be deemed to be the manager or the operator of a Vessel… (Rule 1.5)
It is important to determine whether a person is a manager or an operator of a vessel for various purposes under the Rules. Rule 1.5 provides that such a

determination is to be made by the Association in its discretion. A professional manager is a person who performs some or all of the technical, crewing or commercial functions on behalf of and for the account of the owner of a vessel and is normally an organisation which is wholly independent from the owner and which renders such services to different principals under different management agreements. An operator will usually be a person who performs similar functions on behalf of the owner to that of a manager, but for his own risk and account, and may be affiliated to or associated with the owner.

(F) Where any matter requires the agreement, approval or consent of the Association… (Rule 1.6)

This Rule clarifies and emphasises that a Member is not entitled to rely on any agreement, approval or consent given by the Association where it is given orally. It must be confirmed by the Association in writing, e.g. by e-mail, other means of digital documentation or letter, if it is to be binding on the Association. The purpose of this Rule is to avoid disagreements or disputes as to whether the Association has given its agreement, approval or consent.

Rule 2 The cover

1 A Member shall be covered for
   a such of the risks specified in Parts II and III of these Rules as are agreed between the Member and the Association; and
   b such of the additional risks specified in Appendix II as are either expressed in Appendix II to be available to such a Member or as are expressly agreed between the Member and the Association.

2 The cover afforded by the Association to a Member shall be subject to the Articles of Association and to these Rules and to any special conditions agreed between the Association and the Member.

3 A Member is only covered in respect of liabilities, losses, costs and expenses incurred which arise
   a in direct connection with the operation (which in the case of Defence cover also shall include acquisition or disposal) of the Vessel, which will be deemed to include activity at one or more supply bases provided that such activity is in direct connection with the operation of the Vessel and transport between the Vessel and a supply base or a port or airport in the vicinity of the base;
   b in respect of the Member's interest in the Vessel; and
   c out of events occurring during the period of entry of the Vessel in the Association.

4 Subject always to the provisions of Rule 2.3, the Association may in its absolute discretion exercise powers conferred in the Articles of Association to pay compensation in respect of a liability, loss, cost or expense which is not otherwise covered under these Rules.

Guidance

A) …such of the risks…as are agreed between the Member and the Association. (Rule 2.1)

The insurance cover provided by the Association is not a general liability cover. It is 'named risk insurance' which provides cover only against the specific risks identified in the Rules and agreed in writing with the Association. P&I cover for mobile offshore units are available under Part II of the Rules, with optional additional cover for Defence risks under Part III. A Member may also be covered for additional risks as specified in Rule 2.1.b. This will for example include the war risk cover available to all Members. See Appendix II to the Rules and guidance in paragraph (B) below.

It follows that the Association does not cover risks not specified in the Rules. However, the Association may, nevertheless, in its absolute discretion pay compensation in such circumstances under Rule 2.4 provided that the particular risk otherwise complies with the provisions of Rule 2.3, as discussed below, and does not extend beyond the purpose of the Association. It means

in practice that the Association cannot on the basis of Rule 2.4 (referred to as the Omnibus Rule and discussed under (K) below) cover a liability that has not arisen in direct connection with the operation of the insured vessel as required in Rule 2.3.

Some of the P&I risks specified in Part II may be excluded from cover as a result of special terms of entry agreed with the Member. Any such exclusion will be set out in the certificate of entry or an endorsement note issued pursuant to Rule 5.

(B) …the additional risks specified in Appendix II… (Rule 2.1.b)
The principal scope of P&I cover for mobile offshore units offered by the Association is set out in Part II. The structure and scope of the cover is modelled on the standard P&I cover for ordinary ships insured in a club being a member of the International Group of P&I Clubs. To meet special needs, the Association may also make cover available for additional risks on terms to be agreed. These risks are either covered by the Association or arranged by the Association on behalf of the Member as agent only through market facilities which have been negotiated by the Association. The Association has no liability under the terms of cover arranged by it as agent only.

Cover for war risks for mobile offshore units as itemised in Appendix II is automatically available to all Members who has P&I cover for mobile offshore units with the Association. The war risk cover is subject to standard war risks terms and conditions such as notice of cancellation and automatic termination clauses etc., meaning, inter alia, that the cover will terminate automatically in the event of an outbreak of war between major global powers. Furthermore, the war risk underwriter may be entitled to terminate the cover or to change the agreed trading limits on seven days' notice in certain critical circumstances.

Insurance for other special risks which are not automatically available to a Member can be arranged if specifically agreed and will normally be subject to payment of additional premium. Further details can be obtained in the Gard publication Additional Covers – Terms and Conditions. Reference is also made to the commentaries to the Additional Covers - Terms and Conditions in the Guidance to the Rules for Ships.

C) The cover…shall be subject to the Articles of Association…these Rules and to any special conditions… (Rule 2.2)
The contract of insurance between the Member and the Association is governed by the Bye-Laws of Gard P. & I. (Bermuda) Ltd. for entries with Gard P. & I. (Bermuda) Ltd., the Statutes of Assuranceforeningen Gard -gjensidig- for entries with Assuranceforeningen Gard -gjensidig-, and these Rules and any special terms of entry agreed in writing between the Member and the relevant Association. The Member and the Association have a freedom to contract. In general terms this means that they are free to enter into

such special terms as are considered necessary in respect of the contract of insurance, subject only to the mandatory sections of the Norwegian Insurance Contract Act of 1989 as explained in commentaries to Rules 67 and 70 below.

(D) A Member is only covered…which arise… (Rule 2.3)
The conditions itemised in sub-sections a, b and c of Rule 2.3 are cumulative. Members will only be covered for liabilities, losses, costs and expenses satisfying all of these conditions. These conditions represent the fundamental principles of P&I insurance. Firstly, the cover follows the insured vessel and comprises only liabilities, losses, costs and expenses (the named risks) arising in connection with the operation of that vessel. Secondly, the cover will only comprise liabilities and losses etc., incurred by the Member in his capacity as owner, operator, or charterer of the insured vessel. In other words, liabilities or losses incurred by the Member in a capacity other than owner, operator, or charterer of the entered vessel or which have not arisen in connection with the operation of that vessel will not be covered. As pointed out in (A) above, liabilities and losses incurred by the Member in a capacity other than owner, operator or charterer or which have not arisen in connection with the operation of the insured vessel cannot be covered under the omnibus clause in Rule 2.4 either.

E) …liabilities, losses, costs and expenses… (Rule 2.3)
'Liabilities' means legal liabilities. The Association does not cover voluntary payments made by the Member to third parties for the Member's own commercial or other reasons in the absence of any legal liability to do so. Legal liabilities can arise under contract, in tort, or statute. The basis of the legal liability and the law or jurisdiction under which it arises, is immaterial for the purpose of cover. A standard P&I policy contains no trading limits. It applies worldwide.

Liabilities falling within the scope of cover may be based on negligence, e.g. in the case of a collision, or on strict or absolute liability created by statute and imposed without negligence, e.g. as sometimes happens in the case of damage to fixed or floating objects and in respect of oil pollution. See the guidance to Rules 24 and 25. A key feature of the P&I insurance is that it protects the assured against liabilities and losses incurred pursuant to governing law and regulations at the place where the incident occurs provided no special trading limits or exclusions are agreed. The terms of cover for US owned, operated, or managed vessels as specified in Rules 42.2, 43 and 57.2 illustrate such special terms and exclusions for a specified category of entries.

Liabilities, losses, costs or expenses which would not have arisen but for the terms of a contract or indemnity entered into by or on behalf of the Member that results in greater liability than follow from terms of contract that are customary in the area where the vessel operates are not covered unless the

terms have been approved by the Association. Similarly, no cover is available for liabilities which arise as a result of contractual terms prohibited by the Association, or which arise where a Member has omitted to use contractual terms required by the Association. Reference is made to Rule 42.

The words 'losses, costs and expenses' cover not only losses which arise as a result of a Member's liability to a third party but also losses, costs and expenses incurred by the Member himself, where the Rules permit the Member to recover them from the Association. Examples include diversion expenses under Rule 21, the cost of measures taken to avert or minimise loss under Rule 32 and disinfection and quarantine expenses under Rule 33A. However, some losses, costs and expenses may be recoverable only when incurred with the prior approval of the Association, such as for example legal costs under Rule 30.

(F) …incurred… (Rule 2.3)
The liabilities, losses, costs and expenses must be 'incurred' either by the Member directly or by servants, agents or independent contractors for whose acts or omissions the Member is held vicariously liable.

For example, the Member may have a direct liability to a third party for loss or damage caused by the acts or omissions of his employees, on the basis that an employer is liable for the acts of his employees which are performed in the course of their employment.

Where a servant, agent or independent contractor of a Member incurs a direct liability to a third party in the course of his employment, the Member may be obliged to indemnify him for that liability. This obligation may arise under a specific term of the contract between the Member and the servant, agent or independent contractor, or under general law. The Association does not insure the servant, agent or independent contractor directly and will, therefore, not reimburse him for liabilities that he incurs. However, cover is available to the Member for his liability to indemnify the servant etc., if the third party liability incurred by the servant etc., would have been covered by the Association had it been incurred by the Member.

The liability must be incurred by the Member. The Association will not cover in rem claims (i.e. a lawsuit against an item of property not against a person) against the vessel incurred by someone other than the Member, e.g. a previous owner or a bareboat charterer of the vessel which was not entered with the Association at the time when the incident giving rise to that party's liability occurred. Assuming the relevant claim is a P&I risk, it may fall within the scope of the P&I entry of the previous owner or bareboat charterer.

The Association does not require any liability incurred by a Member to a third-party claimant to have been determined by a competent court or arbitration tribunal before compensation can be paid. It is sufficient that the Association is satisfied after investigation that the Member is liable, or likely to be liable,

to the claimant. In many cases it is arguable whether or not the Member is liable to the claimant and it is therefore possible to settle the claim on a compromise basis. In such circumstances, cover is available for the Member's compromised liability, provided that the Association has approved the settlement as required under Rule 67. If, however, a Member admits liability for a claim or settles a claim without prior notification to or consultation with the Association, this may prejudice his cover for that claim as specified in Rule 62.2.

Pursuant to Rule 67.1 the Member's right of recovery is usually dependent on the liability, loss, cost or expense first being discharged or paid by the Member. In certain circumstances, however, the Association may make or commit itself to making a payment to a third party on behalf of the Member either by provision of 'Blue Cards' that are mandatory pursuant to various international conventions such as for example the Bunker Convention and the Civil Liability Convention regarding oil pollution liability or otherwise in anticipation of a liability, loss, cost or expense being incurred. Examples of the latter situation are where:

a the Association makes a payment into court with the approval of the Member;

b the Association, at the request of the Member, provides its letter of undertaking or other form of security to a third-party claimant as security for its claim against the Member.

Although in practice being an important part of the services offered by the Association, Rule 68.1 emphasizes that the making of such a direct payments or the provision of such security is entirely discretionary on the part of the club. Furthermore, Rule 68.3 states clearly that the Member is ultimately obliged to indemnify the Association for any payment made or liability incurred by the Association for any liability incurred to third parties under or in connection with any security issued or payment made for or on behalf of the Member, save to the extent that the Member would have been entitled to reimbursement under the terms of entry.

(G) …direct connection with the operation (which in the case of Defence cover also shall include acquisition or disposal) of the Vessel , which will be deemed to include activity at one or more supply bases provided that such activity is in direct connection with the operation of the Vessel… (Rule 2.3.a)
The cover provided by the Association is limited to liabilities, losses, costs and expenses incurred in direct connection with the operation of the vessel. The brackets referring to acquisition and disposal of the vessel clarifies that legal and other costs incurred in connection with cases pertaining to acquisition, conversion, alteration or disposal of the vessel for the purpose of the Defence cover will be deemed to have arisen in connection with the operation of the vessel provided any other special requirements for the Defence cover are

complied with.

There must be a direct causal link between the operation of the vessel or, in the case of Defence cover only, its acquisition, conversion, alteration or disposal etc., and the incident giving rise to the relevant liability, loss, cost or expense. For avoidance of doubt, it is emphasized that the term "direct connection with the operation of the Vessel" shall include "…activity at one or more supply bases provided that such activity is in direct connection with the operation of the Vessel...". In other words, the necessary casual link is deemed to be established if the activity at the supply base giving rise to the claim is done for the purpose of assisting the insured vessel, for example the handling of equipment to be used on board the vessel. Thus, any claim arising out of an activity at the supply base directly linked to the insured vessel will for the purpose of the P&I and Defence cover be deemed to have arisen in direct connection with the operation of the vessel.

As explained under (D) above, the cover 'follows the vessel'. Thus, the cover will not comprise liabilities and losses etc., arising out of any other operations or business activities of the Member not being directly linked to the operation of the entered vessel. For example, a liability arising out of the negligent handling of equipment at the supply base will not be covered if the relevant equipment was not designated for use on board the entered vessel. In this example, there is not direct causal link between the insured vessel and the incident giving rise to the claim.

(H) ...and transport between the Vessel and a supply base or a port or airport in the vicinity of the base... (Rule 2.3.a)
As liability or loss arising out of work performed at the supply base linked to the operation of the vessel will be deemed to satisfy the general requirement in Rule 2.3 a. even if the vessel as such is not directly involved in the casualty, cover is also extended to include transport between the vessel and the supply base.

For example, a P&I claim arising out of an incident occurring at the supply base during loading of equipment destined for the mobile offshore unit onto an offshore supply ship will for the purpose of the cover be treated as having arisen in 'direct connection with the operation' of the insured vessel as explained in (G) above. In this example the cover is triggered by the fact that the relevant equipment loaded at the supply base is destined for the entered vessel. Failing such a link, no cover would have been available. Further, a P&I claim arising out of an incident occurring during transport of the said equipment on board the offshore supply vessel from the supply base to the mobile offshore unit will be treated as having arisen in direct connection with the operation of the insured vessel inasmuch as it has arisen during transport

between the supply base and the vessel.

It ought to be added that the P&I cover is not a substitute for a general liability insurance for the owner or operator of the supply base. If for example the supply base is owned and operated by the Member, he must arrange separate insurance for liabilities and losses incurred in his capacity as owner and operator of the supply base. Only P&I incidents where there is a link to the operation of an insured vessel in the Association will in certain circumstances be covered as outlined above. Likewise, the owner of the offshore supply ship must arrange his own insurances protecting him against liabilities and losses for his own account.

The reference to '…port or airport in the vicinity of the base' restricts the cover geographically only to comprise transport between the vessel and ports or airports near or surrounding the supply base.

(I) …the Member's interest in the Vessel… (Rule 2.3.b)
The Association provides cover only for liabilities, losses, costs and expenses which arise in respect of the Member's interest in the vessel. This will generally be taken to mean the capacity in which the Member has been insured by the Association, i.e. as an owner, operator or charterer. For example, a Member who also is the owner of the cargo on board the vessel, for example a floating storage unit (FSU), will be covered only in his capacity as owner of the vessel and not as cargo owner.

(J) …events occurring during the period of entry… (Rule 2.3.c)
The cover provided by the Association is limited to liabilities, losses, costs and expenses which arise as a result of events which occur during the period of entry of the vessel in the Association. See Rule 4.

In circumstances where it is possible to state with precision how and when the event that resulted in the liability, loss or damage has occurred, the Association will treat it as having occurred as result of such event and at that time. However, in some cases the physical loss or damage may not occur or become apparent until sometime after the causative event. In order for cover to be available for the liability, loss, cost or expense, the Member must demonstrate that the causative event occurred during the period of entry even if the loss or damage did not become manifest during the period of entry.

(K) …compensation in respect of a liability…not otherwise covered… (Rule 2.4)
This Rule is commonly called the Omnibus Rule. It enables the Association, upon the application of a Member, to pay compensation in respect of a claim which falls outside the classes of liability, loss, cost and expense specified as risks covered in the Rules. The Omnibus cover is a particular feature of P&I insurance and provides the Association with some measure of flexibility to meet the changing needs of its Members. An application for Omibus cover

should not be made before the relevant case is finally resolved.

Claims put forward for consideration under the Omnibus Rule must be within the spirit of, or closely related to, existing heads of cover and must be consistent with the mutual interests of the Members and the purpose of the Association as laid down in the Articles of Association of the relevant risk carrier. Furthermore, the exercise of discretion by the Association under the Rule can only be exercised in respect of liabilities, losses, costs and expenses which satisfy the conditions set out in Rule 2.3 as to direct connection with the operation of the vessel etc. See guidance in paragraphs (D) to (H) above.

Certain Rules make reference to cover not being available '…unless and to the extent that the Association in its discretion shall decide otherwise…' or by words of a similar nature. Those provisions should be read in conjunction with Rule 2.4.

It is entirely in the discretion of the Association whether a Member shall be indemnified in respect of a claim under this Rule. Such discretion shall be exercised by the Board of Directors of the Association under the terms of Article 6 of the Bye-Laws for Gard P. & I. (Bermuda) Ltd. and/or Article 9 of the Statutes of Assuranceforeningen Gard and cannot be delegated to the management or other administrative officers of the Association.

The decision of the Board of Directors is final and subject to judicial review only when it is alleged that the members of the Board of Directors have exceeded their authority, for example acted ulta vires, or have failed to apply the rules of natural justice as expressed by the English court in the case reported as the Vainqueur Jose (1979) 1 LL Rep 557. Other courts and tribunals may follow the same approach. A court will normally assume that the members of Board of Directors have acted in good faith and the onus of proving otherwise is on the party making the allegation.

Chapter 2

Entries and duration of cover

Rule 3 Entries

1 Application for an entry of a Vessel may be made by any owner, operator, charterer or other insurer of that vessel.
2 A vessel may be entered with the Association for a partial interest only.
3 Application for the entry of a vessel shall be made in such form as may from time to time be required by the Association. The particulars given in any application form, together with any other particulars or information given in writing in the course of applying for insurance or negotiating changes in the terms of insurance, shall form the basis of the contract of insurance between the Member and the Association.
4 The Association may refuse to accept an application for an entry of a vessel without stating grounds therefore, and whether or not the applicant is already a Member of the Association.

Guidance

(A) Application…may be made by any owner, operator, charterer...or other insurer of that vessel… (Rule 3.1)
The application for the entry of a vessel may be made only by a person who is eligible to be a Member of the Association, i.e. by an owner, operator, charterer, or, where the entry is by way of reinsurance, by another insurer of the vessel since an application for the entry of a vessel also constitutes an application for membership of the Association, if the applicant is not already a Member.

In contrast to standard terms of entry for ordinary ships, no distinction is made in the Rules for mobile offshore units between owners' entries and charterers' entries. Both owners and charterers of mobile offshore units are insured on a fixed premium basis, subject to an agreed limit of insurance (see Rule 34.2) and reinsured under the same reinsurance program. For that reason, there is no need to distinguish between owners' and charterers' entries.

Others who have an interest in the vessel can also be insured; but must do so in the capacity of a co-assured under Rule 58.

(B) A vessel may be entered with the Association for a partial interest only (Rule 3.2)
The Rules permit the entry of a vessel for a partial interest only. For example, an owner may enter a vessel for 75 per cent of its interest with the Association and for 25 per cent of its interest with another P&I club. Another example will be the insurance of a mobile offshore unit owned by a joint venture consisting of a group of licensees involved on the same field where each member of the joint venture arranges his own insurances covering his partial interest in the vessel. Some may enter their share(s) with the Association while others may

insure their interests with other P&I clubs or market insurers.

The clubs, or market insurers, involved in arrangements as outlined above will then be treated as co-insurers of the vessel. This is similar to the situation where a percentage of a vessel's hull and machinery risk is placed with one insurer and the balance of the risks placed elsewhere, or retained by the owner. However, the practice between the two markets differs. In the case of hull and machinery insurance, it is established practice that the 'following underwriters' will be bound by the claims handling decisions made by the 'lead underwriter' or designated 'claims leader'. In the case of P&I insurance there is no established practice of one club being the 'lead underwriter' and the other(s) the 'following underwriters.' However, it is common for clubs involved in such arrangements to enter into an agreement to such effect on a case-by-case basis. Nevertheless, insofar as premium rating is concerned, one club will normally not be bound by the risk assessment made by another club.

The entry of a vessel for partial interest only should be distinguished from the entry by the owner of a fleet of vessels some of which being insured (for their full interest) with one club and others with another (or other) club(s). This is currently a more common practice than entering vessels for a partial interest only as described above.

Where a vessel is entered for a partial interest only, the Member is entitled to recover from the Association only such proportion of any liability, loss, cost or expense as the entered interest bears to the full interest. Moreover, the premium rating will be calculated in accordance with the entered (i.e. part) interest.

(C) Application…shall be made in such form as may…be required by the Association… (Rule 3.3)

The Association has standard application forms for the entry of vessels, known as 'entry forms'. The forms prescribe, and the Association will expect to receive, the following information, together with such additional information that the applicant/Member has a duty to disclose in the circumstances under Rule 6;

- the persons to be named as assureds and/or co-assureds;
- the name of the vessel;
- the port of registry and flag, IMO number and/or any other identification details;
- the classification of the vessel;
- the gross and net tonnage;
- the date of construction, and, if any, date(s) of rebuild, extension and conversion;

- the description of the vessel, including details of its primary function(s) and servicing capacity;
- the intended trading area and the types of services to be performed;
- the number and nationality of the officers and crew, together with details of their employment contracts;
- the cover required under Rule 23 (Collision with other ships) and Rule 24 (Damage to fixed or floating objects).

The application must be submitted to the Association's underwriting department, who may request further information including information relating to the vessel's condition. Pursuant to Rule 9 the Association may require the vessel to be surveyed.

At the conclusion of any such discussions, and subject to any amendment made to the original application, the Association will either reject the application, or decide the terms on which an offer of insurance should be made to the applicant. Since mobile offshore units are reinsured outside the International Group of P&I Clubs' Pooling Agreement, the quotation restrictions laid down in the International Group Agreement will not apply.

The following commentary assumes that Norwegian law will apply to the making of the contract.

Any offer made by the Association will contain details of the proposed premium rating and of other proposed terms of insurance for the vessel. If the applicant decides to accept the offer, he should send a written notice to the Association to such effect. In certain cases the Association may impose a time limit for acceptance. In other cases, the Association will be bound by the acceptance only if it is received within a reasonable time after the making of the offer.

A contract of insurance will be concluded when the offer is accepted by the applicant, or by a broker or other agent acting on behalf of the applicant. There may be a binding contract even though the Association and the applicant have not agreed all minor items, provided that all of the essential items of the contract have been agreed.

Although the contract of insurance is concluded at a certain point in time, the actual entry of the vessel and the commencement of insurance cover may occur at a later date. For example, a contract may be concluded on 1 February committing the Association to enter the vessel and to make cover available, and committing the Member to pay premium, with effect from 20 February.

Membership of the Association will commence on the date that the insurance cover commences, although the contract of insurance may have been concluded at an earlier date.

Brokers are frequently used as intermediaries for the purpose of placing P&I insurance. Under both Norwegian and English law, a P&I broker is regarded as an agent of the applicant, i.e. the Member, unless the Member and the Association otherwise expressly agree. However, brokers must be distinguished from agents appointed by the Association to offer insurance on its behalf. For example, Gard AS in Norway and Gard (UK) Limited in London act as the Association's agents in this regard.

The broker normally receives remuneration for his services by the payment of commission (or brokerage), which is usually a percentage of the premium. Liability for payment of commission varies from market to market. Traditionally, premium and commission relating to an entry are paid directly by the Member to the Association. Upon receipt of the commission, the broker remuneration is then paid by the Association to the broker involved. However, in some markets, for example the United States, it is more common for the Member to pay remuneration for broker services on a fee basis. Whichever method of remuneration payment is applicable, Norwegian law requires there to be full transparency. See the Norwegian Insurance Intermediary Act as amended on 22 December 2021 and the corresponding regulations of 22 December 2021 (section 6-3). The Association is not permitted to pay commission to a broker without first having obtained the consent of the Member. Further, the amount of commission or broker remuneration agreed shall be stipulated and highlighted in the premium debit note if the brokerage shall be collected by the Association.

The extent to which payment of premium by the Member to a broker will discharge the Member's liability to the Association, and the extent to which payment of claims by the Association to a broker will discharge the Association's liability to the Member, varies from jurisdiction to jurisdiction, and will depend on the circumstances of each case. This issue will be particularly relevant where the broker becomes insolvent before passing on the premium to the Association, or the claim compensation to the Member. Under Norwegian law, payment of premium by the Member to the broker will not normally discharge the Member's liability to pay premium to the Association since the broker is treated as the agent of the Member. Therefore, if the broker fails to forward to the Association the premium received from the Member, the Member remains liable to pay it.

(D) The particulars…shall form the basis of the contract of insurance… (Rule 3.3)

The contract of insurance is entered into by the Association in reliance on the particulars and information which are given in writing by the applicant for membership. The applicant has a general duty under Norwegian law and under Rule 6 to disclose to the Association all information that the applicant considers, or reasonably should consider, relevant to the Association's

evaluation of his application. Similar duties apply under most other systems of law which may be relevant to the placement of the insurance.

(E) The Association may refuse to accept an application… (Rule 3.4)
Rule 3.4 reinforces the Association's rights under Norwegian law that there is no obligation on the Association to accept an application. Furthermore, the Association may accept an entry for P&I cover, but not for Defence cover. In neither case is the Association obliged to give reasons for its refusal.

Rule 3.4 states expressly that the fact that an applicant is already a Member of the Association will not prejudice the Association's right to refuse an application. The Member, therefore, cannot oblige the Association to accept an application on the basis that there has been a course of dealing between himself and the Association which entitles him to enter an additional vessel.

The Association will not normally accept an entry only for Defence cover except in the case of building and purchase contracts where 'pre-delivery' Defence cover may be offered on the condition that the Member undertakes to enter the vessel for P&I risks at the latest on taking delivery of the unit.

The power to accept or reject an application and the power to agree special terms and conditions for the entry of a vessel is vested in the Board of Directors of the Association but exercised by the managers of the Association pursuant to the delegated authority to do so that has been granted by the Board.

Rule 4 Period of cover

The cover shall commence at the time and date agreed by the Association and shall continue until immediately prior to noon GMT on the 20th February next ensuing, and thereafter, unless terminated in accordance with these Rules, from Policy Year to Policy Year.

Guidance

(A) …time and date agreed by the Association… (Rule 4)
The Association and the Member will agree the time at which cover is to commence at the time of conclusion of the contract between them. The time and date of commencement of entry will be recorded in the certificate of entry. The cover will continue until immediately prior to noon GMT (meaning Greenwich Mean Time which is the standard time in the UK) on the following 20 February, unless it has ceased or been terminated before then.

Cover is available for a claim only if it arises out of an event occurring at or after the time of commencement of cover and before the termination or cesser of cover. See Rule 2.3.c.

(B) …cover…shall continue…unless terminated in accordance with these rules… (Rule 4)
The P&I cover does not automatically terminate at the end of the policy year. It continues unless cover is terminated or ceases pursuant to the provisions of Rules 15 to 17. In the circumstances outlined in Rule 17 the Member ceases to be covered immediately on the occurrence of the particular event unless the Association decides otherwise. Under Rule 15 the Member may terminate the entry as from the end of the policy year by giving written notice thereof prior to 20 January. Under Rule 16 the Association may terminate cover by giving written notice of termination.

Importantly, the Member cannot terminate the entry on any date other than at the end of the policy year except with the agreement of the Association. However, the Association can, in the circumstances outlined in Rule 16, terminate an entry on a date before the end of the policy year.

Rule 5 Certificate of Entry

1 After an entry has been accepted, the Association shall issue a Certificate of Entry which shall evidence the terms and conditions of the contract of insurance.

2 The following provision will be deemed to be incorporated into all Certificates of Entry:
"This Certificate of Entry is evidence only of the contract of indemnity insurance between the above named Member(s) and the Association and shall not be construed as evidence of any undertaking, financial or otherwise, on the part of the Association to any other party.

In the event that the Member tenders this Certificate as evidence of insurance under any applicable law relating to financial responsibility, or otherwise shows or offers it to any other party as evidence of insurance, such use of this Certificate by the Member is not to be taken as any indication that the Association thereby consents to act as guarantor or to be sued directly in any jurisdiction whatsoever. The Association does not so consent."

3 If the Association and a Member at any time agree a variation in the terms and conditions of the contract of insurance the Association shall issue an endorsement note stating the terms of such variation and the date from which such variation is to be effective.

Guidance

(A) After an entry has been accepted, the Association shall issue a Certificate of Entry… (Rule 5.1)
The certificate of entry is normally sent to the Member when the contract of insurance has been concluded. Copies of the Articles of Association, Rules and other relevant publications will follow separately and are available on www.gard.no.

Furthermore, the Association will, at the time of conclusion of the contract of insurance, arrange any undertakings or confirmations required for the issuance of agreed certificates which are reasonably needed for the trading of the vessel, e.g. certificates of financial responsibility for liabilities arising under international conventions.

(B) …which shall evidence the terms and conditions of the contract of insurance. (Rule 5.1)
The certificate of entry names and describes the vessel and identifies the Member and other assureds which are subject to the contract, either as joint members, or as co-assureds.

The certificate of entry also identifies in broad terms the risks covered by the Association in respect of the vessel, whereas the detailed terms and conditions of cover, and of membership, are found in the Rules and the Articles of Association. The certificate of entry refers to these Articles of Association and Rules, but they are expressly subject to any special terms and conditions which are set out in full on separate endorsement notes.

Currently, virtually all flag states and other authorities are prepared to accept an electronically signed PDF version of the certificate of entry accompanied by access to a regularly updated and searchable register of covered vessels on the webpage of the Association as the equivalent of the original document. The Association currently has such a searchable register which can be found on www.gard.no.

The certificate of entry is only evidence of the contract of insurance as the contract itself is concluded earlier when the terms and conditions are accepted as discussed under Rule 3 above.

(C) The following provision shall be deemed to be incorporated into all Certificates of Entry… (Rule 5.2)

The provision quoted in Rule 5.2 underlines the nature of the certificate of entry and, more generally, the extent of the obligations undertaken by the Association in respect of a Member. The provision is deemed to be incorporated into all certificate of entries. This ensures that it takes effect as a condition of the contract that binds the Member and is also brought to the attention of any third party who seeks to rely on the certificate of entry. However, it will not prevent the Association from incurring direct liability to third parties if the Association has by any other form of conduct assumed obligations towards them.

The Association may incur liabilities to third parties indirectly as a result of its insurance of the Member's liabilities. In some cases, third parties may be allowed by law to claim directly against the Association. Some jurisdictions allow direct claims against insurers where the insured is insolvent. The position under Norwegian law is discussed in the guidance to Rule 67. However, the contract remains one which is purely between the Association and the Member, and the certificate of entry cannot be relied upon by third parties as evidence of an undertaking given by the Association directly to such third parties. For example, the Association does not approve of the presentation to port authorities or other third parties of the certificate of entry as anything other than evidence that the vessel is entered with the Association for P&I risks as identified in the policy document.

The certificate of entry is also used by Members in other ways, for example as evidence of employers' liability insurance for personal injury suffered by employees. The Association does not object to the reasonable use of the certificate of entry in this way as it is appreciated that failure to have

such a document on board can result in the costly detention of the vessel. Nonetheless, the Association does not by such use of the certificate of entry by the Member, assume the status of a guarantor of the Member's liabilities. The Association has no direct responsibility for the Member's liabilities to port authorities or to anyone else to whom the certificate of entry is shown, and no acceptance of such responsibility can be implied as a result of such use of the certificate of entry by the Member. Furthermore, the presentation to interested third parties of the certificate of entry does not constitute any acceptance by the Association of liability for claims against the Association or to a submission to the jurisdiction of any court in respect of such claims.

(D) …endorsement note stating the terms of…variation… (Rule 5.3)
The terms of the contract of insurance can be amended from time to time by agreement between the Association and the Member. They can either be included in a new certificate of entry issued by the Association or evidenced by the issue of an endorsement note which will state the terms of the amendments and the date from which the amendments take effect. Therefore, the terms and conditions of the contract of insurance at any one time may not be recorded solely in the certificate of entry. Any and all endorsement notes must be considered in conjunction with the certificate of entry.

Chapter 3

Conditions of cover

Rule 6 The Member's duty of disclosure

1 The Member shall prior to the conclusion of the contract of insurance make full disclosure to the Association of all circumstances which would be of relevance to the Association in deciding whether and on what conditions to accept the entry. Should the Member subsequently become aware of any such circumstances as are mentioned above, or of any change in such circumstances as previously disclosed, it must without undue delay inform the Association.

2 Where the Member at the conclusion of the contract of insurance has neglected its duty of disclosure and the Association would not have accepted the entry at the Premium Rating agreed if the Member had made such disclosure as it was its duty to make, the Association is free from liability. Where the Association would have accepted the entry on the same Premium Rating but on other conditions, the Association shall only be liable to the extent that it is proved that any liability, loss, cost or expense would have been covered under those conditions the Association would have accepted.

3 Where the Member neglects its duty of disclosure subsequent to the conclusion of the contract of insurance and the Association would not have accepted the entry at the same Premium Rating had it known of the circumstances prior to the conclusion of the contract, the Association is free from liability. Where the Association would have accepted the entry at the same Premium Rating but on other conditions, the Association shall only be liable to the extent that it is proved that any liability, loss, cost or expense would have been covered under those conditions the Association would have accepted.

Guidance

(A) The Member shall…make full disclosure… (Rule 6.1)

An important principle of insurance law is that the contract of insurance is based upon the utmost good faith of the parties. The applicant for insurance has a duty to disclose to the insurer every fact or circumstance which may influence the insurer in deciding whether or not to enter into the contract.

Rule 6 emphasises the duty of disclosure that the Member has prior to and at the conclusion of the contract of insurance with regard to aspects of risk which are relevant to the Association. For example, this would include but would not be limited to disclosure of any survey evidence relating to the vessel or any evidence relating to the status and character of the applicant. The Member is required to inform the Association of every fact which would influence its judgement in estimating the risk or in assessing the premium or

the terms and conditions on which the first entry or subsequent renewal(s) of a vessel should be accepted.

At each renewal the Member and the Association are entering into a new contract of insurance that is subject to the requirements in this Rule 6. Thus, any changes in circumstances or facts earlier reported which might influence the Association decision as to whether or not the entry should be renewed or on what terms should be disclosed. An example could be repeated postponements of compliance with class requirements. Even if the vessel formally complies with governing class requirements, the Association may not wish to continue to insure the risk if the Member repeatedly has been exempted from standard requirements. See the guidance to Rule 8, paragraph (A).

The duty of disclosure is not predicated on, or triggered by, any request for information that may be made by the Association. It is a duty to make full disclosure of any material facts regardless of whether the Association has made any request for such information. The expression 'Member' in this context includes both prospective Members and Members who are renewing their previous year's entry. 'Member' may also include co-assureds and affiliates and any joint member.

The Member's duty of disclosure extends to circumstances known, not just to the Member, but also to an officer or employee in the Member's organisation or to independent contractors, such as managers, to whom the Member has delegated important functions relating to the management and operation of the vessel, even if these circumstances were not known to the Member personally.

The knowledge of a broker, being the agent of the Member, or other person who effects the insurance on the Member's behalf may also be considered to be the knowledge of the Member, for the purpose of Rule 6, even if the circumstances are not known to the Member himself. For example, if a broker has insured a vessel for a previous owner, material facts known to the broker when effecting that insurance may need to be disclosed in the context of a later application for entry made by that broker on behalf of a subsequent owner.

The use of the term 'Member' hereinafter in the guidance to this Rule includes all such persons.

(B) …prior to the conclusion of the contract of insurance…Should the Member subsequently become aware of any such circumstances as are mentioned above, or of any change in such circumstances… (Rule 6.1)
Under Rule 6 the Member has a continuing duty, commencing before, and continuing both at the time of the conclusion of the contract of insurance and thereafter, to disclose to the Association all facts and circumstances which would be relevant to the Association when deciding whether to accept the entry and/or the terms upon which it should be accepted. He also has

the duty once the contract of insurance has been concluded to inform the Association if there has been any change to those facts and circumstances. For example, such a duty would arise if the Member, after concluding the contract of insurance realises that his broker has given incorrect information to the Association with regard to the contractual terms governing the operation of the vessel or the nationality of the crew, both of which are important facts and circumstances for the insurer to know when making the risk assessment.

A Member must inform the Association of a change in circumstances 'without undue delay'. The Member must ensure that information which in the hands of, or channelled through, managers, brokers or other parties identified with the Member is relayed speedily to the Association. Delay or failure to disclose new or changed circumstances on the part of such managers, brokers or other parties may be deemed delay or non-disclosure by the Member.

The continuing duty of disclosure under Rule 6 should be read in conjunction with Rule 7 but not confused with the requirements of Rule 7. While Rule 6 deals with circumstances existing at the time of conclusion of the contract of insurance, Rule 7 deals with alterations of risk occurring thereafter. See the example given at the end of the guidance to Rule 7.

(C) …all circumstances which would be of relevance to the Association… (Rule 6.1)

The Member must advise the Association of every fact, matter and circumstance which would be relevant to the Association's assessment of the risk. The duty extends not only to circumstances relating to the vessel itself, but also to its ownership, management and operation.

Although the Association requires applicants to complete entry forms as stipulated in Rule 3 they cannot and do not embrace every detailed aspect of a particular Member's business. Accordingly, Members must not assume that the only information required by the Association is that requested in the entry form. In addition, Members must provide on the entry form, or otherwise in writing, all other information that would be relevant to the Association's assessment of the risk. The provisions of Rule 6.1 are similar to the provisions in the Nordic Marine Insurance Plan, which require disclosure of all relevant information, regardless of whether the insurer has made pertinent enquiries. It is not sufficient justification for a Member to say 'if it was relevant why did the Association not ask?'

A circumstance will be 'of relevance' if it is a fact or matter that would influence the judgement of the Association in estimating the risk, particularly if that circumstance tended to increase the risk. Although it is not possible to make an exhaustive list, relevant circumstances would include a Member's intention to operate the vessel substantially outside 'warranty limits', to

perform operations or services the vessel is not constructed, designed or adapted for, to change substantially the contractual terms under which the vessel is operating, or to change the manning level or the nationality of the crew with a commensurate increase in contractual death, disability or other compensation benefits. The Norwegian case of Ormlund ND (1978) page 31 illustrates these issues. The guideline must be that, if in doubt, all matters should be disclosed to the Association.

(D) Where the Member…has neglected his duty of disclosure… (Rules 6.2 and 6.3)

Under Norwegian law, the Member, or any manager, broker or other person identified with the Member, will be considered to have neglected his duty of disclosure only if he has been negligent in not disclosing information to the Association. If none of the aforesaid people could have known about the relevant circumstances, the duty of disclosure will not be considered to have been neglected.

The Member and those identified with him cannot, however, 'turn a blind eye' by failing to make diligent enquiries or to exercise rights to obtain information from others and will be deemed to know every material circumstance which ought to be known in the ordinary course of business. For example, the Member will normally have the right to receive all information regarding the vessel which is in the possession of the vessel's classification society. Accordingly, the Member will be deemed to have been aware of such information, even if the Member has not inspected the class records.

(E) Where the Association…would not have accepted the entry…Where the Association would have accepted the entry at the same Premium Rating but on other conditions... (Rules 6.2 and 6.3)

The consequences of a breach of the duty of disclosure are described in Rules 6.2 and 6.3. Where full and proper disclosure has not been made by the Member a distinction is drawn between circumstances in which it can be said

a that the Association would not have accepted the entry either at all or at the agreed premium rating; and

b those where it can be said that the Association would have accepted the entry at the agreed premium rating but on different terms. For example, a higher deductible or lower limit would have been agreed or some special exclusions would have been introduced restricting the cover for certain identified risks.

In the case of (a) the failure to disclose need not be causative of the event giving rise to the claim and the Association has no liability for any claim made under the contract of insurance in respect of the vessel or vessels to which the failure to disclose is relevant. For example, if the Member informs the

Association prior to or at the time of entry of a vessel that it is classed by a classification society approved by the Association as required under Rule 8 when in reality it is not, the Association will be free from any liability arising in respect of that vessel, but not in respect of the other vessels entered by the Member where correct information has been given. Based on existing underwriting practice the Association would not have accepted entries not complying with the requirement in Rule 8.

The Association has the burden of proving that the entry would not have been accepted at all or at the same premium rating if the Association had known of the circumstances which the Member has neglected to disclose. The Norwegian Supreme Court case *Fønix ND* (1938) p. 188 can serve as an example. The M/V Fønix was lost in a fire, but the insurer was relieved of liability based on the assured's failure to disclose that a flag state requirement to install a new pump was not complied with even if there was no causation between the fire and the failure to install a new pump. The court found that the insurer in this case had proved that he would not have accepted the insurance as long as the requirement to install a new pump was not complied with. The case illustrates that to meet the burden of proof the Association must be able to establish that based on current underwriting practice the entry would not have been accepted at all or at least not at the same premium rating if all relevant information had been disclosed. Existing underwriting guidelines codifying governing underwriting practice or examples on applications for memberships that have been declined for similar reasons may be relevant.

In the case of (b) the situation is different. Where, notwithstanding the non-disclosure, the Association would nevertheless have accepted the entry at the same premium rating, but subject to other conditions, the Association is liable to indemnify the Member only in respect of liabilities, losses, costs and expenses that would have been covered under the conditions that the Association would have accepted had full and proper disclosure been made. For example, if it can be established based on current underwriting practice that a special deductible of USD 500,000 and a limit of insurance of USD 50 million per event would have been introduced if a full and proper disclosure had been made, the cover available shall be subject to such terms. Furthermore, if it can be demonstrated that a special exclusion would have been included excluding an identified category of liabilities or losses if correct disclosure had been made, the Association is not liable for claims falling within the scope of the special exclusion.

The Association has the burden of proving the terms and conditions which it would have required in order to accept the entry if full and proper disclosure had been made. In turn, the Member must prove that the liability, loss, cost or expense which the Member has incurred would have been covered under the conditions that the Association would have required in such circumstances.

The neglect by the Member of his duty of disclosure under Rule 6 also gives the Association a right to terminate the entry subject to 14 days' notice of

such termination pursuant to Rule 16.2.c.

Rule 7 Alteration of risk

1 Where after the conclusion of the contract of insurance circumstances occur which result in an alteration of the risk, the Member shall disclose such circumstances to the Association without undue delay.

2 Where there is an alteration of the risk which has been intentionally caused or agreed to by the Member and the Association would not have accepted the entry at the same Premium Rating if it had known of such an alteration prior to the conclusion of the contract of insurance, the Association is free from liability to the extent that any liability, loss, cost, or expense incurred by the Member was caused or increased by the alteration. Where the Association would have accepted the entry at the same Premium Rating but on other conditions, the Association shall only be liable to the extent that it is proved that any liability, loss, cost or expense would have been covered under the conditions the Association would have accepted.

Guidance

(A) …after the conclusion of the contract of insurance…the Member shall disclose… (Rule 7.1)

While Rule 6 deals with circumstances existing at the time of conclusion of the contract of insurance, Rule 7 deals with alterations of risk occurring thereafter. In other words, Rule 7 imposes a duty on the Member to disclose circumstances occurring after the conclusion of the contract of insurance which result in an alteration of the risk.

Rule 7 involves a consideration of two separate issues:

a Are there circumstances that result in an alteration of the risk?; and

b If so, then in what circumstances is the Association entitled to place restrictions on cover?

The test of whether there are circumstances which result in an alteration of the risk is a question of fact and is irrespective of whether the Member has actual knowledge of those circumstances, or if he has such knowledge, of whether he perceives them to represent an alteration of the risk. However, logically, it is difficult for the Member to disclose circumstances if he has no knowledge of them. Therefore, the Association is entitled to place restrictions on the cover that is available to the Member for his failure to disclose only in the event that the alteration of risk has been intentionally caused or agreed to by the Member.

The Association has no liability for a claim made by the Member in the

circumstances described in Rule 7.2. Furthermore, where the Member neglects the duty of disclosure under Rule 7.1, the Association may terminate the insurance of any or all vessels entered by the Member on giving 14 days' notice in accordance with Rule 16.2.

(B) …circumstances occur which result in an alteration of the risk… (Rule 7.1)
'Circumstances' covers every fact or matter relating to the vessel; however, it is only those circumstances which 'result in an alteration of the risk' that are subject to the duty of disclosure. The altered circumstances must be relevant or material in the sense that they affect or influence the judgement of the Association in assessing the risk, in deciding the correct premium rating or in determining the terms and conditions imposed for the vessel's entry or renewal in the Association. An example of such a circumstance would be a change of the vessel's operational activities. The Norwegian case of MK Anna II ND (1953) p. 376 can be used as an example. The ship sank in open seas carrying a cargo of fish. The hull insurer was allowed to deny cover as the ship was insured only as a fishing vessel and not as a cargo vessel. The Oslo City Court found that the shipowner should have informed the hull insurer of the ship's alternative use to carry cargo since the insurer would have either increased the premium or issued an additional policy.

(C) …without undue delay… (Rule 7.1)
The above words permit some delay, but not to the extent that the delay becomes 'undue' or excessive. A Member must inform the Association as soon as practically possible of the circumstances that cause an alteration of the risk.

Entries in the Association are often effected through intermediaries such as brokers or managers whose acts are deemed to be those of the Member. It is important that such brokers, managers and others whose knowledge may be deemed to be that of the Member understand this Rule and that they comply by disclosing promptly all relevant and material information relating to changed circumstances.

(D) …an alteration of risk which has been intentionally caused or agreed to by the Member… (Rule 7.2)
The consequences of any alteration of the risk are described in Rule 7.2. Whilst an alteration of the risk must in both cases have been intentionally caused or agreed to by the Member a distinction is drawn between circumstances in which it can be said that;

a the Association would not have accepted the entry either at all or at the agreed premium rating if it had known of the altered risk prior to the conclusion of the contract of insurance (See (E) and (F) below); and

b those where it can be said that the Association would have accepted the entry at the agreed premium rating but on different terms (See (G) below).

(E) Where there is an alteration of the risk…and the Association would not have accepted the entry… (Rule 7.2)
The Association has no liability for the Member's liability, loss, cost or expense caused or increased by the alteration of the risk, if:

i it was intentionally caused by, or agreed to by the Member, and

ii where the Association would not have accepted the entry either at all or on the same premium rating if it had known about it prior to the conclusion of the contract of insurance.

The Association has the burden of proving that, if it had received information about the circumstances causing the alteration of the risk at the time of entry or renewal, the entry of the vessel in the Association would not have been accepted at the same premium rating.

(F) …the Association is free from liability to the extent that the liability…was caused or increased by the alteration. (Rule 7.2)
It is necessary to distinguish between two situations:

i Where the liability, loss, cost or expense has been caused by the alteration of the risk the Association has no liability to reimburse the Member for any such liability, loss, cost or expense.

ii Where the liability, loss, cost or expense merely has been increased by the alteration of the risk, the Association is free from liability to only to the extent that the liability, loss, cost or expense which the Member has incurred has been thereby increased.

In contrast to Rule 6, Rule 7.2 requires there to be a link of causation between the altered circumstances and the incident which forms the basis of the Member's claim upon the Association. For example, if the vessel no longer complies with her statutory manning requirements, the Association is free from liability if the incident would not have taken place had she been properly manned. The Norwegian case of Ormlund ND (1978) page 31 can serve as an example. However, if the breach of manning requirements is not relevant to the claim, the Association cannot avoid liability under Rule 7 but other policy defences may be available.

An example of increased risk is where the Member, after the conclusion of the contract of insurance, transfers the vessel to another operational area where the exposure to legal liability is much higher because of strict liability regimes and/or the deprivation of the right to limit liability. For example, after being transferred to the new area of operation the vessel suffers a grounding

incident with the result that the Member incurs substantial liabilities which he cannot resist or limit under the applicable local law. In contrast, if the same incident had occurred in the operational area reported to the Association at the time of conclusion of the contract of insurance, the Member might have been able to resist and/or limit such liabilities. In such circumstances, cover is available only for the liability that would have been incurred if the risk had been as originally disclosed.

(G) …Where the Association would have accepted the entry at the same Premium Rating but on other conditions… (Rule 7.2)

The second sentence of Rule 7.2 reduces the danger of potential loss of cover pursuant to the first sentence of the Rule, i.e. where the alteration of risk is of such a character that the Association would still have accepted the entry at the same premium rating, but subject to other conditions. For example, this could occur when, as a result of a change in its trading pattern, the vessel is transferred to an operational area for which the Association would have applied special exclusions and deductibles for liabilities, costs and expenses. An example would be a transfer of the vessel from the North Sea to the Gulf of Mexico combined with the appointment of a US based manager.

Example of the relationship between Rules 6 and 7

The Member has notified the Association before the entry of the vessel that the vessel would not be US operated or managed, but subsequently learns following the entry that a US based crew manager is appointed as a sub-contractor to the 'head' manager. That could be considered to be both "a change in such circumstances as previously disclosed" for the purposes of Rule 6.1 and "an alteration of the risk...after conclusion of the contract" for the purposes of Rule 7.1.

If the Member has "intentionally caused or agreed to" the appointment of the US based crew manager then that is likely to be an "alteration of the risk" and the provisions of Rule 7 apply. However, if the Member has not "intentionally caused or agreed to" the appointment of the US based crew manager as a sub-contractor to the 'head' manager, then this is, nevertheless, likely to be "a change in such circumstances as previously disclosed" for the purposes of Rule 6 with the result that the Association is entitled to rely on the provisions of Rule 6 only if the Member has failed to disclose such facts to the Association without undue delay after becoming aware of such circumstances. Therefore, if the Member has not "intentionally caused or agreed to" the appointment and has made prompt disclosure once he has become aware of it, the Member is entitled to cover. However, the Association is nevertheless entitled to terminate the entry on 45 days' notice (Rule 16.2 d)

Rule 8 Classification and certification of the Vessel

1 Unless otherwise agreed in writing, it shall be a condition of the insurance of the Vessel that:

- **a** the Vessel shall be and remain throughout the period of entry classed with a classification society approved by the Association;
- **b** the Member shall promptly call to the attention of that classification society any incident, occurrence or condition which has given or might have given rise to damage in respect of which the classification society might make recommendations as to repairs or other action to be taken by the Member;
- **c** the Member shall comply with all the rules, recommendations and requirements of that classification society relating to the Vessel within the time or times specified by the society;
- **d** the Association is authorised to inspect any documents and obtain any information relating to the maintenance of class of the Vessel in the possession of any classification society with which the Vessel is or has at any time been classed prior to and during the period of insurance and such classification society or societies are authorised to disclose and make available such documents and information to the Association upon request by it and for whatsoever purpose the Association in its sole discretion may consider necessary;
- **e** the Member shall immediately inform the Association if, at any time during the period of entry, the classification society with which the Vessel is classed is changed and advise the Association of all outstanding recommendations, requirements or restrictions specified by any classification society relating to the Vessel as at the date of such change;
- **f** the Member shall comply or procure compliance with all statutory requirements of the state of the Vessel's flag relating to the construction, adaptation, condition, fitment, equipment, manning, safe operation, security and management of the Vessel and at all times shall maintain or procure the maintenance of the validity of such statutory certificates as are issued by or on behalf of the state of the Vessel's flag in relation to such compliance.

2 The Association shall notify the Member when it intends to inspect classification documents or request information documents or request information from a classification society in accordance with Rule 8.1.d.

3 The Member shall not be entitled to any recovery from the Association in respect of any claim arising during a period when the Member is not

fulfilling or has not fulfilled the conditions in Rule 8.1.

Guidance

(A) Introductory remarks

A classification society or ship classification organisation is a non-governmental organisation that establishes and maintains technical standards for the design, construction and operation of ships and mobile offshore units. Being originally established to assist marine insurers to assess the quality of the ships they were being asked to insure, classification societies certify that the construction of a vessel complies with relevant standards laid down by the flag states and carry out regular surveys to ensure continuing compliance with the standards. Thus, a classification certificate issued by a classification society, acting on the basis of delegated authority from the flag state, is required for an owner to obtain insurance. A classification certificate may also be required to be produced before a vessel's entry into some ports or waterways and may be of interest to the Member's contract partners such as charterers or contractors and potential buyers.

It is desirable both for the membership as a whole and for the wider international community that vessels meet internationally recognised safety standards. To ensure compliance with such regulations for the benefit of the membership, Rule 8 requires all Members, unless the Association exercises its discretion in writing to the contrary, to comply with the requirements of the vessel's classification society and its flag state. The right of the Member to make a recovery under the contract of insurance is made conditional upon compliance with such safety rules and regulations. If the Member does not comply with this condition, he is as a starting point no longer entitled to cover regardless of whether the breach is or is not causative of the relevant claim. By making the right of recovery under the contract of insurance conditional upon compliance with the requirements of the vessel's flag state and classification society, insurers such as the Association underpin compliance with the governing safety standards.

Rule 8 should also be read in conjunction with the duty of disclosure as specified in Rule 6. Any changes in circumstances or facts relating to the classification of the insured vessel earlier reported which might influence the Association decision as to whether or not the entry should be renewed or on what terms should be disclosed. As an example, repeated postponements of compliance with class requirements should be reported to the Association. Even if it can be said that the vessel formally complies with governing class requirements as required under this Rule 8 when extensions lawfully have been granted, the Association may not wish to continue to insure the risk if the Member repeatedly has been exempted by the classification society from standard requirements. Alternatively, the Association may only be willing to

continue the cover if special terms and conditions are agreed.

(B) Unless otherwise agreed in writing between the Member and the Association it shall be a condition of the insurance of the Vessel… (Rule 8.1)
Rule 8.1 emphasises that, unless the Association agrees otherwise in writing, it is a 'condition' of the insurance that the Member must comply with the requirements of the vessel's classification society and the technical and certification requirements of the flag state. Thus, Rule 8.1 is expressed in a form similar to a warranty with a combination of an affirmative warranty as to the vessel being classed with a classification society approved by the club at the inception of the insurance and a promissory warranty that the vessel shall remain classed and comply with the classification requirements during the period of entry. See guidance in (C) below. Rule 8.1's legal status as a condition is underpinned by Rule 8.3 stating that the Member shall not be entitled to cover in respect of any claim arising during a period when the Member is not fulfilling or has not fulfilled the conditions in Rule 8.1. See also the guidance to Rule 17.2.g. pursuant to which the cover will cease automatically if the vessel ceases to be classed with a classification society approved by the Association or the class is suspended.

Under Norwegian law, the parties to a contract of insurance involving a mobile offshore unit have a freedom to contract. See also the guidance to Rule 70. Thus, the parties have a freedom to agree, for example, conditions or warranties meaning terms of contract pursuant to which the insurer is discharged from liability in case of non-compliance, irrespective of whether there is fault on the part of the assured or causation between the breach and the loss.

The expression 'condition' means in the context of Rule 8.1 a requirement that needs to be met for the Member to be entitled to cover. Any breach of that requirement by the Member in the event of a loss otherwise payable under the contract of insurance will give the Association a defence to any claim irrespective of whether there is a causal connection between the breach of the contractual term and the relevant liability or loss. It ought to be added that there has been discussion as to what extent conditions or warranties as outlined above will be set aside by a court of law pursuant to the Norwegian Contract Act, section 36, (as an unreasonable terms of contract) if there is no causation between the assured's breach of a condition or warranty and the relevant liability or loss. However, there is no firm case law or practice in Norwegian law in support of the view that causation is an absolute requirement where the parties have a freedom to contract.

In comparison, the Nordic Marine Insurance Plan of 2013, version 2023, (the Plan) contains broadly similar strict classification provisions. Pursuant to section 3-14 of the Plan the vessel shall be classed with a classification

society approved by the insurer when the insurance commences, and the cover will terminate automatically in the event of loss of the main class. The Plan distinguishes between, on the one hand, the main class and, on the other hand, various optional additional classes as set out in the individual classification society's rules. It is only loss of main class that triggers section 3-14. However, the requirements are slightly modified in respect of mobile offshore units. If the main class is lost when the vessel is engaged in its normal operations offshore or under way, the insurance shall nevertheless continue until the vessel terminates the ongoing operations in accordance with applicable regulations and the field operator's consent and arrives at the nearest safe port in accordance with the insurer's instructions. See section 18-1. d. of the Plan. In other words, the assured is protected by the insurance until the on-going operation can be safely terminated and the vessel is brough to a safe port as instructed by the insurer.

In the case of the P&I cover for mobile offshore units the Association is given the discretion to deviate from the strict requirements in Rule 8.1 in writing on a case-by-case basis. This is an example of the flexibility given to the Association pursuant to Rule 2.2 to agree any special conditions that it may consider to be relevant to a particular entry. Therefore, based on its risk assessment of the entry, the Association may consider that strict compliance with the provisions of the Rule may not be necessary in particular circumstances. Such flexibility is recognised to be a desirable feature of P&I insurance allowing the Association to confirm in appropriate circumstances that a breach of some or all of such requirements does not constitute a breach of condition. However, the Association will not lightly agree to waive compliance with the requirements of Rule 8.1 and can be expected to exercise its discretion to the contrary only if the Member can put forward strong and persuasive reasons why it should do so. For example, the club may follow the same practice as hull insurers under the Nordic Marine Insurance Plan of 2013, version 2023, if the vessel's main class is lost while the mobile offshore unit is engaged in its normal operations offshore or under way to a safe port as discussed above. In such cases the Association may in its sole discretion agree to allow the cover to continue until the ongoing operations is terminated in accordance with applicable regulations and the field operator's consent and the vessel has arrived at the nearest safe port in accordance with the Association's instructions.

(C) …the Vessel shall be and remain throughout the period of entry classed with a classification society approved by the Association… (Rule 8.1.a)
As stated above, classification societies were and are established to ensure the observance by shipowners of safety standards set both by the classification societies and by flag states for the design, construction and maintenance of vessels. Such classification societies are usually private companies which act under the terms of a contract with the owner or operator of the vessel.

There are many such classification societies, some of which are international whilst others are confined to a particular nation's fleet. These societies compete for tonnage and revenue. In order to ensure that such a competitive environment does not cause certain classification societies to lower their standards in order to attract business, the Association keeps itself appraised of the performance of classification societies. Therefore, it is a requirement that each vessel is classed with a classification society which is approved by the Association. The Association normally requires vessels to be classed with classification societies which are members of the International Association of Classification Societies (IACS) and engaged in classification of mobile offshore units.

Since the Member must ensure that the vessel remains classed with an approved classification society throughout the period of the vessel's entry with the Association, cover ceases automatically in respect of the vessel in the event that the Member fails to do so, or in the event that its class with an approved society is suspended. See the guidance to Rule 17.2.g below. However, the Association can determine pursuant to Rule 17.5 to maintain or reinstate cover.

(D) …the Member shall promptly call to the attention of that classification society… (Rule 8.1.b)
The Member is required to give prompt notification to the classification society of any relevant incident, together with sufficient information to enable the society to decide whether its surveyor needs to visit the vessel immediately or whether a survey can be deferred.

Although Rule 8.1.b places obligations on the 'Member', this does not necessarily mean that it is only the Member who can and should notify the classification society. Such a duty is also imposed on those who are on board the vessel, i.e. the platform manager, master and crew, as well as on other servants or agents to whom the Member has delegated important functions relating to the management and operation of the vessel, all of whom are expected to have a proper understanding of when the classification society should be notified, and to ensure that proper and timely notification is given to class, either directly or via the Member's office. Therefore, the Member is required and expected to employ personnel and representatives who have the appropriate competence and experience, and to maintain systems which safeguard the proper inspection, ascertainment, and repair of any damage to, and/or defects in, the vessel, and which ensure that the classification society is properly informed whenever necessary.

(E) …any incident, occurrence or condition which has given or might have given rise to damage in respect of which the classification society might make recommendations… (Rule 8.1.b)

The requirement of Rule 8.1.b is very wide since it requires the reporting by

a Member not only of damage which has occurred, but also of incidents, occurrences or conditions that may have caused damage to the vessel, even though such damage may not yet have become apparent, e.g. the grounding of a vessel on a soft bottom which does not seem to have caused any apparent damage to the vessel's hull. Although the incident may have caused no apparent damage, it may, nonetheless, have affected the structural condition of the vessel. Consequently, the fact that the vessel has grounded, and the surrounding circumstances, should be reported promptly to the classification society so that it can properly assess whether the vessel should be inspected, and which other action should be taken.

(F) …the Member shall comply with all the rules, recommendations and requirements of that classification society… (Rule 8.1.c)
The classification society may require the Member to carry out repairs, a further survey or take some other action within specified time limits. The Member must abide by these requirements, comply with any time limit that has been set and, generally, follow all class rules, recommendations and requirements. In particular, Members must maintain the validity of all relevant class certificates and establish proper systems for maintaining the complete and valid certification of the vessel.

The absence of valid class certificates may not only prejudice the Member's defence to third party claims but may also affect the Member's cover with the Association. Rule 8.3 disentitles the Member to any recovery for claims which arise whilst the Member is in breach of any of the obligations of Rule 8.1. See guidance under (B) above and (M) below.

(G) …the Association is authorised to inspect any documents and obtain any information relating to the maintenance of class… (Rule 8.1.d)
The Association may require access not only to documents and information supplied by the Member, but also to documents and information held by any classification society with which the vessel is or has been entered in the past. In such event, the Association will notify the Member pursuant to Rule 8.2. Such documents and information may be required in order to investigate an incident, assist the Member's defence against third-party claims or to verify the Member's compliance with the Association's Rules.

Classification societies do not normally release documents and information except with the owner's approval. By virtue of Rule 8.1.d, the Association is authorised by the Member to inspect any relevant documents and to obtain information concerning the maintenance of class of the vessel directly from the relevant classification society or societies, and the Member is deemed to have authorised the relevant classification society or societies to make such documents and/or information available to the Association upon the request by the Association. Normally, the Association will request such documentation and/or information from the vessel's current classification

society, but the authority extends to any classification society in which the vessel has been entered during and/or since her construction.

(H) …the Member shall immediately inform the Association if…the classification society with which the Vessel is classed is changed… (Rule 8.1.e)
Since the classification society has to be approved by the Association any change of the vessel's classification society must be immediately reported to the Association by the Member. If the new classification society is one which is approved by the Association, cover will normally continue to be available. If, however, the new classification society is not approved by the Association, cover will not continue to be available in respect of claims arising after the change. See the guidance to Rule 17.2.g below.

(I) …advise the Association of all outstanding recommendations, requirements or restrictions… (Rule 8.1.e)
The Member may change the vessel's classification society for various reasons. One common reason is that the Member and the classification society do not agree on the extent of any repairs or maintenance that may be required. Consequently, the Member may wish to appoint a classification society which imposes less stringent requirements. As part of its overall duty to all Members to monitor the standards of maintenance of entered vessels, and, indeed, to monitor the performance of classification societies, the Association requires Members that are changing the vessel's class to advise the Association of all outstanding recommendations, requirements or restrictions that exist at the date of the change. This obligation to advise applies to any and all classification societies with which the vessel has been previously entered and not merely the vessel's current classification society at the time of the change.

(J) …the Member shall comply or procure compliance with all statutory requirements of the state of the Vessel's flag relating to the construction, adaptation, condition, fitment, equipment, manning, safe operation, security and management of the Vessel… (Rule 8.1.f)
The vessel's flag state has imposed various statutory requirements with which a Member must comply. Such requirements and safety standards will be enforced through the classification societies acting on the basis of delegated authority from flag states. The principal, but not the only, requirements are compliance with:

- The International Convention for the Safety of Life at Sea, London, 1974, with subsequent amendments (SOLAS), which regulates many aspects of safety at sea, in particular the safe construction and equipment of the vessel, including its navigational, life-saving and communications equipment;
- The International Convention for the Prevention of Pollution from Ships

1973 as amended which is designed to minimise pollution of the seas by discharges of oil and other harmful substances.

- The International Safety Management (ISM) Code which sets out regulations and procedures relating to the safe management of the vessel, as well as the International Ship and Port Security (ISPS) Code that focuses on enhancing ship and port security in relation to terrorism, piracy and other malicious acts;
- The Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) which regulates training standards for seafarers;
- The Maritime Labour Convention (MLC) which establishes minimum standards for the welfare of seafarers.

(K) …at all times shall maintain or procure the maintenance of the validity of such statutory certificates as are issued by or on behalf of the state of the Vessel's flag in relation to such compliance. (Rule 8.1.f)
This provision applies both to statutory certificates issued by the flag state directly and to those issued by some other body on its behalf. As discussed above, the monitoring of compliance with the flag state's statutory requirements is normally sub-contracted to the vessel's classification society. The Member is under an obligation to maintain the validity of all the statutory certificates issued by or on behalf of the flag state. Rule 8.3 emphasises that failure by the Member to do so may cause him to lose a right of recovery.

Rule 8 refers to requirements and safety standards determined by the vessel's flag state. On the other hand, compliance with rules and regulations of the country in which the vessel operate does not have the legal feature of a condition of the insurance pursuant to Rule 8.1, although failure to comply with such local regulations may trigger other policy defences. Non-adherence to local rules and regulations in the country where the vessel operate may also give rise to third party liability, but such failure of the Member will not automatically entitle the Association to decline cover under Rule 8.3 cf. Rule 8.1.

(L) The Association shall notify the Member when it intends to inspect classification documents or request information from a classification society… (Rule 8.2)
The Association will, insofar as practicable, give the Member reasonable notice of its intention to inspect documents or request information from the classification society or societies with which the vessel is or has been classed. After giving such notification, the Association is entitled to approach classification societies directly without involving the Member further.

(M) …any claim arising during a period when the Member is not fulfilling or has not fulfilled the conditions in Rule 8.1… (Rule 8.3)
The effect of Rule 8.3 is that the Member loses his right to recover from the Association in respect of any claim which arises during a period when the Member has not fulfilled any one of the conditions of Rule 8.1. Any failure

to comply gives the Association the right to reject claims arising during the period of non-compliance irrespective of whether there is any causal connection between the circumstances which have given rise to the claim on the Association and the non-compliance. Thus, the provision in Rule 8.3 underpins that Rule 8.1 is a condition of the insurance meaning that any breach of which by the Member in the event of a loss otherwise payable under the policy will give the Association a defence to any claim irrespective of whether there is a causal connection between the breach and the relevant liability or loss.

On the other hand, if the vessel does carry all the required certificates, but the incident arises as a result of the acts and/or default of the crew which constitute non-compliance with the regulations for which a certificate has been issued, the Association is not entitled to deny cover under Rule 8.3. An example would be where the circumstances causing the incident and/or the subsequent handling and reporting of the incident constitute non-compliance with the ISM Code. Here there is no breach of the condition of insurance since the vessel carries the required certificates.

It should also be remembered that a Member whose vessel ceases to be classed with an approved classification society or has its class suspended will cease to be covered by the Association in respect of that vessel under the terms of Rule 17 unless the Association determines pursuant to Rule 17.5 to maintain or reinstate cover.

Rule 9 Survey

1 The Association may at any time during the period of entry appoint a surveyor to inspect the Vessel on behalf of the Association.

2 Where the Vessel has been laid-up for a period exceeding six months, the Member shall give the Association not less than seven days' notice prior to the Vessel leaving the place of lay-up for recommissioning, to afford the Association an opportunity to inspect the Vessel pursuant to Rule 9.1.

3 Should the Member refuse to co-operate in an inspection under Rule 9.1, the Association will thereafter be liable only to the extent that the Member can prove that any liability, loss, cost or expense is not attributable to defects in the Vessel that would have been detected in the course of an inspection under Rule 9.1.

4 Where an inspection reveals matters which, in the sole discretion of the Association, represent a deficiency in the Vessel, the Association may exclude specified liabilities, losses, costs and expenses from the cover until the deficiency has been repaired or otherwise remedied.

Guidance

(A) Introductory remarks

In some instances, the claims which are made on the Association can be attributed to defects or deficiencies in the vessel, its machinery or equipment or to deficiencies in respect of the crew. Whilst inspections by classification societies, flag states and the authorities of the country where the vessel operates are crucial in identifying these problems, the Association also takes an active role in supervising its own portfolio of entered vessels by carrying out inspections. Such inspections can be required before the entry of a vessel is accepted and thereafter during the period of entry. It is a condition of entry of such vessels that the deficiencies identified, and recommendations made as a result of surveys carried out prior to entry, have been rectified or complied with either prior to entry or within a specified time thereafter. The Association will monitor compliance by the Member in this regard.

Practical problems can arise where a bank demands confirmation of P&I cover prior to advancing a loan for the purchase of a vessel, but the seller refuses to allow the P&I surveyor to board the unit. In such cases the Association may forego an entry survey, but may instead make the entry conditional on a survey being conducted at the earliest possible opportunity after the Member has taken delivery of the vessel, and on such survey not revealing any serious condition that would lead to refusal of the entry.

(B) The Association may at any time during the period of entry appoint a surveyor to inspect the Vessel… (Rule 9.1)

The Association has a discretionary right under Rule 9.1 to inspect any entered vessel during the period of entry.

Vessels may be selected for survey during the period of entry for a range of reasons, e.g. a consistently poor loss record, a sudden increase in the frequency of claims or as a result of information received from surveyors in connection with a casualty or event. Alternatively, a certain category of vessel or vessels which are of a particular age or engaged in a particular trade, geographical area or activity will be inspected, on the basis of statistical information derived from the Association's claims database.

The words 'at any time' give the Association complete discretion as to the timing of an inspection. The Association may exercise its right immediately following a casualty, other event or period of lay-up or during the vessel's routine activities. However, the Association will, insofar as possible, co-operate with the Member to ensure minimum disruption to the vessel's operation.

The Member normally pays the cost of any entry survey whereas the Association normally pays the cost of condition surveys for vessels that are already entered. However, in the latter event, all costs and expenses incurred will be charged to the Member's loss record.

To enable it to carry out such surveys the Association has the right of access to inspect all parts of the vessel's hull, machinery, equipment, fittings, certificates, records, logbooks and documents and also to examine the certification, qualifications and general competence of officers and crew. The inspector may require the owner, operator or manager to provide access to inspect of all relevant areas of the vessel, or to carry out trials under his supervision and to require the Member to bear the cost of providing such access.

Since the surveys and inspections that are subject to Rule 9 are carried out 'on behalf of the Association', the surveyor's report and other written information pertaining to the survey or inspection is the property of the Association. However, a copy of the report will normally be sent to the Member or to such other party that he has designated, e.g. the technical manager of the vessel.

(C) Where the Vessel has been laid up for a period exceeding six months… (Rule 9.2)

A vessel is considered to be laid up when it is anchored or moored in a safe and sheltered place and not engaged in any type of commercial activity. See guidance to Rule 14 below. Most mobile offshore units are laid up because of prevailing market conditions. Some vessels are laid up 'warm stacked' meaning that the unit will have a skeleton crew on board to maintain and run engines, equipment and systems minimizing time needed to reactivate the vessel when a new contract of employment is entered into. Other vessel may be laid up 'cold stacked' where the vessel will only have maintenance crew and/or watchmen on board or be unmanned and under a lay-up contract with a third party.

The laying-up of an entered vessel is a relevant circumstance for the purposes of Rule 6 (Member's duty of disclosure) and represents an alteration of risk as defined in Rule 7. Accordingly, in order to comply with the obligations imposed by those Rules, the Member should immediately advise the Association of any lay-up of the entered vessel with details of the intended lay-up location and period.

Rule 9.2 applies when the vessel is laid up for a continuous period exceeding six months. Therefore, periodical lay-ups for shorter periods will not bring the Rule into operation. However, the Member may under Rule 14.1 be entitled to a return of premium if his vessel is laid up for a period of at least 15 consecutive days (30 consecutive days in the case of US owned, operated or managed units).

(D) …the Member shall give the Association not less than seven days' notice prior to the Vessel leaving the place of lay-up… (Rule 9.2)
A Member who wishes to 'recommission', i.e. reactivate and bring back into service, a vessel which has been laid up for more than six months, must give the Association at least seven days' notice of his intention to do so, in order to give the Association the opportunity to inspect the vessel before it is recommissioned. Seven days is considered a reasonable period of time for the Association to arrange for an inspection should it wish to do so.

The Association will decide on a case-by-case basis whether or not to inspect the vessel, but usually it will decide to inspect, because a prolonged lay-up period may have caused the condition of the vessel to deteriorate.

(E) Should the Member refuse to co-operate in an inspection under Rule 9.1… (Rule 9.3)
The issue of co-operation must be seen in conjunction with the purpose of the survey, which is to obtain as accurate and comprehensive assessment as possible of the P&I risk represented by the vessel and crew. Therefore, the phrase 'refuse to co-operate' is given a broad interpretation and includes not only a refusal to allow the Association's inspector on board the vessel, but also any failure to allow the inspector proper access to any part of the vessel's hull, machinery, equipment, fittings or any documentation that the inspector might wish to examine.

(F) …the Association will thereafter be liable only to the extent that… (Rule 9.3)
Any refusal on the part of the Member to co-operate with a survey or inspection, including failure to give proper notice prior to the vessel leaving the place of lay-up enabling the Association to carry out an inspection, is likely to prejudice the Member's cover. In such circumstances, cover is available only for those liabilities, losses, costs and expenses which the Member can prove were not caused or contributed to by defects in the Vessel which would have been detected during an inspection by the Association's surveyor.

(G) Where an inspection reveals matters which, in the sole determination of the Association represent a deficiency in the Vessel… (Rule 9.4)
A 'deficiency' in the vessel includes anything which renders the vessel's hull, machinery, equipment, fittings, design, documents or personnel unfit or unsuitable for the vessel's intended operation.

The Association has the sole and unfettered right to decide whether or not a particular deficiency constitutes a 'deficiency' in the vessel for the purposes of the Rule and the Member is bound by the decision of the Association in this respect.

(H) …the Association may exclude specified liabilities, losses, costs and expenses from the cover until the deficiency has been repaired or otherwise remedied. (Rule 9.4)
If a deficiency is found following a survey or inspection conducted on behalf of the Association, the Association may notify the Member that cover is not available for certain risks until the deficiency is remedied. Alternatively, the Association may decide not to exclude the risk completely, but to impose a higher deductible with the result that the Member must bear a higher financial risk if further liabilities occur as a result of that deficiency. This may be considered a more appropriate measure where the Member and the Association have different views as to the importance of the deficiency or condition.

Chapter 4

Premiums

Rule 10 Premiums

1 Each Vessel shall be entered on the basis of a fixed premium in an amount agreed between the Association and the Member.

2 The Association may determine (either generally for all entries, or separately for any entry or category of entries) that for the next ensuing Policy Year the Premium Rating of the Vessels entered in the Association shall be altered by a fixed percentage, before any further adjustment is made in order to take account of the Member's loss record, alteration in the extent of the risk or any other factor the Association may deem relevant.

3 The Association may, in its sole discretion, levy an additional fixed premium for cover made available pursuant to Rule 2.1(b).

4 The Association may, in its sole discretion, agree or levy premium adjustments on the renewal or termination of an entry in accordance with the premium conditions set out in paragraph A of Appendix I.

Guidance

(A) …entered on the basis of a fixed premium … (Rule 10.1)

Owners of mobile offshore units are insured on a fixed premium basis. In contrast to mutual entries, this means that the Association has no right or possibility to levy additional premiums or calls on Members insured under the Rules for P&I and Defence cover for mobile offshore units if the agreed premium rating should not be sufficient to cover claims and other costs of the Association in the relevant policy year. Furthermore, the Association cannot return any surplus premium to Members insured under the Rules for P&I and Defence cover for mobile offshore units in a policy year where the premium income exceed the claims costs and other outgoings of the Association.

The premium rating for P&I and Defence cover for mobile offshore units is agreed at inception. It is determined on a commercial basis as a result of an individual risk assessment and the prevailing market forces. The fixed premium is assessed in a manner which includes a margin to cover uncertainty in the development of the policy year. The objective is to ensure that the total premium income from fixed premium entries will be higher than the claims produced by such entries, so that in the aggregate and over time, a surplus will be generated which will contribute to the Association's funds for the benefit of the whole of the membership.

(B) ...in an amount agreed between the Association and the Member… (Rule 10.1)

The premium rating for each vessel is dependent on a number of matters which the Association considers relevant to the risk. Those matters will normally include, but not necessarily be limited to, the following:

a The vessel's particulars, including type, flag, age, tonnage and operating activities;

b Intended place(s)/country(ies) of operation;

c The terms of the charterparties or other contracts of employment governing the vessel's operating activities. As a starting point the premium rating of the individual vessel assumes that the premium conditions specified in paragraph B of Appendix 1 to the Rules are adhered to unless otherwise agreed. The premium conditions assume that the division of liability as between the parties follows the 'knock for knock' model with some deviations. See the guidance to Rule 42.2 and paragraph B of Appendix 1 to the Rules. See also the guidance to Rule 58 as to the 'knock for knock' principle;

d Crewing arrangements, including the number and qualification of officers and the number of other crew members and employees engaged on board. The nationality of the crew and other employees may also be relevant, as this may affect the Member's liability for matters such as personal injury, death and repatriation expenses;

e The terms of other insurances that apply to the vessel, as such terms may fully or partly duplicate the P&I cover. For example, the vessel's hull policies may cover liabilities in respect of collision and/or damage to fixed and floating objects;

f The deductible which the Member agrees to bear. Increased or reduced deductibles can be negotiated and the premium rating will be adjusted accordingly;

g The extent of the cover required by the Member, including any variations of the standard cover under Part II of the Rules. A Member may wish to exclude certain liabilities included under the standard P&I cover, either because the Member has other cover available, or because the Member agrees to bear these liabilities as a self-insured;

h The management of the vessel. The Association will require sufficient information to assess the quality and experience of the managers of the vessel.

i The Member's loss record, which will usually be a guide used in the assessment of future risk and determination of the premium rating. Information relating to measures taken by the Member to reduce risks, control claims exposure and generally ensure quality operations, may also be relevant. Insurance of mobile offshore units is not subject to the quotation restrictions laid down in the International Group Agreement. See further comments under (E) below.

j Limit of insurance. The Association can offer a limit of USD 500 million per event of drilling vessels and up to USD 750 million per vent for FPSOs.

k Fleet size. The premium rating will depend on the size of the fleet to be insured on behalf of the relevant Member.

(C) …may determine (either generally...or separately…)... (Rule 10.2)
Rule 10.2 enables the Association to make general adjustments in relation to particular categories of entries reflecting changes in the underlying exposure relevant for the defined categories only. As an illustration, it permits the Association to take account of enhanced risks which apply specifically to a class of vessels or Members engaged in a particular activity. Such enhanced risks may be a result of legislative changes in the country where these vessels or Members operate, for example the introduction of new and higher liability limits.

The Association can also determine the premium rating for a P&I entry and a Defence entry of the same vessel on a different basis, which may be necessary due to underlying differences in the risk profiles of these different types of cover.

(D) …shall be altered by a fixed percentage… (Rule 10.2)
This Rule entitles the Association to make a general variation of the premium rating for the next policy year. A general variation pursuant to Rule 10.2 applies across the board to all P&I and Defence entries, as the case may be, and should not be confused with the individual premium adjustments which may be applied to any particular vessel, fleet or Member. However, different percentage variations may be applied to P&I and Defence cover. Variations in the premium rating pursuant to Rule 10.2 are decided by the Board of Directors of the Association. See Article 6.2.d. of the Bye-Laws of Gard P. & I. (Bermuda) Ltd. and Article 9.2.c. of the Statutes of Assuranceforeningen Gard - gjensidig.

The premium policy which the Association adopts for any given policy year is based on the expected financial results of the Association for the current year, the financial strength represented by the total contingency and claims reserves held in trust by the Association as well as an assessment of the

liabilities, costs and investment returns during the next ensuing policy year. This includes claims trends and the development of cost drivers such as new and changed industry risks, legislation or international conventions affecting ships and mobile offshore units generally. The premium policy will also take account of inflation, expected increase or reduction in investment income, changes in reinsurance costs and administration expenses. Solvency capital requirements imposed on insurers domiciled in the EU and EEA area pursuant to the Solvency II Directive may also affect the premium rating.

(E) …further adjustment is made in order to take account of the Member's loss record… (Rule 10.2)
In addition to adjusting the general variation in premium for all vessels or a category of vessels or Members, further adjustments are made based on the loss record of the Member and/or any change in the risks covered.

The loss record of a Member is essentially a comparison made for all vessels that are or have been entered by that Member in the relevant loss record period, of, on the one hand, the premium charged in respect of such vessels and, on the other hand, claims, paid and estimated, plus apportioned abatement and market reinsurance costs applicable to those vessels. When calculating the loss record of individual Members, no account is taken of the Association's administration costs or its investment income except in the case of a Defence entry in which case an administration expense is shown on the Member's loss record. The administration expense is estimated based on the number and characteristics of defence claims registered, and is included due to the fact that, in comparison with P&I entries, a significantly greater proportion of the total cost of defence claims can be attributed to internal costs in view of the substantial service element.

It is normal for the Association to assess the premium rating on the basis of a loss record period of six years preceding the current policy year. A period of six years is considered necessary because P&I claims are sometimes not reported to the Association until several years after the incident which gave rise to them, and furthermore, they may not be finalised until a long time thereafter. What is not shown on the loss record are the provisions made for claims incurred but not reported (IBNRs), which can be a substantial factor where a Member is known to have a 'long tail' in relation to claims.

The loss record for the current policy year will usually not be significant in this regard as it may not represent a sufficiently accurate claims picture. Claims may still be reported and claims that have been reported may develop significantly. However, where, in the current policy year, there has been one or more significant claims affecting the overall record substantially, and it is clear at the time of the renewal discussions what the claims cost will be,

e.g. because the claim has been or is in the process of being compensated, this is likely to be taken into account.

The Association's P&I cover for mobile offshore units is reinsured outside the International Group of P&I Clubs' Pooling Agreement. For that reason a transfer of a mobile offshore unit or a fleet of such vessels to the Association from another club which is a party to the International Group of P&I Clubs will not be subject to the quotation restrictions and other requirements laid down in the International Group Agreement.

(F) ...additional fixed premium forcover made available under Rule 2.1 (b). (Rule 10.3)
A fixed premium may also be levied for additional insurances made available under Rule 2.1. b. Such fixed premium will be payable in one instalment on inception of cover unless otherwise agreed.

(G) ...premium adjustments on the renewal or termination of an entry in accordance with the premium conditions set out in paragraph A of Appendix I. (Rule 10.4)
Even if mobile offshore units are entered on at the basis of a fixed premium, Rule 10.4 allows the Association to make adjustments in the premium rating on both renewal or termination of the entry within the parameters laid down in Appendix I (A) to the Rules. For ease of reference the full text of paragraph A of Appendix I to the Rules is included in paragraph (H) below.

First, when an entry is renewed, the Association can offer a discount. Secondly, if the entry is terminated by the Association, additional premium can be levied. Whether or not to make such further adjustments shall be determined by the Association in its sole discretion. The Member cannot require such discount as of right even if the entry is renewed and the Association has no legal obligation to levy additional premium if the entry is terminated by the club. The premium conditions in Appendix I (A) are designed to enable the Association to offer attractive terms for loyal Members and to secure a fair contribution to claims costs from entries being terminated by the club.

Renewal
Pursuant to section A. 1 a of the premium conditions, the Association and the Member can agree that a proportion of the premium payable in respect of the entry shall be deferred and shall only become payable in the circumstances specified in section A. 1 b.

According to section A. 1 b, the deferred proportion of the premium payable shall become payable on demand from the Association only if the Member terminates the entry with effect from the end of the policy year the premium relates to (Rule 15). The Association may in its sole discretion determined

whether or not to demand payment of the deferred proportion of the premium payable.

The Member will only be liable for payment of the deferred proportion if the Association makes a demand pursuant to section A. 1 (b) of the premium conditions on the grounds that the Member has terminated the entry with effect from the end of the relevant policy year (Rule 15).

It is only when the Member terminates the entry that the Association has a right to demand the deferred proportion of the premium to be paid. If the entry is terminated by the Association (see Rule 16) or the entry has ceased (Rule 17), the Association cannot make a demand for the deferred proportion of the premium. Furthermore, when the entry is renewed for the next policy year, the deferred proportion of the premium shall be deemed to cancelled.

This means in practice that the Member will benefit from a discount equivalent to the agreed deferred proportion of the premium payable unless the entry is terminated by the Member under Rule 15.

Termination

Section A 2. of the premium conditions allows the Association to levy additional premium if the entry is terminated by the Association pursuant to Rule 16. The intention is to secure a fair contribution to the club's underwriting results if the Association finds it necessary to bring the entry to an end.

The Association's rights to levy additional premium is restricted as follows:

a) where the loss ratio during the four-year period ending on the date of termination, or the period of entry, if less than four years, is between 51 and 75 per cent, the additional premium shall not exceed five per cent of the premium payable in the last year of entry.

b) where the loss ratio during the four-year period ending on the date of termination, or the period of entry, if less than four years, exceeds 75 per cent, the additional premium shall not exceed ten per cent of the premium payable in the last year of entry.

(H) Premium conditions - Paragraph A of Appendix I to the Rules

The premium conditions governing the Association's right to make adjustments for renewal and termination referred to in Rule 10.4 and included in paragraph A of Appendix I to the Rules reads as follows:

A Premium adjustment for renewals and termination (Rule 10)

1 Premium deferral for renewal

a When a Vessel is entered for a Policy Year, the Association and the Member may agree that a proportion of the premium payable for that Policy Year shall be deferred and shall only be payable in the circumstances described in paragraph A.1(b).

b If the Member terminates the entry pursuant to Rule 15 at the end of the Policy Year referred to in paragraph A.1(a), the deferred proportion of the premium payable shall become payable to the Association on demand. The Member shall have no other liability for payment of the deferred proportion, which shall be deemed to be cancelled on the entry being renewed for the next subsequent Policy Year or being terminated pursuant to Rule 16 or ceasing under Rule 17.

2 *Additional premium on termination*

On any termination of an entry under Rule 16 the Association may levy an additional premium determined by the Association, subject to the following:

i where the loss ratio during the four year period ending on the date of termination, or the period of entry, if less than four years, is between 51 and 75 per cent, the additional premium shall not exceed five per cent of the premium payable in the last year of entry;

ii where the loss ratio during the four year period ending on the date of termination, or the period of entry, if less than four years, exceeds 75 per cent, the additional premium shall not exceed ten per cent of the premium payable in the last year of entry.

Rule 11 Payment

1 Premiums are due in three instalments as follows:
a for the period 20th February - 20th June, on 15th March;
b for the period 20th June - 20th October, on 15 September;
c for the period 20th October - 20th February, on 15th November.

2 Where the Vessel is entered in the course of a Policy Year, a pro rata premium for the four-monthly period in which it is entered is due at once, with the remaining instalments, if any, due at the times specified in Rule 11.1.

3 Any other sums debited by the Association to a Member, including Insurance Premium Tax, reimbursement of deductibles, interest, costs or expenses, are due on demand.

4 If any sums due to the Association from the Member are not paid on or before the due date interest is chargeable on such unpaid sums at such rate as the Association may from time to time decide.

Guidance

(A) …Premiums are due in three instalments… (Rule 11.1)
The premiums shall be paid in three instalments during the policy year to which it relates in order to minimise cash flow difficulties for Members. Each instalment must be paid before or at the due date. Whilst a Member is permitted to pay any instalment before the relevant due date for the instalment, he is not entitled to receive any discount for doing so.

(B) …Vessel…entered in the course of a Policy Year… (Rule 11.2)
Where a vessel is entered during the course of a policy year it makes practical sense to collect the pro rata premium relating to the first four-monthly period of the vessel's entry at the time of entry and any remaining instalments at the dates specified in Rule 11.1.

(C) Any other sums debited by the Association to a Member…are due on demand. (Rule 11.3)
This provision applies to payment of any sums debited to a Member other than premiums such as for example reimbursement of loans, deductibles, interest, costs or expenses. Under Norwegian law 'due on demand' means that the amount falls due for payment immediately after the debit note has been received by the Member.

(D) If any sums…are not paid on or before the due date…interest is chargeable… (Rule 11.7)
It is important that the Association receives timely payment of sums that are due to it in order, inter alia, to avoid cash flow constraints, counterparty credit risk and the consequent need to liquidize profitable investments in order to generate cash. Furthermore, it would be unfair to other Members if any individual Member were to receive cash flow and earnings benefits as

a result of withholding payments without any form of redress. Accordingly, this Rule gives the Association the right to claim interest on late payments. According to the Norwegian Interest on Overdue Payments Act of 1976 (Forsinkelsesrenteloven 1976), interest is chargeable in the case of payments which are 'due on demand' upon the expiry of one month after the debit note has been submitted.

In the case of non-payments, the Association is also entitled to take other measures against the Member, including the exercise of the right of set-off (Rule 13) or the right to terminate cover (Rule 16.2.b). The Association may also take legal action against the Member and anyone else insured under the same entry (Rule 60.1) to recover unpaid sums.

Rule 12 Insurance Premium Tax

The Member shall indemnify the Association and hold it harmless in respect of any liability, cost or expense incurred or amount paid by the Association in respect of any Insurance Premium Tax for which the Member is liable.

Guidance

(A) The Member shall indemnify the Association...in respect of any Insurance Premium Tax for which the Member is liable. (Rule 12)

A number of countries provide that certain taxes or dues commonly referred to as Insurance Premium Tax (IPT) are payable to their tax authorities in respect of insurance premiums and calls that are payable to the Association as an insurer. For example, the domestic legislation of countries that are members of the EU/EEA is based on the Second Council Directive (88/357/EEC) of the EU, article 2 (d) of which provides that premiums are payable in the "Member State where the risk is situated". In the case of vessels, including mobile offshore units, this means that the premiums are taxable in the member state where the vessel is registered, and that premiums that are payable for risks related to the company are normally taxable in the member state where the policy holder's head office is established. Therefore, the Member's liability to pay IPT will normally depend on the type of insurance product and the risks that it covers.

It is the Member that has the primary obligation to pay the IPT and the responsibility to do so in full and in time in compliance with the applicable laws and regulations. The Association's involvement is limited to the collection of the necessary funds from the Member and the subsequent remittance of those funds to the relevant tax authorities on the Member's behalf. However, in some countries, the Association may be obliged to pay the IPT to the relevant tax authorities if the Member has failed to pay the IPT in compliance with the applicable laws and regulations, or to provide the Association with the necessary funds to enable them to do so on the Member's behalf, or even for other non-related reasons.

Rule 12 makes it clear that it is the Member that has the primary responsibility to pay the IPT and that any payment of IPT that the Association may be obliged to make to the relevant tax authorities does not absolve the Member from that primary responsibility, or from the responsibility to indemnify the Association in respect of such payment and any liability, costs or expenses that the Association may incur in so doing. Therefore, Rule 12 reflects the responsibility that the Association has to the Membership as a whole to have the right of recourse against a Member in such circumstances in order to safeguard membership funds. Furthermore, Rules 11.3 and 11.4 provide that any sum debited by the Association to the Member for IPT for which the Member is primarily responsible is to be paid on demand and shall incur interest if not paid on or before the due date.

Rule 13 Set-off

1 Without prejudice to anything elsewhere contained in the Articles of Association or these Rules, the Association shall be entitled to set off any amount due from a Member to the Association against any amount due from the Association to such Member or its Co-assureds or Affiliates.

2 A Member shall not set off against any amount due from it to the Association the amount of any claim it or its Co-assureds or Affiliates may have against the Association.

Guidance

(A) Without prejudice to anything elsewhere… (Rule 13.1)

The right of set off which is conferred on the Association by this Rule does not affect any other rights which it may have as a result of the non-payment by a Member of sums due to the Association.

(B) …the Association shall be entitled to set off… (Rule 13.1)

The Association has the right to set off any amounts due from the Member to the Association in respect of, inter alia, outstanding and/or overdue premiums, claim deductibles or payments made by the Association to third parties on behalf of the Member against any amount due from the Association to the Member (or to any co-assured or affiliate or any transferee or assignee of that Member).

The Association's rights of set-off under Rule 13 are wider than the rights of set-off conferred under the Norwegian Insurance Contract Act unless otherwise agreed. However, the parties to a contract of marine insurance have a wide degree of freedom to contract and any provision which extends the insurer's rights of set-off, such as that contained in Rule 13.1, is valid and enforceable. Rule 13.1 applies to 'any amount due', whether premium or otherwise, from the Member to the Association and whether or not arising under the entry of a particular vessel.

However, the Association's rights of set-off against a claim brought against it by a third party (i.e. someone other than a Member or co-assured or affiliate or transferee or assignee of the Member) that has an interest in the contract of insurance may be more restricted. For example, if a Member is insolvent, a third party may in some circumstances have a direct right of action against the Association under the Norwegian Insurance Contract Act of 1989, section 7-8, and, in such a case, the Association's right to set-off against the third party is limited to sums that are due from the Member in respect of premium that is payable under the contract of insurance pursuant to which the third party's claim is made. Moreover, such a right of set-off is restricted to premium that is payable within two years prior to the date of set-off. See the under the Norwegian Insurance Contract Act of 1989, section 8-3, second paragraph.

(C) A Member shall not set off… (Rule 13.2)

A Member must pay any sum which is due to the Association in full on the due date specified in Rule 11. The Member is not entitled to set off any sum that he claims to be due to him from the Association against any sum that is due from him to the Association. The reason for this is that the Member's obligation to pay sums to the Association is usually unarguable both as to liability and quantum whereas the basis for, and the quantification of, sums that may be due from the Association to the Member is not so readily ascertainable since much will depend on the facts of the case, the availability of cover and a proper assessment of quantum. Accordingly, were the Member to be entitled to set-off, this would be contrary to the best interests of the membership as a whole, since other Members would then be obliged to fund shortfalls in income caused by the delayed payment or non-payment of premium or other sums due to the Association from the Member.

Rule 14 Laid-up returns

1 Subject to any special terms which may have been agreed, if the Vessel has been laid up in a safe port or other approved lay-up location for a period of at least 15 consecutive days (or, in case of a U.S. owned, operated or managed unit, 30 consecutive days), excluding the day of arrival at and the day of departure from the lay-up location, such proportion as the Association may decide of the premium payable, pro rata for the period of the lay-up, shall be returned to the Member.

2 The Member shall disclose to the Association any major repairs or alterations to be undertaken during lay-up, and if required by the Association shall forward to the Association a copy or copies of the contract or contracts for such works, and the Association may in its discretion make adjustments to the rate at which laid-up returns are payable under Rule 14.1.

3 No claim for laid-up returns shall be recoverable from the Association unless the Member has informed the Association of the lay-up of the Vessel within 30 days after the commencement of the lay-up and the claim for laid-up returns is made within 30 days of the end of the lay-up period.

Guidance

(A) Laid-up returns... (Rule 14)

A vessel is considered to be laid up when the owner or operator has taken a clear-cut and unfettered decision to have it anchored or moored in a safe and sheltered place without being involved in any commercial activity for a period of at least 15 consecutive days excluding the day of arrival and departure for the lay-up location (for U.S. owned, managed or operated units for a period of at least 30 consecutive days excluding the day of arrival and departure for the lay-up location). Therefore, a vessel is not considered to be laid up for the purposes of this Rule when it is, for example, arrested, detained or otherwise physically or legally prevented from being engaged in commercial activity even if such delay or detention may exceed 15 or 30 consecutive days, as the case may be. Most vessel are laid up because it is uneconomical for the owner or operator to engage the vessel in any kind of commercial activity under the prevailing market conditions.

When the vessel is laid up, it may only have maintenance crew and/or watchmen on board, or be totally unmanned and under a contract with a lay-up service provider who will run periodic checks of the vessel and its mooring/anchoring arrangements and arrange necessary maintenance of machinery and equipment as agreed with the owner/operator.

The fact that a vessel is laid up does not affect the Member's obligation under the Rules to keep the vessel in class or to comply, or to procure

compliance, with all statutory requirements of the flag state. Furthermore, if the Member does not keep the vessel fully insured on standard terms for hull and machinery risks during the period of lay-up, cover is not available from the Association in respect of liabilities, losses, costs and expenses that would otherwise have been covered by the hull policies had the vessel been so insured. For example, if the laid-up vessel should drag its anchor in a storm and make contact with a port installation causing the Member to be liable for repair and loss of use claims, cover will not be available under Rule 24 if the Member has allowed the hull policies to expire and, but for such expiry, the relevant liability etc., would have been covered under those policies.

If the vessel is laid up for a period which exceeds six months, the Member is obliged, pursuant to Rule 9.2, to give the Association the opportunity to carry out an inspection before it leaves the place of lay-up for recommissioning, and the failure to do so may prejudice the Member's rights to cover.

(B) ...at a safe port or other approved lay-up location... (Rule 14.1)
The Association will be able to consider a return of a proportion of premium under Rule 14 only if the vessel is laid up 'at a safe port or other approved lay-up location'. Generally, the Association will regard the port or location as safe if it has been approved as such by the vessel's hull insurers.

(C) ...at least 15 consecutive days (or, in the case of U.S. owned, operated or managed units 30 consecutive days)... (Rule 14.1)
Members having entered U.S. owned, operated, or managed units will only be entitled to lay-up returns if the vessels have been laid up for a period of at least 30 consecutive days. As to special terms for U.S. owned, operated or managed units see Rule 43 and Appendix I, section B below. Otherwise, vessels (i.e. non U.S. owned, operated or managed units) must be laid up for 15 consecutive days in order to qualify for laid-up returns.

The day of the vessel's arrival at, and the day of the vessel's departure from, the lay-up location do not count in the calculation of that period. The 15 (or 30 days, as the case may be) will be treated as continuing to run consecutively if the vessel remains in a laid-up condition and simply shifts her lay-up location within the same port or within the same lay-up area.

However, if the vessel moves from one port or lay-up location to another and ceases to remain in a laid-up condition during such transit, time is interrupted. Consequently, if the Member wishes to claim a laid-up return of premium in such circumstances, a fresh period of 15 consecutive days (or 30 consecutive days, as the case may be) will commence to run from the day after the vessel's arrival in the new safe port or lay-up location. Members are encouraged to inform the Association about the change of lay-up location for any vessel that has been laid up, to clarify whether the change may cause the lay-up period to be interrupted for the purpose of this Rule. A mere shift of position within the same lay-up port or sheltered lay-up location, e.g. shift

from one quay position to another or one anchor position in the same bay will not constitute a breach in the vessel's lay-up. However, such shift should be notified to the Association for its discretionary consideration.

(D) … disclose to the Association any major repairs or alterations to be undertaken during lay-up… (Rule 14.2)
Members may wish to use the period of lay-up to carry out necessary repairs of or alteration to the vessel to avoid such work to interfere with planned commercial activities reducing the earning of hire when the vessel is on charter. In this context 'alteration' will involve changes to a vessel that will not affect the basic character or structure of it.

However, the carrying out of major repairs on or alterations to the vessel are circumstances that may alter the risk picture and affect the insurer's risk assessment. For example, when repairs or alteration work is carried out, the exposure for personal injury claims may increase because of more activities taking place on board the vessel. Furthermore, it may be an increased risk of escape or discharge from the vessel of oil or other pollutants when such work is performed. For this reason, the Member is under a duty to disclose to the Association any major repairs or alterations that shall be undertaken during the period of lay-up. This will enable the club to make a correct risk assessment on the basis of which the rate of laid-up return can be determined.

(E) … copies of the contract or contracts for such works,…and the Association may in its discretion make adjustments to the rate at which laid-up returns are payable… (Rule 14.2)
Rule 14.2 gives the Association a right to require the contract(s) governing the repairs or alteration work to be disclosed. The contracts will normally govern the distribution of liability between the owner and contractor engaged to carry out the repairs or alterations. For the Association it is interesting to verify whether the relevant contracts are based on, for example, the knock for knock principle meaning that each party shall carry the risk and responsibility for injury to or death of its own employees and for damage to or loss of its own property regardless of whether the other party may be to blame or whether some other terms have been agreed. To the extent the contract governing the repairs or alteration works are more onerous seen from the owner's perspective, the Association's risk exposure will increase, and the rate of the laid-up return may be reduced correspondingly. The decision is taken by the Association in its own discretion.

(F) ...unless the Member has informed the Association of the lay-up of the Vessel within 30 days after the commencement of the lay-up... (Rule 14.3)
The Association has the right to reject a claim for laid-up return of premium unless the Member has informed the Association of the lay-up of the vessel within 30 days after the commencement of the lay-up. The purpose of this notification requirement is to ensure that the Association has proper and

timely notice of lay-ups to enable it to estimate its overall insurance risk exposure and premium income at any given time and to make adequate and timely provision for laid-up returns.

(G) ...unless...the claim for laid-up returns is made within 30 days of the end of the lay-up period (Rule 14.3)

A claim for laid-up returns must be made in writing within 30 days of the end of the lay-up period. If this is not done, the Association has the right to reject the claim. It is important both for accounting and evidentiary reasons that a claim is made promptly and the period of 30 days is considered to be a reasonable period for the submission of a claim for laid-up returns.

Chapter 5

Termination of cover

Rule 15 Termination by a Member

A Member may terminate the entry with effect from the end of the Policy Year in respect of one or more Vessels by giving written notice thereof prior to 20th January. Except with the agreement of the Association, a Vessel may not be withdrawn nor may notice of termination be given with effect from any other date.

Guidance

(A) A Member may terminate… (Rule 15)

Unless an entry is terminated in accordance with the Rules, the cover provided by the Association continues automatically from policy year to policy year as stipulated in Rule 4. Rule 15 provides the only circumstances in which a Member may unilaterally terminate the entry. However, provided that he complies with the formal requirements of the Rule, the Member can terminate for any reason whatsoever and need not give reasons for the termination. The effect of termination of cover is described in Rule 18.

(B) ...with effect from the end of the Policy Year... (Rule 15)

Provided written notice is given prior to 20 January, the termination will take effect from the end of the policy year, i.e. from noon GMT on 20 February. The Member can give notice at any time prior to the 20 January but the entry will not terminate before noon GMT on 20 February unless the Association so agrees.

(C) ...written notice…prior to 20 January... (Rule 15)

In order to exercise his right to terminate an entry unilaterally, a Member must give notice in writing before the end of the policy year, that is, prior to 20 January. Such notice of termination has legal effect when it is received by the Association or its designated agent Gard AS in Arendal, Norway or any subsidiary office of Gard AS or branch office of the Association. Normally, the Member should submit such notice to the underwriter or underwriting unit assigned to the Member. However, service of the notice on a broker is not sufficient to constitute service on the Association as a broker is deemed to be the agent of the Member. See the guidance to Rule 3, paragraph (C) above.

(D) ...in respect of one or more Vessel... (Rule 15)

A Member that has entered more than one vessel may terminate the entry of one or all of his vessels by one single written notice to the Association.

(E) ...a Vessel may not be withdrawn…with effect from any other date. (Rule 15)

The reason why a vessel may not be withdrawn or why a notice of termination cannot take effect at any time other than at the end of the policy year is because the Association will have entered into commitments, such as reinsurance arrangements, on the premise that entries will continue for the full policy year. However, if this provision is shown to cause material hardship or prejudice to the Member, the Association may agree that the termination of the entry can take effect from an earlier date on specific terms to be agreed with the Member.

Rule 16 Termination by the Association

1 The Association may terminate the entry with effect from the end of the Policy Year in respect of one or more Vessels by giving written notice thereof prior to 20th January.

2 The Association may also terminate the insurance of any or all of the Vessels entered by a Member:

a without notice, where a casualty or other event has been brought about by wilful misconduct on the part of the Member, as defined in Rule 53;

b on three days' notice, where the Member has failed to pay when due and demanded any premium or other amount due to the Association;

c on 14 days' notice, where the Member has neglected a duty of disclosure under Rule 6 or Rule 7 or where there has been an alteration of the risk after conclusion of the contract of insurance;

d on 45 days' notice, without giving any reason.

3 Notwithstanding and without prejudice to Rules 16.1 and 16.2 and Rule 17.4, the Association may, on such notice in writing as the Association may decide, terminate the entry in respect of any and all Vessel(s) in circumstances where the Member has exposed or may, in the opinion of the Association, expose the Member or the Association and/or its Agent to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by the State of the Vessel(s) flag, by any State where the Association and/or its Agent has its registered office or permanent place of business or by the United Nations, the European Union, the United Kingdom or the United States of America.

Guidance

(A) The Association may terminate... (Rule 16.1)

Rule 16.1 is the 'mirror image' of the right to terminate that is given to the Member by Rule 15. Unless an entry is terminated in accordance with the Rules, the cover provided by the Association continues automatically from policy year to policy year as stipulated in Rule 4. Rule 16.1 sets out the circumstances in which the Association may unilaterally terminate the entry at the end of the policy year. Provided it complies with the formal requirements of the Rule, the Association has the right to terminate an entry for any reason whatsoever and need not give reasons for the termination. The effect of termination of cover is described in Rule 18.

(B) ...terminate...with effect from the end of the Policy Year... (Rule 16.1)

Provided written notice is given prior to 20 January, the termination will take effect from the end of the policy year, i.e. from noon GMT on 20 February. If the Association wishes to terminate the entry before noon GMT on 20 February it must comply with the procedures stipulated in Rule 16.2.

(C) ...written notice... (Rule 16.1)
In order to exercise its right to terminate the entry unilaterally pursuant to Rule 16.1, the Association must give notice in writing prior to 20 January. Such notice of termination is deemed sufficient for the purpose of termination of entry pursuant to Rule 16.1 when it is received at the Member's address that has been notified most recently by the Member to the Association. When the entry has been made through a broker, a notice of termination that has been sent by the Association to the broker is to be deemed to have the same effect as if it had been sent to the Member as a broker is deemed to be the agent of the Member. See the guidance to Rule 3, paragraph (C) above.

(D) ...in respect of one or more Vessels... (Rule 16.1)
The Association may terminate the entry of one, some or all of the vessels that have been entered by a Member, by sending one single written notice of termination.

(E) ...may also terminate the insurance of any or all of the Vessels... (Rule 16.2)
Whereas Rule 16.1 entitles the Association to terminate an entry for any reason at the end of the policy year, Rule 16.2 gives the Association the right to terminate during the course of the policy year the insurance of any or all of the vessels that have been entered by a Member either immediately or on the giving of notice depending on the particular circumstances. Rule 16.2 gives the Association the right to do so even though the circumstances giving rise to the termination may relate to only one or some of the vessels that have been entered by him.

(F) ...without notice where a casualty or other event has been brought about by wilful misconduct on the part of the Member, as defined in Rule 53... (Rule 16.2.a)
Rule 16.2.a states expressly that the Association has the right to terminate an entry 'without notice' where a casualty or other event has been brought about by the wilful misconduct of the Member. The term 'wilful conduct' is defined in Rule 53 as: '...an act intentionally done, or a deliberate omission by the Member, with knowledge that the performance or omission will probably result in injury, or an act done or omitted in such a way as to allow an inference of a reckless disregard of the probable consequences'.

Whilst it is inevitable in practise that some form of notice will need to be given to the Member at some point in time, the right to terminate 'without notice' in Rule 16.2.a represents a material and important distinction. Where the Rules require the giving of notice as a pre-requisite for termination, the termination will not take effect until the notice is received by the Member, whereas under Rule 16.2.a, termination takes effect upon the occurrence of the event and before the Association has given notice confirming the termination.

(G) ...a casualty...brought about by wilful misconduct... (Rule 16.2.a)
The right to terminate immediately without notice is restricted to the most serious of circumstances namely, where the wilful misconduct, as discussed under Rule 53, of the Member has brought about a casualty or other event. The phrase 'other event' is construed restrictively and includes only those events similar in nature to a casualty. However, in order to justify termination of cover, the relevant misconduct must be that of the Member himself, or that of the 'alter ego' of the Member, i.e. the person(s) whose "action(s) is(are) the very action of the company itself". This would normally include the directors of the company but could also, depending on the circumstances, include other senior personnel and independent contractors to whom important functions relating to the management and operation of the vessel have been delegated. Therefore, the wilful misconduct of other personnel who cannot be considered to be the 'alter ego' of the Member is not sufficient to justify termination pursuant to Rule 16.2.a.

The fact that the Member's wilful misconduct has brought about the event is sufficient to cause the Association to invoke this provision regardless of whether the relevant event has resulted in the making of a claim on the Association. However, if the event does result in a potential claim against the Association, the Association also has the right under Rule 53 to decline cover for liabilities, losses, costs or expenses caused by such conduct.

(H) ...the Member has failed to pay...any...amount due... (Rule 16.2.b)
Rule 11 lays down strict time limits for payment of amounts that are due to the Association and payment is deemed to have been made by the Member only when funds have been received in the Association's account in an immediately useable form. Therefore, the sending of a cheque or the giving of bank instructions does not amount to payment for these purposes since no funds have been received at that point by the Association in readily useable funds.

When the Member is in breach of his duty to make payment under the Rules, the Association has the right to terminate an entry under Rule 16.2.b at any time by giving three days', i.e. 72 running hours, notice. The period of notice is calculated from the time that the notice is served, and includes Saturdays, Sundays and Bank Holidays. The entry will terminate at the expiry of the three days' notice even though the Member may have paid the overdue amount during the course of the three days' notice period. However, the Association may exercise its discretion to continue the entry in such circumstances.

Since the entry is not terminated until the expiry of the three days' notice period the Association remains at risk for events that give rise to recoverable claims during the notice period. Similarly, the Member remains liable for any premium that is payable up to the date of termination, and the Association may be obliged to repay any premium which has been pre-paid by the Member in respect of the period after the date of termination.

(I) ...the Member has neglected a duty of disclosure or...there has been an alteration of the risk... (Rule 16.2.c)
A failure to disclose material facts whether before or after the vessel's entry in the Association or an alteration of the risk after entry can affect the exposure of not only the Member but that of the membership as a whole. Therefore, Rule 16.2.c gives the Association the right to terminate the entry in such circumstances. If the Member has neglected to disclose material facts before the conclusion of the contract of insurance (Rule 6), or if there has been an alteration of the risk after entry (Rule 7), the Association is not only protected against liability to the extent that Rules 6 and 7 allow but also has the right to terminate the insurance by giving 14 days' notice, i.e. 14 running days. For example, there would be an alteration of risk if a vessel originally operating solely in the Norwegian part of the North Sea were to be relocated during the course of the policy year to operate solely in the exclusive economic zone or territorial water of the United States. Since the exposure of the Member and that of the membership as a whole to personal injury and pollution liabilities would increase substantially as a result of the change in the vessel's area of operation, the Association has a right to terminate cover under Rule 16.2.c.

(J) ...without giving any reason. (Rule 16.2.d)
The Association has the right to terminate an entry during the course of a policy year in circumstances other than those described above by giving 45 days' notice to the Member, i.e. 45 running days. It is rare for the Association to make use of this provision, but it may be invoked, for example, where the relationship between the Member and Association has become adversarial and it is, therefore, considered to be in the best interest of the membership as a whole that the entry is terminated. The Association does not need to give any reason for the termination and 45 days is considered to be a sufficiently long period of time to enable the Member to arrange alternative insurance cover.

(K) Notwithstanding and without prejudice to Rules 16.1 and 16.2 and Rule 17.4, the Association may, on such notice in writing as the Association may decide, terminate the entry (Rule 16.3)
Rule 16.3 gives the Association power to terminate an entry or entries if the relevant vessel(s) is(are) involved in activities that have exposed or may expose the Association. its Agent (Gard AS or its subsidiaries as defined in Rule 1.1) or the Member to the risk of being, or becoming, the target of, or subject to, any sanction, prohibition or adverse action in any form whatsoever from the state of the vessel's flag, any state where the Association or its Agent has its registered office or has a permanent place(s) of business or from the United Nations (the UN), the European Union (the EU), the United Kingdom (the UK) or the United States of America (the US).

The reference to "Agent" means that Rule 16.3 will be triggered as long as any of the Association's Agents as defined in Rule 1.1 (i.e., Gard AS or any of

its subsidiaries) may be exposed to the risk of being, or becoming, the target of, or subject to, any sanction, prohibition or adverse action in any form whatsoever by, for example, any state where a Gard AS subsidiary has its registered office or a permanent place of business. In practice it means that even if a vessel is lawfully entered in the Association pursuant to Norwegian law, Rule 16.3 will nevertheless be triggered if a Gard AS' subsidiary in another country would be exposed to the risk of becoming subject to sanctions in a country where the relevant subsidiary has a permanent place of business.

The wording of Rule 16.3 is aligned with market clauses. See for example clause 2-17 of the Nordic Marine Insurance Plan of 2013, version 2023 and the corresponding explanatory notes. There is no longer any reference to states being so-called Major Powers. The reference to France was deemed to be unnecessary as this is encompassed by the reference to the EU. The reference to the Russian Federation was also problematic with the outbreak of war between Russia and Ukraine. To avoid uncertainty for Members, Rule 16.3 will not operate if the Association, its Agent or the Member may be exposed to the risk of becoming the target of, or subject to, countersanctions from Russia. Finally, there is no longer an express reference to the People's Republic of China. However, sanctions from China may still be relevant if the entered vessel flies Chinese flag or in respect of Chinese sanctions supported by the UN.

Besides reference to sanctions by the EU and the UN in general, further international sanctions have in recent years been introduced by, *inter alia*, the United States, the United Kingdom (no longer being a member of the EU) and Norway against countries such as, for example, Iran, Syria and the Russian Federation which are deemed to have broken international accepted norms. The Association is of the opinion that the scope for yet further sanctions, whether against these or other countries, and the potential impact of such sanctions, is extremely wide and constitutes a substantial increase in risk in that it envisages the imposition of sanctions on organisations and individuals 'underwriting or otherwise providing insurance or reinsurance' relating to such trade as outlined in several membership circulars. Consequently, the Association considers that it is necessary to protect the membership and itself against a risk which may otherwise be beyond the control of the Association and the membership. Thus, the purpose of Rule 16.3 is to protect the Association as much as possible against a charge that it is providing insurance for a prohibited activity and, thereby, being itself subject to sanctions.

Rule 16.3 entitles the Association to terminate the entry of 'any and all Vessel(s)' if the Member has by his conduct either exposed or may expose the Member and/or the Association or the Association's Agent to the risk of "any sanction, prohibition or adverse action in any form" by any one or more of the

states identified in the Rule. For example, the Association would invoke this provision where it becomes apparent that the Member is or will be using the vessel in activities that violate any applicable sanctions legislation.

In such circumstances, the Association is entitled to terminate the entry by giving notice in writing. The notice period shall be determined by the Association in its sole discreation. However, Rule 16.3 must be read in conjunction with Rule 17.4 and is expressly stated to be without prejudice to Rule 17.4 which provides for immediate and automatic cesser in the circumstances described in that Rule (subject to the discretion given to the Association to continue or reinstate cover under Rule 17.5).

The imposition of sanctions may also have an impact on the ability of the Association to indemnify the Member against liabilities, costs or expense. See the guidance to Rule 51.2 and 3.

Rule 17 Cesser

1 A Member shall (subject to Rule 17.5) cease to be covered by the Association in respect of any and all Vessels entered in the following circumstances:
   - **a** where the Member is a corporation, a resolution is passed for the voluntary winding up of the Member or an order is made for its compulsory winding up or it is dissolved or a receiver or similar official to all or part of its affairs is appointed or any secured party takes possession of any of its property or it seeks protection from its creditors under any applicable bankruptcy or insolvency laws or any similar event occurs (in the determination of the Association) in any applicable jurisdiction; and
   - **b** where the Member is an individual, the Member dies or becomes incapable by reason of mental disorder of managing or administering its property and affairs or becomes bankrupt or makes any composition or arrangement with its creditors generally or a receiving order is made against the Member or any secured party takes possession of any of its property or any similar event occurs (in the determination of the Association) in any applicable jurisdiction.

2 The Member shall (subject to Rule 17.5) cease to be covered by the Association in respect of any Vessel entered by him in the following circumstances:
   - **a** the Vessel becomes a total loss;
   - **b** the Vessel is accepted by the hull underwriters (whether of marine or war risks) as a constructive total loss;
   - **c** the Vessel suffers damage and the cost of repairs (as determined by the Association) will equal or exceed the higher of 80% of its insured value or of its value in repaired condition (as determined by the Association);
   - **d** the Vessel is transferred to a new owner by sale or otherwise;
   - **e** new managers of the Vessel are appointed or there is a change in the operator of the Vessel;
   - **f** any mortgagee or other secured party enters into possession of the Vessel;
   - **g** the Vessel ceases to be classed with a classification society approved by the Association, or its class is suspended;
   - **h** the Vessel is requisitioned;
   - **i** the Vessel, with the consent or knowledge of the Member, is being used for the furtherance of illegal purposes.

3 Where the Vessel disappears, it shall be deemed to be a total loss ten days from the day it is last heard from.

4 Notwithstanding and without prejudice to Rules 17.1, 17.2 and 17.3, a Member shall forthwith cease to be insured by the Association in respect of any and all Vessel(s) entered if any Vessel is employed by the Member in a carriage, trade or on a voyage which will thereby in any way howsoever expose the Association and/or its Agent to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any State where the Association and/or its Agent has its registered office or permanent place of business by the United Nations, the European Union, the United Kingdom or the United States of America.

5 Notwithstanding the provisions of Rules 17.1, 17.2 and 17.4, the Association may decide in any particular case that cover shall be continued without interruption, or that cover shall be reinstated, in either case on such terms as the Association shall determine.

6 Notwithstanding the provisions of Rule 17.2. (a), (b) and (c) the Association shall cover subject to these Rules and the terms of entry agreed, liabilities, losses, costs and expenses flowing from the casualty which gave rise to the total loss or constructive total loss of the Vessel.

Guidance

(A) A Member shall...cease to be covered... (Rules 17.1 and 17.2)

Rule 17 provides for cessation of cover on the occurrence of certain events. Cover will cease automatically on the occurrence of such events, i.e. without a need for the Member or the Association to give notice to the other party. This is to be contrasted with the position under Rules 15 and 16, which, with the exception of Rule 16.2.a, require the service of notice by the Member or the Association. The effect of a cessation of cover is described in Rule 18.

(B) ...in respect of any and all Vessels entered...(Rule 17.1)...in respect of any Vessel entered... (Rule 17.2)

The events described in Rule 17.1 are ones that affect the Member's personal status and his ability to perform his obligations as a Member of the Association, whereas the events described in Rule 17.2 are ones that affect individual vessels. The entry of all vessels which have been entered by the Member will cease on the occurrence of the events described in Rule 17.1, whereas it is only the entry of the particular vessel that is affected by the events described in Rule 17.2, which entry will cease on the occurrence of such events.

(C) ...in the following circumstances... (Rules 17.1.a and b)

It is clearly important for the continued financial well-being of the Association and its membership that individual Members remain able and willing to contribute funds as and when required. The occurrence of any of the events described in Rule 17.1 may seriously affect the Member's continuing ability to do so and therefore, it is considered prudent that the entry of all vessels entered by the Member should cease on the occurrence of such events.

Rule 17.1.a applies where the Member is a corporation and Rule 17.1.b where the Member is an individual.

The circumstances itemised in Rule 17.1.a apply when the Member is a corporation are the following:

"*...a resolution is passed for the voluntary winding up of the Member...*" i.e. a decision is taken by the corporation itself to wind up the business;

"*...an order is made for the compulsory winding up of the Member...*" i.e. a court order which declares that the corporation is insolvent or has to be wound up for any other reason;

"*...the Member...is dissolved...*" e.g. the partners of a limited liability partnership decide to part company;

"*...a receiver or similar official to all or part of its affairs is appointed...*" e.g. a consortium of banks from which the Member has borrowed funds to finance the vessels decides to exercise its mortgage rights by administering the affairs of the Member;

"*...any secured party takes possession of any of its property...*" e.g. banks who exercise mortgage rights to acquire ownership and control of vessels;

"*...it seeks protection from its creditors under any applicable bankruptcy or insolvency laws...*" as may happen pursuant to Chapter 11 proceedings in the United States. For example, a Member may file a declaration of bankruptcy, which is granted, but the creditors subsequently accept the Member's offer to continue to operate the business of the corporation on their behalf.

"*...any similar event occurs...*" The Association's Members are domiciled in many different countries and there is a wide diversity of laws, as well as legal and administrative procedures, in those different jurisdictions which affect the liquidation, dissolution etc., of a corporation. Therefore, the Association is given the right in the interests of the membership as a whole to determine whether a particular event shall cause the Member's cover to cease. However, such an event must be similar in nature to those expressly enumerated.

Rule 17.1.b applies where the Member is an individual and the listed circumstances are:

"*...the Member dies...*" In such circumstances, the Association will require confirmation of the death from a reliable source, such as the police authority or other public authorities;

"*...the Member...becomes incapable by reason of mental disorder of managing or administering its property and affairs...*" In most circumstances, the Association will require confirmation of the mental disorder by medical certification or attestation;

"*...the Member...becomes bankrupt...*" i.e. when a court order of bankruptcy is issued;

"*...any similar event occurs...*" See the guidance above relating to similar words in Rule 17.1.a.

(D) ...the Vessel becomes a total loss... (Rule 17.2.a)
Rule 17.2.a provides that cover for a vessel shall cease upon the total loss of it. In this context, 'total loss' means an actual total loss (ATL), which should be distinguished from a constructive total loss (CTL) to which Rule 17.2.b. applies. A total loss (ATL) occurs when the vessel is physically lost without any prospect of it being recovered, e.g. when it has foundered in deep waters, or has been damaged so badly that it cannot be repaired.

It is necessary to read Rule 17.2.a together with Rule 17.3, which provides that, for the purposes of the Rules, a vessel is deemed to be a total loss upon the expiry of ten days after the date on which it was heard of last. Although cover for the vessel will cease as soon as it becomes a total loss, the Association will, pursuant to Rule 17.6, continue to cover liabilities, losses, costs and expenses 'flowing from the casualty which gave rise to the total loss', e.g. wreck removal and pollution prevention/clean-up costs.

(E) ...constructive total loss... (Rule 17.2.b)
Whereas Rule 17.2.a treats the entry as having ceased when the vessel has become an actual total loss (ATL), Rule 17.2.b treats the entry as having ceased when where the vessel has been accepted by the hull underwriters, whether for marine or war risks, as a constructive total loss (CTL). A CTL is a term used for insurance purposes where the cost of repair of the vessel is higher than a prescribed percentage of its insured value or of its value in repaired condition with the result that the insured has the right to claim compensation for the sum insured under the hull policies. The opinion of the Association as to whether the vessel has actually become a CTL is irrelevant for the purposes of this provision. However, see (F) below.

A vessel will usually be accepted as a CTL under the hull policies when either:

i the Member has lost possession or control of his vessel and is unlikely to be able to regain possession of it, or that the costs of doing so will exceed the vessel's value when regained; or

ii the vessel is damaged to such an extent that the cost of repairs will exceed the insured value of the vessel or its market value when repaired, whichever is the higher (or a certain percentage of either of those values as agreed in the hull policies).

Cesser of cover under Rule 17.2.b is not affected by the subsequent decision of the hull underwriters to abandon their interest in the vessel after it has been accepted by them as a CTL. Although cover for the vessel will cease when it is accepted by the hull underwriters as a CTL, the Association will, pursuant

to Rule 17.6, continue to cover liabilities, losses, costs and expenses 'flowing from the casualty which gave rise to the…constructive total loss.' However, the cesser of cover will protect the Association against future claims which may affect the vessel, e.g. claims arising during subsequent towage to a scrap yard.

(F) ...where...the cost of repairs will equal or exceed 80 per cent of... (Rule 17.2.c)

Cover will cease pursuant to Rule 17.2.b only where the vessel is accepted by the hull underwriters as a CTL. However, Rule 17.2.c gives the Association the additional and separate right to determine that the cover shall cease even if the vessel is not accepted by the hull underwriters as a CTL if the vessel has suffered damage and the repair costs are equal to, or exceed, 80 per cent of the insured value of the vessel or of its value in repaired condition, whichever is higher. This Rule gives the Association the flexibility to determine that cover shall cease even if the hull underwriters are unable for whatever reason to determine whether or not to accept the vessel as a CTL, or delay in doing so for an unreasonable time.

(G) ...transferred to a new owner... (Rule 17.2.d)

The entry of a vessel is accepted by the Association partly on the basis of the Association's assessment of the owner. It is a basic principle of mutual insurance that the benefit of the insurance contract cannot be transferred by the owner to a third party without the consent of the Association. See Rule 69. Therefore, Rule 17.2.d brings the entry of the vessel to an end when ownership is transferred. Such a transfer may be the result of a positive act, e.g. sale or gift, or of an involuntary act, e.g. by a forced sale of the vessel pursuant to a court order. Where the transfer is from one company to another within the same group, e.g. as a result of a change in flag, the Association will generally consider a request from the former owner for the entry to be continued in the new ownership in a sympathetic manner.

(H) ...new managers...or...change in the operator... (Rule 17.2.e)

Whereas Rule 17.2.d applies in the event that there is a change of ownership, Rule 17.2.e applies where there is a change in the identity of those managing or operating the vessel. The identity of the manager or operator is a material fact which is relevant to the risk which is insured by the Association and which must, therefore, be disclosed to the Association. In many respects a change of manager or operator is as important to the Association as a change in owner, since the manager or operator will normally be responsible for the technical management and crewing of the vessel. The Rules do not define manager or operator, but these terms include companies being delegated responsibility for the commercial or technical functions that relate to the ownership, maintenance, operation and control of a vessel. If there is uncertainty, the Association has the right to decide whether there has been a change of manager or operator.

(I) ...any mortgagee or other secured party enters into possession... (Rule 17.2.f)

Whilst it is relatively unusual for a mortgagee bank or any other secured party to take physical possession of a vessel rather than enforcing a sale of the vessel, this does happen from time to time. Such an act has much the same effect, from the perspective of the Association, as a change of owner or operator, and will, in any event, probably only arise because the Member is in financial difficulties and, therefore, has not paid amounts due that are secured by the mortgage. The steps that are required to enable a secured party to take possession of a vessel will depend on the law that governs the terms of his security, or the law of the place where the ship is located. Under English law, no formal steps are required, whereas under other systems of law a secured party may only take possession pursuant to a court order. An action taken by a secured party which falls short of taking possession does not constitute cesser for the purposes of Rule 17.2.f.

(J) ...ceases to be classed...or...class is suspended... (Rule 17.2.g)

While it is a condition for the insurance of the vessel that it shall be classed in a classification society approved by the Association, see the guidance to Rule 8, Rule 17.2.g provides that cover for the vessel ceases when the vessel is no longer in class. Cover also ceases if the class is 'suspended', i.e. when the relevant classification society is not prepared to maintain the vessel in class until certain identified conditions have been remedied. Cover ceases since a vessel which has a class suspension is likely to expose the Association to unacceptable risks which were not contemplated at the time that the contract of insurance was concluded.

If the Member fails to comply in time with the classification society's recommendations or requirements, such failure may not always cause that classification society to cease or to suspend class, in which case cover will not cease pursuant to Rule 17.2.g. However, such non-compliance is likely to represent a breach by the Member of the condition laid down in Rule 8.1.c and, therefore, to cause the Member to lose rights of recovery during the period of non-compliance pursuant to Rule 8.3. Similarly, whilst a change of classification society must be advised to the Association in accordance with Rule 8.1.e, such a change does not, per se, cause cover to cease under Rule 17.2.g so long as the new classification society is also one that is approved by the Association. However, if the new classification society is not approved by the Association, cover will cease under Rule 17.2.g.

(K) ...the Vessel is requisitioned... (Rule 17.2.h)

A requisition of the vessel, whether by the authorities of the flag state or where the Member has his principal place of business, or by any other country where the vessel operates, will cause cover to cease. In some cases, the requisition has the effect of depriving the owner of the ownership of the vessel whereas in other cases, the requisition amounts to an enforced charter

or hire of the vessel. Cover will cease in either case, since the requisition has the same effect, insofar as the Association is concerned, as a change of owner or operator.

(L) ...the Vessel, with the consent or knowledge of the Member, is being used for the furtherance of illegal purposes. (Rule 17.2.i)
Cover will cease if the vessel is being used for the furtherance of illegal purposes with the consent or knowledge of the Member. Purposes are considered to be illegal when there is contravention of the laws of the country where the vessel is registered, or where the Member has his principal place of business or carries out operations, or where there is a breach of the laws of the country where the vessel operates or is being used for such purposes. It is necessary in this regard to distinguish between circumstances in which the vessel, on the one hand, is used deliberately for the furtherance of purposes that are clearly illegal, e.g. when used wilfully as a means of drug smuggling, and, on the other hand, where the vessel is used for a lawful purpose but in an illegal manner, e.g. the discharge to shore of slops in contravention of port regulations whilst carrying out an, otherwise, lawful activity. In the latter case, cover does not cease pursuant to Rule 17.2.i, but the Association may have the right to decline cover on other grounds.

The phrase 'consented to' means that the Member has approved the use of the vessel for illegal purposes, whilst 'knowledge of' means that the Member is aware, or should reasonably have been aware, that the vessel is used for illegal purposes and does not take immediate action to remedy the situation. Therefore, cover will cease if the Member, although aware of the fact that the crew is using the vessel for drug smuggling purposes, fails to take any action to prevent them from doing so.

Cover will cease from the time that the vessel is first used for the furtherance of any illegal purpose with the consent or knowledge of the Member. It is the time of the Member's consent or knowledge that determines the time when cover shall cease, and not the time when the vessel is in fact first being used for illegal purposes.

(M) Where a Vessel disappears... (Rule 17.3)
It is necessary to regulate how cover is to operate in circumstances where a vessel disappears and appears to be lost. On the one hand, the Member has a need for cover for a reasonable period of time while he tries to ascertain what has happened to the vessel. On the other hand, it is not in the best interests of the membership that the Association should be exposed for an unlimited period of time to unknown risks in respect of a vessel which cannot be traced. Therefore, Rule 17.3 seeks to strike a balance between the two competing concerns by providing that cover shall cease 10 days after the last reported sighting or position of the vessel.

It should be noted that cover which has ceased pursuant to this Rule will not be automatically reinstated if the vessel is subsequently traced. In such circumstances, the Member must make a new application for entry since the discretion which the Association has to reinstate cover under Rule 17.5 does not extend to Rule 17.3.

(N) Notwithstanding and without prejudice to Rules 17.1, 17.2 and 17.3 a Member shall forthwith cease to be insured by the Association in respect of any and all Vessel(s) entered if any Vessel is employed by the Member in a carriage, trade or on a voyage which will thereby in any way howsoever expose the Association and or its Agent to the risk of being or becoming subject to any sanction prohibition or adverse action in any form whatsoever... (Rule 17.4)

As the background relating to this Rule see the commentary in paragraph (K) of the guidance to Rule 16.

Whereas Rule 16.3 gives the Association the right to terminate entry on the giving of notice in the circumstances described in the guidance to Rule 16, Rule 16.3 also emphasises that the provisions of Rule 16.3 are without prejudice to the provisions of Rule 17.4.

Rule 17.4 emphasises that if any Vessel is employed by the Member in a carriage, trade or on a voyage which will thereby in any way howsoever expose the Association and/or its Agent as defined in Rule 1.1 to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by the State where the Association and/or its Agent has its registered office or has a permanent place of business, the United Nations, the European Union, United Kingdom or the United States, cover shall cease immediately and automatically without any need for notice. The Association is of the opinion that the potential impact of existing and any future sanctions regulations that are or may be imposed by any of the above-mentioned states is extremely wide and constitutes a substantial increase in risk in that it envisages, inter alia, the imposition of sanctions on organisations and individuals “underwriting or otherwise providing insurance or reinsurance” in relation to such trade. Therefore, the Association is of the view that such a form of automatic cesser is necessary in order to protect the interests of the Association and its assets for the benefit of the membership in general.

The imposition of sanctions may also have an impact on the ability of the Association to indemnify the Member against liabilities, costs or expense. See the guidance to Rule 51.2 and 3.

(O) ...the Association may decide that cover shall be continued...or...be reinstated (Rule 17.5)

Rule 17.5 gives the Association the right, where it is considered beneficial to the Association, to let the cover continue, or to reinstate cover where it has ceased pursuant to any of the provisions in Rules 17.1, 17.2 and 17.4, but not

Rule 17.3. A decision to continue the cover means that the existing cover will continue without interruption. However, a decision to reinstate cover entitles the Association to make the reinstatement subject to altered terms, e.g. payment of additional premium or the pre-condition that the vessel must pass an inspection conducted on behalf of the Association pursuant to Rule 9.

(P) Notwithstanding...the Association shall cover...liabilities...flowing from the casualty... (Rule 17.6)

The events that may cause cover to cease pursuant to Rule 17.2.a, b, c and d may occur as a result of a casualty which arises in direct connection with the operation of the vessel. However, some of the liabilities, losses, costs and expenses that arise as a result of such a casualty may do so only after the vessel has become a total loss, CTL etc., and, therefore, at a time when cover for the entry has already ceased. Therefore, Rule 17.6 continues to make cover available for all liabilities, losses, costs and expenses 'flowing from the casualty'. In this regard, Rule 17.6 must be distinguished from Rule 18.2 which states that the Association shall have no liability whatsoever 'by reason of anything occurring after cessation or termination' of the entry. Rule 18.2 applies to new events which occur after the entry has ceased whereas Rule 17.6 applies to the event which causes the entry to cease and which is, therefore, an 'event that occurs during the period of entry of the vessel.

The cover that is available under Rule 17.6 applies only to events that flow from the casualty which caused the vessel to become an actual total loss or a constructive total loss. Therefore, there must be a clear causal connection between that casualty and the liabilities, losses, costs and expenses which have been incurred by the Member. For example, cover is available under Rule 17.6 for liability to remove the wreck or for liability for damage caused by oil pollution from the wreck. However, cover is not available under Rule 17.2 for liability for pollution from the wreck that has been caused by another ship subsequently dragging its anchor over the wreck. Such liability would not flow from the casualty which gave rise to the total loss of the vessel, but would be the result of a new and independent subsequent event, which occurs after cover has ceased.

Rule 18 Effect of cesser or termination

1 Where the insurance ceases or is terminated, the Member shall remain liable for all premiums in respect of the then current Policy Year pro rata for the period up to the date of cesser or termination, and for all premiums in respect of prior Policy Years.
2 The Association shall be under no liability whatsoever by reason of anything occurring after the date of cessation or termination.

Guidance

(A) ...the Member shall remain liable for all...premiums... (Rule 18.1)
Notwithstanding termination or cesser of cover under Rules 15, 16 or 17, the Member remains liable to pay premiums in accordance with Rule 18. The term 'premiums' includes any special premiums which are due from time to time, such as premium for additional insurances that have been arranged by the Association for the Member.

(B) ...in respect of the then current Policy Year pro rata for the period up to... cesser or termination... (Rule 18.1)
If cesser or termination occurs during the course of the policy year, the Member is obliged to pay only that proportion of the premiums related to that policy year which the period of entry of his vessel(s) in that policy year bears to the whole of the policy year. For example, if a Member ceases to be insured on 20 August (half way through the policy year) and in the second half of the policy year an unusual series of incidents gives rise to exceptional claims on the Association, the Member remains only liable to pay 50 per cent of the annual premium. On the other hand, if the Member's cover ceases on 21 March, at which time he has paid one third of the annual premium to be collected during the year to which it relates, he will be entitled to be repaid approximately three-quarters of the payment made, i.e. for three out of the four months.

(C) The Association shall be under no liability... (Rule 18.2)
Rule 18.2 must be read in conjunction with Rule 2.3.c, which provides that cover is available for the Member 'in respect of liabilities, losses, costs and expenses incurred by him which arise out of events occurring during the period of entry.' Therefore, the Association has no liability for events which occur after the date of termination or cesser, but the Association continues to make cover available for liabilities arising out of events occurring before the date the entry was terminated or ceased. For the purpose of assessing whether cover is available, it is the date of the event that causes the liability that is material and not the date on which the consequences of the event became manifest or apparent, nor the date when the Member's liability was determined.

The following example illustrates how Rule 18.2 operates. A vessel is sold to a scrap yard for demolition and is delivered to the yard as buyer on 1 June. Five months later, on 1 November the same year, an accident occurs at the scrap yard while the vessel is demolished. It is subsequently established that the yard failed to comply with governing safety rules and regulations. Third party claims are, inter alia, made against the former owner of the vessel on the grounds that he allegedly sold the ship to a scrap yard he knew or ought to have known did not have the necessary qualifications and certifications to carry out the work. However, in this case no P&I cover is available under the Member's entry in respect of the alleged claims. The event giving rise to the alleged claims is deemed to have arisen when the accident occurred, i.e. on 1 November being five months after the date of cessation on 1 June.

Part II P&I cover

Chapter 1

Risks covered

Rule 19 Liabilities in respect of crew

1 The Association shall cover:

a liability to pay hospital, medical, maintenance, funeral and other costs and expenses incurred in relation to the injury to, or illness or death of, a member of the Crew, including costs and expenses of repatriating the member of the Crew and its personal effects, or sending home an urn of ashes or coffin and personal effects in the case of death, and costs and expenses necessarily incurred in sending a substitute to replace the repatriated or deceased member of the Crew;

b liability to repatriate and compensate a member of the Crew for the loss of its employment caused in consequence of the actual or constructive total loss of the Vessel or of a major casualty rendering the Vessel unseaworthy and necessitating the signing off of the Crew;

c liability to pay compensation or damages in relation to the injury to, or illness or death of, a member of the Crew;

d liability for costs and expenses of travelling incurred by a member of the Crew when the travelling is occasioned by a close relative having died or become seriously ill after the Crew member signed on, and costs and expenses necessarily incurred in sending a substitute to replace that Crew member;

e liability for wages payable to an injured or sick member of the Crew or on death to its estate;

f liability in respect of loss of or damage to the personal effects of a Crew member,

provided that under this Rule 19.1:

i where the liability arises under the terms of a crew agreement or other contract of service or employment, and would not have arisen but for those terms, the liability is not covered by the Association unless those terms have been previously approved by the Association;

ii references to personal effects shall exclude valuables and any other article which in the opinion of the Association is not an essential requirement of a Crew member;

iii the cover shall not include liabilities, costs or expenses arising out of the carriage of specie, bullion, precious or rare metals or stones, plate or other objects of a rare or precious nature, bank notes or other forms of currency, bonds or other negotiable instruments, whether the value is declared or not, unless the Association has been notified prior to any such carriage, and any directions made by the Association have been complied with; and

iv there shall be no recovery in relation to liability which arises under a contract of indemnity or guarantee between the Member and a third party.

2 The Association shall cover liability to repatriate a member of the Crew pursuant to any statutory enactment giving effect to the Maritime Labour Convention 2006 as amended or any materially similar enactment, provided always that there shall be no recovery in respect of liabilities arising out of the termination of any agreement, or the sale of the Vessel, or any other act of the Member in respect of the Vessel, save and to the extent permitted by this Rule 19.2 in respect of the Member's liability for such expense under the Maritime Labour Convention 2006 as amended.

Guidance

(A) Introductory remarks

People claims is the most frequently occurring type of maritime insurance claims. This includes traditional P&I risks such as claims caused by sick or injured crew members. Based on the 'people first' attitude, the Association believes that a proactive focus on seafarers' safety and wellbeing will pay off over the longer terms for the benefit of all parties involved and underpin a sustainable maritime business. This includes focus on the contractual situation regarding crew benefits when an incident occurs.

Cover is available under Rule 19 for legal liabilities, costs and expenses in respect of crew. Such liabilities etc., will arise in most instances under the terms of the contract of employment of the crew, including any collective bargaining agreement (CBA) incorporated by reference into the contract of employment. However, cover is also available when the basis of liability is not the contract of employment, but the provisions of a statute or international convention such as the Maritime Labour Convention 2006 as amended (MLC) (see paragraph (L) below) or the provisions of national law or a combination of the contract of employment and governing law.

Where liability in respect of crew arises under contract, and would not have arisen but for that contract, the Member must obtain the prior approval of the Association to such contractual provisions if cover is to be available. See guidance under paragraph (K) below. In order to consider whether to give such approval the Association may require a copy of the contract of employment and the terms of any incorporated CBA, as well as additional information relating to the nationality and the number of crew members who serve on board and the area or country where the vessel shall operate. Prior to the conclusion of the contract of insurance, the Member has the duty to disclose all circumstances which would be of relevance to the Association in deciding whether to accept the entry and, if so, on what conditions. See Rule 6.

Depending on the circumstances, the Association may either decline to provide cover, or, more likely, to charge extra premium for the additional risks represented by the contractual terms and conditions and the law of the country where the vessel shall operate. For example, contractual terms will

usually not be approved if they commit the Member to a liability for medical care which is unlimited in time since the Member and the Association would be exposed in such circumstances to liability for an illness for which there is no medical cure.

(B) Liabilities in respect of Crew (Rule 19)
Crew is a defined term for the purpose of Rule 19: It means 'officers, including the platform manager or master, and workers contractually obliged to serve on board the Vessel, including substitutes and including such persons while proceeding to or from the Vessel'. It follows that all ranks, ranging from the master and the platform manager to ordinary marine personnel and non-marine personnel such as other workers contractually engaged to serve on board the vessel are covered whether they perform duties in relation to navigation or management of the vessel or any other function relating to the operations or activities the vessel is engaged in. For example, in the case of an accommodation unit, crew also includes staff members who perform catering functions.

Furthermore, various personnel may be employed by the Member on board a vessel prior to the delivery of the vessel from a building yard, e.g. in order either to supervise work which is required before delivery or to familiarise themselves with the vessel before it is put into service. Cover is available in respect of the Member's liability to such personnel in such cases although the vessel has not yet been delivered and, therefore, has not yet been entered with the Association for P&I risks. However, cover is available only if the Member has made a commitment to the Association that the vessel will be entered with the Association for P&I risks after delivery of the vessel to the Member. Similar cover can be agreed in respect of personnel who perform services on board a second-hand vessel that has been purchased, but not yet delivered to the Member, or in respect of personnel who, for an agreed period of time, remain on board a vessel that has been sold, e.g. in order to help the buyer's crew to familiarise themselves with the vessel. Cover is available in respect of any such personnel only to the extent that the Association has given its prior approval as it may be necessary to charge extra premium for the additional risk.

Crew means crew members who are employed to serve on board the vessel that is named as a P&I entry in the Association, and cover is available not simply in respect of the periods when they are actually working on board the vessel, but for the whole period that they are contractually obliged to serve on board the vessel. This means that cover is available for crew members whilst they are travelling to and from the vessel, to and from the place where they were hired, and also whilst they are temporarily ashore at times when they remain under an obligation to return to the vessel to continue service. See the definition of crew in Rule 1.1.

Cover is also available for such crew members while they are on earned leave, i.e. at home or on vacation between periods of service on the vessel or between the vessel and any other vessel that is in a fleet that has been entered by the Member in the Association. However, cover is available only to the extent that the Member is liable to the crew members during such periods under the terms of a contract of employment which have been approved by the Association. If the Member has entered some vessels in the Association and some vessels in another P&I club, cover is available only in respect of crew members who were employed on board a vessel entered in the Association immediately before the commencement of the earned leave. If the crew member's next employment is on a vessel which is not entered in the Association and the crew member falls ill or is injured during the course of travel to join that vessel, the Member would have to seek recovery from the insurer with which that vessel is entered

(C) The Association shall cover… (Rules 19.1)
The cover which is available under Rule 19.1.a to f is subject to the provisos in 19.1.i to iv, which are considered in paragraph (K) below.

The cover that is available under Rule 19 can be categorised as follows:

i The liability of the Member to crew members to pay hospital, medical and maintenance expenses, costs, wages, compensation or damages in respect of illness, injury or death;

ii The liability of the Member for costs and expenses incurred in order to repatriate crew members following illness, injury or death, or the loss of the vessel, or a major casualty rendering the vessel inoperable, or the granting of compassionate leave due to the serious illness or death of a close relative;

iii The liability of the Member for costs and expenses incurred in order to provide crew members to serve as substitutes for those who are no longer able to serve as a result of illness, injury or death, or compassionate leave;

iv The liability of the Member to compensate crew members upon the loss of the vessel, or after a major casualty which has rendered the vessel inoperable, for wages that would have been earned under their contract of employment but for that event;

v The liability of the Member to compensate crew members for lost or damaged personal effects.

(D) …liability to pay hospital, medical, maintenance, funeral and other costs and expenses…in relation to the injury to, or illness or death of a member of the Crew… (Rule 19.1.a)
The cover which is available for hospital and medical costs and expenses includes the cost of acute treatment, diagnostic measures, surgery, post-surgery treatment, nursing care and medicines. Such costs may vary to a

large degree depending on the type and extent of the illness or injury, on whether the hospital or other medical facility is a private or state-owned facility, on the methods of treatment employed, and on the country where treatment and care is provided. However, cover is available for medical treatment and maintenance necessary to ensure that the crew member will receive proper treatment and care bearing in mind the type of illness and injury, the location of the vessel when the need for medical treatment arose, the urgency with which immediate treatment must be given, and the standard of treatment available in the country where the crew member is domiciled. 'Proper treatment and care' is a relative term, but the medical treatment facility where it is given should be certified and accredited for the type of treatment needed unless the urgency of treatment combined with the particular location makes it impossible to find such a facility.

Cover is also available in respect of other costs and expenses which may be necessary and reasonable in the circumstances, such as those incurred when evacuating a crew member from vessel to shore by helicopter, or by other forms of air transportation from a small local hospital to a larger central hospital. However, cover may not be available for the full cost of treatment in private hospitals and rehabilitation centres which give the highest level of medical treatment, care and maintenance. In such circumstances, the Member has an obligation under Rule 62 to advise and consult the Association before incurring substantial costs and expenses, since he is required to take active steps to ensure that treatment costs and expenses are kept at a reasonable level. In some cases, this might necessitate the transfer of a crew member from a foreign hospital to a facility in the crew member's country of domicile where the provision of adequate treatment and rehabilitation is less expensive; where the crew member can communicate with medical and nursing staff in his native language; where the family of the crew member may visit more regularly, and where surroundings are more familiar. In other instances, e.g. in the United States, it is frequently necessary to appoint a medical case manager to assist with the choice of hospital and the monitoring of treatment, as well as a medical auditor to review hospital and rehabilitation bills.

Cover is also available for costs and expenses incurred in circumstances where it is considered medically necessary for one or more persons to escort a crew member who is ill or injured to a medical treatment facility, or between such facilities, or when the crew member is being repatriated. Such escorts can be doctors, nurses and/or others who have the skills considered necessary in the circumstances to ensure the well-being of the crew member, e.g. an interpreter. Cover is also available for the cost of visits to the medical treatment facility by relatives of crew members provided that the doctor responsible for the treatment has confirmed that such visits are likely to promote the medical recovery of the crew member, or such relative may replace an escort that would otherwise have been necessary during

repatriation However, it is recommended that Members should consult with, and seek the prior approval of the Association in such circumstances.

Cover is also available for travel expenses incurred by a crew member who has become ill shortly before he is due to go on earned leave in circumstances where a doctor has certified that the crew member should travel either at an earlier date or to a different destination. However, if the crew member's medical condition does not necessitate the alteration of the original travel plan, cover is not available for such travel costs as it would have been incurred in any event, and is, therefore, considered to form part of the Member's normal operating costs.

In the case of the death of a crew member, cover is available for the Member's liability to pay basic funeral and burial expenses including the cost of returning the body or ashes, and the personal effects of the deceased, but not for the cost of wreaths.

Failure on the part of the Member to properly care for crew members who are ill or injured may increase the Member's liability. For example, the owner has a duty to take all reasonable steps to ensure that the sick or injured crew member receives proper care and treatment. Depending on the terms of employment and statutory obligations, the owner's duty to care for a sick or injured crew member continues until further medical treatment would probably not improve the crew member's condition. Unreasonable denial of maintenance and cure payments can give rise to a liability to pay compensatory damages, e.g. for aggravation of the crew member's condition and indifference in this regard can also give rise to a liability to pay the attorney fees incurred by the crew member. Therefore, in order to enable the Association to assist and advise in relation to the provision of medical care, repatriation and other issues Members are urged to inform the Association promptly of any injury or illness that may give rise to a claim in respect of a crew member since a failure to do so may prejudice cover. See Rule 62.

Some countries have laws that oblige an employer to arrange and pay for insurance that gives protection to their employees with regard to work-related illness, injury or death regardless of liability on the part of the employer or fault on the part of the employee. Such insurance usually gives the insured employee (or, in the case of death, the next of kin) a right to seek recovery directly from the insurance company for treatment costs, disability compensation and other costs and expenses incurred in connection with the illness, injury or death. Furthermore, some countries have social security or national insurance systems which give any person who is a member of such a system a right to claim compensation for treatment costs, disability compensation and other benefits as for example the Norwegian National Insurance Scheme (Folketrygden).

Cover is not available from the Association to the extent that the Member or the crew member is entitled to receive compensation under any such social, public or private insurance. See guidance to Rule 52.

Liability in respect of crew illness, injury and death is an area of high exposure both for the Members and the Association. Therefore, in order to ensure that they are eligible for cover, Members are always required to take reasonable steps to minimise the exposure of the Association to such claims. The Member is also expected to ensure that all contracts of employment contain provisions which will disentitle crew members from relying on contractual benefits in respect of any pre-existing illness or injury that has been wilfully concealed by the crew member at the time of examination.

(E) …costs and expenses necessarily incurred in sending a substitute to replace the repatriated or deceased member of the Crew... (Rule 19.1.a)
Cover is available in respect of costs and expenses that are reasonably incurred by the Member in order to send a substitute to replace a repatriated or deceased crew member. However, the Member must satisfy the Association that the substitute was needed to ensure that the vessel was properly manned and seaworthy, and that the remaining crew members could not manage to operate the vessel safely in the absence of the repatriated or deceased crew member. Cover is not available for such costs if the repatriation of the injured or ill crew member occurs at the time when he would have travelled home in any event since such costs are considered to be part of the Member's normal operational costs. Similarly, cover is not available for the wages of substitute crew members as such costs are also considered to be normal operational costs.

Cover is available for the travel expenses and associated maintenance costs incurred in sending to the vessel one substitute for each replaced crew member. Consequently, if a temporary substitute is subsequently replaced by a permanent substitute, cover is available only for costs incurred in relation to one of the two replacements.

(F) …liability to repatriate and compensate a member of the Crew for the loss of his employment caused in consequence of the actual or constructive total loss of the Vessel or of a major casualty rendering the Vessel unseaworthy and necessitating the signing off of the Crew; (Rule 19.1.b)
Cover is available for the costs incurred in repatriating crew members as a necessary consequence of an event which causes the actual or constructive total loss (the terms actual or constructive total loss are discussed under the guidance to Rule 17.2) of the vessel, or which causes the vessel to become unseaworthy by reason of a casualty, except where the crew member(s) would have been repatriated in any event regardless of the event or casualty, e.g. upon the planned expiry of their contract of employment. However, if crew members are required to remain on board the vessel in order to carry

out repairs or for some other reason, cover is not available for any additional costs thereby incurred, or for the ultimate repatriation of the crew, to the extent that these costs may be recoverable under the vessel's hull policies.

In the event of the loss of the vessel or of a casualty which has rendered the vessel unseaworthy it may be necessary to terminate the contracts of employment of crew members for that reason. In such circumstances, the contracts of employment normally give crew members a right to receive compensation for loss of employment which may, pursuant to the provisions of the MLC (see paragraph (L) below) be limited to two months wages. Similar compensation rights may also arise under statute or the common law in order to compensate the crew member for the loss of the wages that would have been earned under the contract but for the casualty, and also for lost earnings during the time that it takes the crew member to find new employment. See for example the Norwegian Seafarer's Act. Cover is available for the Member's liability to pay such compensation, but not for the proportion of wages already earned, but not yet paid, at the time of the incident, which is considered to be a part of the Member's normal operational cost.

(G) …liability to pay compensation or damages in relation to the injury to, or illness or death of a member of the Crew... (Rule 19.1.c)

Under most legal systems a person is entitled to receive full compensation from the party liable for the reasonably foreseeable financial loss sustained by the injured person as a result of the negligent act or omission of the party that caused the loss, damage or injury.

The Member's liability to pay compensation in relation to the injury, illness or death of crew members can arise either under the contract of employment, which often incorporates the terms of a CBA, or under international or national statutory provisions such as the MLC (see paragraph (L) below), or at common law. Cover is available under Rule 19 regardless of the basis of liability provided that in the case of liability which arises under contract, and which would not have arisen but for that contract, the Member must either obtain the prior approval of the Association to such contractual provisions or obtain confirmation that the Association has approved other similar provisions, for cover to be available. See Rule 19.1 (i) and guidance in paragraph (K) below. See also guidance to Rule 42.1 in respect of terms of contract resulting in greater liability than follow from terms of contract which are customarily in the area where the vessel operates.

In the majority of cases the basis and level of compensation payable to crew members in respect of permanent disability caused by illness or injury (or to their legal beneficiaries in the case of death) will be set out in the contract of employment and/or CBA, and this helps in clarifying the rights and obligations of the parties. Cover is available for such contractual liability unless the basis and/or level of compensation is considered disproportionate to that which the Association has approved previously, whether for the particular

Member or for other Members. Because of the diversity of the terms of crew contracts of employment and CBAs, and the uncertainty that may, therefore, arise as to the extent to which compensation is payable by the Association pursuant to different contractual terms, it is recommended that Members should consult the Association if they are in any doubt as to the scope of cover.

Some CBAs contain no fault liability terms, i.e. the employer (Member) is liable to pay compensation for illness, injury or death regardless of whether there is fault or negligence on the part of the employer, and no deduction is usually allowed in the event that there is contributory negligence on the part of the crew member. A CBA will also normally contain a compensation schedule setting out how much is to be paid in the event of permanent disability or death. The level of compensation will normally vary depending on rank and position and the degree of disability, and the quantum of the compensation is also frequently pre-determined in a schedule according to the severity of the deprivation of bodily functions.

Disputes may arise as to whether any compensation is payable for illness or injury to crew members, or if so, as to the amount of compensation, e.g. what is the degree of disability sustained? Is the disability permanent or is there some form of vocational training that may qualify the crew member for other positions on board or ashore? Disputes may also arise as to the law and jurisdiction which is to apply to the contract of employment, as to whether claims in tort can be brought in addition to the claims arising under the contract of employment, and if so, whether any contractual compensation paid or payable can be deducted from any damages that may be payable in tort. Furthermore, in the event of the death of a crew member, disputes may arise as to who is entitled to receive compensation, particularly if there are competing heirs.

Cover is available not only for the Member's liability to pay compensation, i.e. pre-determined contractual payments, but also for any liability that he has at law, i.e. other than under contract, to pay damages for the injury, illness or death which a crew member might sustain as a result of a tortious act or omission on the part of the Member or his servants or agents. Under most contracts of employment damages are not payable in addition to the contractual compensation since the contractual compensation is payable regardless of fault, but, as noted above, this is sometimes challenged by claimants who rely on statutory provisions or common law principles that apply in the jurisdiction where the claim is brought. Consequently, cover is also available for the Member's legal liability to pay damages, whether or not in addition to the contractual compensation. Such liability to pay damages may in certain circumstances exceed the financial loss which has been sustained or which was anticipated. For example, the Member may be held liable by a court or tribunal to pay damages for non-pecuniary losses such as pain and suffering (or conscious pre-death pain and suffering) and cover is

available for such legal liability. Cover may also be available for exemplary or other forms of punitive damages unless such liability results from the wilful misconduct or reckless disregard of the Member.

(H) …liability for costs and expenses…occasioned by a close relative having died or become seriously ill... (Rule 19.1.d)
Should a crew member, whilst serving on a vessel, learn of the serious illness or death of a close relative, e.g. a spouse, parent, child, adopted child or stepchild, the terms of the contract of employment or of any applicable statutory provisions may give him a right to take compassionate leave, and may oblige the employer (Member) to pay the costs of travel, either to the location of the funeral or, in the case of serious illness, to the residence of the close relative, whether or not this is the same residence as that of the crew member. Cover is available for such travel costs and expenses, including any costs and expenses which are reasonably incurred for food and lodging whilst en route.

Cover is also available for costs and expenses necessarily incurred in sending to the vessel a substitute for the crew member who has been granted compassionate leave. However, the Member must satisfy the Association in such circumstances that the substitute was needed to ensure that the vessel remained properly manned and seaworthy and that the remaining crew members could not manage to operate the vessel safely in the absence of the crew member who has been granted compassionate leave. However, cover is not available for the liability of the Member to pay wages to the crew member whilst on compassionate leave, or to pay the wages of any substitute crew member as such wages are considered to be normal operational costs.

(I) …liability for wages payable to an injured or sick Member of the Crew or on death to its estate... (Rule 19.1.e)
The provisions of most crew contracts, CBAs and statutes and the provisions of the MLC and the common law oblige employers to pay sick wages to injured or ill crew members. The quantum of the wages that are payable pursuant to the contract of employment may be less than the full wages, e.g. the monthly basic wage without provision for overtime. Such sick wages are usually payable until the crew member has recovered and is again fit for duty, or until he has been declared permanently disabled, or until the maximum number of days for which sick wages are payable, as specified in the contract of employment, has been reached.

Cover is available for the Member's liability to pay such wages provided that the incapacity of the crew member for work has been medically certified. However, cover is not available for payment of sick wages beyond the maximum number of days stipulated in the contract of employment.

Upon the death of a crew member, the employer is usually obliged to pay the sick wages which he was entitled to receive during the period of illness or injury leading up to the death to the legal beneficiaries of the crew member. Cover is available for such liability. However, the Member must ensure that such payment is made only to those beneficiaries who are entitled under the applicable law to receive such payment.

(J) …liability in respect of loss of or damage to the personal effects of a Crew member; (Rule 19.1.f)
Since the vessel is the temporary home of crew members during their periods of service it is important that they be allowed to take on board personal belongings that can support their welfare. However, such personal effects can be lost or damaged during the period of service and most contracts of employment oblige the employer to reimburse crew members for such loss or damage regardless of whether it has been caused by the fault or negligence of the Member. Some employment contracts oblige the employer to reimburse the crew member only if the effects are lost or damaged as a result of a total or constructive loss of the vessel, or as a result of a major casualty, whilst other contracts oblige the employer to reimburse the crew member for all accidental loss or damage that may arise during the course of the crew member's service on board the vessel.

However, most contracts also impose a limit on the employer's liability for such loss or damage (commonly in the range of USD 2,000-4,000 per crew member) and require the crew member to submit written details of the items lost or damaged and of their value together with supporting documentation.

Similar liability for loss of or damage to personal effects may also arise under international conventions, statute or the common law. Cover is available for such liability whether it arises under contract, international conventions, statute or the common law provided, in the case of liability that arises pursuant to the terms of a contract, and which would not have arisen but for such terms, that those terms have been previously approved by the Association. See Rule 19.1 (i) and Rule 42.1.

(K) The Association shall cover: …[liabilities pursuant to Rule 19.1.a-f] provided that under this Rule 19.1: (Rule 19.1 provisos i-iv)
It has already been referred to proviso (i) above. In short, crew contracts of employment that give rise to liability that would not have arisen but for those terms, must have been previously approved by the Association if cover is to be made available for such liability. See also the guidance to Rule 42.1.

Further, proviso ii makes it clear that, whilst cover is available for liability for loss of or damage to personal effects, this does not extend to valuables or to any other article which does not, in the opinion of the Association, constitute an essential requirement for the crew. The Association will take a pragmatic view of what is essential for the purposes of the Rule and normally makes

cover available in respect of the Member's liability for loss of or damage to articles that are normally found in living quarters ashore and which have been taken on board to improve the welfare of the crew, e.g. books, mobile phones and other electronic devices.

Proviso iii refers to cash, jewellery, collector's items or other items of high value on board the vessel. Therefore, proviso iii makes it clear that cover is not available in the event of the loss of, or damage to, such items, even if the Member is liable to compensate the crew member for such loss or damage, unless the Association has been informed in advance of the presence of such items and the Member has complied with any directions given by the Association in such circumstances. However, cover is normally available for liability that the Member has for loss of cash belonging to crew members and which has been held in custody in the vessel's safe. Such loss can occur, for example, when the vessel has sunk or has been attacked by pirates.

Finally, proviso iv makes it clear that cover is not available for liabilities that are incurred by the Member by virtue of indemnities or guarantees given by them to third parties. For example, if the Member has agreed to indemnify the manning agent for liability incurred by the manning agent in relation to the crew, cover is not available under Rule 19 in respect of such liability.

(L) The Association shall cover liability to repatriate a member of the Crew pursuant to any statutory enactment giving effect to the Maritime Labour Convention 2006 or any materially similar enactment, provided always that there shall be no recovery in respect of liabilities arising out of termination of any agreement, or the sale of the Vessel, or any other act of the Member in respect of the Vessel, save and to the extent permitted by this Rule 19.2 in respect of the Member's liability for such expenses under the Maritime Labour Convention 2006 (Rule 19.2)

The Maritime Labour Convention (MLC) has been described as the fourth fundamental pillar of shipping regulations (the other three being the SOLAS, MARPOL and STCW Conventions) and came into force on 20 August 2013. The convention establishes minimum standards for the working conditions of seafarers and requires the flag state to establish an inspection and certification system to ensure that such minimum standards are met.

Pursuant to the MLC the owner will be liable for

- outstanding wages (limited to 4 months) and repatriation of seafarers together with incidental costs and expenses in accordance with MLC Regulation 2.5.2, Standard A2.5.2 and Guideline B2.5, and
- compensation for death or long-term disability in accordance with Regulation 4.2, Standard A4.2.1 paragraph 1b and Guideline B4.2.

While Rule 19.1 provides cover for repatriation expenses and loss of earnings resulting from casualties, they do not provide such cover when the liability

is incurred as a result of, for example the Member's insolvency. The MLC, on the other hand, imposes liability on the shipowner in such circumstances and Rule 19.2 is intended, subject to the terms specified in the Rules, to extend cover for the Member's liability in such circumstances. However, the covers that are available under Rules 19.1 on the one hand, and Rule 19.2 on the other hand, differ. The cover that is provided under Rule 19.1 forms part of standard club cover while the cover that is available under Rule 19.2 is subject to the special terms that are set out in Rule 67.3.(c). In practice it means that any payment made pursuant to Rule 19.2 as a result of, for example the Member's insolvency, shall be deemed to be made by the Association as agent only of the Member and the Member shall be obliged to reimburse the Association for the full amount of such payment.

Furthermore, Rule 19.2 provides expressly that cover is not available if the Member incurs liability "in respect of liabilities arising out of the termination of any agreement, or the sale of the Vessel, or any other act of the Member in respect of the Vessel" since such liabilities are considered to be part of the Member's own normal operating costs and not liabilities to which the other Members of the Association should contribute in the context of mutuality. However, if liability is imposed on the Member in such circumstances by the MLC, but the Member, nevertheless, fails to discharge his obligations in that regard, Rule 67.3 (c) provides that the Association shall do so on behalf of the Member but on terms that the Association does so as agent for the Member, and that the Member shall reimburse the Association for such payment.

Rule 20 Liability for persons other than Crew members

The Association shall cover liability resulting from the injury to, or illness or death of, persons other than members of the Crew.

Guidance

(A) ...liability resulting from the injury to, or illness or death of... (Rule 20)
Most laws impose a duty on the owner to ensure that his vessel is safe for persons who are carried on board or otherwise involved in work directly related to the operation of the vessel. The Member may incur liability for failure to ensure such safety. On the other hand, a person carried on board do also have a duty to exercise such level of care for his own safety as is reasonable given his knowledge and experience of vessels, and to comply with all on board instructions regarding safety precautions.

The cover that is available to a Member under Rule 20 is for liability that a Member has to persons other than crew members. Such liability normally arises under statutory law (as for example the Norwegian Maritime Code, section 151) or common law (tort) provisions. Liability can also arise by virtue of contract, but is less commonplace, and is, in any event, often affected by statutory provisions. Therefore, there is, normally, little opportunity for the Member to control the jurisdiction in which the claim is brought, which could be where the incident occurred, or where the claimant resides, or where the Member is domiciled, or the flag state, or the country of domicile of the person (or relatives) affected.

If liability arises pursuant to contractual terms but would not have arisen if there had not been any such terms, cover is available, only to the extent that the contract terms have previously been approved by the Association. See also guidance to Rule 42.1 in respect of terms of contract resulting in greater liability than follow from terms of contract which are customarily in the area where the vessel operates.

In some cases, the person suffering injury, illness or death will be the employee of the Member's contract partner, and the contract may contain 'hold harmless' and/or indemnity provisions. Mutual indemnity, i.e. 'knock-for-knock', provisions whereby each contractual party agrees to hold the other harmless for injury etc., to its own employees, and to indemnify the other party for losses resulting from the acts of its own employees, are generally acceptable, but Members are, nonetheless, advised to consult the Association prior to accepting such provisions. See the guidance to Rule 58 about 'knock for knock' clauses.

Cover is available for the Member's liability for any type of injury or illness so long as the court or tribunal seized of the case has ruled that a medical

condition has given rise to a right to compensation or damages and is the result of an incident for which the Member is legally liable under the governing law. Cover is available not only in respect of physical conditions but also in respect of psychological conditions such as emotional distress, impairing anxiety or post-traumatic stress disorder.

Whilst cover is available for the Member's liability for illness as well as for injury or death, cover is called upon in most cases in relation to liability for injury or death. However, liability for illness could arise in relation to the working environment on board, e.g. shipyard workers suffering from asbestos-related diseases that can be traced to the entered vessel. Citizens ashore can also suffer illness or death as a result of toxic fumes escaping from the vessel.

The cover that is available under Rule 20 is subject to the overriding provisions of Rule 2.3 which make it clear that cover is available only for liabilities that the Member incurs in direct connection with the operation of the vessel and in respect of the Member's interest in the vessel. Therefore, if the Member is the owner or operator of a terminal, berth, port installation and/or equipment, and injury, illness or death is caused by the Member to persons who are not carried on board by an accident for which the Member is liable in his capacity as owner or operator of such other facility rather than in his capacity as shipowner, cover is not available for such liability.

(B) ...persons other than members of the Crew (Rule 20)
The expression 'crew' is defined in Rule 1.1 and will comprise officers, including the platform manager or master and other workers contractually obliged to serve on board the vessel as a part of its regular complement under the terms of a contract of service or employment with the Member (and/or co-assured(s)). Liabilities resulting from injury to, or illness or death of, a member of the crew will fall within the scope of Rule 19.

However, not all persons being or working on board the vessel are crew. For example, a pilot would not form a part of the crew as defined. Although he is obliged to serve on the vessel under the terms of his employment contract, he is not part of the regular complement of the vessel. The same will be the case with regard to repairmen or maintenance personnel, temporary visitors, relatives of a crew member, personnel of other external service provider engaged to carry out defined works on board and even refugees.

The cover that is available to a Member under Rule 20 is for liability, as discussed under paragraph (A) above, that a Member has to persons other than crew members as defined. Thus, cover is available in respect of the Member's liability under the governing law, as for example the Norwegian Maritime Code, section 151, for injury to, or illness or death of, persons other than crew members irrespective of whether such other persons have been

carried on board the vessel or not. In other words, the cover available under Rule 20 will include liability resulting from injury to, or illness or death of, any other persons carried on board the insured vessel, as for example a temporary visitor, as well as persons not carried on board the vessel, as for example a worker at the supply base. However, cover under this Rule 20 is not available for liability for loss of or damage to the effects of persons other than crew.

Rule 21 Diversion expenses

The Association shall cover extra costs of fuel, insurance, wages, stores, provisions and port charges attributable to a diversion, over and above the costs that would have been incurred but for the diversion, where these are incurred solely for the purpose of securing treatment for an injured or sick person on board, or to transfer a deceased person on board to shore for repatriation, or for the purpose of searching for a person missing from the Vessel, or necessarily incurred while awaiting a substitute for such person, or for the purpose of saving persons at sea.

Guidance

(A) …costs attributable to a diversion… (Rule 21)

Diversion must be distinguished from deviation. It is generally accepted that a ship which diverts from its intended course or route is fully justified in doing so and may, indeed, be obliged to do so in certain circumstances, e.g. in order to ensure the evacuation of ill or injured crew members or to search for crew members who are missing at sea. Basic humanitarian and moral principles apply in this regard, but there may also be a legal duty to divert to assist persons in distress and breach of such duty may give rise to liability.

Deviation, on the other hand, is a term which is used to describe an intentional and unenforced alteration of course or route or delay, that cannot be justified in the sense discussed above since it is done for the sole benefit of the shipowner and often contrary to the interests of other parties to the venture.

Whereas a deviation usually results in liabilities and losses and may deprive the carrier of defences or rights of limitation that might otherwise be available to him, as well as his rights to P&I cover, a justified diversion should not result in liability.

However, the Member may well incur extra costs when his vessel is diverted and cover is available under Rule 21 in respect of certain extra costs incurred by the Member in the event of such diversion.

(B) The Association shall cover extra costs and expenses… (Rule 21)

Cover is available only for those costs that are specifically listed in the Rule, i.e. fuel, insurance, wages, stores, provisions and port charges and only to the extent that such costs exceed what would have been incurred regardless of the diversion. When making a claim on the Association the Member must calculate the extra costs and explain how they have been caused by the diversion.

Cover is available for the cost of additional fuel, which includes not only extra fuel consumed as a result of the extra distance steamed, but also as a result of higher speed necessitated by the desire to reach the rescue site as quickly as possible. Additional port charges include not only calls at

unscheduled ports, but also extra costs incurred as a result of a prolonged stay in a port to await a substitute crew member and include the cost of pilots, tugs and port dues etc.

Additional stores include the extra consumption of any kind of ship's stores, such as lubricating oil, electric components etc., whilst additional provisions refers to the extra consumption of food, beverages etc.

Extra insurance costs may be incurred if the diversion requires the vessel to move into areas which require the payment of additional premium such as that required by war risk underwriters when the vessel sails in certain war risk areas, or that required by hull insurers if the vessel is not ice-strengthened and is diverted to an area with ice.

The extra cost of wages does not include wages which are paid to crew members for the extra time taken by the vessel to complete its original voyage as a result of the diversion, but does include the payment of overtime to crew members who take part in searches for missing persons at sea, as well as additional wages that are payable to the crew if the vessel enters a war risk zone during the course of the diversion.

Cover is not available for extra costs incurred as a result of the diversion in respect of items other than those listed or for other loss arising as a result of delay caused by the diversion, e.g. the loss of a subsequent fixture.

(C) …incurred solely for the purpose of securing treatment for an injured or sick person on board, or to transfer a deceased person on board to shore for repatriation, or for the purpose of searching for a person missing from the Vessel, or necessarily incurred while awaiting a substitute, or for the purpose of saving persons at sea. (Rule 21)
Cover is available under Rule 21 for extra costs incurred by the Member in diverting the vessel when such extra costs are incurred in the following circumstances:

1) when the vessel is diverted in order to secure treatment for an injured or sick person on board;

2) when the vessel is diverted in order to search for a person who is reported to be missing from the entered vessel;

3) when the vessel is diverted in order to search for a person who is reported to be missing from another ship;

4) when the vessel is diverted in order to transfer a deceased person on board to shore for repatriation. See Member Circular No. 5/2021. The extension of cover was given retrospective effect from 20 February 2021;

5) when the vessel is waiting for a substitute for the person (usually a crew member) who is reported missing or who has been taken off the vessel to secure his treatment, provided that the Member can demonstrate to the satisfaction of the Association that it was necessary for the vessel to wait for the substitute, i.e. the Member needs to prove that the vessel is not seaworthy to continue the voyage or planned operation without the substitute and that it is not possible to obtain a temporary permit from the relevant authorities in this regard;

6) when the vessel is diverted to assist in the saving of persons at sea. For instance, when a foundering fishing vessel broadcasts an emergency at sea and coastal authorities instruct all vessels in the area to divert and head for the stricken fishing vessel in order to save the lives of its crew.

Cover is available only if the relevant costs are incurred solely as a result of one of the reasons described in 1 – 6 above. Therefore, if the diversion has been caused partly by one of those reasons, and partly by another reason, cover is not available for extra costs incurred as a result of the diversion unless the Member can identify precisely what costs can be attributed to one of the reasons in 1 – 6 above.

Rule 22 Persons saved at sea

The Association shall cover costs and expenses directly and reasonably incurred in consequence of the Vessel having persons saved at sea on board, but only to the extent that the Member is legally liable for the costs and expenses or they are incurred with the approval of the Association. The cover does not include consequential loss of profit or depreciation.

Guidance

(A) ...persons saved at sea (Rule 22)

The cover available under Rule 22 regarding costs incurred in consequence of the vessel having persons saved at sea on board may in practice be more relevant for ordinary merchant ships insured under the Rules for Ships than for stationary mobile offshore units. However, a mobile offshore unit may also become involved in such instances when the vessel, for example, is navigating to port for repairs or dry docking or to another offshore field in another country.

A 'person saved at sea' is a catch-all expression and includes migrants, refugees and any person saved from another ship that is in distress.

(B) The Association shall cover costs and expenses... (Rule 22)

The Member may incur additional costs and expenses in maintaining refugees or persons saved at sea which expenditure may continue after the vessel has reached port. Cover is available for the Member's liability for such costs and expenses and includes costs and expenses incurred in relation to guarding, custody, immigration, deportation and repatriation.

(C) ...directly and reasonably incurred in consequence of... (Rule 22)

Cover is only available for costs and expenses that are considered by the Association to be 'directly and reasonably incurred in consequence of having refugees or persons saved at sea on board'. Costs and expenses may include, e.g. subsistence, medication, as well as costs incurred to disembark stowaways.

Whether the costs and expenses are "reasonably incurred" will be assessed on the merits of each case. Assuming that the above test is met, there is in principle no limitation on the types of costs and expenses for which cover is available under Rule 22, but in most cases these will be restricted to extra costs of fuel, insurance, wages, stores, provisions and port charges – over and above what would have been incurred but for the diversion to disembark the refugee(s) or persons(s) saved at sea. However, it is important to note the proviso in Rule 22 that the cover does not include consequential loss of profit or depreciation. See also the guidance to Rule 21 regarding cover for diversion expenses.

(D) ...only to the extent that the Member is legally liable for the costs and expenses or they are incurred with the approval of the Association... (Rule 22)

The immigration authorities of many countries maintain a watch over a vessel which has refugees on board or, alternatively, place such persons in custody ashore for the duration of the vessel's call at that port. In one case, the vessel was not permitted by the coastal state to land refugees saved at sea and the state used military forces to enforce this. Whatever the circumstances, cover is available under Rule 22 either when the Member has a legal liability for the costs or expenses or when the expenditure has been incurred with the approval of the Association.

Cover is also available for the Member's liability to pay costs and expenses incurred whilst the immigration authorities consider asylum or other immigration applications by the alleged refugees, including the cost of repatriation, if the application for asylum or other immigration is denied and the cost of accompanying guards if considered necessary.

Rule 23 Collision with vessels

1 The Association shall cover liability to pay damages to any other person incurred as a result of a collision with another vessel, if and to the extent that such liability is not covered under the Hull Policies, provided that

   a the Member shall not be entitled to recover from the Association any deductible borne under the Hull Policies; and

   b the cover under this Rule shall exclude liability in respect of persons or property on board the Vessel.

2 Unless otherwise agreed between the Member and the Association as a term of the Vessel's entry in the Association, if both vessels are to blame, then where the liability of either or both of the vessels in collision becomes limited by law, claims under Rule 23.1 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 the latter'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.

Guidance

(A) …liability…incurred as a result of a collision… (Rule 23.1)

Cover is available under Rule 23 for liabilities arising where an insured vessel is involved in a collision with another ship or vessel unless cover for such liability is available to the Member under the vessel's hull policies. Therefore, the Rule operates only where two or more ships or vessels are involved in a collision, but not where a collision occurs between an insured vessel and a fixed or floating object. Borderline cases may sometimes arise in respect of whether a mobile offshore unit is a ship or vessel as required in Rule 23. See further comments under paragraph (C) below. However, cover for liability for loss or damage to any fixed or floating object by reason of contact between the insured vessel and such object is available under Rule 24.

Collision liability

Liability in respect of ship collisions is usually founded on principles of negligence and breach of the duty of care. However, several countries give effect to the rules for the apportionment of liability set out in the International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels, signed at Brussels, 3 September 1910, normally referred to as the Brussels Convention of 1910, which has been enacted by the majority of maritime countries, although not by the United States. However, the general rule under US law is nevertheless that, if a collision occurs in non-US territorial waters, or if both ships involved in a collision in international waters have the same flag, or if their separate flag states apply the same law,

liability and damages are determined according to the relevant non-US law. Consequently, if a collision has occurred outside US territorial waters and the flag states of the ships involved have ratified the Brussels Convention of 1910, the US courts are likely to apply the rules of that Convention instead of US domestic rules of law concerning apportionment of liability.

The Brussels Convention of 1910 determines that where a collision is caused by the fault of one or more ships, the owners of those ships shall each pay damages to the other corresponding to the proportion of blame which each ship is to bear for the collision. Further, where damage is caused to property belonging to third parties, e.g. to cargo owners, the owner of each ship is liable to such third parties only to the degree that it is at fault for the collision. However, the owners of both ships are jointly and severally liable to third parties in respect of claims for death or personal injury. Consequently, personal injury claimants may sue the owners of either or both ships for the entirety of their damages, which liability is then brought back into the collision adjustment between the two ships together with other claims which have arisen as a result of the collision.

The shipowner is liable for the negligent acts, defaults and omissions of all persons for whom he is legally responsible, i.e. the officers and crew, and also for pilots and tug operators. The question of whether or not there has been a failure to exercise due care in the navigation of a vessel is generally assessed by reference to the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS), which set out the rules of navigation that all ships registered in countries that have accepted the COLREGS are bound to follow. However, local rules of navigation may also apply in certain ports, harbours or tidal rivers and these may take precedence over the COLREGS or, at least, may be taken into consideration by the court when assessing the conduct of each party and the question of fault.

A failure to exercise a duty of care in the navigation of a vessel may also give rise to other liabilities, such as civil or criminal fines or other penalties for breach of any safety regulations imposed, e.g. on the shipowner, master and/or other crew. However, cover is not available under Rule 23 in respect of such fines or penalties. Nor will such fines fall within the three categories of fines that are covered as of right under Rule 29.

The owner of a vessel who incurs liability as a result of a collision may be entitled to limit his liability under the applicable law for claims that are made against him by the owner of the other ship, e.g. pursuant to the provisions of the London Convention for the Limitation of Maritime Claims, 1976, or the 1996 Protocol to that Convention, or pursuant to domestic rules of law. Furthermore, the owners of such ships may also have a right to limit the

liability that they may have to third parties for claims that are made against them by such third parties as a result of the collision, e.g. for loss of life or personal injury, or for loss of or damage to cargo or other property.

P&I cover for collision liability

Rule 23 is intended to be a supplement to, and not a substitute for, the cover that is available to the Member under the Member's hull policies for collision liability. Therefore, subject to any other relevant restrictions in the Rules, cover is available under Rule 23 to indemnify the Member for damages which the Member is legally liable to pay (and does pay) to other parties affected by the collision but only to the extent that such liability is not covered under his hull policies. Relevant other parties include those parties that have an interest in the other ship, or its cargo or any other property or persons on board the other ship. For example, P&I cover under Rule 23 will be available for claims arising out of a collision falling outside the scope of the hull cover due to their nature and which traditionally have been treated as P&I risks. See further comments in paragraph (D) below. However, cover is not available under Rule 23 for the Member's liability in respect of property or persons on board the insured vessel although cover may be available under other Rules. See for example Rules 19, 20 and 26.

(B) …damages… (Rule 23.1)

The amount which is payable by way of damages may differ depending upon the law which governs the dispute between the parties. The governing law may be the law of the country where the collision occurred, or the law of the flag of each ship. Alternatively, the governing law and jurisdiction may be determined by an agreement entered into by the parties after the collision.

The injured party is normally entitled to recover only that loss or damage which is the direct and foreseeable consequence of the collision. Furthermore, if the injured party has failed to take reasonable steps to avoid or minimise his loss or damage, i.e. he has failed to mitigate his losses, he will normally be entitled to be compensated only for that loss or damage for which he would have been entitled to receive compensation had he acted reasonably.

The damages which are normally recoverable by one party from the other party include:

i The reasonable cost of both temporary and permanent repairs to the damaged ship or, where it is beyond economic repair, its insured value, market value or replacement cost;

ii The value of lost bunkers or equipment that was on board the damaged ship, or the cost of their replacement or repair if damaged;

iii Loss of earnings;

iv Liabilities to third parties caused by the collision, e.g. liability in respect of lost or damaged cargo, or personal injury to, or death of, persons that are on board the damaged ship;

v Costs and expenses reasonably incurred as a result of the collision, e.g. salvage and general average charges and agents' and surveyors' fees;

vi Liability to reimburse costs and expenses incurred in respect of any necessary measures that are taken to chart, mark, light, raise, remove or destroy the wreck of the (other) ship which has been lost as result of the collision.

(C) …another vessel… (Rule 23.1)

Rule 23 applies only to collisions between ships or vessels. The test of what is a 'ship' or a 'vessel' is one of fact based upon a number of factors. As to Norwegian law, reference is made to Maritime law (Sjørett). 8th edition, by Thor Falkanger and Hans Jacob Bull, Chapter 2.1. Under English law the UK Merchant Shipping Act of 1995 (MSA) offers guidance. In section 313 of the MSA the word 'ship' is defined to "include every description of vessel used in navigation". In Part II, paragraph 12 of Schedule 7 to the MSA this is extended to include 'any structure …launched for use in navigation as a ship….'. In Perks v Clark (2001 2 LLR), the English Court of Appeal held that a jack-up rig that was towed from one location to another for the purpose of drilling for oil was a ship and concluded that so long as navigation was a significant part of the function of the unit, "the mere fact that it is incidental to some more specialised function such as dredging or provision of accommodation does not take it outside the definition". Consequently, cover would normally be available under Rule 23 for liabilities resulting from a collision between an insured vessel and a barge or a non-powered craft, whereas cover would not be available for a collision between a vessel and a landing stage or a buoy or stationary offshore facility not used in navigation. Liabilities arising out of contact between the insured vessel and a fixed and floating object will fall within the scope of Rule 24.

(D) …such liability is not covered under the Hull Policies on the Vessel… (Rule 23.1)

The P&I cover supplements the hull cover. The cover available under Rule 23 for collision liabilities incurred by the Member shall only include such liabilities to the extent they are not covered by his hull policies. This exclusion is based on the expectation and understanding that the Member will follow normal prudent practise and ensure that the entered vessel is fully insured for hull and machinery risks on 'standard terms' for not less than the market value of the vessel. See Rule 52.

The Association considers the hull policies which provide cover for hull and machinery risks on English, Scandinavian, American, German, Japanese or French terms and conditions to be on 'standard terms'. Therefore, if the vessel is insured for hull and machinery risks on other terms and conditions, the Association will need to consider and evaluate such terms and conditions in order to determine whether they constitute 'standard terms' for the purposes of this Rule.

Provided that the Association is satisfied that the vessel has been insured on 'standard terms,' cover is available notwithstanding the fact that such 'standard terms' do not all provide exactly the same scope of cover for collision liability. For example, for there to be a 'collision' under the English ITC Hull conditions, there must be physical contact between the hulls of the ships and/or their appurtenances, e.g. an anchor or cargo handling gear. By contrast, under the Nordic Marine Insurance Plan, there may be a 'collision' in circumstances where a ship causes another ship to run aground as a result of taking avoiding action, without there being physical contact between the hulls of the ships. Furthermore, under ITC Hulls, the hull insurers normally cover three-fourths of the assured's collision liability whereas under the Nordic Marine Insurance Plan the hull insurers cover the collision liability in full, albeit limited to the insured value of the insured ship. The degree and extent of the cover that is provided varies and a rough comparison can be found at the end of the guidance to this Rule.

When the vessel's hull policies cover only three-fourths of the vessel's collision liability (which is usually the case when the vessel is insured under English terms and conditions), cover is available under Rule 23 for the remaining one-fourth of that liability. The Association may also agree to offer collision liability cover for a proportion other than one-fourth if the proportion of collision liability excluded under the Member's hull policies is not one-fourth. However, such arrangements are unusual.

A standard hull policy will usually limit the cover for collision liability to the proportion of liability insured multiplied by the insured value of the vessel. Where the Member's collision liability exceeds the sum recoverable under the hull policies, including the hull-interest insurance if such insurance is taken out (see for example the Nordic Marine Insurance Plan of 2013, version 2023, clause 14-1 (b)), solely by reason of such a limit on the sum insured, cover is available from the Association for the amount by which the collision liability exceeds that limit. This may occur, e.g. if the entered vessel has a relatively low value, but has to bear the major proportion of liability for a collision with another ship that has a very high value and is unable to limit that liability under the applicable law. Alternatively, the excess liability cover that is available from the Association under Rule 23 might be required if there was a large claim against the entered vessel as a result of the salvage or wreck removal of the other ship.

It would be contrary to the concept of mutuality if a Member who fails to insure his vessel for its full market value and who, thereby, runs the risk that there will be a shortfall in the collision liability cover provided by the hull policies, could be allowed to remedy this in full by making a claim for the shortfall under his P&I insurance. Therefore, if the insured vessel is insured under the hull policies for a value that is lower than its true market value, i.e. under-insured, cover is available under Rule 23 only for the excess liability which would not have been recoverable under the hull policies had the vessel been insured for its true market value as required under Rule 52. Such under-insurance can occur if, for example, the market value of the ship increases over time, and the shipowner fails to declare a higher value to his hull insurers.

Finally, P&I cover under Rule 23 will be available for claims arising out of a collision falling outside the scope of the hull cover due to their nature. The exclusions in the Nordic Marine Insurance Plan of 2013, version 2023, section 13 -1, second paragraph, sub-sections (a) to (j), are illustrating. Sub-sections (b) and (c) exclude for example claims in respect of personal injury regardless of whether the injured persons were on board the insured vessel, the other ship involved in the collision or elsewhere. Sub-section (f) excludes claims in respect of pollution damage irrespective of whether the oil or any other substance have escaped from the insured vessel or are derived from any other source. (See the explanatory notes to the Nordic Marine Insurance Plan of 2013, version 2023, section 13 – 1).

Example
Ship A collides with ship B and ship A is held 100 per cent to blame for the collision. Ship B suffers losses of USD 15 million. Consequently, ship A is liable to pay ship B its full claim of USD 15 million. However, the hull and machinery (H&M) policy of ship A is subject to the Nordic Marine Insurance Plan which includes standard 4/4ths collision liability cover with an insured value of USD 12 million. Therefore, since the cover for collision liability under the hull policy for ship A is limited to USD 12 million, i.e. the sum insured, ship A's liability to pay the balance of USD 3 million is not covered by the hull policy with the result that cover for that balance is available under Rule 23.

The cover for collision liability is usually additional to the cover for loss of, or damage to, the insured vessel. Therefore, the hull insurers may be liable for double the sum insured if the insured vessel becomes an actual or constructive total loss as a result of the collision and the liability of that ship to the other ship(s) equals or exceeds the sum insured.

Finally, cover is not available under Rule 23 in circumstances where, although the Member has the right of recovery under the hull policies, he fails to make the recovery for some reason, e.g. due to governing sanction legislation or due to the insolvency of one or more hull insurers. The reason for this is that the

Association is not privy to, and has no control over, the manner in which the Member chooses to place his hull policies. Therefore, it would be contrary to the concept and spirit of mutuality to require other Members to bear the cost of the Member's decision to place his hull policies on an unsatisfactory basis.

(E) …the Member shall not be entitled to recover from the Association any deductible… (Rule 23.1.a)
A Member may decide for many reasons to agree to accept a high or low deductible under the hull policies. This is a personal decision for the Member and the Association is not privy to that decision which is a matter that affects the Member's private business arrangements and not something that should prejudice the interests of the other Members in the context of mutuality. Therefore, cover is not available under Rule 23 for any collision liability that falls within the deductible borne by the Member under the hull policies.

(F) …exclude liability in respect of persons or property on board the Vessel… (Rule 23.1.b)
Cover for the Member's liability to persons or property on board the insured vessel is not available under Rule 23, but may be available under Rules 19, 20 and 26.

(G) …if both ships are to blame… (Rule 23.2)
Where both vessels are damaged as a result of a collision caused by the fault of both vessels, each vessel is liable for the damage caused by it to the other. The starting point in most cases is that such liability is ascertained on the principle of cross liability.

Example

'Cross liability'

If ship A is 60 per cent to blame for the collision and suffers damage of USD 20 million whilst ship B is 40 per cent to blame and suffers damage of USD 15 million, the 'cross liability' is calculated as follows:

- Ship A is liable to B for USD 9 million (i.e. 60 per cent of the cost of the damage to ship B estimated to USD 15 million)
- Ship B is liable to A for USD 8 million (i.e. 40 per cent of the cost of the damage to ship A estimated to USD 20 million)

'*Single liability*'

However, where either or both ships can limit their liability by law, the claims are resolved in accordance with the principle of single liability. This means that the claims will be set off against each other to produce a balance which is payable by one ship to the other.

Liability arising as a result of a collision can be even more complicated. For example, if a collision were to occur between ship A and ship B, caused partly as a result of the unseaworthy state of ship A and partly as a result of the negligent navigation of ship B, the following claims might arise:

1 Hull damage to ship A – USD 1 million

2 Damage to cargo on ship A – USD 900,000

3 Hull damage to ship B – USD 4 million

4 Injury to passengers on ship B – USD 3 million

Assuming that, pursuant to the Hague-Visby Rules, ship A is entitled to limit its liability for the damage to the cargo that is carried on ship A to the sum of USD 300,000 whilst, pursuant to the Athens Convention, ship B is entitled to limit its liability for injury to passengers carried on ship B to USD 1 million, the claim which ship A will make against ship B is USD 1.3 million and the cross claim which ship B will make against ship A is USD 5 million.

If ships A and B are each 50 per cent to blame for the incident, the claims will be adjusted as follows:

– Ship A recovers 50 per cent of USD 1.3 million, i.e. USD 650,000 from ship B

– Ship B recovers 50 per cent of USD 5 million, i.e. USD 2.5 million from ship A

Therefore, ship A is liable to ship B for USD 1.85 million

Depending on the tonnage of ship A, ship A may then be able to limit its liability by law (for example under the 1976 Limitation Convention) for the claim brought against it by ship B to a sum lower than USD 1.85 million.

'Internal settlement'

However, this principle may not produce a fair result when claims are allocated between the shipowner, his hull underwriters and his P&I club. Consequently, for the purpose of 'internal settlement' between the assured and his different insurers, the claim is assessed as if each ship had actually made payment to the other ship of its full share of the other ship's damages, i.e. on the 'cross liability' principle. But, where both ships are damaged as a result of a collision caused by the fault of both ships and one or both of them is/are able to limit its/their liability, the cover that is available from the Association for the Member's collision liability is governed by the principle of single liability and not cross liability. The reason for this exception is that, under the laws of most jurisdictions, an owner may limit only his net liability, as calculated under the single liability principle, and not his gross liability, as calculated under the cross liability principle.

Liabilities covered by Hull Policies – collision with other ships

√ = Covered by hull policy

	English conditions (Institute Time Clauses-Hulls 1983, 3/4ths cover)	Nordic conditions (Nordic Marine Insurance Plan 2013, version 2023)	United States conditions (American Institute Hull Clauses)	German conditions (DTV hull Clauses)
Damage to other vessel and cargo on board the other vessel	√	√	√	√
Loss or damage resulting from entanglement of anchors (no contact between the hulls of the two vessels)	√		√	√
Loss or damage to property (other than cargo) on board other vessel	√	√	√	√
Delay or loss of use of other vessel	√	√	√	√
Collision with another vessel which causes collision between that vessel and another ship	√	√	√	√
Removal of wreck of other vessel or property on same (as consequence of collision)		√		√

Rule 24 Damage to fixed or floating objects

The Association shall cover liability for loss of or damage to any fixed or floating object by reason of contact between the Vessel and such object, if and to the extent not covered under the Hull Policies, provided that there shall be no recovery under this Rule 24 in respect of any deductible borne by the Member under the Hull Policies.

Guidance

(A) …any fixed or floating object… (Rule 24)

Cover is available under Rule 24 for liability for contact between the insured vessel and fixed or floating objects unless cover for such liability is available to the Member under the vessel's hull policies.

A 'fixed object' is a structure that does not float and, therefore, is not designed to move or be moved on water, e.g. a harbour, quay, dock, pier, jetty, crane or bridge or a fixed offshore platform, subsea pipeline or power or telecommunication cable.

A 'floating object' is a structure other than a ship that is designed to have buoyancy, e.g. a buoy or a semi-submersible drilling rig, and that may be designed to move on water. It may often be difficult to draw the distinction between a ship and a floating object other than a ship. There is no universally accepted definition of 'ship', although it is frequently referred to the UK Merchant Shipping Act of 1995 defining 'ship' as a 'vessel used in navigation'. In Part II, paragraph 12 of Schedule 7 to the MSA this is extended to include 'any structure …launched for use in navigation as a ship…'. In Perks v Clark (2001 2 LLR), the English Court of Appeal held that a jack-up rig that was towed from one location to another for the purpose of drilling for oil was a ship and concluded that so long as navigation was a significant part of the function of the unit, "the mere fact that it is incidental to some more specialised function such as dredging or provision of accommodation does not take it outside the definition". See also Maritime law (Sjørett) by Thor Falkanger and Hans Jacob Bull, 8th edition, Chapter 2.1. For example, a floating storage unit (FSU) will be stationary so long as it is operating on the field, although it has propulsion and the ability to transport oil as cargo off the field. Thus, a stationary FSU may be deemed to be a 'floating object' for the purpose of Rule 24. On the other hand, once the FSU is disconnected for operational reasons it can be said that it is used in navigation and be treated as a 'ship'.

Fixed and floating objects include both man-made structures that are erected or installed in areas exposed to maritime risks and natural habitat resources with direct or derived economic value which can be damaged

by physical contact with vessels, e.g. coral reefs, and which may result in a claim for restoration costs and natural resource damages. Cover is available for liability to both types of objects but the distinction between 'fixed' and 'floating' objects may be important in relation to the liability of the Member as discussed further below under section (C).

(B) …by reason of contact between the Vessel and such object… (Rule 24)
Cover is available under Rule 24 only where there has been physical contact between the entered vessel and the fixed or floating object and liability for such damage is not covered under the vessel's hull policy (see section (E) for further commentary on this point).

The Association regards the hull and machinery conditions of the Nordic Marine Insurance Plan of 2013, version 2023, as one of the 'standard terms' as discussed under the guidance to Rule 23 for the application and interpretation of Rule 24. The commentary to hull insurance under the Nordic Plan of 2013 (see in particular section 13-1) makes it clear that liability for contact damage (striking) involves physical contact between the insured vessel and another object as a consequence of a movement which results in pressure, e.g. where the vessel causes damage by bumping against a jetty. Contact (striking) may also be the result of 'pulling' or 'sucking', e.g. where the vessel sucks or draws an object towards itself. The act of the vessel 'pulling' the object and thereby causing a 'striking' (i.e. physical contact) falls within the scope of contact damage under the Nordic Marine Insurance Plan's hull cover, but 'pulling' without 'striking' does not, and is, therefore, not the subject of cover under Rule 24 but under Rule 26. A typical example is damage caused by waves or backwash (so called wash damage) which cannot be described as contact (striking) damage and is therefore the subject of cover under Rule 26.

For there to be cover under Rule 24 there must be contact between the entered vessel and the other object. However, for these purposes, the word 'vessel' is construed broadly and includes not merely the hull, but any part of the entered vessel's fixed structure, e.g. accommodation, bridge wings, as well as equipment such as cranes, booms, deck equipment, gangways, anchors, chains, mooring ropes, towing lines etc and also appurtenances that are used regularly by the vessel for its intended purpose, such as a sonar 'streamers' applied to a seismic vessel.

Cover for liability for contact (striking) damage caused by the vessel's equipment, e.g. cranes, booms, gangways, anchors, chains, mooring ropes, towing lines and other similar equipment, is available under Rule 24 only in situations where contact (striking) damage has been caused by the vessel's movement being transmitted through the medium of such equipment.
For example, if a lifeboat, derrick or deck cargo that protrudes out over the vessel's side whilst the vessel is manoeuvring to go alongside makes contact with, and causes damage to, a shore installation, cover is available for the

liability that the Member may have for the contact damage to the shore installation under Rule 24. Similarly, if a gangway which has been hoisted up and fastened makes contact with, and causes damage to, the jetty whilst the vessel is still manoeuvring, cover for such liability for contact damage to the jetty is available under Rule 24.

In contrast, cover is not available under Rule 24 if the contact (striking) damage has been caused by movements of the insured vessel's equipment such as cranes, booms, gangways, anchors, chains, mooring ropes, towing lines and other similar equipment, that have not been caused by the movement of the vessel but merely as a result of the separate and independent use of such equipment. For example, should the vessel's cranes be negligently operated whilst the vessel is safely secured at a berth so that damage is caused to shore equipment, cover is not available under Rule 24 since such damage has not been caused by any movement of the vessel but as a result of the separate and independent use of the vessel's cranes. However, cover might be available under Rule 26.

Similarly, if the vessel is alongside and the vessel's crew incorrectly (i.e. excessively) tighten the vessel's mooring ropes by using the vessel's winches with the result that a bollard is torn loose and the jetty is damaged, cover is not available under Rule 24 but possibly under Rule 26. However, by way of contrast, if the vessel is still moving and a fastened mooring rope were to pull loose a bollard and thereby cause damage to the jetty, cover is available under Rule 24 since the contact damage has been caused by the movements of the vessel being transmitted via the mooring ropes.

Cover is not available under Rule 24 where there has been no physical contact between the entered vessel, or any part of it, or equipment used by it, and the damaged object, e.g. as a result of contamination by oil, chemicals or other substances which have been discharged from, or which have escaped from, the vessel, or where damage has been caused by waves, wakes or swirls caused by the vessel's movement or by the use of its propellers. However, cover may be available under Rules 25 and 26, respectively.

(C) Liability for loss or damage to… (Rule 24)

An owner's liability for damage to a fixed or floating object arises most often in tort but may also arise under contract or under statute or other regulations.

In the case of liability in tort, a shipowner has, both personally and through his servants and agents, a duty to exercise care to ensure that his ship does not cause damage to others. Therefore, if it is found that a sufficient degree of care has not been exercised, and that this has caused the vessel to strike a fixed or floating object, it is likely that the Member will be held liable to compensate the owner of that object for losses sustained as a result.

Where a vessel in motion makes contact with an object that is stationary, particularly where the object is fixed or, if floating, incapable of moving

to avoid contact, there will usually be a presumption that the vessel is to blame for having caused the contact. For example, where a vessel makes contact with a fixed oil platform, it is likely that the shipowner will be held liable for the consequent damage caused to the platform. Depending on the applicable law, the Member may not be able to escape liability even if it can be proved that the contact and damage was not caused by his fault since some rules of law provide for strict liability. For example, under English law, a shipowner may be held liable for damage caused by his ship to a harbour, dock or pier, or any quay or associated works, even if neither he nor his ship is at fault. Likewise, under Norwegian law the shipowner is strictly liable for FFO damage caused by a technical failure of the vessel's reversing mechanism. Another example of strict liability is found in the Norwegian Marine Resources Act of 6 June 2008, section 30, concerning damage to fishing gear.

However, the fact that an object is stationary on or in the water does not necessarily mean that some contributory blame cannot be attributed to its owner in the event of contact with a vessel. The owner or operator of that object is obliged to comply with rules that govern the adequate charting, marking, lighting of, and/or emission of signals from, such objects, and if it is considered likely that contact with the vessel would not have occurred had the owner or operator of the object complied with such rules, this may affect the apportionment of liability for the incident.

Liability for loss of, or damage to, fixed and floating objects may also arise under contract. For example, it can be a pre-condition for the entered vessel's use of a dock, port, berth, terminal or similar facility that the Member must agree to standard 'condition of use' before being allowed to use the facility. Alternatively, such 'condition of use' may be considered to be binding on the shipowner under the applicable law even though he does not sign a contract before using the dock, port etc., if he has in fact used the facility on previous occasions subject to similar contractual terms, i.e. as a result of a prior course of dealing. Alternatively, the 'condition of use' may take the form of local, legally binding regulations which provide that the use of the facility constitutes an implied acceptance of the terms, provided that the Member has been made aware of them, or it can be shown that the vessel has in fact used the facility on previous occasions subject to similar terms.

In practice, there is a variety of such 'condition of use' which can differ substantially both in relation to the basis of liability and in relation to the degree of liability that is imposed on the 'user'. It is usual for 'condition of use' to impose strict liability for any damage caused by the 'user' and to give the owner or operator of the facility a right to be indemnified in respect of any resulting loss or damage. Indeed, liability may be imposed even in circumstances where the owner or operator of the facility is solely to blame for the incident, e.g. due to the negligence of harbour tugs and/or the mooring master during berthing operations. However, should the Member

incur liabilities solely by virtue of the applicability of 'condition of use', cover is available only to the extent that the Association has given prior approval to those terms. See the guidance to Rule 42 about terms of contract in general and in particular the restrictions in cover regarding the use of terms of contract resulting in greater liability than follow from terms of contract customary in the area where the vessel operates.

(D) …loss of or damage to any fixed or floating object… (Rule 24)
The damages that may be claimed after an incident which has caused the loss of, or damage to, a fixed or floating object include:

i The reasonable cost of both temporary and permanent repairs to the object and ancillary equipment or, where the object has become damaged beyond economic repair, its insured value, or market value, or replacement cost;

ii Compensation for the loss of use of the object, i.e. the loss of revenue suffered by its owner or operator by reason of the fact that the object is out of (normal) use as a result of the damage caused by the entered vessel;

iii Third party liabilities, whether arising under contract, statute or in tort, which are incurred by the owner or operator of the object as a result of the contact damages. For example, a terminal operator may be liable under contract to pay compensation to other users of the terminal as a result of the inoperability of loading and discharging equipment caused by the contact incident;

iv Various costs and expenses reasonably incurred by the owner or operator of the object as a result of the damage caused, e.g. survey and inspection fees and costs.

If the object is lost as a result of the contact with the vessel, e.g. it sinks to the seabed, it is possible that the owner or operator of the object may be ordered to chart, mark, raise and/or remove it, and may, therefore, claim reimbursement of the resulting removal costs and expenses from the Member.

However, cover is available for such liability only to the extent that it is not covered under hull policies that are on 'standard terms.' (See (E) below).

The Member, master and/or crew may not only incur liability to compensate the owner of a fixed or floating object for the financial loss sustained as a result of damage but may also become liable to pay fines and penalties. However, cover is not available for such fines and penalties under Rule 24. Nor will such fines fall within the three categories of fines that are covered as of right under Rule 29.

(E) … if and to the extent not covered under the Hull Policies … (Rule 24)
Cover is available for the legal liability that a Member has incurred as a result of physical contact between the entered vessel and a fixed or floating object provided that such liability is not covered under the vessel's hull policies. Therefore, cover is available in such circumstances under Rule 24 subject to the following exceptions:

i cover under Rule 24 will not include damages which are covered under the hull policies or which would have been covered under the hull policies had the vessel been insured for hull and machinery risks on 'standard terms' as required under Rule 52; and

ii cover under Rule 24 will not include damages which fall within the deductible actually borne by the Member under his hull policies.

These exceptions reflect the fact that this cover, like the cover available under Rule 23 for collision liability, is a supplement to, and not a substitute for, the Member's hull policies.

There are significant differences between hull policy terms and conditions in this regard. The standard Nordic, German or French terms all include cover for such liability to a varying degree, whereas the English, American and Japanese terms do not do so. Therefore, please see the comparison table which can be found at the end of the guidance to this Rule.

If the actual hull policy that the Member has for the vessel provides more limited cover for liability to fixed and floating objects than is the case under other hull polices which are considered to be on 'standard terms', cover is not available for liability that would have been covered under a hull policy which is on such 'standard terms'. However, in view of the fact that the available cover for such liability under differing hull policies is less standardised, the Association will wish to review the applicable hull policy terms and conditions in the light of their governing law and market practice in order to determine whether cover is available.

Standard hull policies normally limit the insurer's liability cover to the insured value of the ship. Therefore, should the Member's liability for loss of or damage to fixed and floating objects exceed the sum recoverable under the hull policies, including the hull-interest insurance if such insurance is taken out (see for example the Nordic Marine Insurance Plan of 2013, version 2023, clause 14-1 (b)), solely by reason of such a limit P&I cover is available under Rule 24 for the amount by which the liability exceeds the maximum sum recoverable under the hull policies. This may occur, for example, if the vessel has a relatively low value and causes major damage to, or even the total loss of, an object or installation with a high value, and is unable to limit its liability for such a claim under the applicable law.

P&I cover under Rule 24 will also be available in respect of FFO claims falling outside the scope of the hull cover due to their nature. The exclusion in the Nordic Marine Insurance Plan of 2013, version 2023, section 13-1 (f) regarding liability for "damage to coral reefs and other environmental damage' is illustrating. The exclusion in the Nordic Plan for "damage to coral reefs and other environmental damage" was introduced in the 2010 version. Since it had become common in to seek indemnification for this type of damage for environmental reasons, there was a need to provide a more precise definition of hull liability in relation to such damage as well. The exclusion clarifies that liability for damage to coral reefs attributable to the insured vessel having been in physical contact with the coral reef is excluded. Liability for such damage is to be regarded as environmental damage falling within the scope of the P&I insurance. "Other" environmental damage means in this context damage to other types of living organism on the sea bottom or the seashore as a result of physical contact with a vessel.

It would be contrary to the concept of mutuality if a Member who has failed to insure his vessel for its full market value and who, thereby, runs a risk that there will be a shortfall in the cover available under the hull policies for liability for loss of damage to fixed and floating objects, could be allowed to remedy this in full by making a claim for the shortfall under his P&I insurance. Therefore, if the vessel is insured under the hull policies for a value that is lower than its true market value, i.e. under-insured, cover is available under Rule 24 only for the excess liability which would not have been recoverable from the hull insurers had the vessel been insured for its true market value. Such under-insurance can occur where the market value of the vessel increases over time, and the shipowner fails to declare a higher value to his hull insurers.

Finally, cover is not available under Rule 24 in circumstances where, although the Member has the right of recovery under the hull policies, he fails to make the recovery for some reason, for example due to governing sanction legislation or the insolvency of one or more hull insurers. The reason for this is that the Association is not privy to, and has no control over, the manner in which the Member chooses to place his hull policies. Therefore, it would be contrary to the concept of mutuality to require other Members to bear the cost of the Member's decision to place his hull policies on an unsatisfactory basis.

(G) …there shall be no recovery under this Rule 24 in respect of any deductible borne by the Member under the Hull Policies… (Rule 24)
A Member may decide for many reasons to agree to accept a high or low deductible under the hull policies. This is a personal decision for the Member and the Association is not privy to that decision which is a matter that affects the Member's private business arrangements and not something that should prejudice the interests of the other Members in the context of mutuality.

Therefore, cover is not available under Rule 24 in respect of any liability that falls within the deductible borne by the Member under the Hull Policies.

FFO liabilities and hull policy cover

√ = Covered by hull policy

	English conditions (Institute Time Clauses-Hulls 1983, 3/4ths cover)	Nordic conditions (Nordic Marine Insurance Plan 2013, version 2023)	United States conditions (American Institute Hull Clauses)	German conditions (DTV hull Clauses)
Damage to fixed or floating object (FFO) (as a consequence of striking by the vessel		√		√
Loss of use of FFO (as a consequence of striking by the vessel)		√		√
Removal of wreck of the FFO (as a consequence of striking by the vessel)		√		√
Damage to FFO without physical contact with the vessel (e.g. surge damage)				√

Rule 25 Pollution

The Association shall cover liabilities, costs and expenses (excluding fines) arising in consequence of the discharge or escape from the Vessel of oil or any other pollution or the threat of such discharge or escape.

Guidance

(A) Introductory remarks

Over the past five decades major marine pollution incidents have affected the regulatory environment of the shipping sector on an increasing scale. International conventions, such as the International Convention on Civil Liability for Oil Pollution Damage, 1969; its Protocol of 1992 and existing amendments (CLC) and the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunker Convention), have been developed in order to regulate shipowner liability as well as to ensure prompt and efficient payment of compensation to those that have been affected by such pollution.

However, a question that remains subject to debate is whether mobile offshore units such as floating production, storage and offloading units (FPSOs), floating storage units (FSUs), drilling vessels, accommodation barges etc will be deemed to be 'ships' under the traditional shipping law, such as the CLC and the Convention on Limitation of Liability for Maritime Claims of 1976 as amended (LLMC), or whether they will be regulated as if they were offshore facilities such as wellhead platforms subject to special offshore legislation.

For obvious reasons owners and operators of, for example, FPSOs and/or FSUs wish to know whether the LLMC and/or CLC limits of liability will be available in the event of future third-party claims relating to the operation of the units. The potential financial consequences are substantial. Taking as an example a typical VLCC-sized tanker of 160,000 GT, the limit of liability currently available for property damage claims is about USD 63 million under the LLMC, and USD135 million under the CLC. The scale of recent incidents in the offshore energy sector demonstrates that these sums are substantially lower than third-party liabilities that may arise in the event of a significant incident. The Deepwater Horizon accident at the Macondo field in 2010 is illustrating where total costs of clean-up (including legal costs) are estimated to exceed USD 60 billion.

However, despite various initiatives to clarify the issue, the position remains unclear. There is currently no international legal regime expressly responding to pollution from mobile offshore units when engaged in drilling or production operations. Liabilities arising out of incidents occurring while a vessel is engaged in drilling or production operations will normally be subject to local legislation pursuant to which the ultimate liability use to

be channelled to the licensee of the oil or gas field. See as an example the Norwegian Petroleum Activity Act of 1996 as amended. The charterparty or other contract of employment between, on the one hand, the owner of the vessel and, on the other hand, the licensee or designated field operator acting on behalf of the licensee, will usually govern the distribution of liabilities and losses arising out of incidents occurring during the term of the contract.

Against this background, liabilities in respect of pollution remain an important area of P&I cover for mobile offshore units, both in terms of the amounts paid and the coverage needed. Rule 25 reflects the position taken by the Association that the scope of the cover available for liabilities, losses, costs and expenses arising as a result of vessel-source pollution incidents ought to be broad, because the majority of such incidents are accidental, and Members need adequate protection against the severe financial consequences that are applicable.

Whilst the Association normally is obliged to indemnify the Member only where he has firstly paid or otherwise discharged his third-party liability (see Rule 67), this is not always the case in respect of pollution liability. For example, the Bunker Convention's definition of a 'ship' is 'any seagoing vessel and seaborn craft of any type whatsoever'. This will include mobile offshore units such as FPSOs and FSUs and mobile offshore drilling vessels. Such units are therefore required to have Bunker Blue Cards if they are flagged by a state party to the Bunker Convention or if they are entering or leaving a port in a state party to that convention. The Association will certify that the necessary insurance is in place and by doing so, the Association will thereby incur direct liability to third-party claimants for the pollution damage for which the shipowner is liable under the convention. See the guidance to Rule 67, paragraph (A).

Irrespective of whether a pollution incident requires a clean-up operation, the local authorities may impose a fine on the shipowner/ operator, or the master, or sometimes both. Since Rule 25 expressly excludes fines, the cover for pollution fines is discussed more fully in the guidance to Rule 29.

(B) CLC, LLMC and national law

Cover is available under Rule 25 for liabilities that the Member incurs pursuant to international conventions, national statutes, or common law principles. Since there is no international legal regime expressly regulating liability for pollution from mobile offshore units, countries will enforce local legislation with the result that the Member's liability exposure can be significantly different depending on where claims for pollution damage are made against him. See further comments to the Norwegian Maritime Code of 1994, the English Merchant Shipping Act and the US Oil Pollution Act of 1990 below.

As already commented on above, it has been questioned whether the CLC and the LLMC extend to for example FPSOs and FSUs when they operate off the coasts of signatory states. The definitions of 'ship' under the CLC and the LLMC will govern these units' right to limit. If a mobile offshore unit does not fall within the definition of 'ship' in the relevant convention, the unit will not have the benefit of the limitation provisions save that national law may extend the right to limit liability to floating structures that do not fall within the definition of 'ship' in the relevant convention.

In practice FPSOs process hydrocarbons received from the seabed and the resultant oil or gas is stored until it can be offloaded onto a tanker or transported through a pipeline to a terminal. FPSOs can either be converted tankers or purpose-built, and their shapes can vary from being ship-shaped, to box-shaped barges with varying dimensions. As technology advances, so do the design and capabilities of these units. Some of them are designed to disconnect from their moorings, production risers and other connections to seabed production infrastructure and gas export pipelines to avoid adverse weather conditions and a few are designed for grazing marginal fields and transporting the oil to refineries. However, once they are moored and connected to seabed infrastructure, they are considered to be permanently or semi-permanently attached to the seabed, albeit floating.

As to FSUs the position is that they store oil received from a fixed or floating producing platform or an FPSO. Alternatively, they may be connected directly to a live well and have simple processing equipment on board to separate and stabilize the petroleum products.

CLC

The purpose of the CLC is to respond to the 'dangers of pollution posed by worldwide maritime carriage of oil in bulk' to ensure that adequate compensation is available to victims of oil pollution from ships. A 'ship' is defined in article 1.1 of the CLC as '…. any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following…. . This means that oil must be carried in bulk as cargo during a voyage. The definition of 'ship' in the CLC will not capture permanent or semi-permanent units such as FPSOs and FSUs while operating at an offshore oilfield, even though these units may be ship-shaped or function as 'stationary' tankers.

The IOPC Funds provided guidance in 2016 in which they took the view that FPSOs or FSUs should be regarded as ships if (i) the vessel has its own independent motive power, steering equipment for seagoing navigation

and seafarer onboard so as to be employed either as a storage unit or for the carriage of oil in bulk as cargo and (ii) is undertaking a qualifying voyage. To qualify, the voyage would need to be for the carriage of oil as a cargo to or from a port or terminal outside the oil field in which the unit normally operates. A voyage from the offshore field for operational reasons or simply to avoid bad weather would not qualify as a voyage under the CLC.

LLMC

The word 'ship' is not expressly defined in the LLMC but referred to as any 'seagoing ship'. There are, however, two important provisions found in article 15. First, article 15(4) states that the LLMC does not apply to "ships constructed for or adapted to, and engaged in, drilling" and, secondly, article 15(5) provides that the LLMC does not apply to "floating platforms constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof". Existing case law offers limited guidance as to the interpretation of the above exemptions but there is a view that an FPSO (but not an FSU) is a floating platform constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil and that an FPSO, thus, is caught by the offshore craft exclusion in article 15.5.

National law – Norway, United Kingdom and United States

Under Norwegian law a mobile offshore unit which is not deemed to be a 'ship' under the CLC and/or the LLMC is nevertheless given the right to limit liability pursuant to Norwegian national law. See the Norwegian Maritime Code of 1994 as amended, section 507 cf. sections 181 and 208. The maximum liability for a personal injury claim as specified in the Maritime Code, section 175 no 2, is SDR 36 million regardless of the size or tonnage of the unit. The maximum liability for other claims, including property damage claims, as set out in section 175 no 3, is SDR 60 million. A separate fund for wreck removal claims is subject to a limit of SDR 60 million regardless of the size or tonnage of the unit. See the Maritime Code section 175a. Even if a mobile offshore unit is not a 'ship' as defined in the CLC, the owner will have a strict liability for any pollution damage caused by the discharge or escape of oil from the unit. See the Norwegian Maritime Code section 208, first paragraph, cf. sections 191 and 192. See the guidance to Rule 34.

The UK's Merchant Shipping Act of 1995 (MSA) enacts the LLMC in English law. However, the MSA deletes the Article 15 (5) offshore craft exclusion. By virtue of Article 1(2) of the LLMC, the right to limit is restricted to 'seagoing ships'. Whether an FPSO can limit under English law depends on whether it is a ship under the MSA (section 313) defining 'ship' to 'include every description of vessel used in navigation'. Further, Part II, paragraph 12 of Schedule 7 to the MSA extends the definition of 'ship' to cover 'any structure …launched for use in navigation as a ship….'. In Perks v Clark (2001 2 LLR), the English Court

of Appeal held that a jack-up rig that was towed from one location to another for the purpose of drilling for oil was indeed a ship and concluded that so long as navigation is a significant part of the function of the unit, "the mere fact that it is incidental to some more specialised function such as dredging or provision of accommodation does not take it outside the definition". This supports the view that FPSOs and FSUs can be treated as ships for the purpose of limitation under the LLMC if it can be said that these units are 'used in navigation'. See also the guidance to Rule 34, paragraph (B).

The US Oil Pollution Act of 1990 (OPA 90) sets out the liability and compensation regime in the event of oil pollution and applies expressly to both ships and offshore facilities. See the definitions of 'offshore facility' in section 1001. This will include for example FPSOs and FSUs. Pursuant to section 1004 (a) (3), offshore facilities have an unlimited liability for clean-up costs but can limit their liability for other damages as a result of pollution to USD 137.66 million per event regardless of the size or tonnage of the unit. The limitation amount is reviewed regularly (normally each third year) by the Bureau of Ocean Energy Management, a part of the US Department of Interior, and can be increased administratively to reflect changes in inflation over time based on the increase in the consumer price index (CPI). The limitation amount was increased last time with effect from 18 January 2018.

Summary

To summarize, while FPSOs and FSUs are not considered to be ships within the meaning of the CLC whilst operational at an offshore oilfield, the IOPC Funds have taken the view that FPSOs or FSUs should be regarded as ships if the vessel has its own independent motive power, steering equipment for seagoing navigation and seafarer onboard so as to be employed either as a storage unit or for the carriage of oil in bulk as cargo and is undertaking a qualifying voyage. Further, there is scope to argue that FPSOs and FSUs shall be treated as 'ship' for the purpose of the LLMC as long as, in the case of a FPSO, the Article 15 (5) offshore craft exclusion is deleted. This will in particular be the case when the relevant unit is disconnected and actually used in navigation. Finally, even if mobile offshore units are not deemed to be 'ships' as defined in the relevant convention, the vessel may be entitled to limit liability pursuant to special provisions in national law.

(C) …shall cover liabilities, costs and expenses… (Rule 25)

Rule 25 makes cover available for liabilities, costs and expenses that arise under the governing law as a result of the actual or threatened discharge or escape of oil or any other substance from the insured vessel. Cover is not available for liabilities that arise solely by virtue of the terms of a contract or agreement unless those terms have been approved by the Association. See also the guidance to Rule 42.1 regarding terms of contract resulting in greater liability than follow from terms of contract customarily in the area where the vessel operates.

Cover is available if:

a oil or some other pollution has been discharged or has escaped from the entered vessel, or there is a threat of such discharge or escape; and

b as a result of (a), the Member or the Association incurs a legal liability to pay compensation or damages to third parties that have been affected by the incident, and/or incurs liability for costs or expenses which have been incurred in order to prevent and/or clean-up the pollution and/or to restore the polluted areas.

Cover is available for e.g.:

i Costs and expenses that are incurred by the Member in order to prevent pollution damage following a spill, or to clean up and restore polluted areas and property in circumstances where the Member has a legal liability to incur such costs and expenses;

ii Costs and expenses to which reference is made in (i) that are incurred by third parties in the first instance, but in circumstances where the Member is legally obliged to indemnify those third parties, e.g. public authorities in the country or state affected by the spill which have undertaken pollution prevention, clean-up, restoration and monitoring measures;

iii Third party loss or damage caused by physical contamination of property where the Member is legally obliged to indemnify those third parties, e.g. the soiling of recreational boats or fishing nets, or the clogging of water intakes to a production facility, or economic losses incurred as a result of such events regardless of whether or not the claimants have been directly affected by contamination, e.g. fishery and tourism losses, as well as damage or losses caused by clean-up and restoration activities;

iv Damage to natural resources, e.g. beaches, mangroves, marshlands, coral reefs and their wildlife flora and fauna habitats, for which the Member is liable under the applicable law to incur restoration costs and/or pay damages in respect thereof to authorities, trustees or other parties.

The cover that is provided under Rule 25 expressly excludes fines. However, cover in respect of pollution fines and penalties may be available under Rule 29.1.c.

(D) ...arising in consequence of the discharge or escape... (Rule 25)
The majority of recoverable claims that are made against a Member involve clean-up costs and/or damage to the property of third parties caused by the discharge or escape from the entered vessel of oil carried as cargo or as bunker fuel.

The term 'discharge' includes not only incidents that occur during the course of planned discharge operations but also unplanned and accidental discharges that occur (usually as a result of negligence) during normal discharging operations or other operational activities on board. For example, liability may occur if an oil spill is caused by an unknown leak in the offloading hose during the course of transferring cargo from an FPSO to an off-taking tanker. Depending on the circumstances, such a 'discharge' may also be considered to be an 'escape' of oil, i.e. the unintentional release of oil or another substance from the vessel. An 'escape' could also occur following a spill of heavy or other fuel oil following the breach of bunker tanks as a result of a grounding. Cover is available for liabilities that arise as a result of such an incident.

(E) ...from the Vessel... (Rule 25)
The oil or other substance must have been discharged or escaped from the entered vessel. If the mobile offshore unit receives bunker oil in port from a tank barge and oil is spilled from the barge, there is no escape of oil from the entered vessel and, therefore, cover is not available under Rule 25. Nonetheless, the owner may still be liable for the mishap under contract and, if so, cover may be available under Rule 26 if the contract has been approved by the Association. See also the guidance to Rule 42.1 regarding terms of contract resulting in greater liability than follow from terms of contract customarily in the area where the vessel operates.

Cover is not available where liability is incurred as a result of pollution caused by the presence, discharge or escape of oil or other pollution that was either (a) previously, but is no longer, in the possession of the entered vessel or (b) from a source other than the vessel. For example, no cover is available for liabilities incurred as a result of uncontrolled escape of oil from leaks in wellhead production equipment or flowlines on the seabed, or subsea risers or umbilicals which are not deemed to be parts of the entered vessel, or arising from a well 'blow out'. See also guidance to Rule 35.

As already emphasized, the substance giving rise to liability must have escaped from the entered vessel. Therefore, cover is not available under Rule 25 if the polluting substance is the vessel itself or any part of it, e.g. if the wreck of the insured vessel is considered pollution under the applicable law. However, cover may be available under Rule 27.

(F) ...of oil or any other pollution... (Rule 25)
The term 'oil' includes persistent and non-persistent types of oil. However, for the purpose of Rule 25, the term 'oil' is less important, because cover also applies to the discharge or escape of 'any other pollution', which is a term that is much wider in scope. The intention is to provide broad cover for pollution liabilities arising from ship-source spills, and includes, inter alia, cargo carried, hazardous and noxious substances (HNS), garbage, sewage, oily bilge water,

waste, debris as well as soot emitted through the vessel's funnel. However, the cover that is available for liabilities arising as a result of the carriage of nuclear substances is substantially restricted in scope pursuant to Rule 55.

Cover is available although the substance giving rise to liability may not be classified as a pollutant or as a hazardous or noxious substance. It is sufficient that the discharge or escape of the substance has given rise to a legal liability for pollution under the law of the jurisdiction(s) where the incident and/or damage occurred.

(G) ...or the threat of such discharge or escape... (Rule 25)
Cover is also available for liabilities, costs and expenses that arise as a result of the 'threat' of a discharge or escape. Such a 'threat' will be deemed to exist when pollution damage is likely to occur if no measures are taken to reduce the risk of damage. However, cover is also available where the Member is liable under the applicable law to reimburse local authorities or other parties for preventive measures that they have taken in order to avoid or reduce the risk of pollution, whether or not, objectively, a threat of pollution existed. For example, the vessel may suffer a grounding incident in close proximity to a busy port. Although it is not clear that cargo and/or bunker tanks have been, or will be, breached, the port authorities may decide to place booms around the vessel and to mobilise oil recovery vessels to stand by. If the authorities make a claim for reimbursement of these costs and expenses from the Member, and the Member is liable to pay such reimbursement under local law, cover is available under Rule 25.

Cover is also available where the Member, in similar circumstances, is requested by local authorities to take preventive measures and is at risk of incurring liability, including that of penalties that may be imposed by the authorities, if he does not comply with such request. However, before confirming that cover is available in such circumstances, the Association will assess whether the costs and expenses incurred by the Member were reasonable, taking into account the nature of the request and the consequences of any non-compliance.

The above situations must be distinguished from those where the Member, independently and voluntarily, takes preventive action and thereby incurs costs and expenses. In such circumstances, the Association will assess whether the actions that were taken were taken against a threat of pollution that was real. The Association will also consider whether the costs and expenses that were incurred were reasonably and necessarily incurred because of that threat and not for any other purpose, such as the protection of the Member's reputation, or the protection of his general business interests. Therefore, Members are encouraged, where time permits, to consult the Association prior to incurring costs and expenses for which they intend to seek recovery from the Association.

Finally, there are situations where, regardless of whether or not action has been taken by the Member in response to a request to do so from the authorities, it cannot be said that there was, or is, a threat of pollution from the vessel. For example, the fouling of a cargo hold inside the vessel as a result of a leakage from a bunker tank through a crack in the tank top is unlikely to cause pollution damage outside the vessel if the external structure of the vessel is intact. Similarly, cover is not normally available where oil is spilt on deck and must be cleaned up by the crew before the vessel is allowed to leave port. This is because such a spill does not normally create a risk of an escape of oil from the vessel. In these examples no casualty or event giving rise to insurance liabilities or losses has occurred. However, each case must be assessed on its own facts, but generally speaking, cover for costs incurred in order to clean the hold, or the deck or dispose of oily waste is not normally available under Rule 25 in such circumstances. As a starting point, such costs will be deemed to be ordinary operating costs for the Member's own account.

(H) The location of pollution damage

Cover is available for pollution damage to both the marine and the non-marine environments. Typical marine environments are coastal shorelines, tidal zones, estuaries, riverbanks, ports, inland waterways, as well as resources in the water column and on the seabed. The non-marine environment includes not only property and resources that is/are located inland but also the atmosphere, which can be damaged, e.g. by the release of air pollutants, such as chemical cargo vapours, gases or exhaust soot.

It should be noted that pollution damage may affect more than one country, and that, therefore, the law of more than one country may apply when determining liability and damages. However, this does not affect the scope of cover.

(I) Pollution and hull insurance

While as a starting point liability for pollution is excluded from the hull policy (see as an example the Nordic Marine Insurance Plan of 2013, version 2023, section 13 – 1 (f)), certain liabilities, costs and expenses arising as a result of incidents that cause pollution may nevertheless be covered under the vessel's hull policy, and if so, P&I cover will not be available for such liabilities, costs etc. For example, under both the Nordic Marine Insurance Plan and ITC Hull terms, contamination of the hull by oil is considered as 'damage' covered under standard hull and machinery conditions. This means in practice that if the vessel is fouled by oil or any other substance having escaped from the vessel or any other ship or other source, cover for the cost of cleaning the vessel is to be provided by its hull policies. Likewise, the removal from the vessel after a collision incident of oil or other substances originating from the other ship may be considered a necessary measure to facilitate repairs to the

vessel. Another example would be costs incurred in cleaning the hull of the other ship after a collision if the collision liability of the vessel is provided by the vessel's hull policies.

Although the cleaning of the vessel in such circumstances is normally considered to be a hull risk that is to be covered by the vessel's hull policies, such cleaning costs may nevertheless be recoverable under the P&I policy if the risk of pollution is severe and critical. In such cases, the cost of cleaning the vessel's hull may be treated as a P&I claim if the criteria are met for compensating extraordinary costs and expenses incurred on or after the occurrence of a casualty or event for the purpose of avoiding or minimizing a liability on the Association. See Rule 32. This will typically be in circumstances where pollution damage is likely to occur on or after the occurrence of a casualty or event if no extraordinary and immediate measures are taken to reduce the risk of third-party damage or clean up expenses. By way of contrast, cover is not available under the P&I entry merely because the cleaning of the vessel is required before being allowed to enter or leave a port if there is no imminent threat of pollution. Similarly, if hull cleaning is required to enable the vessel to enter a port in order to carry out repairs that should be covered by the vessel's hull policies. Such cost will be treated as part of the cost of repairs under the vessel's hull policies.

Rule 26 Loss of or damage to property

The Association shall cover liability for loss of or damage to property not specified elsewhere in the chapter.

Guidance

(A) Introductory remarks

In most circumstances, cover for the Member's liability for loss of, or damage to, property is available elsewhere in Part II of the Rules, i.e. liability for collisions with other vessels or ships under Rule 23, liability for damage to fixed and floating objects under Rule 24 and liability for pollution damage under Rule 25. In the case of Rules 23 and 24, the scope of P&I cover is largely affected by the extent to which the Member's liability is covered under the Member's hull policies. However, the intention of Rule 26 is to make cover available for the Member's liability for loss of or damage to property occurring in circumstances where cover is not available under either the hull policies or any other P&I Rule.

(B) …liability for loss of or damage to property… (Rule 26)

Cover is available for the Member's legal liability for loss of, or damage to, the property whether the Member's liability arises in tort, contract, statute or in any other way. The form of liability will normally be determined by the law of the place where the loss or damage occurred based on the lex loci delicti principle, i.e. the law of the place where the tort was committed.

There is 'loss' of property for the purposes of Rule 26 when it is either damaged beyond the possibility of repair or when it cannot be traced or recovered, e.g. when it has been lost in deep waters or totally consumed by fire. There is 'damage' to property for the purposes of Rule 26 when the ability to use it as intended and/or its economic value has been impaired.

Rule 26 does not state expressly that cover is available for the Member's liability for consequential loss arising as a result of the loss of or damage to property, e.g. liability for the loss of use of shore equipment until it has been repaired or replaced. However, Rule 26 is intended to afford the same degree of cover as that which is available under Rules 23 and 24. Consequently, cover is available for the Member's legal liability to compensate the property owner for economic loss which he has incurred as a consequence of the loss of, or damage to, property, e.g. the loss of profit on a planned on-sale as a result of the damage to the property, and also for the Member's legal liability to compensate a claimant who is not the owner of the lost or damaged property, but who has suffered economic loss as a result of such loss or damage.

Property

In the majority of cases, the property that has been lost or damaged will be owned by a third party. However, even if the property that has been lost or damaged is owned wholly or in part by the Member, Rule 33 makes it clear that cover is available under Rule 26 to the same extent as if the property had belonged to a third party and, that if this had been the case, the Member would have been liable for the loss of, or damage to, such property.

Cover is available under Rule 26 not only in respect of 'property' which is privately owned, but also in respect of property which is owned by public sector entities, trustees and other organisations. However, cover is not available for loss or damage to natural resources or habitats that cannot be considered as to be 'property' in the sense discussed above. In most instances this issue will depend on the view that is taken under the applicable law.

However, cover is not available under Rule 26 for loss of or damage to the insured vessel. Such loss or damage would normally be covered under the hull policies and is, in any event, excluded from P&I cover by virtue of Rule 52. On the other hand, cover will be available under Rule 26 in respect of loss of or damage to equipment, containers, lashings, stores or fuel on the vessel owned or leased by the Member. Such equipment etc., are not deemed to be a part of the vessel and for that reason not caught by the exclusion.

Finally, cover is clearly not available under Rule 26 in respect of liability for loss of life or personal injury.

There is often a close connection between incidents for which cover is available under Rule 26 and those for which cover is available under Rules 23, 24 and 25. Therefore, reference should be made to the guidance to these other Rules when considering the ambit of the cover that is otherwise available under Rule 26. With that warning in mind, it can be said that cover may typically be available under Rule 26 for the Member's liability for:

- non-contact damage caused by the negligent manoeuvring of the vessel. Even if there is no contact between them, the vessel may cause another ship to run aground or to collide with a third ship and, depending upon the terms of the hull policies, such policies may not provide cover for the Member's liability;
- 'wash damage' caused by the movement of the vessel through the water or the turbulent effect of her propeller which causes damage to other moored crafts, their moorings, waterfront property, quays or jetties;
- damage caused to subsea cables or pipelines by the vessel's anchor or mooring lines, or to shore based property such as cranes, rails, conveyor belts etc., by the vessel's cranes, gangway, other equipment or deck cargo when such damage is caused otherwise than as a result of the vessel's movement being transmitted through the medium of such equipment.

For example, cover is available under Rule 26 for the Member's liability for damage that may be caused to a truck on the quay as a result of the fact that equipment has been dropped from the vessel's cranes during the course of discharge.

- damage caused to another ship by the vessel's cranes, gangway, other equipment or deck cargo when such damage is caused otherwise than as a result of the vessel's movement being transmitted through the medium of such equipment.

(C) …not specified elsewhere in this chapter. (Rule 26)
As emphasised above, the purpose of Rule 26 is to make cover available where a Member's liability in respect of property loss or damage is not covered elsewhere in the Rules or by the hull policies. Examples of such situations have been given in (B) above. It follows that cover is not available under Rule 26 for liabilities for which cover is available under another Rule or under the hull policies for the vessel.

Since the cover that is available under Rule 26 applies only when cover is not afforded by the other Rules and the hull policies, the Association will need to review both the terms and conditions of the hull policies in the light of their governing law and market practice, as well as the possible applicability of other P&I Rules before confirming that cover is available under Rule 26.

Rule 27 Liability for obstruction and wreck removal

The Association shall cover:

a costs and expenses incurred relating to the raising, removal, destruction, lighting and marking of the Vessel or of the wreck of the Vessel or parts thereof or of its equipment lost as a result of a casualty, when such raising, removal, destruction, lighting and marking is compulsory by law or the costs or expenses thereof are legally recoverable from the Member, under contract or otherwise;

b liability incurred by reason of the Vessel or the wreck of the Vessel or parts thereof, as a result of a casualty, causing an obstruction,

provided that

i for the purpose of this Rule, 'casualty' means collision, stranding, explosion, fire or similar fortuitous event;

ii recovery from the Association under this Rule shall be conditional upon the Member not having transferred its interest in the wreck otherwise than by abandonment; and

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

In no circumstances shall cover under this Rule extend to any costs relating to removal or clean-up of any part of the drilling or production equipment lost or deposited on the seabed once the equipment has been deployed for drilling or production. For the purpose of this Rule equipment shall be considered deployed from the time installation of the equipment, or any part of the equipment, for drilling or production has commenced.

Guidance

(A) Introductory remarks

Casualties and other incidents may cause a vessel to become a total loss or at least inoperable pending salvage, towage and repairs. Over the past few decades, the increased focus on the protection of the marine environment has caused coastal states to implement regulations to ensure as far as possible that hazards posed by shipwrecks, or by vessels that are otherwise inoperable, or by their equipment or other pollutants that may be on board, are removed.

Until recently states have had to rely on a patchwork of different legislation in order to deal with the problem and this has created legal uncertainty and a lack of transparency for all parties involved. Many states have had to rely on their own legal framework in order to deal with the removal of wrecks within their territorial waters, and whilst the Intervention Conventions (the full names are the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969, as amended in 1973, and

the Protocol relating to Intervention on the High Seas in Cases of pollution by Substances other than Oil) have empowered coastal states to intervene on the high seas, i.e. outside their territorial waters, in order to prevent and mitigate threats of marine pollution to the relevant state, states have had only limited powers to claim costs incurred by them in relation to wreck removal in such waters.

However, on 14 April 2015, the Nairobi International Convention on the Removal of Wrecks (the Nairobi Convention) came into force and introduced for the first time a set of uniform rules for the prompt and efficient removal of wrecks that are located outside the territorial sea of the states that are parties to the convention. As a starting point, the Nairobi Convention applies to all seagoing vessels of any type whatsoever, including "submersible, floating craft and floating platforms except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources". This means in practice that the Nairobi Convention will apply to floating storage units (FSUs), floating production and storage units (FPSOs) or drilling units when they are in port or being towed to the field but not to FPSOs or drilling units while connected and engaged in drilling or producing activities on the field. However, in the absence of a clear definition of 'floating platform', there are some uncertainties with regards to the scope of this exclusion. For example, it is debatable whether drilling ships qualify as 'floating platforms' since these two terms have been distinguished in other IMO conventions such as article 15.4 of the LLMC. See comments under the guidance to Rule 25, paragraph (B), above. However, to the extent the above exclusion from the Nairobi Convention will apply while a mobile offshore unit is engaged in drilling or producing activities on the field, wreck removal liabilities will be subject to governing offshore legislation and contracts between the parties involved.

The Nairobi Convention governs wreck removal operations within the Exclusive Economic Zone (EEZ) of the state that is a party to the convention, but the convention also enables contracting states to declare when adopting the convention that they are extending the application of the convention to their territorial seas. Therefore, if a vessel becomes a wreck within the territorial seas of a country, it will be necessary not only to ascertain whether that state is a contracting state to the Nairobi Convention but also to ascertain whether that state has opted to extend the application of the convention to its territorial seas.

The Nairobi Convention imposes virtually strict liability on the registered owners of the vessel that has become a wreck subject only to the very limited defences that are found in the CLC and other similar IMO liability and compensation regimes. Whilst the convention itself does not provide for any right to limit liability, it nevertheless provides that the registered owners are

entitled to exercise whatever limitation rights they may have under general limitation conventions such as the Convention on Limitation of Liability for Maritime Claims of 1976 as amended by the 1996 Protocol (LLMC). Finally, the convention requires a vessel that is either registered in a contracting state or trading to a contracting state to maintain insurance to cover its liability under the convention and to carry an insurance certificate to evidence such insurance similar to the 'blue cards' that are obligatory under the CLC and Bunkers Conventions. The Association will certify that the necessary insurance is in place and by doing so, the Association will thereby incur direct liability to third-party claimants for the wreck removal liability.

Cover is available under Rule 27 for liabilities, costs and expenses that the Member may incur in relation to wreck removal whether such liability arises under local law or international convention implemented as national law. Cover will also be available for liabilities, costs and expenses that the Member may incur in relation to wreck removal under contract provided the relevant contract or agreement has been approved by the Association. See also guidance to Rule 42.1 excluding liabilities etc., arising under terms of contract resulting in greater liability than follow from terms of contract customarily in the area where the vessel operates.

Liabilities etc. in relation to wreck removal can be very substantial because of the technical complexity of such operations (particularly when done in harsh weather and difficult sea conditions in offshore marine environments) and the high cost of the advanced equipment and technology that is frequently used. It is also relevant to remember that the Member may either not be entitled to limit his liability for such claims, or, alternatively, be subject to high limits. In some countries, as for example Norway, have used the opportunity under the LLMC to establish separate wreck removal limitation funds. See the Norwegian Maritime Code of 1994, sections 172a and 175a. However, the owner's duty to act after having been ordered by governing authorities to remove the wreck is not subject to limitation. This was confirmed by the Norwegian Supreme Court in the Server case (HR-2017-331-A).

(B) ...costs and expenses relating to the raising, removal, destruction, lighting and marking of the Vessel or of the wreck of the Vessel or parts thereof or of its equipment lost as a result of a casualty... (Rule 27.a)
Cover is available under Rule 27.a for costs and expenses that are incurred in relation to the raising, removal etc., of the insured vessel, the wreck of the vessel or parts thereof, or its equipment. The insured vessel is the vessel that is entered in the Association for P&I risks and the wreck of the vessel means the vessel after it has been accepted under the hull policies as a total loss, whether an actual or constructive total loss. See further comments on these terms in the guidance to Rule 17, paragraphs (D) and (E).

The phrase ‘or parts thereof’ is given a broad construction to include, not only the vessel’s hull, machinery and other equipment, but also the ‘apparel’ of the vessel such as, for example, navigational equipment, lifeboats and tackle. Subject to the proviso in the last paragraph of this Rule 27, the term ‘equipment’ is given a broad construction to include equipment actually on board the vessel when the casualty occurred. Cover is available for liabilities, costs and expenses relating to the vessel’s equipment whether it is still on board the wreck, or has become separated from the vessel or the wreck of the vessel as a result of the casualty provided the relevant equipment were not deployed for drilling or production operation at the time of the casualty. See guidance in (H) and (I) below.

Cover is available for costs and expenses that are incurred in relation to expressly itemised measures to eliminate or minimise the risks that are associated with the vessel or wreck etc., i.e. the marking, lighting, raising, removal or destruction of it. The precise type of measure that will be necessary in any particular case depends on the risks that the vessel, wreck or equipment represents and the orders that may be given by the governing authorities, and can, therefore, differ substantially from case to case. A grounded vessel may only require additional lights, whereas a vessel that is temporarily submerged may need to be marked with buoys. However, some vessels that are grounded or submerged may have to be removed in whole or in part, or, in extreme cases, they may have to be destroyed. Similar measures may be necessary where a vessel’s equipment causes an obstruction or where it is deemed to be ‘dangerous’ or a pollutant overboard.

The terms ‘lighting’ or ‘marking’ refer to measures that are taken to alert other ships and craft of the presence and position of the vessel, wreck and/or equipment and may include the attachment of lights, buoys, radar beacons or other appliances to the wreck, or on the water surface above and/or around a submerged object. Cover is also available for costs and expenses that are incurred in taking reasonable measures to locate the wreck, or parts thereof, or lost equipment in order to ensure proper lighting or marking. The term ‘raising’ refers to the activities that are undertaken in order to bring a sunken vessel, wreck and/or equipment to the surface whilst the term ‘removal’ refers to measures that need to be taken in order to move the vessel, wreck and/or equipment, whether or not in one piece, from its current position to a designated place of disposal. Finally, the term ‘destruction’ means the demolition of the vessel, wreck and/or equipment, whether at the casualty site or elsewhere, following removal.

However, cover is available for such costs and expenses only where they have been incurred as a result of a ‘casualty’. In this context, a casualty is an event

that is caused by a maritime accident such as a grounding, fire, collision or contact with a fixed or floating object. See comments in paragraph (E) below.

(C) ...when such raising, removal, destruction, lighting and marking is compulsory by law or the costs or expenses thereof are legally recoverable from the Member under contract or otherwise... (Rule 27.a)
Cover is available if the Member is legally obliged to bear the relevant costs and expenses, i.e. where the raising, removal, destruction, lighting and marking is compulsory by law and the Member is ordered to take such measures. However, cover is available only for those costs and expenses that are necessarily and reasonably incurred in order to comply with the relevant order. Therefore, if the Member wishes to retain control of the wreck removal in order to ensure that whatever value is left in the wreck and/or equipment is preserved, the Member is required to keep in close contact with the Association since the Association may well wish to take an active role in the planning and preparation of the operation by, for example, nominating suitable contractors and negotiating the terms of the wreck removal contract in order to minimise the cost of the removal and to maximise the residual value to which the Association is entitled pursuant to proviso ii. See (F) below. In all cases, the Association should be kept closely involved in order to ensure that the Member's legal rights in relation to the wreck removal order, including any right to limit liability in relation to wreck removal, are fully protected. If the Member incurs wreck removal costs in excess of the applicable limitation amount and the Member is entitled to limit his liability, cover may not be available for liabilities that exceed such limit.

However, in some instances, the governing authorities may incur the relevant costs and expenses themselves in the first instance and then claim reimbursement for them from the Member. Alternatively, if the Association has provided the vessel with a 'Blue Card' pursuant to the requirements of the Nairobi Convention, the authorities will have the right to claim such costs and expenses directly from the Association. Cover is also available in such circumstances to the extent that the costs and expenses are legally recoverable from the Member under the applicable law even if the Member would not have been obliged to take such measures himself.

A Member may be obliged to comply with an order to mark, raise, remove or destroy a vessel, wreck or equipment pursuant to the provisions of an international convention or local statute or local laws that regulate navigation in, and the use of, ports, channels, canals, locks and waterways. The order that is made by the governing authority is normally prompted by the fact that the vessel, wreck or equipment is considered to represent a hazard to marine safety, or to the environment, or an obstruction to navigation or to other commercial interests. In some instances, a country may have the legal

right to order the destruction or the removal of the vessel or the wreck of the vessel, even though it does not in fact pose such a hazard or obstruction. Nevertheless, if the Member is legally liable in such instances, cover is available under Rule 27.

The Member may also incur liability for such costs and expenses by virtue of the terms of a contract that he has concluded for the use of a terminal, berth or offshore site. However, cover is available for liability that arises solely as a result of such contract terms only if the Association has given its prior approval to those (or materially similar) terms. See also guidance to Rule 42.1 excluding liabilities etc arising under terms of contract resulting in greater liability than follow from terms of contract customarily in the area where the vessel operates. Further, the cover for wreck removal costs incurred pursuant to terms of contract is in any event restricted to situations where the vessel or parts thereof or its equipment etc is lost or has become a wreck etc., as a result of a casualty. See also the guidance to Rule 38 excluding costs relating to removal or clean-up of debris lost or deposited on the seabed during operation from the cover. The obligation of for example the licensee under the Norwegian Petroleum Activity Act of 1996 to do necessary clean-up of debris lost or deposited on the seabed during operation will not be covered unless such items are lost or deposited as a result of a casualty. See guidance in paragraph (E) below.

(D) ...liability incurred by reason of the Vessel or the wreck of the Vessel or parts thereof, as a result of a casualty, causing an obstruction ... (Rule 27.b) There may be circumstances in which the entered vessel, or the wreck or parts thereof, and/or its equipment is deemed to be causing an 'obstruction' and, therefore, needs to be removed. Such an occurrence can also mean that the Member becomes liable to pay damages to third parties who have suffered financial losses as a result of the obstruction. In most cases, the obstruction will merely affect the safe navigation of other ships or vessels, but it may also affect other commercial or public interests, e.g. a subsea pipeline, a power or telecommunications cable, a seawater inlet to a waterfront industrial site, an aquaculture site etc.

Cover is available in such circumstances if the authorities that have jurisdiction in the area have deemed the vessel or wreck to be an obstruction and a hazard to safe navigation, and have, therefore, forbidden other ships to pass in the immediate vicinity of it even though safe passage may in fact be possible.

Cover is available for legal liabilities of all kinds that are incurred by the Member as a consequence of the fact that the insured vessel, or wreck or

parts thereof, and/or its equipment is deemed to be causing an obstruction. This includes liability for costs and expenses that are incurred in order to comply with an order to remove the vessel etc., and also liabilities to third parties that arise, for example, as a result of a collision or other contact with the vessel or wreck, or for purely financial losses that may be suffered by third parties, e.g. demurrage and delay costs caused by the inaccessibility of the port or berth. However, as in the case of Rule 27.a, cover is available only if the obstruction has been caused by a casualty in the sense discussed in (E.) below.

When a vessel becomes a wreck within the territorial waters of a particular country as a result of a casualty, the governing authorities of that country will invariably make use of their legal powers to order removal of the wreck if it is considered to be causing an obstruction and/or if it is considered to be a hazard to the environment. If so, the Member can, in consultation with the Association, decide whether to undertake the wreck removal operation or allow the authorities to undertake that task. However, even if a wreck is deemed to be causing an obstruction or to be a hazard to the environment outside territorial waters, the owner may, nevertheless, still owe a duty of care to ensure that the wreck does not cause loss or damage to third parties, including other mariners and operators of sub-sea platforms, pipes and cables. Should the problem arise within the Exclusive Economic Zone of a state, the law of that state may oblige the shipowner to remove the wreck. Furthermore, this obligation is explicitly imposed by the Nairobi Convention. Several of the states that are parties to this convention have extended its application to their territorial waters as well.

In all cases, the Association should be kept closely involved in order to ensure that the Member's legal rights in relation to the wreck removal order, including any right to limit its liability in such circumstances, are fully protected. If the Member incurs wreck removal costs in excess of the applicable limitation amount and the member is entitled to limit his liability, cover may not be available for liabilities that exceed such limit.

(E) …casualty means collision, stranding, explosion, fire or similar fortuitous event (Rule 27 proviso i)

The obligation of the Association to indemnify Members for wreck removal liability is restricted to cases where the vessel or parts of it or its equipment have become a wreck as a result of a 'casualty'. In this context, a 'casualty' is an event that is caused by a maritime incident such as a grounding, fire, explosion, collision or contact with a fixed or floating object. The reference to "similar fortuitous event" means an event of natural or human origin that could not have been reasonably foreseen or expected and is out of the control of the persons involved.

On the other hand, no cover is available in the case of loss of the insured vessel having become a wreck as a result of other non-accidental events such as a prolonged lay-up or a lack of maintenance or as a result of abandonment by the Member. For example, repeated postponements of compliances with class requirements could result in serious deterioration of a vessel's technical condition but this is not a casualty from an insurance law point of view. The fact that a vessel may become a wreck because of lack of maintenance or postponements of class requirements etc., are expected and can be foreseen. See also the guidance to Rules 6 about duty of disclosure if the Member repeatedly has been exempted from standard class requirements in respect of the insured vessel.

Further, cover is not available where the removal of the vessel is ordered because it is unlawfully anchored in a busy waterway and is, thereby, jeopardising navigational safety. Such situations will not be deemed to be 'casualties' for the purpose of Rule 27.

(F) ...recovery...shall be conditional upon the Member not having transferred its interest in the wreck otherwise than by abandonment... (Rule 27.proviso ii)

The entered vessel is considered to be a wreck when its hull insurers have accepted that it is a total loss. This means that the owner of the vessel is then entitled to claim the sums insured under his hull policies. Upon payment of the sums insured to the owner, the hull insurers have the right to assume title to the wreck, in which case the owner will be required to abandon, i.e. relinquish, his interest in the wreck. If the hull insurers assume title to the wreck, they will concurrently assume the liabilities that are, or may become, 'attached' to the wreck, e.g. the liability to raise, remove and/or destroy the wreck or any parts thereof, e.g. oil trapped inside the wreck, as ordered by the governing authorities.

Cover is not available from the Association for wreck liabilities in such circumstances since such liabilities will be the responsibility of the hull insurers and not those of the Member. However, in practise, the hull insurers will rarely assume ownership of the wreck. The normal practise is that the hull insurers will abandon their interest in the wreck concurrently with the payment of the sums insured, which means that whatever liabilities that have arisen, or that may arise, in respect of the wreck, will remain those of the shipowner.

For similar reasons cover is not available for wreck liabilities, costs and expenses that may arise after the Member has transferred his interest in the wreck to a third party, e.g. by selling the wreck on an 'as is – where is' basis to a salvage company. However, local authorities may still hold the party that was the owner of the vessel at the time of the casualty liable for wreck

removal costs to the extent the new owner of the wreck fails to remove it or to otherwise deal appropriately with the hazard that the wreck is perceived to represent. In such circumstances, cover is still available provided that such liability flows from the casualty which caused the vessel to become an actual total loss or a constructive total loss. See Rule 17.6.

(G) ...the realised value of the wreck and other property saved shall be credited to the Association. (Rule 27.proviso iii)
In the event that cover is made available for the costs and expenses that are incurred in removing the wreck or parts thereof or equipment which has been lost as a result of a casualty, the Member is obliged to credit the Association with the proceeds of the sale of the wreck and/or any other property that has been saved in order to enable the Association to minimise its overall liability for the wreck removal. The 'realised value of the wreck' is deemed to be the best price that can be obtained for the wreck in the market less the cost of the sale and any other realisation costs such as the costs of towing it to the place where it is agreed that title shall pass to the third party buyer. The Member is obliged to use his best endeavours to afford all necessary assistance to the Association and to provide any information that may be necessary in order to maximise the realised value of the wreck.

(H) In no circumstances shall cover ... extend to any costs relating to removal or clean-up of any part of the drilling or production equipment lost or deposited on the seabed once the equipment has been deployed for drilling or production... (Rule 27, last paragraph)
A mobile offshore unit may have equipment on board that will be deployed from the vessel during operation. The use of such equipment is independent from and not directly connected to the operation of the insured vessel.

A distinction should be made between, on the one hand, traditional P&I risks covering liabilities and losses arising in direct connection with the operation of the insured vessel (as explained in the guidance to Rule 2.3 above), and, on the other hand, special offshore risks comprising liabilities and losses arising out of drilling or production activities on the field with not direct connection to the insured vessel. Liabilities etc., for removal or clean-up of equipment lost or abandoned on the seabed after being deployed for drilling or production operations fall outside scope of traditional P&I cover because the liabilities and losses have not arisen in direct connection with the operation of the insured vessel.

This is codified in the last paragraph to Rule 27 stating that no cover shall be available for liabilities, costs and expenses relating to clean-up and removal of equipment lost or abandoned on the seabed as a result of an incident or occurrence having occurred after the relevant equipment having been deployed from the vessel. See also the special exclusion in Rule 38.

(l) …. For the purpose of this Rule equipment shall be considered deployed from the time installation of the equipment, or any part of the equipment, for drilling or production has commenced. (Rule 27 last paragraph)

The last sentence of Rule 27 clarifies that equipment will be deemed to be 'deployed', and, thus, caught by the exclusion, from the point in time the installation of the equipment or any part of it for production or drilling has commenced. In other words, Rule 27 last paragraph will operate even if the equipment is lost before the intended use or operation of the equipment has started as long as the installation process has begun.

Rule 28 Salvage

The Association shall cover liability for special compensation awarded to a salvor

- **a** pursuant to Article 14 of the International Convention on Salvage 1989; or
- **b** pursuant to Article 14 of the International Convention on Salvage 1989, as incorporated into Lloyd's Open Form of Salvage Agreement, or into any other salvage contract approved by the Association; or
- **c** pursuant to the Special Compensation P&I Clubs Clause (SCOPIC) as incorporated into Lloyd's Open Form of Salvage Agreement or any other "No Cure - No Pay" salvage contract approved by the Association.

Guidance

(A) ...liability...to a salvor... (Rule 28)

Traditionally, a person who voluntarily saves the property of others at sea is entitled at law to claim a salvage award from the owners of that property. The salvage award is based, inter alia, on the post-salvage value of the property saved, the degree of danger involved, the degree of skill applied and a number of other factors. The salvage award is payable by the owners and/ or the insurers of the salved property in accordance with the proportion that the value of the particular property bears to the total value saved. The vessel's proportion of such salvage award is insured under the vessel's hull policy but the Association also has an active interest in relation to life salvage and liability claims that include a salvage element.

Even if the Association generally has been increasingly involved with salvage operations ever since the entry into force of the1989 Salvage Convention which introduced the concept of environmental salvage (Art. 14) and the introduction of SCOPIC in 1999, the concept of salvage has limited importance for mobile offshore units. This is an area where the traditional maritime law and the more recent offshore legislation differs. Pursuant to Article 3 of the 1989 Salvage Convention, it shall not "… apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources." In other words, if an incident occurs while the unit is engaged in, for example, drilling or production, the Salvage Convention will not apply. The further commentaries in this guidance to Rule 28 is based on the assumption that the 1989 Salvage Convention and standard forms of salvage agreements as stipulated in the rule will apply.

Salvage has historically been based on the principle of 'no cure-no pay' and the salvor has been required to bear in full the economic risk that is involved in rendering the salvage services. If the salvor failed to save any property, or if the property saved had no residual value, he received no compensation

for the costs and losses that had been incurred by him in making the attempt. However, in the late 1970's it was recognised that salvors ought to be encouraged if the prospects of an award based on the value of property salved were small or non-existent, to, nevertheless, undertake salvage services in order to prevent or reduce environmental damage. Therefore, provisions were incorporated into the Lloyd's Open Form Salvage Agreement of 1980 that were intended to compensate the salvor for costs and expenses incurred by him in such circumstances, and this principle was subsequently developed in the 1989 Salvage Convention, article 14 of which introduced the concept of the 'special compensation'. Such special compensation is payable only if, and to the extent that, it exceeds the traditional salvage award based on the salved value of the property saved that is payable by the owners/insurers of the salved property.

The method by which such special compensation was assessed proved in some cases to be very expensive and time-consuming. Furthermore, hull and other property underwriters argued that it was more logical and natural for such liability to be covered under P&I insurance since the liability for environmental damage that would have been caused by the escape of oil or any other substance from the ship had it not been prevented or minimised by such salvage services would normally be covered by P&I insurers. Consequently, hull, property and P&I insurers developed the concept of the Special Compensation P&I Club Clause (SCOPIC) as an alternative method of calculating the compensation that was payable to salvors in such circumstances. SCOPIC may be included in the LOF or any other form of salvage agreement and can be invoked by the salvor at any time during the salvage services. However, unlike the 'special compensation' which is payable under Article 14 of the 1989 Salvage Convention, SCOPIC provides for a tariff-based assessment and remuneration of the costs and expenses that are incurred by the salvor when undertaking the salvage operation.

Whilst the concept of the special compensation and SCOPIC has done much to encourage salvors to take prompt action to protect the environment, the fundamental principle remains that salvage awards are still based primarily on the post-casualty values of the salved property and are payable by the owners/ insurers of such property. However, much of the risk of failure that had been borne by salvors in relation to such traditional salvage operations has now been transferred to shipowners and their P&I insurers. Therefore, Rule 28 is intended to make P&I cover available for claims that are made by salvors against shipowner Members for 'special compensation'. Rule 28.a provides cover for 'special compensation' claims that are made pursuant to Article 14 of the Salvage Convention 1989, Rule 28.b for such claims when made pursuant to article 14 of the Convention as incorporated into a salvage contract, and Rule 28.c for such claims when made pursuant to the SCOPIC clause.

(B) ...special compensation awarded…pursuant to Article 14... (Rule 28.a)
Article 14 of the International Convention on Salvage 1989 entitles a salvor to special compensation, irrespective of whether the ship, bunkers or other property are salved, where it can be demonstrated that the salvor intentionally ”carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment”. See article 14.1 of the Convention. An environmental threat in this context is defined as a threat of ”substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents”. See Article 1 (d) of the Convention.

The ’special compensation‘ is intended to compensate the salvor for the out of pocket ’expenses‘ that he has incurred in rendering the services, e.g. the cost of hiring personnel, vessels and equipment, and to allow him to recover a ’fair rate’ for his own vessels, men and equipment that have been reasonably used. If the salvor can demonstrate that the services that he has rendered did prevent or minimise damage to the environment, he may, at the discretion of the tribunal that is determining the salvage award, receive an additional award of up to 30 per cent of his expenses, which may also, in exceptional circumstances, be increased up to 100 per cent of those expenses. The factors taken into account when assessing the level of special compensation include the potential risk of damage to the environment existing when the salvage services were being rendered, the degree of success, the skill with which the services were carried out, and the risks that were undertaken by the salvor.

However, if the salvors have succeeded in salving property that has a residual value, they are then entitled to receive a salvage award that is calculated with reference to the salved value of such property. That award is payable by the owners of the vessel and cargo and any other salved property in accordance with the proportion that the value of the particular property bears to the total of the value saved, and payment will normally be made (subject to any deductible) by the insurers of the hull and cargo and other property. In such circumstances, special compensation, and consequently, P&I cover under Rule 28, is available only for the difference, if any, between the amount of any such salvage award and the total amount assessed as special compensation.

(C) …Lloyd’s Standard Form of Salvage Agreement…or any other salvage contract approved by the Association… (Rule 28.b)

Cover is available under Rule 28.b where the International Convention on Salvage 1989 does not apply by force of law, but is adopted by agreement into a salvage contract, e.g. in a Lloyd’s Open Form of Salvage Agreement (LOF).

Recent editions of LOF incorporate the International Convention on Salvage

1989 and provide that disputes between salvors and owners of salved property are to be resolved pursuant to English law and London arbitration. The recent LOF 2011 does not make any fundamental changes to the existing LOF regime but provides that all agreements to use the LOF form are to be reported to Lloyd's and that details of LOF awards are now to be made publicly available on the Lloyd's website. The terms of LOF 1980, 1990, 1995, 2000 and 2011 are approved by the Association and therefore, these contracts do not need to be submitted to the Association for approval.

Cover is also available where Article 14 of the 1989 Convention is incorporated into salvage contracts other than LOF provided that the terms of such a contract, or similar terms, have been approved by the Association.

(D) ...the Special Compensation P&I Club Clause (SCOPIC)... (Rule 28.c)
The Special Compensation P&I Club Clause (SCOPIC) was introduced in 1999 and is intended to be used in conjunction with LOF salvage contracts. However, the clause was developed, drafted and agreed in response to the specific concern that was expressed by salvors when engaged in salvage operations and, therefore, it is not suitable for use in the context of other response activities, such as pollution clean-up. The clause has subsequently been revised in 2000 (SCOPIC 2000), 2007 (SCOPIC 2007), 2011 (SCOPIC 2011) and 2014 (SCOPIC 2014) mainly to take account of increased tariff rates. Parties need to consider when concluding a LOF salvage agreement, whether or not to include the SCOPIC clause since, if it is included, the salvor is entitled to invoke it unilaterally at any time during the salvage operation and regardless of the circumstances.

SCOPIC provides a fixed tariff for the use that is made by the salvor of his salvage vessel's equipment and his manpower as from the time that SCOPIC is invoked. Furthermore, the salvor is entitled to an increased tariff of 25 per cent for most types of expenses. In this way, SCOPIC provides the salvor with a financial 'safety net' and the encouragement to render services although the prospect of earning a traditional salvage award is low or non-existent.

However, the invocation of SCOPIC does not rule out the prospect of earning a traditional salvage award under Article 13 of the 1989 Convention. There is an important linkage between the traditional form of salvage award and the remuneration that is payable under SCOPIC, which may have a fundamental bearing on the Association's liability pursuant to Rule 28.c:

- If the salvor has invoked SCOPIC, but the Article 13 award nevertheless exceeds the assessed SCOPIC remuneration (including the 25 per cent mark-up), the shipowner Member has no liability to pay SCOPIC remuneration and, consequently, the Association has no liability to reimburse him pursuant to Rule 28.c. Furthermore, the Article 13 award that is payable by the insurers of the property that has been salved in such circumstances will be discounted by 25 per cent of the difference

between that award and the amount of SCOPIC remuneration that would have been earned by the salvor had he invoked SCOPIC on the first day of the salvage operation. This is intended to discourage salvors from invoking SCOPIC in circumstances where it is inapplicable.

- If the salvor has invoked SCOPIC and the Article 13 award is less than the assessed SCOPIC remuneration (including the 25 per cent mark-up), cover is available under Rule 28.c for the amount by which the SCOPIC remuneration exceeds the Article 13 award. In other words, cover is available under Rule 28.c for the full SCOPIC remuneration only in circumstances where there is no Article 13 award, i.e. there are no salved property values on which a traditional salvage award can be based.

Therefore, the Association faces its biggest exposure when, in the case of complex and dangerous salvage operations that require significant pollution prevention or mitigation measures to be taken, the salvor has invoked SCOPIC on the first day and committed very expensive resources for a long period of time, and the salvage operation fails in the sense that no property is salved and no traditional salvage award can be made.

The shipowner is obliged, pursuant to SCOPIC, to provide security to the salvor within two working days after the salvor has invoked the SCOPIC clause. The amount of security is initially USD 3 million, inclusive of interest and costs but can be subsequently increased or reduced upon the request of either party. Pursuant to the Code of Practice that has been agreed between the International Group of P&I Clubs and the International Salvage Union, salvors have agreed to accept such security in the form of a letter of undertaking from the P&I club in which the vessel is entered, which club will not refuse to provide such security except in cases where the member concerned is in breach of the club's rules.

Finally, SCOPIC entitles the owners of the property to which salvage services are being rendered to appoint a Special Casualty Representative (SCR) to monitor the measures that are being taken by the salvor and the resources that are being utilised in the operation. The SCR also has the important responsibility to monitor the expenses that are being claimed by the salvor pursuant to SCOPIC and to assess whether they were reasonably incurred having regard to the nature and dangers of the operation.

Rule 29 Fines

1 The Association shall cover fines imposed upon a Member in respect of the Vessel by any court, tribunal or other authority of competent jurisdiction for or in respect of any of the following:
   - **a** failure to comply with regulations concerning the declaration of goods, or documentation of cargo, provided that the Member is insured by the Association for cargo liability under Rule 26 (other than fines or penalties arising from smuggling of goods or a cargo or any attempt thereat);
   - **b** breach of any immigration law or regulations;
   - **c** the accidental escape or discharge from the Vessel of oil or any other substance or threat thereof, provided that the Member is insured for pollution liability by the Association under Rule 25. An escape or discharge in this context is accidental if it is not the proximate result of an act or omission done with intent to discharge any substance from the Vessel or a reckless act or omission done (irrespective of intent) with knowledge that an escape or discharge from the Vessel would probably result.

2 The Association may, in its sole discretion, cover in whole or in part
   - **a** a fine or penalty other than those listed in Rule 29.1 above imposed upon the Member provided the Member has satisfied the Association that it took such steps as appear to the Association to be reasonable to avoid the event giving rise to the fine or penalty.
   - **b** any fine imposed not upon the Member but the master or Crew member of the Vessel or on any other servant or agent of the Member or on another party, provided that the Member has been compelled by law to pay or reimburse such fine or that the Association determines that it was reasonable for the Member to have paid or reimbursed the same.

3 The Association shall be under no obligation to give reason for its decision pursuant to Rule 29.2 above.

Guidance

(A) Introductory remarks

Every Member of the Association is expected to operate his vessels in compliance with the laws and regulations that apply where his vessels are operating. He is expected to have, or to obtain knowledge about, all such laws and regulations, and to ensure to the best of his ability that he complies with them.

A distinction is drawn in the Rules between, on the one hand, conduct that may result in the cesser of cover (i.e. that the contract of insurance is brought to an end) and, on the other hand, conduct that will deprive the Member of

right of recovery under the contract of insurance for liabilities, losses, costs and expenses that arise as a result of certain conduct. Secondly, a distinction is drawn between serious offences or violations of regulations that are committed with or without the knowledge of the Member, and less serious offences or violations of regulations that are caused by the acts or omissions of the master or crew in the course of their duties and employment but without the knowledge of the Member. For example:

- Under Rule 17.2.(i) the Member shall cease to be covered by the Association on the occurrence of an event in which the vessel is, with the consent and knowledge of the Member, being used for the furtherance of illegal purposes.
- Under Rule 51.1 the Association does not cover liabilities, losses, costs or expenses arising out of or consequent upon the vessel carrying contraband, blockade running or being employed in or on an unlawful trade or voyage even if the Member was unaware that the vessel was being employed in this manner.
- Under Rule 53, the Association does not cover liabilities, losses, costs or expenses arising or incurred in circumstances where there has been wilful misconduct on the part of the Member.

However, subject to such restrictions, cover is available as of right under Rule 29 for fines that may be imposed on the Member for certain prescribed offences whilst, in the case of other offences, cover may be available only if the Board of Directors of the Association decide to exercise their discretion to extend cover. Rule 29.1 itemises the categories of fines and penalties for which cover is available, whereas Rule 29.2 gives the Association the discretionary right to cover fines and penalties in circumstances other than those itemised in Rule 29.1. It is important to note that cover is available only in respect of fines and penalties that have been incurred in direct connection with the operation of the insured vessel, and in respect of the Member's interest in the vessel, and as a result of events that have occurred during the period of entry of the vessel in the Association as required under Rule 2.3.

(B) …fines … (Rule 29.1)

The cover that is available as of right pursuant to Rule 29.1 is specifically restricted to the categories of fines itemised in sub-paragraphs a, b and c of that Rule. This is based on a 'model Rule' that has been agreed between the P&I clubs that are parties to the International Group of P&I Clubs' Pooling Agreement. A similar provision is included in the Rules for P&I and Defence cover for ships and other floating structures (Rules for Ships). This 'model Rule', which has recently been reviewed and re-confirmed by the International Group Clubs, is designed to strike a balance between, on the one hand, accidental law infringements that are considered difficult to avoid given the trading environment in which ships normally operate, and which

are, consequently, considered to be mutual risks that should be shared by the membership and, on the other hand, those infringements that a Member should have taken steps to avoid and which are not considered to be mutual risks but risks that should be for the Member's own account.

Rule 29.1 does not define the term 'fines'. However, for the purposes of Rule 29.1, a 'fine' is considered to be a monetary punishment imposed by a public authority that is empowered under the applicable law to impose such a punishment for a violation or infringement of any applicable laws or regulations, and which has the legal means to enforce it in the country, port or place in question. This will include most types of monetary punishment, but does not extend to the confiscation by authorities of the vessel or the Member's other assets.

(C) …imposed upon a Member… (Rule 29.1)
Cover is available under Rule 29.1 for the fines or other penalties that are itemised in sub-paragraphs (a) to (c) of the Rule when they are imposed upon the Member by a court, tribunal or other authority of competent jurisdiction. In this context, the Member also means any joint member(s) or co-assured(s), as well as any affiliate to whom the Association shall extend cover under Rule 59.

Whilst the laws of some countries permit enforcement action to be taken against the ship in rem, with the consequent risk that the vessel may be arrested, attached, detained and, ultimately, auctioned, cover is not available under Rule 29.1 in such circumstances unless the fines or other penalties in respect of which action has been taken against the vessel, have also been imposed on the Member. Therefore, cover is not available for fines or other penalties that are imposed not on the Member but simply on the insured vessel and which relate to violations or infringements that occurred at a time when the vessel was owned by someone other than the Member.

(D) …in respect of the Vessel… (Rule 29.1)
The fine that is imposed on the Member must have been incurred by him in his capacity as the owner and/or operator of the insured vessel. For example, if the Member is an owner of a Floating Production, Storage and Offloading unit (FPSO) that is entered in the Association, but is also the operator of an oil terminal, cover would not be available for fines or other penalties that the Member has incurred in his capacity as operator of the terminal. See also the guidance to Rule 2.3.

(E) …by any court, tribunal or other authority of competent jurisdiction… (Rule 29.1)
Cover is available under Rule 29.1 only if the Member can demonstrate that the fine has been imposed by a court, tribunal or another authority

of 'competent jurisdiction', i.e. an authority that is empowered under the applicable law to impose such punishment, e.g. the customs authorities, the coast guard or an environmental protection agency. The Member is required to investigate and verify the applicability of the law or regulation based upon which the fine or penalty is being imposed, and the legal competence of the authority that is purporting to impose the fine or penalty. This is usually done by taking advice from local P&I correspondents or legal counsel.

Most countries have a system of law that enables a person upon whom a fine or penalty has been imposed by administrative public authorities to appeal to a court or a higher authority. Whilst it is not a pre-requisite of cover that the Member must have requested appellate review of any fine that has been imposed upon him, the Member is obliged under Rule 62 to take, and to continue to take, such steps as may be reasonably necessary in order to minimise the liability of the Association, and to consult the Association in this regard. The question of whether the Member should simply pay the fine when first imposed or seek appeal to a court or higher authority is an issue that must be determined on a case by case basis in the light of the particular facts, the applicable law or regulations and the likelihood of obtaining a fair hearing in the country in question.

Comments are made in (F) to (K) below on the specific types of fines or other penalties for which cover is available whereas comments are made in (L) to (O) below on the circumstances in which the Association has a discretion to extend cover.

(F) ...failure to comply with regulations concerning the declaration of goods, or documentation of cargo… (Rule 29.1.a)

While mobile offshore units usually are engaged in production or storage operations of oil and gas, they are normally not involved in ordinary carriage of cargo. For that reason, the cover available under available under Rule 29.1.a is of less relevance for owners of mobile offshore units than owners of ordinary merchant ships. The intention is nevertheless that the cover for fines in the Rules for mobile offshore units shall mirror the cover for ordinary merchant ships under the Rules for Ships.

Rule 29.1.a refers to regulations that govern 'cargo' documentation or the declaration of 'goods.'

Cargo

Customs laws and regulations of many countries empower the local customs authorities to impose a fine or some other similar penalty on a carrier of cargo in the event that there is a discrepancy between, on the one hand, the marks, number, quantity or weight of cargo that is described in the transport document such as cargo manifest and, on the other hand, the actual marks, number, quantity or weight of cargo as ascertained by those authorities after

discharge of the cargo from the vessel. The customs authorities of some countries are particularly strict in carrying out their duties in this regard and may impose fines or other penalties even when the discrepancies are either very small or unavoidable given the nature of the cargo.

Fines and penalties are often imposed as a result of the failure of the carrier to present a cargo manifest on time and/or to make accurate cargo declarations in the manifest, and/or for short-delivery of cargo, i.e. when less cargo has (allegedly) been delivered than that which is recorded in the transport documentation, and/or for over-delivery of cargo, i.e. when more cargo has (allegedly) been delivered than that which is recorded in the transport documentation etc. Cover is available in all these circumstances.

"Goods"

The expression 'goods' may be of more relevance for mobile offshore units since it is broader in scope than 'cargo' and will comprise necessary supplies and other objects on board the vessel not carried as cargo. This may include stores such as medical supplies, food or other provisions or consumer goods. Therefore, Rule 29.1.a also provides similar cover for fines that may be imposed by authorities who allege that there are discrepancies in a vessel's manifest that relate to her stores, medicine chest, or bunkers on board. However, objects that are part of the vessel's permanent equipment are not deemed to be 'goods' for the purposes of Rule 29.1.a.

(G) ...provided that the Member is insured by the Association for cargo liability under Rule 26… (Rule 29.1.a)

Fines falling within Rule 29.1.a will typically relate to cargo or 'goods' carried on board. Since the cover for fines in the Rules for mobile offshore units mirrors the standard terms of P&I entry for ordinary ships, the cover for fines under sub-paragraph (a) is made conditional upon the Member being covered for liability for property damage under Rule 26. In the Rules for Ships the cover for fines in relation to cargo is made conditional upon the ship being covered for cargo liability.

In other words, cover is not available under Rule 29.1.a for fines etc., where the Member, as a result of special terms of entry, has excluded liability for property damage as provided by Rule 26 from the scope of the vessel's P&I cover. However, if the vessel is covered for liability for property damage, the Member shall not automatically be deprived of cover against fines pursuant to Rule 29.1.a, even if the incident giving rise to the fine falls within one of the special exclusions in, e.g., Rule 42.1. In such circumstances, the Member is still deemed to be insured for property damage for the purposes of Rule 29.1.a.

(H) …(other than fines or penalties arising from smuggling of goods or cargo or any attempt thereat)… (Rule 29.1.a)
The effect of the words within the brackets is to exclude from cover fines that are imposed upon the Member based on the alleged smuggling of cargo or goods or any attempt thereat. Although providing cover for smuggling fines may not necessarily be unlawful, it may be seen by governments and other authorities as undermining the intended penal and corrective effect of the regulations and, consequently, to be contrary to public policy. For that reason, standard terms of cover do not comprise smuggling fines. This is the case even if there has been no intentional or reckless unlawful conduct on the part of the Member.

Smuggling
For these purposes 'smuggling' means the offence of importing prohibited articles, or of defrauding the revenue by the introduction of articles into consumption, without having paid the duties that are chargeable upon them. In practice 'smuggling' occurs when cargo or goods are brought into a country in a manner designed to avoid detection by the local authorities and in order to avoid any embargos that are imposed by the criminal laws of that country, e.g. laws prohibiting the importation of drugs, or in order to avoid or circumvent the importation laws and regulations of that country, e.g. import taxes, customs dues etc. The exclusion also applies to the smuggling of "goods" the meaning of which is considered in paragraph (F) above.

(I) …breach of any immigration law or regulations… (Rule 29.1.b)
The immigration laws and regulations of a country govern the extent to which any person that is not a citizen of that country may enter and reside in that particular country. Such laws and regulations will usually require persons who are not citizens of that country to show, on arrival at that country's border, such evidence of permission to enter that country that is required from the citizens of the country where the person that is seeking entry is domiciled, e.g. a passport, visa or other similar documentation. A person who violates the relevant immigration laws or regulations may not only be arrested, held in custody or deported, but may also be made liable to pay fines or other penalties, including any costs that may be incurred by the relevant authorities in this regard. Common examples of violations occur when crew members cross a border without permission or stay in a country for longer than is permitted by the conditions of the relevant visa.

Cover is available under Rule 29.1.b where a fine is imposed on the Member as a result of a breach by him, or by a person whom the Member is obliged by law to reimburse, of any such immigration law or regulations. For example, cover is available if the Member is held responsible by the authorities as a

result of the desertion of crew members from the vessel, or if stowaways that are held in custody on board the vessel escape ashore while the vessel is in port and are subsequently apprehended by the local authorities.

Immigration laws or regulations may also require the repatriation of crew members if the vessel is detained or arrested in port in circumstances where there is no prospect that the vessel will be able to resume operation in the immediate future. Cover for costs and expenses that are incurred by a Member in relation to such repatriation is not available under Rule 29.1.b, but may be recoverable under Rule 19.

(J) ...accidental escape or discharge from the Vessel of oil or any other substance or threat thereof... (Rule 29.1.c)

Cover is available for fines imposed on the Member as a result of the accidental discharge or escape of oil or any other substance from the insured vessel or as a result of a threat thereof. However, the cover is restricted to incidents where the insured vessel is the source for the pollution. Rule 29.1.c does not comprise fines and penalties imposed on the Member in respect of accidental escape of oil or any other substances from sources other than the vessel regardless of whether the vessel is directly involved in the casualty or event giving rise to the penalty and the Member has incurred the fine in his capacity as owner or operator of the vessel. Such fines are not a named risk. Practical examples of accidental escape of oil or any other substances from sources other than the vessel can be fines imposed on the Member in respect of uncontrolled escape of oil from the well being serviced by the vessel, pollution from a shore installation caused by the vessel in a FFO case or from the other ship in a collision case.

"Other substances"

The term 'other substances' is widely construed and includes, inter alia, garbage and water that is used to wash a hold or deck. Another common example is where a fine is imposed on a vessel that breaches air pollution rules, usually because the vessel has entered an area where only low sulphur fuel can be used, and the vessel does not have such fuel on board or fails to use it correctly so as to breach local air pollution regulations.

"Escape or discharge"

Any release of a substance from the ship, resulting in the substance escaping from the ship, will qualify as an 'escape or discharge'. See also Guidance to Rule 25 under item (D).

"Accidental"

Cover is available under Rule 29.1.c only if the escape or discharge is '"accidental"'. The term 'accidental' is defined in the last sentence of Rule

29.1 c. The definition in the Rules is negative, meaning that any escape or discharge which is not the proximate result of any of the two alternatives set out in the last sentence of Rule 29.1 c, is considered 'accidental'.

The term 'proximate result' refers to the legal causation between the act or omission on the one hand and the escape or discharge on the other. Legal causation requires that the link between the escape or discharge and the consequence of the acts or omissions covered by the two alternatives set out in the last sentence of Rule 29.1 c is not too remote.

Pursuant to Rule 29.1 c, an escape or discharge is accidental, and thereby covered by Rule 29, provided it is not the proximate result of:

(i) "an act or omission done with the intent to discharge any substance from the Ship"; or

(ii) "a reckless act or omission done (irrespective of intent) with knowledge that an escape or discharge from the Ship would probably result"

Alternative (i) above refers to intent "to discharge". If there is intent to discharge a substance from the vessel, e.g. typically for operational reasons, the release is not accidental, even if there was no intent to pollute or any knowledge that the discharge of the substance could give rise to fines or penalties. It is sufficient that the discharge of the substance which turned out to give rise to fines or penalties, was intended.

However, under alternative (i) it is not sufficient that the act leading to the discharge was intended, if there was not an intention to discharge any substance from the vessel. For example, if an internal transfer of product around the vessel's tanks is intended but due to negligence in operating the wrong pump or a technical malfunction of a valve the product is inadvertently discharged overboard, such a discharge would be accidental. In this example, the escape or discharge is not the proximate result of an act or omission done with the intent to discharge any substance from the ship but an unintended consequence of an intended internal transfer of the substance.

Other examples of escape or discharge which would often be considered accidental pursuant to Rule 29.1 c, include where the escape or discharge is caused by a casualty involving the Vessel, such as a collision, grounding or foundering, or by a leak or tank overflow.

On the other hand, if, for example, wastewater is deliberately pumped overboard in the honest but ultimately mistaken belief that the water was free of pollutants and/or that it was a permissible substance under applicable

laws and regulations to be pumped overboard, the discharge would not be accidental. In this second example, even though there was no intent to pollute, the discharge of the wastewater as such was intentional. The same would apply for all other types of deliberate operational discharges done in the honest but ultimately mistaken belief that the discharge was free of pollutants and/or that it was a permissible substance under applicable laws and regulations, e.g. discharge or emission of ballast water, cooling water, water from open-loop scrubbers, exhaust gases, bilge water, tank washing water, produced water, or other similar deliberate discharges.

Similarly, in case of a reckless act or omission (alternative (ii) above), it is sufficient that the person carrying out the act (or omission) had knowledge that an escape or discharge would probably result; there is no requirement that the person also had knowledge that the escape or discharge would probably cause pollution or lead to pollution liability.

Other examples where an escape or discharge would not be considered to be accidental, includes when, :

- oil or any other pollutant has been intentionally discharged or allowed to escape as a result of infringements or violations of or non-compliance with the provisions regarding construction, adaptation and equipment of ships
- contained in the International Convention for the Prevention of Pollution from Ships, 1973, as modified or amended by the Protocol of 1978 and any subsequent Protocols (MARPOL 73/78) or such of those aforesaid provisions as are contained in the laws of any state giving effect to that convention or to such protocol(s) (See Rule 8.1.f regarding compliance with flag state requirements as a condition of insurance); or
- oil or any other pollutant has been intentionally discharged or allowed to escape from the vessel even if this was thought to be justifiable in the circumstances, e.g., the jettison of crude oil for safety purposes after a casualty; or
- a substance believed to be a non-pollutant, but which was considered to be a pollutant according to local regulations, is intentionally discharged from the vessel (cf. the example regarding discharge of wastewater above).

The reference to intent and knowledge in Rule 29.1 c refers to the intent or knowledge of the person whose act or omission results in the discharge or escape. Consequently, the Member's cover against fines and penalties under Rule 29 will be excluded pursuant to Rule 29.1. c due to the intentional acts or reckless acts or omissions by the crew or other persons, even if the Member had no knowledge of the release.

(K) ...provided that the Member is insured for pollution liability by the Association under Rule 25... (Rule 29.1.c)
Rule 25 outlines the scope of cover that is available for liabilities, costs and expenses that arise in consequence of the discharge or escape from the insured vessel of oil or any other substances, or as a result of the threat of such discharge or escape. Cover for pollution-related fines is expressly excluded under Rule 25 since cover for such fines is made available under Rule 29.1 c. However, if a Member is not insured by the Association for pollution liability pursuant to Rule 25, the cover that would otherwise have been available for fines and penalties under Rule 29.1.c is not available. Furthermore, it is unlikely that the Association would exercise its discretion to extend cover to the Member pursuant to Rule 29.2 in such circumstances, in view of the fact that the Member has chosen to exclude pollution liability cover under his terms of entry for the vessel.

(L) The Association may, its sole discretion, cover in whole or in part...a fine other than those listed in Rule 29.1… (Rule 29.2.a)
The reason why cover is restricted to the categories of fines that are itemised in Rule 29.1 has been explained above. However, Rule 29.2 recognises the fact that restricting cover in this way may, in exceptional cases, cause hardship to the Member. Consequently, subject to the conditions that are imposed by Rule 29.2, the Association is given the discretion to cover in whole or in part a fine that has been imposed upon the Member, or upon a third party whom the Member is legally obliged to reimburse, in circumstances other than those described in Rule 29.1. However, for the avoidance of doubt, the Association is unlikely to exercise its discretion to provide cover for fines relating to the smuggling of goods, the cover for which is excluded under Rule 29.1.a.

Discretion is exercised by the Board of Directors of the Association which will consider any application which the Member wishes to make under Rule 29.2 after the Member has paid the fine, and after the Member has provided a full and complete explanation of all the relevant circumstances that resulted in the imposition of the fine or penalty upon the Member. Whilst each case is considered on its own facts, the Board of Directors is under no obligation to give reasons for any decision that it reaches in relation to such application for cover.

(M) …provided the Member has satisfied the Association that it took such steps as appear to the Association to be reasonable to avoid the event giving rise to the fine or penalty… (Rule 29.2.a.)
Discretion cannot be exercised in favour of the Member under Rule 29.2.a. unless and until the Member has demonstrated to the satisfaction of the

Association that he took steps that are considered to be reasonable in order to avoid the event that gave rise to the fine or penalty. The onus is on the Member to demonstrate this to the Association and to provide all relevant information and documentation, and to give all the assistance that the Association may require in order to enable it to properly investigate the claim as required under Rule 62.

However, even if the Member satisfies all such requirements, the Association is under no obligation to exercise its discretion in favour of the Member. The Association must consider the interests of the membership as a whole and may conclude that the event that gave rise to the fine or penalty was of such a nature, or had such characteristics, that it would be contrary to the interests of the membership as a whole to make cover available for the claim even if the Member had taken all reasonable steps to avoid it.

For example, the Association might decide to exercise its discretion in favour of the Member in the case of a fine or penalty that has been imposed upon the Member for a breach of a regulation that was impossible to avoid since no information had been made available to the Member about the circumstances that would result in the breach, e.g. where the relevant authorities have prohibited the anchoring of vessels in certain coastal areas but have not released the relevant information into the public domain, and the charts that are available for the areas do not indicate any such restriction.

(N) …imposed...upon the master or Crew member of the Vessel or on any other servant or agent of the Member or on another party , provided that the Member has been compelled by law to pay or reimburse such fine... (Rule 29.2.b)

Whilst cover is not directly available for fines that are imposed on individuals who may be employed, engaged or appointed by the Member, cover is, nevertheless, available if the Member is legally obliged to indemnify that person in respect of such fines or other penalties. Such individuals will normally include the master, platform manager, crew members and other workers contractually obliged to serve on board the vessel. The basis for the Member's legal obligation to reimburse such fines is usually the terms of service or employment pursuant to which the Member is obliged to indemnify such individuals for, or to hold them harmless against, any fines or other penalties that are imposed upon them personally as a result of acts or omissions that are committed by them within the scope of their duties and employment on board.

Similarly, cover is available for any legal liability that the Member may have to indemnify independent contractors such as a firm of engineers that has been contracted by the Member to conduct main engine repair works while the vessel is in port. However, cover is available only if the Association has previously approved the terms of the contract or indemnity that imposes the duty to indemnify the Member. See Rule 42.1.

(O) …or that the Association determines that it was reasonable for the Member to have paid or reimbursed the same. (Rule 29.2.b)
In some circumstances, the Member may wish to reimburse a third party in respect of a fine or other penalty that has been imposed upon that party even though the Member does not have a legal obligation to do so.

For example, the Member may wish to indemnify a master in respect of a fine that has been imposed personally on him even if there is no obligation to do so under the contract of employment. Although the Association has no obligation to make cover available in such circumstances, cover may be extended if the Association determines that it was reasonable for the Member to have paid or reimbursed the fine. However, the Member should always endeavour to obtain the agreement of the Association before entering into any commitment to indemnify the third party in question.

(P) The Association shall be under no obligation to give reasons for its decision pursuant to Rule 29.2 above. (Rule 29.3)
Rule 29.2, like the 'Omnibus Rules' of other P&I clubs, empowers the designated decision-making body of the Association, i.e. the Board of Directors, to consider and determine whether, in the context of mutual insurance, and with due regard to the interests of the membership as a whole, a claim that does not fall within the scope of cover that is provided by the Rules should, nonetheless, be compensated by the membership.

The decision of the Board of Directors is to be final in this regard and it does not need to give reasons for its decision. By agreeing to the Association's Articles of Association and Rules, Members have agreed and confirmed that claims made pursuant to Rule 29.2 are to be decided by the Board of Directors of the Association as the sole and highest decision-making authority of the Association. The decision of the Board is subject to judicial review only when it is alleged that the Directors have exceeded their authority, i.e. acted ultra vires, or have failed to apply the rules of natural justice as expressed by the English Court in the Vainqueur Jose (1979) 1 Lloyds Rep 557. Other courts and tribunals are likely to follow the same approach. Courts will normally assume that the Directors have acted in good faith, and the onus of proving otherwise, which is not easily discharged, is on the party making the allegation.

Rule 30 Legal costs

The Association shall cover legal costs and expenses relating to any liability, loss, cost or expense which, in the opinion of the Association, is (or, apart from any applicable deductible, would be) likely to result in a claim on the Association, but only to the extent that such legal costs and expenses have been incurred with the agreement of the Association.

Guidance

(A) …legal costs and expenses… (Rule 30)

It is necessary to distinguish between, on the one hand, Defence cover under Part III, Chapter 1, of the Rules which provides insurance for legal and other costs that are necessarily incurred in establishing or defending claims in which the Association has no proprietary interest and, on the other hand, the cover that is made available under Rule 30 in relation to P&I cover. In the case of P&I cover, the Association has a proprietary interest in the liability, loss, costs or expense that have been incurred by the Member since it provides insurance against such matters. The pursuit or defence of such claims against, or by, the Member will result in cost and expense which can be substantial depending on the size and complexity of the underlying claim or claims. Consequently, cover is also made available under Rule 30 for legal costs and expenses that are incurred in order to resist or pursue such claims.

Cover is available for legal costs and expenses that are incurred by the Member in order to ascertain and protect the Member's legal rights in relation to a claim for which cover is available under the P&I entry for the vessel. However, cover under this Rule 30 is available only for the legal costs and expenses that may be incurred by the Member in order to resist or pursue recoverable claims. Liability that the Member may have to compensate a third party for the legal costs and expenses the third-party has incurred when pursuing his claim against the Member will fall within the scope of the Rule covering the relevant category of claims. For example, a Member's liability to compensate legal costs incurred by a third-party claimant in connection with an ordinary personal injury claim will be compensated under Rule 20 as an integral part of the claim. The legal costs and expenses incurred by each party can be substantial depending on the size and complexity of the underlying claim or claims.

The phrase 'legal costs and expenses' includes the cost of advisory services that are provided by external lawyers, barristers, associates, paralegals etc., at any stage of the case, as well as the cost of legal representation in arbitration or before a court or other tribunal. Furthermore, whilst it is not expressly stated, cover is also available for costs and expenses that are incurred for services that are provided by persons who do not have legal qualifications, e.g. P&I correspondents, surveyors, consultants or experts.

The phrase 'legal costs and expenses' also includes service fees and disbursements that are charged by service providers, including those charged by sub-contractors or appointees of a service provider, and charged to that provider in the first instance, e.g. a local surveyor appointed and paid firstly by the P&I correspondent. However, cover is not available for the Member's internal administrative costs and expenses, such as the wages of those employees dealing with case, or any extra costs that are incurred by the Member as a result of their absence from normal duties. See the guidance to Rule 40.1.f and Rule 62.4.

(B) …relating to any liability, loss, cost or expense which…is… (or, apart from any applicable deductible, would be) likely to result in a claim on the Association… (Rule 30)
Cover is available for costs and expenses only where they are incurred in connection with any liability, loss, cost or expense which, in the opinion of the Association, is likely to result in a claim for which P&I cover is available under the Rules or any other special terms that may apply to the P&I entry of the vessel.

If the legal and other costs that the Member has incurred relate to liability etc., that is not likely to be recoverable from the Association under the P&I entry for the vessel, they may nevertheless be recoverable from the Association if the vessel has been entered for Defence risks, subject to the Defence Rules as set out in Part III of the Rules and any special terms of Defence Entry.

If lawyers or other service providers are instructed to act partly in relation to a matter that is likely to result in, or has resulted in, a claim on the Association, and partly in relation to another matter, it is important that a distinction is made between the two matters, since the cover that is available under Rule 30 will be available for one of them, but not for the other.

The Association may agree to allow a vessel to be entered on terms which provide that the legal costs and expenses that are recoverable pursuant to Rule 30 are not to be subject to any deductible and are consequently, compensated in full. However, the usual rule is that the legal costs and expenses that may be incurred shall be added to the relevant liability, loss, cost or expense for the purpose of calculating the applicable deductible for that liability etc.

C) …only to the extent that such legal costs and expenses have been incurred with the agreement of the Association. (Rule 30)
Cover is not available for legal costs and expenses that have been incurred without the Association's agreement. This provision should be read in conjunction with the obligations that the Member has under Rule 62 in

relation to incidents that may result in claims against the Association. In particular, the Association has the right to control legal costs and expenses similar to that which it has in relation to the conduct of Defence claims. Accordingly, the Association has the right, if it so decides, to control or direct the conduct of any claim or legal or other proceedings and to instruct lawyers and other advisers and experts on the Member's behalf. See Rule 62.3.

Since the Association has considerable knowledge of the experience, expertise and cost of lawyers worldwide it will normally be able to recommend suitable legal representation for the particular claim or dispute.

Rule 31 Enquiry expenses

The Association shall cover costs and expenses incurred by a Member in defending itself or in protecting its interests before a formal enquiry into the loss of or casualty involving the Vessel, in cases in which, in the opinion of the Association, a claim upon the Association is likely to arise, but only to the extent that such costs and expenses have been incurred with the agreement of the Association.

Guidance

The comments to Rule 31 should be read in conjunction with the guidance to Rule 30.

(A) ...a formal enquiry into the loss of or casualty of the Vessel... (Rule 31)
The authorities in most countries have the legal power to order a formal enquiry into any marine casualty that occurs within their territorial waters or which involves a vessel that flies their flag. Such enquiries are usually ordered if the casualty has resulted in serious consequences, e.g. the loss of life, pollution or other environmental damage, and the purpose of the enquiry is normally to establish the cause of the casualty.

Pursuant to Rule 62.1.a. the Member is obliged to notify the Association promptly of any formal enquiry into a loss or casualty which involves a vessel that is entered in the Association. Whilst the formal enquiry may not necessarily have the power to determine liability issues, or to administer punishment for wrongful acts or omissions, its findings and conclusions may, nevertheless, have a profound impact on subsequent administrative or court proceedings that relate to third party claims, and may, therefore, affect the Member's exposure to liabilities for which cover is available under the Rules. Therefore, it is in the interests of the Association that the Member should be properly represented at any such formal enquiry, which is why cover is made available for costs and expenses that are reasonably and necessarily incurred in this regard.

(B) ...shall cover costs and expenses incurred... (Rule 31)
The costs and expenses that are normally recoverable are the fees of external lawyers and technical experts that are appointed by the Member and the reasonable travel and hotel expenses that are incurred by such service providers. Cover is also available for costs and expenses that are incurred by the Member for the attendance at the enquiry of any witnesses that are employed by the Member and who are summoned by the administrators of the enquiry to present evidence, or for the attendance of any other person that the Member, in consultation with the Association, considers should be present. However, cover is not available for the Member's internal administrative costs and expenses, such as the wages of those that attend the enquiry, or any extra costs that are incurred by the Member as a result of their absence from normal duties. See Rule 40.1.f.

Cover is available only for those costs and expenses that are incurred in order to protect the interests of the Member in relation to issues that affect the Association. Consequently, cover is not available for costs and expenses that are incurred for other reasons, e.g. in order to protect the master or members of the crew, unless this is considered to be necessary in order to protect the joint interests of the Member and the Association.

(C) …in cases in which, in the opinion of the Association, a claim upon the Association is likely to arise… (Rule 31)
Cover is available only if the loss of the vessel, or a casualty involving the vessel, is likely, in the Association's opinion, to result in a successful claim being made by the Member against the Association under the contract of insurance. On the other hand, if the Association takes the view that a formal enquiry is unlikely to affect its exposure under the terms of entry, no cover is available for costs and expenses that are incurred by the Member in relation to such an enquiry. See also (D) below.

(D) …but only to the extent that such costs and expenses have been incurred with the agreement of the Association. (Rule 31)
Cover is not available for costs and expenses that have been incurred by the Member in relation to a formal enquiry without the agreement of the Association. The scope of an enquiry may be very broad and may encompass issues that do not concern the Association. Nevertheless, the Member should be aware of the obligations that he has pursuant to Rule 62 to notify and consult the Association should the Member intend to make a claim against the Association for costs and expenses that may be incurred in relation to the enquiry. A failure to do so may give the Association the right to reject a claim or to reduce the compensation that is payable.

Rule 32 Measures to avert or minimise loss

The Association shall cover:

a extraordinary costs and expenses reasonably incurred on or after the occurrence of a casualty or event, including liability for such extraordinary costs and expenses incurred by a third party, for the purpose of avoiding or minimising any liability on the Association, other than:

- **i** costs and expenses resulting from measures that have been or could have been accomplished by the Crew or by reasonable use of the Vessel or its equipment;
- **ii** loss resulting from non-fulfilment, or delay in fulfilment, of a contract or of an agreement for the sale of the Vessel;
- **iii** cost and expenses relating to the regaining of control of the well which is being drilled or worked over or serviced by the Vessel.

b losses, costs and expenses incurred at the direction of the Association.

Guidance

(A) Introductory remarks

Members are expected to act prudently when casualties and other events that may result in claims being made against the Association arise. This means that he must take, and continue to take, all such steps as may be reasonably required to avert or minimise any liability, loss, cost or expense in respect of which he is insured by the Association. See Rule 62.

Rule 32 determines the basis upon which the Member will be compensated in such circumstances. The Rule is a reflection of the principles that underpin the concept of mutuality in that, a Member who, on or after the occurrence of a casualty or event, has incurred extraordinary costs and expenses or liability to third parties for such extraordinary costs and expenses for the purpose of avoiding or minimising liabilities, losses, costs and expenses that would otherwise have been recoverable from the Association, ought to be compensated in that regard by the Association. This is a fundamental principle of marine insurance and the provisions of Rule 32 are similar in nature to those that are normally found in other marine insurance policies sometimes referred to as the 'sue and labour' clauses. See the Nordic Marine Insurance Plan of 2013, version 2023, section 4-7 and the English Marine Insurance Act of 1906, section 78 (1).

Rule 32 should be read in the light of Rule 40 (Excluded losses) which provides that cover is not available for claims that relate to the various damages, liabilities, losses, costs or expenses that are itemised in that Rule 'except where, and to the extent that, they form part of a claim for expenses under Rule 32'. Therefore, claims that appear to be excluded under Rule 40 may, nevertheless, qualify for cover under Rule 32, provided that the relevant

extraordinary cost or expense, or liability to third parties for such extraordinary cost or expense, has been incurred in order to minimise or avoid a liability that is otherwise covered under the Rules.

It is important to note that Rule 32 does not purport to make cover generally available for extra costs and expenses that a Member, or a third party for whose conduct the Member is liable, may incur in connection with the operation of the insured vessel, even if such extra costs and expenses are necessitated by unusual and/or unforeseeable circumstances. Cover is available only if, and to the extent that, the costs and expenses that are incurred by the Member, or by a third party for whose conduct the Member is liable, are 'extraordinary'; 'reasonably incurred'; and incurred as a direct result of measures that are taken by the Member, or the third party, in order to avoid or minimise the liability of the Association. Therefore, cover is available only if all three inter-linking requirements are satisfied.

(B) …extraordinary costs and expenses reasonably incurred… (Rule 32.a)
Cover is available only if the costs and expenses are 'extraordinary' costs and expenses that have been 'reasonably incurred' by the Member, or by a third party for whose conduct the Member is liable. In the majority of cases, the relevant costs and expenses will have been incurred by the Member itself, or by third parties at the request of the Member. However, cover is also available if a third party such as a local authority acting within its statutory rights, or the owners of property that is at risk acting within the rights that are given to them by local law, take independent steps to protect the property that is at risk and claim the costs of such action from the Member. If the Member is legally liable to indemnify such third parties for the costs and expenses that have been incurred by them in taking such action, cover is available to the Member under Rule 32 provided that the steps taken by the third party have avoided or minimised any liability on the Association. See the example given in (D) below.

The question of whether such costs and expenses are 'extraordinary' and 'reasonably incurred' depends on the facts of each particular case.

In order to determine whether 'extraordinary' costs or expenses have been 'reasonably incurred' in order to avoid or minimise the liability of the Association, a comparison needs to be made, between, on the one hand, the nature of the measures that are taken and the quantum of the 'extraordinary' costs and expenses, and, on the other hand, the potential liability of the Association that the Member or third party has tried to avoid or minimise. In making the comparison, due regard must be given to the circumstances as they appeared to the Member or third party at the time that the relevant decisions were taken and carried out by him, and the information that was available to them at that time.

Whilst it may subsequently transpire, with the benefit of hindsight, that better or more cost-effective measures could have been taken, this does not mean that 'extraordinary' costs and expenses were not 'reasonably incurred' at the time in question.

(C) …on or after the occurrence of a casualty or event… (Rule 32.a)
Cover is available under Rule 32 only if the extraordinary costs and expenses have been incurred as a result of a casualty or other event. For the purposes of Rule 32.a, a 'casualty' is an incident that has been caused by a marine peril, such as a collision, stranding, explosion, fire or other cause that renders the vessel incapable of continuing its intended operation. The term 'event' is not defined, but need not be as serious as a casualty and can include other unexpected and accidental incidents that affect the vessel and/or its crew and which may cause the Association to incur a liability to the Member. Therefore, the event must be 'insurable' in the sense that it is a fortuitous event that is outside the control of the Member.

For example, cover is not available for costs and expenses an owner of a floating storage unit (FSU) has incurred in order to comply with his contractual obligation to store cargo at the field, even if such costs and expenses are much higher than originally estimated at the time that the contract of storage services was concluded. However, if, as a result of a casualty or other event making the vessel unable to continue the storage of the cargo as required and the Member risks incurring liability for cargo damage, cover is available for 'extraordinary' costs as for example additional transhipment and on-carriage costs, that are reasonably incurred by the Member or by a third party for whose conduct the Member is liable in order to ensure that the cargo is safely stored elsewhere without deterioration to its condition. However, cover is not available for any costs and expenses that would have been incurred in any event had the storage been performed by the vessel as originally contemplated.

Cover is available for extraordinary costs and expenses that are reasonably incurred either at the time of the casualty or event or after it has occurred. Cover does not cease to be available at any specific time after the casualty or event, but, for cover to be available, the Member must be able to demonstrate that the relevant costs and expenses were incurred in direct connection with the casualty or event and for the purpose of avoiding any liability on the Association. In this regard, measures that are taken promptly at the time of, or shortly after, the casualty or incident in order to avoid or minimise liability, are likely to be considered to be more effective than measures that are taken later in time. However, the question will ultimately depend on the facts of the particular case.

(D) …for the purpose of avoiding or minimising any liability on the Association… (Rule 32.a)

The occurrence of a casualty or other event may cause the Member to incur extraordinary costs and expenses or liability to a third party for such extraordinary costs and expenses for various reasons. However, cover is available pursuant to Rule 32 only where those costs and expenses are incurred for the purpose of avoiding or minimising the liability of the Association. Therefore, cover is not available for 'extraordinary' costs and expenses that are incurred by the Member or by a third party for whose acts the Member is liable for reasons that do not serve this purpose, e.g. in order to comply with orders that are given by local, national or flag state authorities otherwise than as a result of a casualty or other event that is likely to result in any liability on the Association.

Cover is made available in the circumstances outlined in Rule 32 since such costs and expenses are considered by the Association to be an 'investment' that is made in order to avoid or minimise liabilities, losses, costs and expenses that would otherwise be incurred by the membership as a whole. By way of contrast, no cover is available for costs and expenses that are incurred for reasons that do not benefit the membership as a whole even if it can be said that they have been reasonably incurred in order to protect the Member's private interests or the similar interests of any third party for whose conduct the Member is liable.

For example, if a vessel were to drift as a result of the malfunctioning of its engine, and there is a risk that it may come into contact with an oil platform, cover is available for extraordinary costs and expenses that are incurred by the Member or by a third party such as a local authority or the owners of the platform in order to tow the vessel away from the platform if the Member is legally obliged to reimburse the third party in such circumstances and the terms of entry for the vessel include liability for damage to fixed and floating objects, since such action will have served to avoid or minimise the liability of the Association. However, if the Member's liability to fixed and floating objects is insured under the hull policies, cover is not available for the cost of the towage since such action has not avoided or minimised the liability of the Association. In such circumstances, the Member's remedy is to seek recovery of the costs from the hull underwriters. For similar reasons, cover is not available if the liability that is avoided or minimised is excluded under the Rules.

The phrase '…for the purpose of…' indicates that the measures that cause the Member or third party to incur the extraordinary costs and expenses need not be successful in achieving the aim of avoiding or minimising the liability of the Association. It suffices if the Member can demonstrate that such costs and expenses were incurred for that purpose, even if they did not in fact

achieve the desired result. For example, if the vessel to which reference is made in the last example is insured by the Association against liability for damage to fixed and floating objects, cover is available for the cost of the towage even if, during the course of the towage, the towline were to break and the vessel were to come into contact with, and cause damage to, the oil platform.

Cover is available even if the Member or third party has not intentionally or consciously incurred the 'extraordinary' costs and expenses in order to avoid or minimise the liability of the Association. It suffices if the Member can demonstrate that such costs and expenses did in fact serve that purpose even if that was not the original aim of the Member or third party. For example, if, before the engineers that are employed on board the vessel to which reference is made in the last example are able to resolve the engine problem, the master is ordered by the local authorities to employ towage vessels in order to avoid the risk that the vessel may come into contact with the oil platform, cover is available in principle for the cost of the towage provided that the Member can demonstrate that such action did in fact avoid or minimise the liability of the Association. However, before confirming cover, the Association would need to take account of all the relevant factors including the availability or otherwise of any other relevant insurances including, in particular, the Member's hull and machinery cover. In many cases, the relevant costs and expenses may be apportioned between those insurers that have benefited as a result of the fact that the casualty or event has been avoided. However, if the liability that has been minimised or avoided is a liability that clearly falls outside the Rules, cover is not normally available under Rule 32.

(E) …other than… (Rule 32.a.i – iii)

The cover for 'extraordinary' costs and expenses is not available in certain circumstances. The precise circumstances are itemised in provisos i to iii of Rule 32.a. and can be categorised as follows:

- extraordinary costs and expenses incurred as a result of measures that a prudent Member would be expected to take without the benefit of reimbursement from the Association (proviso i).
- extraordinary costs and expenses and losses incurred as a result of the Member's non-fulfilment, or delay in fulfilment, of contractual obligations, including an agreement for the sale of the vessel (proviso ii);
- extraordinary cost and expenses relating to the regaining of control of the well which is being drilled or worked over or serviced by the vessel (proviso iii)

…costs and expenses resulting from measures that have been or could have been accomplished by the Crew or by reasonable use of the Vessel or its equipment… (Rule 32.a.i)
This provision reflects the Member's duty under Rule 62 to take, and to continue to take, all such steps that may be reasonably necessary in order to avert or minimise, inter alia, the incurring of costs and expenses for which he may be insured by the Association. For reasons that are similar to those that make it desirable for a Member to retain an interest in a claim by bearing a deductible, it is desirable that a Member should be required to take his own active steps to avoid or minimise the liability of the membership as a whole. Consequently, cover is not available for 'extraordinary' costs and expenses that are incurred by a Member, or by a third party for whose conduct the Member is liable, after a casualty or other event in circumstances where the necessary measures can be taken by the crew or by the reasonable use of the vessel or its equipment.

… loss resulting from non-fulfilment, or delay in fulfilment, of a contract or of an agreement for the sale of the Vessel; (Rule 32.a.ii)
The Association expects Members to fulfil their contractual obligations. Pursuant to proviso ii the cover does not comprise losses incurred by the Member resulting from non-fulfilment or delay in fulfilment of contractual obligations. The non-fulfilment or delay etc will not be treated as a measure to avert or minimize a loss recoverable under Rule 32. Costs and expenses incurred by the Member, or by a third party for whose conduct the Member is liable, in order to comply with contractual obligations are considered to be usual operating costs for the account of the individual Member and not costs that should be shared by the membership as a whole. Non-fulfilment or delay in fulfilment of contractual obligations will not be treated as a measure to avert of minimise an insurable loss even if rightful fulfilment will be more expensive than anticipated as a result of unforeseeable circumstances.

… cost and expenses relating to the regaining of control of the well which is being drilled or worked over or serviced by the Vessel. (Rule 32.a.iii)
Proviso iii should be read in conjunction with the special exclusions in Part II, Chapter 2 to the Rules excluding from the scope of cover liabilities and losses arising out of certain special offshore related risks such as, inter alia, pollution from the well being drilled or worked over by the insured vessel (Rule 35) and loss of hole or well being worked over or serviced by the insured vessel (Rule 37).

As discussed in (D) above, cover is available pursuant to Rule 32 only where the extraordinary costs and expenses are incurred for the purpose of avoiding or minimising the liability of the Association. Therefore, cover is not available for 'extraordinary' costs and expenses 'reasonably' incurred by the Member, or by a third party for whose acts the Member is liable, for reasons that do not serve the purpose of avoiding or minimising the liability of the club. For

example, costs and expenses incurred by the Member in order to comply with orders given by local authorities to assist in regaining control of a well being drilled or worked over by the insured vessel will not be recoverable under Rule 32 since pollution from the well being drilled or worked over etc is an excluded risk.

(F) …losses, costs and expenses incurred at the direction of the Association. (Rule 32.b)

There may be situations in which the Association considers it beneficial to the membership as a whole that the Member should comply with directions that are given by the Association, even if such directions cause financial loss or other inconvenience to the Member. The Association has no legal right to force a Member to comply with its directions, but Rule 32.b makes it clear that, if the Member does so, cover is available for losses, costs and expenses that are incurred by him as a result of doing so. However, cover is available only if the Association directs the Member clearly and unequivocally to follow a particular course of conduct. The Association will not do so lightly, since it must take the interests of the membership as a whole into account before doing so. Therefore, such directions will be given only in rare circumstances, and the Member should ensure, before committing himself to any particular course of conduct that may subsequently lead him to make a claim against the Association for losses, costs and expenses incurred as a result of doing so, that the Association has given such directions clearly and in writing. The mere suggestion of a particular course of conduct will not suffice for these purposes as this may simply be an informal view that is offered by the Association as to one out of many possible courses of conduct that may assist the Member.

For example, if the Member's vessel is arrested by a third-party claimant that is seeking security for a claim for which cover is available from the Association, the Association may, or may not, exercise its discretion to provide security under Rule 68 to ensure the release of the vessel from arrest. It may decide not to do so if the claimant demands an exorbitant amount of security that is significantly higher than a virtually unbreakable limit of liability that is applicable, and/or demands security terms that are unacceptable in that they do not adequately protect the vessel or the Member's other vessels against future arrest for the same claim. Alternatively, the Association may decide not to offer security if the claimant is not prepared to accept security otherwise than in a form that constitutes an unacceptable risk, e.g. a cash deposit that may be collected by the claimant even before the matter has been heard by a court or tribunal, or which is payable against a judgement of a court of first instance before appeal to a higher court.

If the Association does not provide security the vessel may remain under arrest for a prolonged period of time, and this may cause financial loss to the Member. In such circumstances, the Member may decide to offer security

himself in a manner that is acceptable to the claimant in order to obtain the release of the vessel from arrest. However, if the Association considers that the provision of security by the Member himself could potentially harm the wider interests of the Association, it may, therefore, consider that it would be justifiable, in the interests of the membership as a whole, to direct the Member clearly not to do so. In such circumstances, cover is available under Rule 32.b for losses, costs and expenses that are incurred by the Member as a consequence.

Cover may also be available under Rule 32.b if a vessel were to get into difficulty as a result of a technical problem on board that cannot be rectified immediately and, therefore, threatens to cause damage to nearby property such as an oil or gas platform and/or the environment by running aground and spilling oil. If the shipowner Member were to choose to try and rectify the problem by use of his own on-board resources rather than by obtaining external assistance in the form of a tug or tugs, the Association might take the view that external assistance is required and might direct the Member to obtain it. In such circumstances cover for the costs that would be incurred by the Member in order to obtain such assistance is available under Rule 32.b, regardless of whether the action that is taken is or is not successful.

It is important that the Member should, to the best of his ability, provide the Association with as much relevant information as is possible in relation to the impact whether financial or otherwise that he may suffer if the Association were to direct him to act or to refrain from acting in a certain way, in order to enable the Association to make an informed decision as to whether it is beneficial from the Association's point of view to give directions, and to compensate the Member for his losses pursuant to Rule 32.b.

Rule 33 Damage to Member's own property

If and to the extent the Vessel causes damage to property, other than cargo, belonging wholly or in part to the Member, the Member shall be entitled to recover from the Association under Rule 23 (collision with vessels), Rule 24 (damage to fixed or floating objects) and Rule 26 (loss of or damage to property) and Rule 27 (b) (liability for obstruction) as if the property belonged to a third party.

Guidance

(A) Introductory remarks

The P&I cover that is afforded in Part II of the Rules is principally insurance against third party liabilities that arise in direct connection with the operation of the insured vessel and in respect of the Member's interest in the vessel. It is not designed to be insurance that covers the loss of, or damage to, the vessel etc., or the primary insurance that covers loss, damage or impairment of value that may be suffered by any other property that is owned by the Member. The Member is expected to arrange other suitable insurances for the protection of his own property and the Association will not cover any liability, loss, cost or expense that is recoverable under such insurances. For example, the Member is expected to arrange adequate hull and machinery insurance for his vessel (see Rule 52.1a). Further, the Association is not liable for the loss of, or for damage to the vessel, its equipment and outfits etc. (see Rule 40.1a). Finally, the Association does not cover liability etc., that either is, or would have been, covered by such hull policies had the vessel been fully insured on standard terms without deductible (see Rule 52.1.a). Similarly, if the Member is the owner of other valuable property, the Member is likely to need to take out other insurances to protect him against any damage, liability, business interruption etc., that he may incur in relation to such property.

However, Rule 33 recognises the fact that the Member may not only be the owner, operator or charterer of the vessel, but may also be the owner of other property that is affected by the operation of the vessel. Therefore, cover is available for damage that is caused to property owned by the Member to the extent that the Member would have been covered by the Association in his capacity as owner, operator or charterer of the vessel had such loss or damage been caused to a third party.

It should be clearly understood that this form of cover is not intended to be, and should be distinguished from, property insurance. In the case of property insurance, the assured as owner of the property insures his interest in the property, and is entitled to recover from his insurers pursuant to the terms and conditions of that property insurance once he proves that his property has been damaged. However, the form of insurance that is provided by the Association is liability insurance pursuant to which the assured (the Member) is entitled to compensation from the Association as insurer only if he (the

Member) proves that he, in his capacity as owner, operator etc., of the vessel, is legally liable to the owner of the property for the loss or for the damage that has been caused to that property by the vessel. However, in circumstances where the Member is also the owner of the property to which the insured vessel has caused loss or damage, the owner of that property is treated for the purposes of Rule 33 as though he were someone other than the Member, and cover is made available to the Member subject to the restrictions that are imposed by Rule 33 for any liability that he has for the damage or loss that is caused to such property to the same extent as if the property had been owned by a third party.

The provisions of Rule 33 should be read subject to the provisions of Rule 52. Therefore, if the Member is entitled to be compensated under any other insurances in respect of the claims that he would otherwise have against the Association under Rule 33, the provisions of Rule 52 emphasise that the Association is not liable for such claims. Consequently, the Member will need to closely consider the terms of his hull policies and any other insurances that he may have taken out to protect his interests in relation to any other property that he owns before submitting a claim against the Association under Rule 33.

(B) If and to the extent the Vessel causes damage to property, other than cargo, belonging wholly or in part to the Member … (Rule 33)
Rule 33 makes it clear that the Member 'shall be entitled to recover from the Association' in circumstances where an event involving the vessel, and which is of the nature that is described in (C) below, causes damage to property that is owned by the Member. Therefore, the purpose of Rule 33 is to put the Member in the same position that he would have been in had the property been owned by a third party and cover is available only if the Member is able to satisfy the Association that if the property had been owned by a third party, the Member would have been liable to the third party for that damage under the applicable law.

'Property' means any type of property other than cargo that is capable of being damaged, e.g. land, buildings, docks, piers, wharves, berths, cranes, port equipment, dolphins, buoys, pipelines, cables or another ship or barge. However, damage to the entered vessel itself and its equipment and outfit etc. is excluded from cover by virtue of Rule 40.1.a.

'Property' will not include cargo since mobile offshore units normally are not involved in traditional carriage of cargos belonging to third parties subject to compulsory law such as the Hague-Visby Rules or the Rotterdam Rules. However, in the event the Member were to be the owner of the cargo, for example the cargo stored on board the Member's floating storage unit (FSU), the Member is expected to have arranged separate insurance protecting his interest in that cargo and the cargo insurer shall not have any right of recourse against the vessel as the carrier.

'Property' will be deemed to 'belong' to the Member when he has, at the time of the relevant event, either the legal title to it, i.e. the ownership of it, or another sufficiently ascertainable legal interest in the property that entitles him to pursue a claim under the appropriate law for damage to it. Accordingly, a Member may be entitled in certain circumstances to recover under this Rule for damage to property that is leased or hired to him. Cover may also be available when the Member is a partner in a joint venture that is, collectively, the owner of the property, but not if that joint venture has a distinct legal identity that is separate from its owners. If the Member has only a part interest in the damaged property, he is only entitled to recover an amount that corresponds to his part interest.

For cover to be available under Rule 33 the vessel must have 'caused' the damage to the Member's property. See also the guidance to Rule 2.3. Therefore, if the damage has not been caused by the vessel, but by a third party or by some other occurrence, cover is not available under Rule 33. Furthermore, if the damage has been caused by a third party, the Member is not entitled to Defence cover in order to pursue a claim against such third party since such claim would have to be made in the Member's capacity as owner of the property and not in his capacity as operator of the vessel.

(C) …the Member shall be entitled to recover from the Association under Rules 23…24…26…27b…as if the property belonged to a third party… (Rule 33)

The vessel may cause damage to different types of property and in different ways, e.g. as a result of a collision between the vessel and another ship, or when the vessel comes into contact with a fixed or floating object. A vessel that is owned or operated by the Member may also be prevented from entering or leaving a port, berth or terminal due to the fact that another vessel (or the wreck thereof) that is (or was) owned or operated by the Member is causing an obstruction.

It is important to note that cover is available under Rule 33 only to the extent that cover would have been available pursuant to either Rule 23, 24, 26 or 27 if the property had belonged to a third party. This provision has several implications:

- Since no reference is made in Rule 33 to Rule 25, cover is not available for damage that is caused to the Member's own property by the discharge or escape of oil or any other substance from the vessel.
- The Member may have chosen to insure his liability etc., for collision and/or damage to fixed and floating objects under the hull policies in full or in part. If the Member has insured the risk fully under the hull policies, cover is not available from the Association for damage to his own property. However, if the damages that the Member would have had to pay a third party owner of the property exceed the sum that is recoverable under the

hull policies solely because they exceed the sums that are insured under such policies, then cover is available to the same extent under Rule 33 as it would have been available under Rule 23 or Rule 24.

- If the Member is insured by the Association only in part for liability etc., arising as a result of collision and/or damage to fixed or floating objects, then the cover that is available from the Association under Rule 33 is that which is the equivalent of that proportion of the risk that is insured by the Association.
- Cover is not available under Rule 33 for any deductible that the Member has agreed to bear under his hull policies for liability for collision and/or damage to fixed and floating objects.

Rule 33A Disinfection and quarantine expenses

The Association shall cover extraordinary costs and expenses (in respect of quarantine, disinfection, fuel, insurance, stores, provisions and port charges) necessarily incurred by the Member as a direct consequence of a quarantine order regarding the Vessel or Crew or disinfection of the Vessel or Crew on account of an infectious disease on board, provided always that there shall be no recovery

a where the Vessel has been ordered to a port where the Member knew or ought to have known that she would be quarantined and/or would require disinfection (unless and to the extent that the Association shall in its absolute discretion determine otherwise), and

b in respect of expenses for loss of time, loss of market, delay or similar.

Guidance

(A) Introductory remarks

Vessels may be exposed for delays and extra expenditure caused by the quarantine of the vessel as a result of the presence on board of infectious diseases. In most instances, the owner is not able to avoid such difficulties, but in other instances, they can be attributed to a lack of care on the part of the owner or operator in allowing the vessel to call ports or areas where the vessel is likely to be quarantined.

The outbreak of Covid-19 demonstrated that also mobile offshore units can be exposed to disinfection and quarantine costs. An outbreak of a 'pandemic' was declared by the World Health Organization (WHO) on 12 March 2020. Due to the pandemic, countries in most regions of the world have in certain periods implemented restrictions on citizens and corporations' freedom to move and act for the purpose of preventing and/or limiting the spread of the virus. See also the guidance to Rule 40.3 and the Communicable Disease Exclusion Clause in Appendix III to the Rules.

To meet Members and clients' needs, the scope of standard P&I cover for mobile offshore units was with effect from the 2021 policy year extended to include the disinfection and quarantine risk modelled on the standard terms of P&I cover for ships.

The cover that is available under Rule 33A is limited to those extraordinary costs and expenses that are difficult to avoid and which are, therefore, considered to be a natural risk that should be shared by the membership of a mutual club. However, cover is not available for those costs and expenses that a prudent Member could, and should, have avoided.

(B) …extraordinary costs and expenses … necessarily incurred by the Member as a direct consequence of a quarantine order… (Rule 33A)
Cover is available for costs and expenses incurred by the Member as a direct consequence of 'quarantine orders'. A 'quarantine order' is an order given by local or national authorities in the country where the relevant vessel finds itself at the time. The 'quarantine order' imposes restrictions on either the movement of a specified vessel and/or the crew or other persons that are on board that vessel, or on the handling or discharging of equipment or other property that is on board that vessel.

The purpose and aim of a quarantine order is to ensure that proper measures are taken to investigate, eliminate or minimise the spread ashore of an infectious disease that is present on board a specific vessel. The infectious disease may either affect humans and be carried by the crew or other persons that are on board the vessel; or it may affect flora or other natural resources and be present within foodstuffs or other provisions that are on board the vessel.

A quarantine order is likely to be issued not only when the presence on board of an infectious disease has been established before the relevant vessel calls at the port, but also when the authorities have a suspicion that an infectious disease is present on board. In exceptional circumstances, national health authorities may issue quarantine orders that prevent all vessels berthing at their ports before they are properly inspected in order to ensure that they do not carry a disease, e.g. in the event of a pandemic disease.

Cover is available for costs and expenses that are incurred by the Member 'as a direct consequence of' ' quarantine orders. Therefore, subject to the issues discussed in (D) below, cover is available for costs and expenses that are incurred by the Member in bringing the vessel to anchor in the quarantine area; in carrying out the required inspections or expert analysis; in taking measures to eliminate the hazard in question; as well as for costs and expenses that may be incurred by the Member to unload and reload equipment if this is required in order to comply with the quarantine order.

Further, the costs and expenses must be extraordinary in nature. It is a general principle of insurance that cover is available only for liabilities, losses, costs and expenses that have been incurred as a result of an insured peril. No cover is available for ordinary operational costs of the vessel such as running costs and expenses incurred in connection with the ordinary operation of the vessel regardless of the quarantine order or the presence on board of an infectious disease, e.g. the costs of wages, stores, fuel, provisions and port charges. Consequently, cover is not available under Rule 33A for such costs and expenses. However, where such costs are incurred as a direct consequence of the issuance of quarantine orders or the disinfection of

the vessel, but such costs are higher than those that would normally have been incurred but for the presence of the disease, cover is available for any additional costs and expenses that have been so incurred.

A distinction ought to be made between, on the one hand, a 'quarantine order' regarding a specific vessel as outlined above and, on the other hand, general rules and regulations governing the operation of vessels or ships in general in a particular port or country. Even if both a specific quarantine order and general rules and regulations may give rise to extra costs and expenses, only extra costs and expenses incurred as a result of a quarantine order regarding a specific vessel are treated as a named P&I risk falling within this Rule 33A. National or regional rules and regulations imposing obligations on owners or operators of mobile offshore units in general, for example to implement special measures to combat the outbreak of a disease, such as Covid-19, will not be treated as a quarantine order for the purpose of Rule 33A. Any extra costs or expenses incurred as a result of such new and stricter rules or regulations in general will be deemed to be general operating costs for the Member's own account.

(C) …extraordinary costs and expenses…necessarily incurred by the Member as a direct consequence of…disinfection of the Vessel or Crew… (Rule 33A)
Cover is also available under Rule 33A for costs and expenses that are incurred by the Member as a direct consequence of disinfection of the vessel or crew because of the presence on board of infectious diseases.

(D) …on account of an infectious disease on board… (Rule 33A)
An 'infectious disease' is a disease that will spread and cause infection to other human beings and/or animals and/or flora and/or other natural resources unless disinfection or other similar preventative measures are taken. Besides Covid 19 as discussed under (A) above, typical examples include cholera, plague, smallpox, typhus and more recent pandemic diseases such as avian influenza or ebola.

Depending on the type and nature of the disease it may be necessary to disinfect the crew members and/or any food or other provisions that are on board, or even the whole vessel, and cover is available in all these circumstances. Most of the costs and expenses that are incurred in this regard are incurred as a result of inspections and investigations that are required in order to trace and analyse the disease and its source, and also as a result of the disinfection process itself, which is usually carried out by specialised companies. Such costs and expenses can be substantial depending on the nature of the disease and the type, size and design of the vessel. For example, the disinfection of all parts of an accommodation is likely to be a difficult and time-consuming exercise.

(E) …provided always that there shall be no recovery…where the Vessel has been ordered to a port where the Member knew or ought to have known that she would be quarantined… (Rule 33A. a.)
The Member is expected to know the conditions and regulations that will affect his vessel in the ports and other locations where his vessel will be operating.

If the Member knows in advance that the condition of the vessel, or of the crew, is such that the relevant authorities at a port of call are likely to order the vessel to be quarantined, cover is not available under Rule 33A since the Member would not be acting prudently if he failed to take reasonable steps in such circumstances to avoid the risk.

Similarly, cover is not available even if the Member does not know for certain that his vessel will be quarantined but should have anticipated that a quarantine order could be imposed. A Member cannot turn a 'blind eye' to the risk. He must act prudently and ascertain in advance whether a quarantine order is likely to be issued. The test that is normally applied by the Association in such cases is: what would a reasonable and prudent operator be expected to do in similar circumstances?

This proviso to Rule 33A applies also when there is a risk that the vessel and/or crew may need to be disinfected. The Association may, nevertheless, have a right to refuse cover in such circumstances under Rule 74, since cover is not available under Rule 74 for liabilities, losses, costs and expenses arising out of, or consequent upon, the ship being employed in or on an unduly hazardous trade or voyage.

(F) …provided always that there no recovery…in respect of expenses for loss of time, loss of market, delay or similar (Rule 33A.b.)
This proviso makes it clear that there is no cover available for liabilities or losses, costs and expenses incurred by the Member in respect of loss of time, loss of market or similar etc., arising out of a quarantine order or disinfection of vessel and/or crew.

Chapter 2

Limitations etc. on P&I cover

Rule 34 Limitation of liability and other restrictions in the right of recovery

1 Where the Member or a Co-assured is entitled to limit its liability pursuant to any rule of law, the maximum recovery is the amount to which the Member or the Co-assured may limit its liability save insofar as liabilities, losses, costs and expenses in excess of the amount to which the Member may limit its liability are incurred pursuant to a contract approved by the Association.

2 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 insured 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 only be obliged to pay any amount in excess of USD 100 million per event as and when such funds are received by the Association from the reinsurer(s).

3 Notwithstanding Rule 34.2 above, the liability of the Association for fines as described in Rule 29 shall be limited to USD 50 million per Vessel per event provided that if the total amount of all categories of liabilities, losses, costs and expenses falling within Rule 29 and any other Rules incurred by all Members, Co- assureds and Affiliates under any one entry and which arise out of any one event exceeds the sum insured in the terms of entry referred to in Rule 34.2 above, the Association shall not be liable to make any payment in respect of the amount by which such claims exceed the sum insured in the terms of entry referred to in Rule 34.2 above.

Guidance

(A) Introductory remarks

Shipowners have traditionally had the right to limit their liability for the legal consequences of their actions. This right has generally been regarded as essential in order to ensure the commercial viability of the shipping industry. Until the middle of the twentieth century the right to limit was normally restricted to the registered or beneficial owner of the ship. As a result, various attempts were made to circumvent the application of limitation of liability by bringing claims against parties other than the shipowner. Today, the right to limit liability is available in many circumstances to the owners, charterers, managers, operators and liability insurers of a ship, as well as to the master, crew members or other servants when acting in the course of their employment.

The right to limit liability will often arise under international conventions that regulate liability for certain specific types of claims, for example the

International Convention on Civil Liability for Oil Pollution Damage, 1969; its Protocol of 1992 and existing amendments (CLC). However, the right to limit liability may also arise under other international conventions that regulate the right to limit liability more broadly in relation to a wider range of maritime claims, for example the 1976 London Convention on Limitation of Liability for Maritime Claims or the 1976 London Convention on Limitation of Liability for Maritime Claims as amended by the 1996 Protocol (collectively referred to as the LLMC).

It is in the interests of the membership as a whole that each Member makes full use of the right to limit his liability whenever possible in order to protect the Association and the membership funds against liability or loss that is otherwise avoidable. This also reflects the obligation of each Member under Rule 62 to take, and to continue to take, such steps as may be reasonably necessary for the purpose of averting or minimising any liability etc., for which he may be insured by the Association. Furthermore, it should also be appreciated in this context that if the Association has incurred direct liability to claimants by the provision of 'Blue Cards' as evidence of compulsory liability insurance that are required by international conventions such as CLC, the International Convention on Civil Liability for Bunker Oil Pollution Damage of 2001(Bunker Convention), and the International Convention on the Removal of Wrecks of 2007 (Wreck Removal Convention), the Association may be entitled to limit its liability to any claims that may be made directly against it as guarantor by third-party claimants pursuant to such 'Blue Cards' even if the Member would not be entitled to do so if the claim had been brought against the Member rather than the Association.

However, some uncertainty arises in respect of a mobile offshore unit's right to limit liability under international conventions such as the LLMC and/or the CLC. Any such right to limit will depend partly on the definition of 'ship' in the relevant convention and whether special provisions have been adopted as national law extending the right to limit liability to mobile offshore units regardless of whether they qualify to be 'ships' as defined in the relevant convention.

(B) CLC, LLMC and national law (English, Norwegian and US)

CLC

In the CLC, article 1.1, a 'ship' is defined as '…. any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following…. . This means that oil must be carried in bulk as cargo during a voyage. The definition of 'ship' in the CLC will not capture permanent or semi-permanent units such as FPSOs and FSUs while operating at an offshore oilfield, even though these units may be ship-shaped or function as 'stationary' tankers.

The IOPC Funds provided guidance in 2016 in which they took the view that FPSOs or FSUs should be regarded as ships if the vessel (i) has its own independent motive power, steering equipment for seagoing navigation and seafarer onboard to be employed either as a storage unit or for the carriage of oil in bulk as cargo and (ii) is undertaking a qualifying voyage. To qualify, the voyage would need to be for the carriage of oil as a cargo to or from a port or terminal outside the oil field in which the unit normally operates. A voyage from the offshore field for operational reasons or simply to avoid bad weather would not qualify.

LLMC

Whether a mobile offshore unit such as an FPSO or FSU is a ship for the purpose of limitation of liability under the LLMC will depend on various factors such as its shape as a ship, its capability and frequency to navigate, and what it is doing at the time of the casualty. The LLMC entitles a shipowner to limit its liability for certain claims calculated according to the tonnage of the ship, with a separate calculation for property damage and higher limit for personal injury or death. The 1996 Protocol increased these limits further and following the decisions of the IMO's legal committee in April 2012 the limits were further increased significantly (by 51%) in April 2015.

The heads of claims subject to limitation are set out in Article 2 of the LLMC. This includes first and foremost claims in respect of personal injury or death and/or property damage on board or in direct connection with the operation of the vessel. This will typically respond to claims arising out of a casualty situation. Categories of claims that do not qualify for limitations are listed in Article 3 of the LLMC. This includes, inter alia, a salvor's claim for salvage, certain claims by the vessel's crew and claims in respect of oil pollution that fall within the meaning of the CLC. However, since mobile offshore units normally are not treated as ships within the meaning of the CLC, they are not caught by the exclusion in the LLMC with regard to claims governed by the CLC.

The word 'ship' is not expressly defined in the LLMC but referred to as any 'seagoing ship'. There are, however, two important provisions found in article 15. First, article 15(4) states that the LLMC does not apply to "ships constructed for or adapted to, and engaged in, drilling" and, secondly, article 15(5) provides that the LLMC does not apply to "floating platforms constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof". Existing case law offers limited guidance as to the interpretation of the above exemptions. While a seagoing ship is a ship that is used in navigation on the sea, it can, however, be argued that an FPSO (but not an FSU) is a floating platform constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil and that an FPSO, thus, is caught by the offshore craft exclusion in article 15.5.

English law

The UK Merchant Shipping Act 1995 (MSA) enacts the LLMC in English law. However, the MSA deletes the Article 15 (5) offshore craft exclusion. Thus, by virtue of Article 1 (2) of the LLMC, the right to limit is restricted to 'seagoing ships'. Whether an FPSO can limit under English law will then depend on whether it is a ship under the MSA (section 313) which defines 'ship' to 'include every description of vessel used in navigation'. In Part II, paragraph 12 of Schedule 7 to the MSA the definition of 'ship' is extended to cover 'any structure …launched for use in navigation as a ship…' This supports the view that FPSOs and FSUs can be treated as ships for the purpose of limitation under the LLMC as long as it can be said that the unit is 'used in navigation'.

English case law indicates that it may be sufficient for navigation to be part of the unit's function and that it is capable of and used in navigation, even if infrequently. In Perks v Clark (2001 2 LLR), the Court of Appeal held that a jack-up rig that was towed from one location to another for the purpose of drilling for oil was indeed a ship and concluded that so long as navigation is a significant part of the function of the unit, "the mere fact that it is incidental to some more specialised function such as dredging or provision of accommodation does not take it outside the definition". It was commented that the courts had moved away from the 'real work' or 'primary purpose' test which might have otherwise disqualified the mobile offshore unit from being a ship as defined in the MSA.

The English courts seem to have taken the view that it is sufficient for navigation to be part of the unit's function and that the unit is capable of and used in navigation, even if infrequently, and that the unit need not navigate under its own power. However, the issue has not yet been definitively decided by the English courts in the context of MSA/LLMC.

Norwegian law

Both the CLC and the LLMC are incorporated into Norwegian law in the Maritime Code of 1994 as amended. However, mobile offshore units which are not deemed to be 'ship' as defined under the CLC and/or the LLMC are nevertheless given the right to limit liability pursuant to Norwegian national law. See the Maritime Code of 1994, as amended, section 507 cf. sections 181, second paragraph, and 208.

Even if a vessel will not be deemed to be a 'ship' under the CLC, the owner of the vessel will be strictly liable for oil pollution arising as a result of escape or discharge of oil or other pollution from the vessel and subject to the same exemptions from liability as an owner of a tanker under the CLC but subject to the special limitations figures for mobile offshore units as outlined below. See the Maritime Code, sections 191, 192 and 208.

The special limitation figures for mobile offshore units as set out in the Maritime Code, section 181, second paragraph, are as follows:

a Personal injury claims as specified in the Maritime Code, section 175 no 2, SDR 36 million regardless of the size or tonnage of the unit.

b Other claims, including property damage claims, as set out in the Maritime Code, section 175 no 3, SDR of 60 million regardless of the size or tonnage of the unit.

c Wreck removal claims as set out in the Maritime Code section 175a, SDR 60 million regardless of the size or tonnage of the unit.

However, to the extent a mobile offshore unit is deemed to be 'ship' under the LLMC, the special limitation figures for mobile offshore units as set out in the Maritime Code, section 181, second paragraph, shall only apply for claims arisen while the relevant vessel was engaged or used in drilling activities. On the other hand, claims arising out of a casualty occurring when the relevant vessel or unit is navigating and not involved or engaged in drilling activities will be subject to the ordinary limitation figures for ordinary merchant ship based on the tonnage of the vessel, with separate calculations for property damage and wreck removal claims and higher limit for personal injury or death as outlined above.

US law

The US Oil Pollution Act of 1990 (OPA 90) sets out the liability and compensation regime in the event of oil pollution and applies expressly to both ships and offshore facilities. See the definitions of 'offshore facility' in section 1001. This will include for example FPSOs and FSUs. Pursuant to section 1004 (a) (3), offshore facilities have an unlimited liability for clean-up costs but can limit their liability for other damages as a result of pollution to USD 137.66 million per event regardless of the size or tonnage of the unit. The limitation amount is reviewed regularly by the Bureau of Ocean Energy Management, a part of the US Department of Interior, and can be increased administratively to reflect changes in inflation over time based on the increase in the consumer price index (CPI). The limitation amount was increased last time with effect from 18 January 2018.

Summary

To summarize, the current definition of 'ship' in the CLC does not capture permanent or semi-permanent units such as FPSOs or FSUs, while operating at an offshore oilfield even though these units may be ship-shaped or function as 'stationary' tankers. However, the IOPC Funds have taken the view that FPSOs and FSUs should be regarded as ships under the CLC if the relevant vessel (i) has its own independent motive power, steering equipment for seagoing navigation and seafarer onboard to be employed

either as a storage unit or for the carriage of oil in bulk as cargo and (ii) is undertaking a qualifying voyage. Further, there is scope for FPSOs and FSUs to be considered to be ships for the purpose of the LLMC, provided that in the case of an FPSO, the Article 15 (5) offshore craft exclusion is deleted. This is very much dependent upon local law. There are no definitive cases on the application of the LLMC to these units, and therefore it will depend upon the respective national courts around the world to give meaning to the definition of ship.

(C) Where the Member or a Co-assured is entitled to limit… (Rule 34.1)
Rule 34 makes it clear that, where a claim is brought by a third party against either the Member or a co-assured each one of them is expected to make full use of any rights that he may have to limit his liability, and neither of them has the right to recover from the Association any sum that is in excess of the sum to which he is entitled to limit his liability. In most cases, the Member, and any one or more co-assured that may be severally and/or jointly liable to the third party together with the Member, will be able to limit liability under the same limitation rules in the same proceedings in the same country. In such circumstances, only one claim for compensation can be made against the Association for such liability and the compensation payment that is made by the Association to the Member or to the co-assured will also be in satisfaction of any liability that the Association may have under the contract of insurance to the other for such claim. See guidance to Rule 60.2.

However, it is possible that the third party may bring the same claims against the Member and one or more co-assureds separately in different countries, e.g. against the owner of the vessel in country A and against the ship manager in country B, and that those countries may apply different limitation rules. For example, country A may be subject to the 1976 Limitation Convention whereas country B may not give effect to that convention, but to particular domestic rules of law that extends the limitation rights. If the owner of the insured vessel (the Member) and the ship manager (the co-assured) both incur liability as a result of such separate legal actions, cover is available for both parties so long as they have each sought to invoke any rights and defences that may be available to them to limit their liability under the applicable law. The owner of the insured vessel and the manager (who qualifies as a co-assured pursuant to Rule 58.2 since he is carrying out operations and/or other activities that are customarily carried out by the owner of the vessel) are both entitled to compensation from the Association for their respective liability subject always to the agreed sum insured. See guidance to Rule 34.2 in paragraph (F) below.

If cover is extended to an affiliate pursuant to Rule 59, the affiliate is not entitled to recover more from the Association than would have been

recoverable by the Member in the relevant circumstances. Therefore, the Association is also entitled in practise to invoke the limitation provisions of Rule 34 vis-à-vis affiliates.

(D) …is entitled to limit its liability pursuant to any rule of law… (Rule 34.1)
Rule 34.1 is applicable when the Member has the right to limit his liability pursuant to 'any rule of law' which, in this context, means a rule that is contained in, or can be derived from, any act, code, statute or other legislation of a country, or is the result of a firm and established rule of the common law.

It is possible that the Member's right to limit his liability may arise only under a provision of the domestic law that is applied in, and by, the country where the third party has brought the claim against the Member. However, a right to limit liability will more frequently be based on an international convention the provisions of which have been enacted by the country where the third-party claim is brought, or by the country where the Member seeks to invoke the rights that are conferred on him by the convention, for example by constituting a limitation fund as security for third party claims in the country where one of his ships has been arrested.

Some countries have laws that require a limitation fund to be constituted by paying the limitation amount into court before the right to limit liability can be pleaded in legal proceedings whereas, in other countries, a right to limit liability may be pleaded as a defence to a legal action without the need to constitute a limitation fund. Rule 34.1 does not distinguish between the two; it simply makes it clear that the maximum sum that the Member can recover from the Association will be the amount to which the Member may limit his liability, regardless of the procedure that must be followed in the relevant country in order to protect and enforce that right.

Most countries also require interest to be paid in addition to the limitation amounts that are specified by the applicable law. If a limitation fund must be constituted by payment into court, the sum so payable will usually include interest from the date of the occurrence of the event until the date that the limitation fund is constituted. Thereafter, the total sum so constituted will continue to earn interest until the limitation fund is distributed between claimants in due course. However, if limitation can be pleaded as a defence, the court will usually, when giving judgement on the third-party claim, order that interest should be paid on the limitation amount from the date of the occurrence of the event until the date of judgement. In either case, cover is available under Rule 34 for any interest that has been paid by the Member in addition to the limitation amount, subject always to the agreed sum insured. See Rule 34.2.

(E) …the maximum recovery is the amount to which the Member or the Co-assured may limit its liability… (Rule 34.1)
If the Member or the co-assured is entitled to limit his liability for a particular claim then the maximum sum that is recoverable from the Association in respect of such claim is the amount to which the Member or the co-assured respectively is entitled to limit his liability.

The Association does not have the right to reduce the amount of compensation that is payable to a Member under Rule 34 unless the Association can demonstrate that the Member had the right to limit his liability for the third-party claim to an amount that is lower than that which has in fact been paid by the Member to the third party. Therefore, the onus of proof is on the Association in this regard. The Association must demonstrate not only that the Member had the right in law to limit his liability, but also that it was possible to do so in fact in the country where the third-party claim was being brought against the Member.

The Association must also demonstrate that the Member would not have lost the right to limit his liability for the claim in the particular circumstances. Most limitation conventions and national statutes provide that if the person who is seeking the right to limit his liability is guilty of a certain type of conduct, then that person will lose the right to limit. In the case of the LLMC and the CLC a person will lose the right to limit only if 'it is proved that the loss resulted from his personal act or omission committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.'

If it is proved that the Member has lost the right to limit his liability, then the Association has no right under Rule 34.1 to reduce the amount of compensation that is payable to the Member. However, if the Member is guilty of the conduct that would deprive the Member of his right to limit under the LLMC or the CLC, or another similar international convention such as the Bunkers Convention, it is very unlikely that the Association would be liable to indemnify the Member since such conduct would in all probability constitute the type of conduct that would deprive the Member of cover pursuant to the provisions of Rule 53.

In some instances, the Member may decide to discharge his liability for third party claims by paying more than the amount to which he is legally entitled to limit his liability since the prospects of convincing the court or tribunal seized of the case that he has such right are not good, and/or because such proceedings can be expected to be expensive and time consuming. However, the Member should consult the Association before doing so since, otherwise, there is a risk that the Association may reject or otherwise reduce the compensation that is payable to the Member.

(F) In any case, the liability of the Association for any and all liabilities, … which arise out of any one event shall be limited to the sum insured… (Rule 34.2)

Besides the economical restrictions on cover discussed in guidance to Rule 34.1 above with reference to the Member's right to limit liability under international conventions or national law, see paragraphs (D) and (E), the Association's liability under the contract of insurance is in any event limited to the agreed 'sum insured'. The term 'sum insured' means in this context the maximum amount (in the aggregate) the Association as insurer is legally obliged to pay to the Member and/or co-assureds by way of compensation under the contract of insurance in respect of liabilities, losses, costs and expenses falling within the scope of cover and incurred by the Member and/or co-assureds arising out of any one event.

The significance of the sum insured is first and foremost that the Association's liability under the contract of insurance is limited to the agreed amount. Thus, the Association's liability is limited by a double regime. First, under Rule 34.2 the agreed sum insured, and, secondly, under Rule 34.1, where lower than the sum insured, the amount the Member and/or the co-assured(s) could have limited their liability where they are entitled to limit liability under any rule of law as explained under paragraphs (A) to (E) above.

The 'sum insured' is linked to liabilities etc., arising out of 'any one event'. The question whether one or several casualties or events have occurred in relation to the sum insured must be the subject of a case-to-case evaluation, but the following may offer some guidance.

First, is there a close connection in terms of location and time between the successive incidents or is the new (second) incident the result of a new and independent cause? While it is not possible to stipulate very strict requirements as to connection in time and location for several incidents to be regarded as one casualty but as long as the incidents occur within a limited geographical area, it must be accepted that they can occur at certain time intervals.

Secondly, what possibilities had the Member to avert or minimize the second incident? The Member's negligent failure to avert or minimise the last incident should not give rise to a new sum insured.

Thirdly, does the initial incident or its cause entail an increased risk of the new incident, or is the last (second) incident a result of a 'generally prevailing risk of damage' which would have occurred with the same effect independently of the first incident or its cause. If the latter is the case, the second incident may be deemed to be a new event.

(G) … provided always that … the Association shall only be obliged to pay any amount in excess of USD 100 million per event as and when such funds are received by the Association from the reinsurer(s). (Rule 34.2)
The proviso in Rule 34.2 makes it clear that the Association is not obliged to pay any compensation to the Member in respect of liabilities, losses, costs or expenses falling within the scope of cover to the extent the compensation exceeds USD 100 million per event until the Association has received the funds required from its reinsurer(s).

In other words, if the Association is not able to recover from its reinsurer(s) the funds required to compensate the Member for insured liabilities or losses etc because of reinsurer(s) being insolvent, the Association is under no legal obligation to pay any compensation to the Member in excess of USD 100 million per event irrespective of the agreed sum insured in the terms of entry being a higher amount. On the other hand, claims up to USD 100 million shall be compensated by the Association in full in accordance with the terms of entry agreed regardless of whether the reinsurers are able to pay their share or not.

In practice the proviso in Rule 34.2 has the result that the risk of a shortfall in recovery from reinsurer(s) is transferred from the Association to the relevant Member to the extent the compensation exceeds USD 100 million. Any shortfall in recovery from reinsurer(s) in respect of claims amounting to USD 100 million or less will be for the risk and account of the Association. See also the guidance to Rules 51.1 and 51.2 regarding a shortfall in recovery from reinsurers because of sanctions.

(H) … the liability of the Association for fines as described in Rule 29 shall be limited to USD 50 million per Vessel per event… (Rule 34.3)
The cover for fines available pursuant to Rule 29 is subject to a special sub-limit of USD 50 million per entered vessel per event. As to the meaning of the sub-limit and 'per event', reference is made to the guidance under paragraph (F) above regarding sum insured and the term 'any one event'.

(I) … provided that if the total amount of all categories of liabilities, … falling within Rule 29 and any other Rules … which arise out of any one event exceeds the sum insured in the terms of entry referred to in Rule 34.2 above, the Association shall not be liable to make any payment in respect of the amount by which such claims exceed the sum insured in the terms of entry … (Rule 34.3)
The proviso to Rule 34.3 is a so-called anti-stacking clause.

The expression 'stacking' means the aggregation of multiple insurance limits to cover liabilities and losses arising out of the same event. The application of two or more policy limits to claims arising out of a single occurrence could in theory result in a total recovery of the insured in excess of the maximum

amount the insurer intends to be obliged to pay to the insured by way of compensation under the contract of insurance in respect of claims arising out of any one event. See the guidance in (F) above.

In the case of the Association's P&I cover for mobile offshore units, the intention is not that the sub-limit for fines in Rule 34.3 shall be added to the sum insured referred to in Rule 34.2 above. For example, the sum insured agreed for an entered vessel pursuant to Rule 34.2 is USD 200 million. The vessel is involved in a major casualty giving rise to different categories of P&I claims amounting to more than USD 200 million and a fine in excess of USD 50 million. However, the Member can only recover USD 200 million in total from the Association regardless of whether USD 50 million in whole or in part is allocated to cover fines. The sub-limit for fines shall not be added to the sum insured. In the example, the Associations' legal liability under the contract of insurance shall not exceed the agreed sum insured of USD 200 million. To make this clear the proviso in Rule 34.3 contains a so-called anti stacking clause which is designed to ensure that the Association maximum liability in the aggregate for liabilities and losses etc. arising out of any one event will be the sum insured agreed in the terms of entry regardless of the sub-limit for fines.

Rule 35 Pollution from well and damage to property caused by blowout etc.

The Association shall not cover:

a liabilities, losses, costs or expenses arising out of pollution from the well which is being drilled or worked over or serviced by the Vessel and measures taken to avert or minimise such liabilities, costs or expenses;

b liability for loss or damage to property belonging to any person chartering the Vessel by way of a charterparty or other contract for the employment of the Vessel and any other party having an owning interest in the field being serviced by the Vessel, caused by blow-out, cratering, seepage or any other uncontrolled flow of oil, gas or water from the well or reservoirs, provided that the liability arises in connection with the well which is being drilled or worked over or serviced by the Vessel.

Guidance

(A) Introductory remarks

Rule 35 refers to certain special offshore risks relating to pollution from well and damage to third-party property caused by blow-outs, cratering, seepage etc., that are excluded from the scope of the conventional P&I risk picture. These risks may easily result in liabilities and losses of a catastrophic nature that the mutual membership should be protected against.

In the context of this guidance the expression ‘well’ means a drilling into the seabed designed to bring oil or gas to the surface. While the distinction may not be of importance for the purpose of the P&I cover, a well drilled for the purpose of producing crude oil is normally referred to as ‘oil well’ while a well designed to produce only gas may be called a ‘gas well’. Wells are created by drilling down into an oil or gas reservoir which is then connected to a fixed or stationary installation, for example, a platform resting on poles rammed into the seabed.

The term ‘blow-out’ is commonly used when faced with an uncontrolled release of crude oil and/or natural gas from an oil well or gas well if pressure control systems fail. The Ekofisk Bravo incident in the North Sea in April 1977 is an example from recent history illustrating the seriousness of an oil well blow-out. The blow-out occurred due to an incorrectly installed safety valve. The quantum of spilled oil amounted to some 80,000–126,000 barrels in total. It is still one of the largest blow-outs in the North Sea.

The expressions ‘cratering’ means the forming of a crater at the seabed where the well is drilled while ‘seepage’ means slow escape of oil or gas from the well or reservoir.

Finally, since P&I is a named risk insurance, the fact that cover is not excluded under this Rule 35 does not necessarily mean that cover is available in general

under any other Rule. It must always be established by the Member that cover is made available for the relevant liability or loss etc., by one or more of the specific Rules in Part II, Chapter 1 of the Rules.

(B) The Association shall not cover…liabilities, losses, costs or expenses arising out of pollution from the well which is being drilled or worked over or serviced by… (Rule 35.a)
Rule 35.a deals with pollution risk while Rule 35.b deals with liability for property damage. See paragraph (D) below.

Rule 35.a excludes from the scope of cover the risks arising out of pollution from the well which is being drilled or worked over or serviced by the vessel. Besides referring to the comments in (A) above about the catastrophic nature of such risks and the Association's need to be protected against the exposure for the benefit of the membership, the exclusion in this Rule 35.a should be read in conjunction with Rule 25 restricting cover for pollution liability in any event to liabilities etc arising in consequence of the discharge or escape of oil or other pollution from the entered vessel. This means that pollution from the well which is drilled or worked over or serviced by the insured vessel is in any event not a named risk. Both catastrophic blow-outs and seepage of oil or gas from the reservoir or well are excluded risks.

The meaning of the term "well which is being drilled" by the insured vessel is self-explanatory while the expressions "worked over" and "serviced by" may need some further guidance.

The phrase "worked over…." by the insured vessel means that the vessel is engaged in performing some type of work other than ordinary drilling in relation to the well. An example can be a well stimulation vessel. Well stimulation is an intervention performed on an oil or gas well to increase production by improving the flow from the reservoir into the well bore. It may be used special well stimulation structures or special well stimulation vessels. If the well stimulation vessel is insured in the Association based on the Rules for MOUs, the cover will not comprise liabilities for oil pollution from the well where the vessel is performing well stimulation operations.

The expression "serviced by" will typically mean that the vessel is linked to the well. For example, a Floating Storage Unit (FSU) will be deemed to service the well if the oil is transferred directly from the producing well to the FSU.

Finally, the exclusion in Rule 35.a is restricted to pollution etc from the well that is being driller or services or worked over by the insured vessel. Any pollution from sources other than the well being drilled or worked over or serviced by the entered vessel are not caught by the exclusion. Although of little practical importance, the exclusion will not operate in relation to liability for pollution from a well other than the well being drilled or worked over or serviced by the

entered vessel, provided that the liability or loss arising out of pollution from such other well otherwise qualifies to be treated as a named risk.

(C) The Association shall not cover … measures taken to avert or minimise such liabilities, costs or expenses, (Rule 35.a)
Cover for measures to avert or minimise liabilities and losses is available only where those costs and expenses are incurred for the purpose of avoiding or minimising the liability of the Association. See the guidance to Rule 32. In such circumstances the costs and expenses are treated as an 'investment' made to avoid or minimise liabilities, losses, costs and expenses that would otherwise be incurred by the membership as a whole.

On the other hand, cover is not available for costs and expenses incurred by the Member for the purpose of averting or minimising liabilities etc falling outside the scope of cover. For this reason, costs, and expenses etc., incurred as a result of measures to avert or minimise liabilities arising out of pollution from well are excluded from cover.

(D) The Association shall not cover … liability for loss or damage to property belonging to any person chartering the Vessel … and any other party having an owning interest in the field being serviced by the Vessel …., caused by blow-out, cratering, seepage or any other uncontrolled flow of oil, gas or water from the well or reservoirs … (Rule 35.b)
Rule 35.b deals with liability for damage to property subject to the following restrictions:

First, the exclusion comprises merely damage to property belonging to two specific categories of persons (i.e. body corporates) comprising, (i) the person(s) having chartered the insured vessel pursuant to a charter party or other contract of employment and, (ii) the persons having an owning interest in the field being serviced by the vessel such as the licensee(s).

The identity of the first category of persons can easily be ascertained by examining the relevant charter parties or contract(s) of employment for the insured vessel at the time of the incident or occurrence. The expression 'any person chartering the vessel' will include all charterers in the chain of charterparties, i.e. both the head charterer and sub-charterers. The second category referring to parties having an owning interest in the field being serviced by the vessel will typically include the licensee(s). Property belonging to persons other than those two categories will not be caught by the exclusion. For example, damage to a fishing boat belonging to a third party caused by oil pollution because of uncontrolled flow of oil from the oil well will not be caught by the exclusion in Rule 35.b since the owner of the fishing boat is neither the charterer of the insured vessel nor the licensee of the field.

Secondly, the exclusion is restricted to property damage caused by blow-out, cratering, seepage or any other uncontrolled flow of oil, gas or water from the well or reservoirs. As to the meaning of these expressions, it is referred to the guidance in paragraph (A) above.

The exclusion will typically comprise damage caused to the property of the licensee of the field caused by a blow-out from a well on the field being serviced by the vessel. On the other hand, property damage caused by reasons other than a blow-out, seepage, cratering etc., will not be excluded by virtue of Rule 35.b. For example, property damage caused by escape or discharge of oil from the insured vessel will fall within the scope of cover in Rule 25. Cover will be available under Rule 25 even if the property being lost or damaged as a result of such escape of discharge of oil from the vessel belongs to the charterer of the vessel or any party having an owning interest in the field, i.e. being a licensee.

(E) … provided that the liability arises in connection with the well which is being drilled or worked over or serviced by the Vessel.
Finally, the exclusion in Rule 35.b will only operate to the extent the relevant liability or loss has arisen in connection with well being drilled or worked over or serviced by the insured vessel. In other words, for the exclusion to apply, the blow-out, seepage or other uncontrolled flow of oil or gas etc must be from a well or reservoir serviced by or worked over by the insured vessel. The only requirement is that the relevant well '…is being drilled or worked over or serviced by…' the insured vessel at the time of the incident. There is not a need to establish a closer causal connection for the exclusion to operate. On the other hand, if the blow-out or other uncontrolled flow of oil or gas come from a well or reservoir not being serviced by the entered vessel at the relevant period of time, the exclusion will not apply.

Rule 36 Production operations

The Association shall not cover liabilities, losses, costs or expenses arising from a Vessel engaged in production operations out of seepage or an uncontrolled flow from any flow line, riser or umbilical connected to the producing well prior to the product entering the Vessel, save insofar such flow line, riser or umbilical would be included in the description of the Vessel but always subject to Rule 35.a, and out of measures taken to avert or minimise such liabilities, losses, costs or expenses.

Guidance

(A) Introductory remarks

A mobile offshore unit will be a unit constructed or adapted for the purpose of carrying out drilling, production, storage or other operations in connection with oil or gas exploration. It will comprise a wide range of floating structures ranging from traditional drilling rigs to floating storage, production and accommodation units having features in common with traditional merchant ships. As to the definition of the term 'vessel' in the Rules, reference is made to the guidance to Rule 1.1.

A mobile offshore unit engaged in production and storage may be connected to various equipment placed on the seabed often referred to as risers, flowlines or umbilical connecting the producing well to the vessel. Such underwater equipment may belong to the owner of the mobile offshore units to which the equipment is connected and, thus, be deemed to be a part of the insured vessel or be owned by a third party. The scope of cover available may to some extent depend on whether such underwater equipment for the purpose of the P&I cover is deemed to be a part of the entered vessel or not. See paragraph (C) below and the guidance to Rule 1.1, paragraph (A), above regarding definition of the term "Vessel".

Finally, since P&I is a named risk insurance, the fact that cover is not excluded under this Rule 36 does not necessarily mean that cover is available in general under any other Rule. It must always be established by the Member that cover is made available for the relevant liability or loss etc by one or more of the specific Rules in Part II, Chapter 1 of the Rules.

(B) … shall not cover liabilities … arising from a Vessel engaged in production operations out of seepage or an uncontrolled flow from any flow line, riser or umbilical connected to the producing well prior to the product entering the Vessel (Rule 36)

Assuming the underwater equipment, such as flow lines, risers and umbilical, are not deemed to be part of the entered vessel, Rule 36 excludes liabilities and losses etc arising out of seepage or uncontrolled flow of oil or gas from such equipment connecting the insured vessel to the producing well. However, the exclusion will only operate if and to the extent the seepage

or uncontrolled flow of oil or gas occurs before the oil or gas has reached the insured vessel. The distinction between escape or discharge of oil or other pollution from the insured vessel and from other sources remains relevant. While liabilities etc., arising out of seepage of flow of oil or gas from the underwater equipment will be excluded, liabilities etc arising out of seepage or flow of oil or gas from the insured vessel is covered under Rule 25 comprising liability for pollution as a result of discharge or escape of oil etc from the insured vessel. See the guidance to Rule 25.

(C) … save insofar such flow line, riser or umbilical would be included in the description of the Vessel … (Rule 36)
In some cases, the underwater equipment connecting the producing well with the vessel is owned by the Member and described as being a part of the insured vessel for the purpose of the P&I cover (See Rule 1.1) If that is the case, any escape of discharge of oil or gas from such equipment will be treated as being escape of discharge of oil from the vessel and cover for pollution liability will be available under Rule 25 and the exclusion in this Rule 36 will not operate.

(D) … but always subject to Rule 35.a… (Rule 36)
The proviso emphasizes that the exclusion in Rule 35.a will prevail in case of any conflict with the provisions of Rule 36. Even if cover is available under Rule 36 in the case of seepage or uncontrolled flow of oil and gas from the underwater equipment being deemed to be part of the insured vessel, no cover shall be available if and to the extent there is seepage or pollution or uncontrolled flow of oil or gas directly from the well.

(E) The Association shall not cover… out of measures taken to avert or minimise such liabilities, losses, costs or expenses. (Rule 36)
Cover for measures to avert or minimise liabilities and losses is available only where those costs and expenses are incurred for the purpose of avoiding or minimising the liability of the Association. In such circumstances the costs and expenses are treated as an 'investment' made in order to avoid or minimise liabilities, losses, costs and expenses that would otherwise be incurred by the membership as a whole.

Against this background, cover is not available for costs and expenses incurred by the Member for the purpose of averting or minimising liabilities etc falling outside the scope of cover. See the guidance to Rule 32. For this reason, costs, and expenses etc incurred as a result of measures to avert or minimise liabilities arising out of seepage or an uncontrolled flow from any flow line, riser or umbilical connected to the producing well prior to the product entering the Vessel are excluded from cover. On the other hand, if it has been agreed and noted in the certificate of entry that the underwater equipment is deemed to be a part of the insured vessel, and liability for escape or discharge of oil or gas from that equipment is covered under Rule 25, measures to avert or minimise a liability or loss will be covered under Rule 32.

Rule 37 Loss of hole, well and reservoir

The Association shall not cover:

a loss of or damage to the hole or well;

b loss of or damage to the reservoir;

provided that the loss or damage arises in connection with the hole or well which is being drilled or worked over or serviced by the Vessel.

Guidance

(A) The Association shall not cover … loss of or damage to the hole or well (Rule 37.a)

The expressions 'hole' or 'well' means a drilling into the seabed designed to bring oil or gas to the surface. A well drilled for the purpose of producing crude oil is normally referred to as an 'oil well' while a well designed to produce only gas may be called a 'gas well'. Wells are created by drilling down into an oil or gas reservoir which is then connected to a fixed or stationary installation, for example, a platform resting on poles rammed into the seabed.

Rule 37.a excludes any liabilities or losses that may arise out of or connected to loss of the hole or well being drilled. Like the risk related to pollution from well (see guidance to Rule 35), the liability for loss of or damage to the hole or the well is excluded from the scope of the conventional P&I risk picture since this risk may easily result in liabilities and losses of a catastrophic nature that the mutual membership should be protected against.

Since P&I is a named risk insurance, the fact that cover is not excluded under this Rule 37 does not necessarily mean that cover is available in general under any other Rule. It must always be established by the Member that cover is made available for the relevant liability or loss etc by one or more of the specific Rules in Part II, Chapter 1 of the Rules.

(B) The Association shall not cover … loss of or damage to the reservoir (Rule 37.b)

An oil and gas reservoir is a formation of rock in which oil and natural gas has accumulated. If and to the extent the insured vessel can cause such a reservoir to be damaged or get lost, the risk is excluded from the cover under this Rule 37.b. subject to the proviso discussed under (C) below. As to the scope and nature of the risk, see paragraph (A) above.

(C) … provided that the loss or damage arises in connection with the hole or well which is being drilled or worked over or serviced by the Vessel (Rule 37 proviso)

Like the restriction in cover pursuant to Rule 35.b regarding liabilities arising out of blow-out and seepage etc., the exclusion in Rule 37 will only operate to the extent the relevant liability or loss has arisen in connection with the hole or well being drilled or worked over or serviced by the insured vessel at

the time of the incident. In other words, for the exclusion to apply, the loss or damage to hole, well or reservoir must have happened when the said hole, well or reservoir is being drilled or worked over or serviced by the insured vessel. The only requirement is that the relevant hole, well or reservoir '…is being drilled or worked over or serviced by….' the insured vessel at the time of the incident. There is not a need to establish a closer causal connection for the exclusion to operate.

Rule 38 Excluded removal and clean-up costs

The Association shall not cover any costs relating to removal or clean-up of debris lost or deposited on the seabed during operations, unless such costs are recoverable under Rule 27.

Guidance

(A) Introductory remarks

Mobile offshore units engaged in production and storage operations may be connected to various equipment placed on the seabed. This will typically include underwater equipment such as risers, flowlines or umbilicals connecting the producing well to the vessel. Such underwater equipment may belong to the owner of the mobile offshore units to which the equipment is connected and, thus, be deemed to be a part of the insured vessel as discussed in the guidance to Rule 36, or by a third party such as the licensee. In this context the licensee is the person(s) (body corporate(s)) having been given a right by the governing authorities, such as the Norwegian Ministry of Petroleum and Energy, to explore and extract oil and gas deposits at a specified area on the seabed. This is normally referred to as petroleum activities.

Under the governing law the licensee(s) shall ensure prudent clean-up of debris lost or deposited on the seabed as a result of the petroleum activities. The licensee has a duty to do the necessary clean-up both while the work is undertaken and after it has ended regardless of whether the debris or other items are lost or deposited as a result of a casualty or not. In other words, the licensee is under an obligation to do the necessary clean-up of the seabed irrespective of the reason for the debris or items being lost or deposited. Further, the licensee is under an obligation to carry out any specific measures determined by governing authorities as regards such clean-up. See for example the Norwegian Petroleum Activity Act of 29 November 1996, as amended, section 5-3.

Charterparties or other contracts of employment between, on the one hand, the Member as owner of the vessel and, on the other hand, the licensee or associated companies as charterers or contractors governing the work or services to be performed by the entered vessel may contain indemnity or hold harmless clauses whereby the owner of the vessel shall be liable for clean-up costs for which the licensee is liable, as outline above, relating to debris lost or deposited on the seabed. This will typically include clean-up or removal costs relating to underwater equipment that has been used or connected to the vessel and deposited on the seabed when the operations have ended. In a situation like this the relevant equipment cannot be said to have been lost or deposited on the seabed as a result of a casualty in the sense the expression ‘casualty’ is used in marine insurance. See guidance to Rule 27, paragraph (E).

(B) The Association shall not cover any costs relating to removal or clean-up of debris lost or deposited on the seabed during operations… (Rule 38)
Rule 38 excludes from the scope of cover costs and expenses relating to removal of debris or other items lost or deposited on the seabed during the operations irrespective of the legal basis for being responsible for such costs and expenses. This is considered to be ordinary operating costs of the licensee and should remain his responsibility. Under governing law such costs and expenses are the responsibility of the licensee as explained in (A) above and cannot be said to have arisen as a result of a casualty as the expression is used in marine insurance.

(C) … unless such costs are recoverable under Rule 27 (Rule 38 proviso).
The proviso to Rule 38 contains an exception from the exclusion only if and to the extent cover is available under Rule 27 regarding liability for wreck removal etc. The cover under Rule 27 is dependent on the vessel or a part of the vessel or its equipment having been lost or become a wreck as a result of a 'casualty'. In this context, a 'casualty' is an event that is caused by a maritime accident such as a collision, stranding, explosion, fire or similar fortuitous event. The reference to 'similar fortuitous event' means an event of natural or human origin that could not have been reasonably foreseen or expected and is outside of the control of the persons involved. See the guidance to Rule 27, paragraph (E).

On the other hand, no cover is available in the case of vessels that have become wrecks as a result of other non-accidental events such as a prolonged lay-up or a lack of maintenance or as a result of abandonment by the Member. Further, cover is not available where the removal of the vessel is ordered because it is unlawfully anchored in a busy waterway and is, thereby, jeopardising navigational safety. Such situations will not be deemed to be 'casualties' for the purpose of Rule 27.

For example, if underwater equipment is lost or deposited on the seabed for convenience only with no intention to remove it or with the intention to remove it at a later stage if an order is given by governing authorities, no cover is available under Rule 27. The relevant items are not lost or deposited as a result of a casualty.

If the Member undertakes to indemnify the licensee for clean-up costs etc by virtue of the terms of a contract as explained in (A) above, no cover is available for such costs and expenses under standard terms of entry unless the clean-up operation has been triggered by a casualty. Even if the debris or items are lost or deposited as a result of a casualty, the contractual obligation to indemnify the licensee will only be covered to the extent the relevant terms and conditions have been approved by the Association. See guidance to Rule 42.1 regarding terms of contract resulting in greater liability than follow from terms of contract that are customary in the area where the vessel operates.

Rule 39 Construction operations etc.

Where the Vessel is engaged in construction operations, the Association shall not cover liability in respect of pollution from, loss or damage to the contract works or to the materials supplied or to be supplied for the contract works, to the extent that the pollution, loss or damage arises either

a out of the installation or repair or other work being undertaken by the Vessel; or

b during the navigation of the Vessel to or from or about the site where the work is to be undertaken, where that liability is covered by builders all risk insurance or construction all risk insurance or would be so covered had the Member been named as co-assured on standard builders all risk or construction all risk insurance policies in respect of the project of which the contract works form a part.

Guidance

(A) Introductory remarks

When vessels are engaged in construction projects either at sea or in port the cover that is available from the Association is restricted since the Member is then vulnerable to additional risks that are different from those that have traditionally been considered as typical P&I risks. Consequently, Rule 39 draws a distinction between, on the one hand, liabilities and losses etc., that arise out of the installation or repair or other work being undertaken by the vessel or during the navigation to the site where the work is being undertaken and, on the other hand, liabilities and losses etc., incurred by the Member whilst undertaking conventional trading operations (which are not excluded from cover). The distinction between the two categories of risks can be difficult to make but the Association has a responsibility to decide the issue in an objective manner that is consistent and fair to the membership as a whole and to its reinsurers.

(B) …engaged in construction operations (Rule 39)

The exclusion in Rule 39 will only operate when and to the extent the insured vessel is engaged in construction operations. If the vessel is not engaged or involved in construction operations, Rule 39 will not apply.

Construction operations will typically comprise installation of structures and facilities in a marine environment, usually for production of oil or gas. Construction and pre-commissioning may be performed partly onshore whereafter the installations are towed to the site floating on its own buoyancy. Bottom founded structure are then lowered to the seabed while floating structures are held in position with mooring systems. The size of the tow can be reduced by making the construction modular, with each module being constructed onshore and then lifted by use of crane vessels into place on the platform at the site. When the vessel is engaged and involved in such operations, the special exclusion in Rule 39 will operate.

For this purpose, construction operations must be given a broad interpretation in accordance with industry practice. The exclusion shall also operate when the entered vessel is engaged in repairs and maintenance work.

(C) …Association shall not cover liability in respect of pollution from, loss or damage to the contract works or to the materials supplied or to be supplied for the contract works… (Rule 39)
The exclusion in this Rule 39 is linked to the term 'contract works' meaning in this context typically offshore structure(s), installation(s) or facility(ies), including temporary building(s), facility(ies) and installation(s), in the process of being constructed or built and in relation to which the insured vessel is engaged. If the vessel is not engaged in the construction operation relating to the 'contract works', the exclusion will not apply as pointed out in (B) above.

The exclusion in Rule 39 comprises two categories of claims only. The first category is liabilities, losses, costs and expenses in respect of pollution from the contract work or material supplied or to be supplied for the contract work. This will typically include liabilities and losses etc arising out of pollution from a module to be installed on a fixed platform while the entered vessel, for example a crane vessel, is involved in the placing of the module on the platform at the field. This is a typical construction risk that in nature differs from traditional P&I risks. Cover as of right is not available under standard terms of entry. The exclusion illustrates the importance of distinguishing between pollution from the entered vessel that is a named risk under Rule 25 and pollution from other sources normally caught by various exclusions. See also the guidance to Rules 35 and 36.

The second category comprises liabilities, losses, costs and expenses in respect of damage to or loss of the contract work or material supplied or to be supplied to the contract work. This category of excluded claims includes risks that are typical construction risks in nature such as liabilities and losses etc in respect of damage to or loss of the contract work or material supplied or to be supplied to the contract work. For example, if the crane vessel in the above example causes damage to the module when it is lifted into place at the platform at the site, standard terms of entry will not cover any liabilities, losses, costs or expenses the Member may incur in respect of such property damage.

Claims excluded pursuant to Rule 39 comprise merely liabilities and losses etc in respect of pollution from the contract work or material related to the contract work and damage to or loss of the contract work or material supplied to the contract work. Liabilities, losses, costs and expenses arising in consequence of escape or discharge of oil or any other substance from the entered vessel will still be covered under Rule 25 even if the vessel is engaged in construction operations. Likewise, personal injury claims arising while the vessel is involved in construction operations and claims relating to damage to property other than the contract work and material related to the contract

work will not be caught by the exclusion in Rule 39 unless other policy defences might be applicable.

(D) … to the extent that the pollution, loss or damage arises either … out of the installation or repair or other work being undertaken by the Vessel (Rule 39.a)

Besides being restricted to the two categories of claims as discussed in paragraph (C) above, proviso (a) restricts the scope of the exclusion further to operate only when it can be established a causal link between, on the one hand, the relevant pollution, i.e. the escape or discharge of oil or any other substance from the contract work (for example a module to an offshore installation), or loss or damage to the contract work and, on the other hand, the work or services actually performed by the entered vessel. See in particular the words '…to the extent that the pollution, loss or damage arises…'. Thus, to invoke the exclusion, the Association must establish that the necessary link of causation exists.

If the vessel is held responsible for either pollution from the contract work or for damage to or loss of the contract work having occurred entirely independent from and not in any way related to the work or services undertaken by the entered vessel, the exclusion will not apply.

(E) … to the extent that the pollution, loss or damage arises either … during the navigation of the Vessel to or from or about the site where the work is to be undertaken, where that liability is covered by builders all risk insurance or construction all risk insurance (Rule 39.b)

There are many different types of insurances designed to protect property owners and contractors through various phases of a construction project. While under construction, offshore installations or other structures are normally insured under builders all risk insurance, also known as a construction all risk insurance. Proviso (b) to Rule 39 states that the exclusion as discussed above also will apply during navigation of the entered vessel to or from the site where the construction work is performed provided that the relevant risks, i.e. pollution from the work or loss of or damage to the work etc, are covered under builders all risk insurance policies or construction all risk insurance policies where the Member is named as co-assured. Since the construction risk is covered elsewhere there is no need for the P&I cover to respond to liabilities and losses arising out of such risks. See also the guidance to Rule 52.

(F) … or would be so covered had the Member been named as co-assured on standard builders all risk or construction all risk insurance policies in respect of the project of which the contract works form a part. (Rule 39.b)

It is common practice for owners of mobile offshore units to be named as co-assureds under the contractor's builders all risk or construction all risk

insurance policies. As a co-assured, the Member will be fully protected against liabilities and losses excluded pursuant to this Rule 39. The exclusions will operate even if the Member is not named as co-assured as long as such builders all risks or construction all risks insurance policies customarily are arranged in respect of the relevant construction work and the Member in accordance with established practice would have been named as co-assured. In other words, the exclusions will operate and the Member will not be covered for liabilities and losses etc., arising from pollution from the work or for damage to or loss of the contract work, unless the Member can establish that in the relevant project it was not customary for the Member as an independent service provider to be named as co/assured in the contractor's builders all risks or construction all risks insurance policies.

Rule 40 Other excluded losses

1 The Association shall not cover, except (in the case of paragraphs (a)-(d) below) where and to the extent that they form part of a claim recoverable under Rule 32:
   - **a** loss of or damage to the Vessel, its equipment, outfit or supplies, used on board or outside the Vessel;
   - **b** loss of hire due to the Member;
   - **c** costs of salvage or services in the nature of salvage, rendered to the Vessel and any costs or expenses in connection therewith, except to the extent that they form part of a claim recoverable under Rule 28 (Salvage);
   - **d** liabilities, losses, costs or expenses arising out of cancellation of a charter or other engagement of the Vessel;
   - **e** liabilities, losses, costs or expenses arising out of the insolvency of the Member or any other person or out of overdue or irrecoverable debts or out of any of the circumstances described in Rules 17.1(a) or (b);
   - **f** the Member's internal administrative costs and expenses.

2 Unless and to the extent that the Association in its sole discretion shall otherwise decide, the Association shall not cover any liability, loss, damage, cost or expense, including, without limitation, liability for the cost of any remedial works or clean-up operations, arising as a result of the presence in, or the escape or discharge or threat of escape or discharge from, any land based dump, site storage or disposal facility of any substance previously carried on the Vessel whether as cargo, fuel, stores or waste and whether at any time mixed in whole or in part with any other substance whatsoever.

3 The cover shall be subject to the Marine Cyber Endorsement (LMA 5403) and Communicable Disease Exclusion (JL 2021-014), the Coronavirus Exclusion (LMA-5395), and the Five Powers War Exclusion as specified in Appendix III. These clauses shall be paramount and shall override anything contained in this insurance inconsistent therewith.

Guidance

(A) The Association shall not cover … (Rule 40.1)

Rule 40 lists certain categories of claims that are expressly excluded from the cover that is available under the Rules. It must be read in conjunction with the other provisions in Part II of the Rules. Since P&I is a so-called 'named risk' insurance, the fact that cover is not excluded under Rule 40 does not necessarily mean that cover is available in general or under any other Rule. It must always be demonstrated by the Member that cover is made available for the particular liability, loss, cost or expense by one or more of the specific Rules in Part II, Chapter 1, listing the risks covered.

Rule 40 excludes cover for specified claims that arise in relation to P&I cover. Therefore, the Rule does not apply to Defence cover which may still be available to the Member for legal and other costs that may be incurred by him in pursuing or defending such claims provided the relevant claim or dispute otherwise falls within the list of risks covered in Part III, Chapter 1 of the Rules (Defence cover).

(B) …except…. where and to the extent that they form part of a claim for expenses under Rule 32… (Rule 40.1)
Extraordinary costs and expenses that are either reasonably incurred by a Member or by a third party for whose conduct the Member is liable for the purpose of avoiding or minimising any potential liability that the Association may incur for claims pursuant to Rule 32, or which may be incurred at the Association's direction, may be covered, even though such claims may include items such as the cost of repairs to the entered vessel that would otherwise be excluded under Rule 40.

(C) … loss of or damage to the Vessel, its equipment, outfit or supplies, used on board or outside the Vessel (Rule 40.1.a)
The Member is expected to insure himself against damage to, or loss of, the entered vessel under marine hull and machinery or war risk policies, that are completely separate from the cover that is provided by the Association. See also guidance to Rule 52. The insurance that is provided by the Association is insurance against liabilities, losses, costs and expenses that arise in direct connection with the operation of the entered vessel. See the guidance to Rule 2.3. Consequently, Rule 40.1.a makes it clear that claims for damage to, or for the loss of, the vessel are in any event excluded from P&I cover.

The cause and the nature of the 'loss of or damage' is not relevant. The phrase is broadly construed and includes not only the loss of, or physical damage to, the vessel that is caused by traditional marine risks such as collision, grounding etc., but also the loss of, or damage to, the vessel that is caused by other events such as theft, hijack or contamination which reduces the unit's value.

The exclusion applies not only to the loss of, or damage to, the entered vessel, but also to the loss of, or damage to, 'its equipment, outfit or supplies, used on board or outside the vessel'. This may for example include underwater equipment such as flow lines, risers or umbilical defined for the purpose of the terms of entry as being part of the vessel. See the guidance to Rule 36 above.

(D) …loss of hire due to the Member (Rule 40.1.b)
Rule 40.1.b excludes any loss suffered by the Member as a result of the hire due to the Member not being paid. The phrase 'hire' is construed broadly to encompass all forms of remuneration payable to the Member for the use or services of the vessel. Cover is excluded whether the right to remuneration arises under a charterparty or other contract of employment or otherwise

by operation of law, and regardless of whether such loss is suffered by the Member in his capacity as owner, charterer or operator.

It ought to be added that most Members have arranged a loss of hire insurance that covers the insured for loss of income resulting primarily from physical damage to the insured vessel falling within the scope of the hull policy. See for further information the Nordic Marine Insurance Plan of 2013, version 2023, Part Four, Chapter 18, section 4.

(E) …. costs of salvage or services in the nature of salvage, rendered to the Vessel … except to the extent that they form part of a claim recoverable under Rule 28 (Salvage) (Rule 40.1.c)

A salvor is entitled to remuneration under a salvage agreement or the general maritime law in proportion to the value of the property saved. Therefore, a salvor can normally expect to receive remuneration from the owners of the vessel and any other interests that are at risk. That proportion of the cost of salvage or similar services that is payable by the vessel is normally paid by the hull insurer. Consequently, Rule 40.1.c makes it clear that cover is not available from the Association in that regard, unless the amount that has been paid to the salvor by the Member is recoverable as special compensation that has been awarded to a salvor or is made pursuant to SCOPIC as incorporated into the salvage contract. See the guidance to Rule 28.

(F) …liabilities, losses, costs and expenses arising out of cancellation of a charter or other engagement of the Vessel… (Rule 40.1.d)

Cover is excluded for liabilities, losses, costs or expenses that arise as a result of the cancellation of a 'charter or other engagement'. This is an uninsured risk and the exclusion applies regardless of the type of 'charter or other engagement' that is cancelled, and regardless of whether the cancellation is effected by the owner or the charterer of the vessel, and of whether the cancellation is, or is not, legally valid.

(G) liabilities, losses, costs or expenses arising out of the insolvency of the Member or any other person … or out of any of the circumstances described in Rules 17.1(a) or (b) (Rule 40.1.e)

Rule 40.1.e deals with two separate scenarios, first the financial failure of the Member, and, secondly, the financial failure of others with whom the Member carries on business. In either case, cover is not available for liabilities, losses, costs or expenses that arise in such circumstances. Liabilities, losses etc., that arise as a result of financial failure is a general business risk that affects all types of business activity and cannot be said to arise purely and simply in direct connection with the operation of the insured vessel. See Rule 2.3.

Furthermore, in the event that the Member becomes insolvent in the circumstances described in Rules 17.1 (a) or (b), he ceases automatically upon the occurrence of any such event to be covered by the Association in respect of any and all vessels that are entered by him.

(H) …the Member's internal administrative costs and expenses (Rule 40.1.f)
Cover is not available for the internal, administrative costs and expenses that are incurred by the Member as a result of a casualty giving rise to a potential insurance claim, even if these costs and expenses are higher than usual as a result of claims that may involve the Member. Therefore, whilst Rule 32 makes cover available for extraordinary costs and expenses that are reasonably incurred by the Member on or after the occurrence of a casualty or event for the purpose of avoiding or minimising any liability that may be incurred by the Association, it does not make cover available for any internal administrative costs and expenses that the Member incurs for this purpose. Similarly, Defence cover is not available for work done, and time spent, by the Member's own in-house lawyers and other staff in relation to claims for which the Member seeks Defence cover even if such involvement is necessary, substantial and productive. See the guidance to Rule 44, paragraph (A).

It is not possible to give a definitive list of those cost items that are deemed to be 'internal administrative costs or expenses' for the purposes of Rule 40.1.a but they include items such as the costs of staffing the Member's office and rental and utility charges. Furthermore, in order to ensure that the claims of all Members are handled by the Association with the same degree of consistency, the Association is given the discretion to determine whether particular items are to be treated in any particular circumstances as 'internal administrative costs or expenses.'

Notwithstanding the exclusion of cover for such costs and expenses, the Member is obliged in the event that cover is available from the Association for a particular claim, to obtain, at his own cost, any information that may be required by the Association, and to make calculations, attend meetings and provide whatever assistance that may be required by the Association, whether by use of his own employees or by the use of others that are regularly used to perform such services. If the Member fails to do so, he may be considered to be in breach of the duty that he has under Rule 62 to provide the Association with the necessary assistance that may be required by the Association in order to deal with claims. In such circumstances, the Association has the right, under Rule 62.2 to reject the claim or to reduce the sum that would otherwise be payable to the Member. The Association also has similar rights in relation to Defence cover.

(I) Unless and to the extent that the Association in its discretion shall otherwise decide, the Association shall not cover any liability, loss, damage, costs or expense … arising as a result of the presence in, or the escape … from, any land based dump … of any substance previously carried on the Vessel … (Rule 40.2)
Rule 40.2 has been introduced to protect the Association against claims that could be made against the Member as a result of problems that can arise after the removal from the insured vessel of substances that have

previously been carried on the vessel, whether as cargo, stores or waste. Such liabilities can arise, for example, under the provisions of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of the United States which gives local authorities or other parties that are affected by the presence of such substances on shore, the right in some instances to hold the Member responsible for such post-discharge problems on the basis that the original cause of the problem can be traced back to the Member's vessel. Such liabilities, losses etc., are in any event not considered to arise 'in direct connection with the operation of the vessel as required under Rule 2.3.

However, Rule 40.2 makes it in any event clear that liabilities, losses, costs or expenses that arise in any way whatsoever as a result of the presence of the relevant substances on, or in, the land based dump, or as a result of the actual or threatened escape or discharge of such substances from such a facility are excluded from the P&I cover. For example, the owner of the facility or the local authority might hold the Member liable for substantial clean-up costs that are incurred by them should toxic substances escape from the site, or for substantial costs that are incurred to ensure that this does not happen. Alternatively, very large claims could be made against the Member if those who live or work in the vicinity of the site were forced to evacuate the area because of the escape of noxious or harmful gases emanating from substances that had previously been taken from the vessel. Cover is not available in such circumstances, nor in any other circumstances that arise as a result of the fact that such substances are present in such a facility.

So long as the substance that has been taken ashore originated in the entered vessel, it does not matter whether it was previously carried as cargo or as stores or as waste. Cover is excluded in all such circumstances.

Cover is excluded in the event that any part of the substance that has been taken to the land-based dump etc., originated on the vessel. It does not matter that such a substance has been mixed with any other substance, whether in whole or on part, and whether that occurred before or after discharge from the insured vessel. For example, such admixture could occur when waste from the entered vessel is mixed with some other substance in a barge after discharge from the vessel and before the mixed commodity is taken to the land-based dump.

However, the Association is given the discretion in the circumstances that are described in Rule 40.2 to make cover available either in full or in part and on such terms as it thinks appropriate in the circumstances. Such discretion will be exercised on a case-by-case basis depending on the particular circumstances and can only be exercised by the Board of Directors of the Association. See Article 6.5.b of the Bye-Laws of Gard P. & I. (Bermuda) Ltd. and Article 9.3.b of the Statutes of Assuranceforeningen Gard -gjensidig.

(J) The cover shall be subject to the Marine Cyber Endorsement (LMA 5403) and Communicable Disease Exclusion (JL 2021-014), the Coronavirus Exclusion (LMA-5395) and the Five Powers War Exclusion as specified in Appendix III. These clauses shall be paramount and shall override anything contained in this insurance inconsistent therewith. (Rule 40.3).
Rule 40.3 incorporates certain market clauses into the covers subject to the Rules. These clauses will therefore be incorporated in any Certificate of Entry or Policy incorporating the Rules.

The market clauses incorporated by Rule 40.3 mirror the terms of the Association's market reinsurance arrangements for non-Poolable P&I risks, i.e. P&I risks reinsured outside the scope of the International Group of P&I Clubs' Pooling Agreement such as the P&I cover for MOUs, and are incorporated into the covers offered by the Association under the Rules to ensure that the Association as direct insurer is 'back to back' with its market reinsurers. The risks excluded by the market clauses in Rule 40.3. also have in common that these risks may potentially result in extreme, aggregated losses that are not easy to quantify and difficult to charge the right premiums for.

The proviso that the clauses incorporated in Rule 40.3 shall be 'paramount and shall override anything contained in this insurance inconsistent therewith' is a rule of interpretation of the terms and conditions in the contract of insurance. If there is any conflict between, on the one hand, any of the clauses and, on the other hand, any other terms or conditions in the contract of insurance agreed between the Association and the individual Member as set out in the Rules, the certificate of entry or any special terms and conditions agreed, the clauses incorporated in Rule 40.3 shall always prevail.

(K) Marine Cyber Endorsement
The wording of the Marine Cyber Endorsement incorporated in Policies subject to the Rules is set out in Appendix III to the Rules and reads as follows:

1 Subject only to paragraph 3 below, in no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.

2 Subject to the conditions, limitations and exclusions of the policy to which this clause attaches, the indemnity otherwise recoverable hereunder shall not be prejudiced by the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm.

3 Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person

acting from a political motive, paragraph 1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

LMA5403 - 11 November 2019

General

LMA 5403, issued by Lloyd's of London on 11 November 2019, intends to provide some more clarity to the insurance market with regard to the limit and extent of cyber cover. In short it can be summarised as follows:

Malicious cyber acts

Section 1 of the LMA5403 excludes liabilities, losses, costs and expenses arising out of malicious cyber acts only. It is referred to the use or operation, 'as a means for inflicting harm', of any computer, computer system, computer software programme etc. The effect of section 1 of the clause is that no cover is available for liabilities, losses, costs or expenses directly or indirectly caused by or contributed to by or arising from a malicious cyber act. A typical example will be a case where the attacker uses a laptop for the purpose of causing damage to property.

Non-malicious cyber acts

On the other hand, section 2 of the LMA5403 states that cover shall be available for liabilities, losses, costs and expenses arising out of the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm. For example, if a casualty occurs because of computer failure on board the vessel, the Member will not be deprived cover on the basis of the LMA5403 if coverage otherwise is available under the terms of entry. The relevant proviso reads as follows: …the indemnity otherwise recoverable hereunder shall not be prejudiced by the use or operation of any computer,…if such use or operation is not as a means for inflicting harm.

War risks

Section 3 of the LMA5403 states that when the clause is incorporated in a war risk policy, section 1 will not operate to exclude liabilities and losses etc., when computer systems or computer software programmes etc., are used in the launch and/or firing mechanism of any weapon or missile etc. In other words, even if the intention here is to cause damage, the exclusion in section 1 above shall not apply in a war risk policy.

(L) Communicable Disease Exclusion clause

The wording of the Communicable Disease Exclusion incorporated in the Policies subject to the Rules is set out in Appendix III and reads as follows::

1. *In the event that the World Health Organization ('WHO') has determined an outbreak of a Communicable Disease to be a Public Health Emergency of International Concern (a 'Declared Communicable Disease'), no coverage will be provided under this (re)insurance for any loss, damage, liability, cost or expense directly arising from any transmission or alleged transmission of the Declared Communicable Disease.*

2. *The exclusion in paragraph 1 of this endorsement will not apply to any liability of the (re)insured otherwise covered by this (re)insurance where the liability directly arises from an identified instance of a transmission of a Declared Communicable Disease and where the (re)insured proves that identified instance of a transmission took place before the date of determination by the WHO of the Declared Communicable Disease.*

3. *However even if the requirements of paragraph 2 of this endorsement are met, no coverage will be provided under this (re)insurance for any:*

A. *liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for the Declared Communicable Disease whether the measures are preventative or remedial;*

B. *liability for or loss, cost or expense arising out of any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of the Declared Communicable Disease;*

C. *loss, damage, liability, cost or expense caused by or arising out of fear of or the threat of the Declared Communicable Disease.*

4. *As used in this endorsement, Communicable Disease means any disease, known or unknown, which can be transmitted by means of any substance or agent from any organism to another organism where:*

A. *the substance or agent includes but is not limited to a virus, bacterium, parasite or other organism or any variation or mutation of any of the foregoing, whether deemed living or not, and*

B. *the method of transmission, whether direct or indirect, includes but is not limited to human touch or contact, airborne transmission, bodily fluid transmission, transmission to or from or via any solid object or surface or liquid or gas, and*

C. *the disease, substance or agent may, acting alone or in conjunction with other comorbidities, conditions, genetic susceptibilities, or with the human immune system, cause death, illness or bodily harm or temporarily or permanently impair human physical or mental health or adversely affect the value of or safe use of property of any kind.*

5. *This endorsement shall not extend this (re)insurance to cover any liability which would not have been covered under this (re)insurance had this endorsement not been attached.*

All other terms, conditions and limitations of this (re)insurance remain the same.

JL2021-014 8th March 2021

General

The outbreak of the Covid–19 virus in December 2019 developed into a global health threat and the World Health Organization (WHO) declared a Public Health Emergency of International Concern on 30 January 2020 for the purpose of strengthening the co-ordination of efforts to prevent further spread of the disease. Outbreak of a 'pandemic' was declared by WHO on 12 March 2020 meaning a world-wide spread of a new disease, although there are no agreed or fixed criteria for what reaches the level of pandemic and what does not.

A public health emergency of international concern may affect P&I insurers in several ways. For example, an increased number of ships and vessels may be quarantined as a result of alleged disease on board the ship. Further, if it can be established that the relevant disease most likely was brought to a country by an identified vessel, it may be basis for third party claims from local interests and even class actions if a larger group of people are infected. A class action is a lawsuit where one of the parties is a group of people represented collectively by a member of that group. The concept of class action originated in the United States but is now introduced in several other jurisdictions, including the UK and Norway.

Against this background and several market clauses developed in the aftermath of the Covid – 19 outbreak, the Lloyd's Market Association has developed a new and more balanced insurance endorsement with the aim of adding clarity and predictability as to cover available with regard to liabilities and losses etc arising out of or linked to communicable diseases.

Scope – directly related to transmission of Declared Communicable Disease

Section 1 links the exclusion to a Communicable Disease. The term "Communicable Disease" is defined in Section 4. The exclusion will however only apply where the Communicable Disease has been declared by the WHO as a Public Health Emergency of International Concern (PHEIC), thereby becoming a "Declared Communicable Disease".

For example, For example, Covid-19 was previously declared a PHEIC (since 30 January 2020) thereby falling within the definition of Declared Communicable Disease and therefore excluded. However, since May 2023, the WHO has decided that Covid-19 is no longer a PHEIC. Consequently, Covid-19 no longer falls within the Declared Communicable Disease definition and is therefore no longer excluded under the Communicable Disease Exclusion

Clause (see, however, Section (M) below). If a Declared Communicable Disease has been declared, the clause will operate, even if the liabilities and losses arise out of serious diseases.

The clause will only apply for liabilities etc., 'directly arising from transmission … of the Declared Communicable Disease'. First, the word 'directly' requires a direct causal link between, on the one hand, the liability or loss that has arisen and for which the Member seeks insurance cover and, on the other hand, the Declared Communicable Disease. Secondly, the word 'transmission' refers to something being transferred from a person or place to another. It is only liabilities etc that arise out of the relevant disease being transferred from a person or place to another that are excluded. For example, if class action is brought against the Member as the owner of the vessel on the basis that the vessel brought the Declared Communicable Disease to the port, the potential liability will be excluded from the cover. This must be treated as a liability that has arisen directly from transmission of the Declared Communicable Disease to that port as set out in section 1 of the clause. On the other hand, if the vessel is quarantined as result of an outbreak of the Declared Communicable Disease, the quarantine costs will be covered. See guidance to Rule 33A. The costs and expenses cannot be said to have arisen as a result of transmission of the disease.

Liabilities and losses arising out of transmission prior to WHO's declaration
Section 2 of the clause makes it clear that the exclusion will not apply for any transmission of the Declared Communicable Disease if it can be established that the transmission took place before the WHO declared the relevant disease to a Declared Communicable Disease. However, even if the requirements of section 2 above are met, liabilities, losses, costs and expenses relating to, inter alia, clean up, detoxifying, monitoring or testing or other preventive or remedial measures will not be covered. Further, no cover is available with regard to loss of revenue and loss of markets etc as a result of the Declared Communicable Disease or the fear or threat of such disease. See section 3, (A), (B) and (C) of the Communicable Disease Exclusion clause above.

Definition of Communicable Disease
The term "communicable disease" is defined in Section 4. The definition is not restricted to named viruses but will apply generally to diseases falling within the definition of Section 4.

Finally, section 5 states the obvious that the clause shall not extend cover to any liabilities or losses etc that would not have been covered under the relevant terms of entry if the Communicable Disease Exclusion had not been incorporated. P&I is a 'named risk' insurance and the fact that cover is not expressly excluded does mean that cover is available in general or under any other Rule. It must always be demonstrated by the Member that cover is made available for the particular liability, loss, cost or expense by one or more

of the specific Rules in Part II, Chapter 1, listing the risks covered.

(M) Coronavirus Exclusion
The wording of the Coronavirus Exclusion incorporated in Policies subject to the Rules is set out in Appendix III to the Rules and reads as follows:

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.

1 *This insurance excludes coverage for:*

any loss, damage, liability, cost, or expense directly arising from the transmission or alleged transmission of:

a Coronavirus disease (COVID-19);

b Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2); or

c any mutation or variation of SARS-CoV-2;

or from any fear or threat of a, b or c above;

2 *any liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for a, b or c above;*

3 *any liability for or loss, cost or expense arising out of any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of any of a, b or c above or the fear or the threat thereof.*

All other terms, conditions and limitations of the insurance remain the same.

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General
As mentioned under Section (L) above, Covid-19 was up until May 2023 declared a Public Health Emergency of International Concern and therefore fell within the definition Declared Communicable Disease and therefore excluded by the Communicable Disease Exclusion clause. However, since the WHO decided that Covid-19 was no longer a PHEIC, that exclusion no longer applies. Market practice is however still to exclude Covid-19 related losses and liabilities, and a special exclusion for Covid 19 was therefore introduced in the Association's non-poolable reinsurance agreement. In order to be back-to-back with reinsurance, the Coronavirus Exclusion clause was therefore introduced in 2024.

(N) Five Powers War Exclusion

The wording of the Five Powers War Exclusion incorporated in Policies subject to the Rules is set out in Appendix III to the Rules and reads as follows:

This insurance excludes loss, damage, liability, or expense arising from

a the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

b requisition either for title or use.

General

The Five Power War Exclusion excludes losses etc. arising from the outbreak of war between the United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China, and from requisition for title or use.

As the Five Powers War Exclusion is included in Rule 40.3 and Appendix III it is incorporated in all Policies subject to the Rules, and not just the Policies providing cover against war risks. However, with respect to Policies excluding war risks pursuant to Rule 54, the incorporation of the Five Powers War Exclusion is not intended to alter the cover, as the risks excluded by the Five Powers War exclusion are already excluded under Rule 54.

Rule 41 Amounts saved by the Member

Where the Member, as a result of an event for which it is covered by the Association, has obtained extra revenue, saved costs or expenses or avoided liability or loss which would otherwise have been incurred and which would not have been covered by the Association, the Association may deduct from the compensation an amount corresponding to the benefit obtained.

Guidance

(A) Introductory remarks

The purpose and aim of the Association is to indemnify Members against liabilities and losses etc that are specified in Part II, Chapter 1, of the Rules (the named risks). This reflects the fundamental principle that is the foundation of marine insurance generally. Consequently, if the Member has benefited in some way as a result of an event that is insured under the P&I cover, credit should be given for such benefit against any sums that the Member is entitled to receive from membership's funds as a result of that insured event. The individual Member should not profit at the expense of the other Members. This would be contrary to the principle of mutuality.

(B) Where the Member…has obtained extra revenue, saved costs or expenses or avoided liability… (Rule 41)

The aim of Rule 41 is to place the Member in the same financial position as that in which he would have been if the event given rise to the P&I claim had not arisen, save for any deductible that the Member has agreed to bear. Therefore, if the Member earns extra revenue, or saves costs or expenses, or avoids an uninsured liability or loss, as a result of the event that gives rise to a claim on the Association, such amounts must be taken into account before determining the amount of compensation that is payable by the Association to the Member in respect of that event.

For example, a mobile offshore unit insured in the Association for P&I risk is involved in a casualty giving rise to various categories of possible P&I liabilities. In connection with the management of the casualty the Member, in consultation with the Association, seeks the assistance of a specialist vessel, for example an anchor handling vessel. While the anchor handling vessel is in the process of leaving port for the purpose of assisting in the handling of the casualty, the Member asks the anchor handling vessel also to bring some other special equipment to be used on board the unit involved in the casualty. However, this other equipment is not needed or otherwise related to the handling of the relevant casualty. The reason why the Member asks the anchor handling vessel to bring this other equipment out to the mobile offshore unit is simply to save costs of transportation that otherwise would have been incurred. In this example, the Member has saved the cost of transportation of equipment needed on board the entered vessel for its normal operation that otherwise would have been incurred but for the fact

that the anchor handling vessel assisting in the handling of the casualty giving rise to various categories of possible P&I claims had space available that could be utilized free of charge. This saving must be taken into account in the reimbursement claim under the policy.

(C) …saved…or avoided…which would not have been covered by the Association… (Rule 41)
The Member must give credit for expenditure which he would have incurred but for the event and which would not have been recoverable from the Association. It is only in these circumstances that it can be said that the Member has benefited from the insured event.

(D) …the Association may deduct from the compensation payable under a P&I entry an amount corresponding to the benefit obtained. (Rule 41)
Rule 41 gives the Association the right to deduct the financial value of any benefit that has been obtained by the Member as a result of the insured event from the compensation that is payable under a P&I entry. Such deduction is likely to be made if the Association has not yet compensated the Member in full. However, if compensation has already been paid in full or if the Association has already satisfied the third party claimant's claim directly, but it subsequently transpires that the Member has either gained revenue or saved expenses as a result of the event, the logical corollary is that the Member is obliged to reimburse the Association with the amount by which he has so benefited since otherwise, the Association would not be able or reluctant to assist Members by providing speedy compensation or agreeing where appropriate to pay third party claimants directly on behalf of the Member.

Rule 42 Terms of contract the Association shall not cover

1 The Association shall not cover liabilities, losses, costs or expenses:
   - **a** which would not have arisen but for the terms of a contract entered into by the Member that result in a greater liability than follow from terms of contract which are customary in the area where the Vessel operates;
   - **b** which result from, or would not have arisen but for, the Member having used terms of contract which the Association has prohibited; or omitted to use terms which the Association has prescribed.

2 The Association shall not cover liabilities, losses, costs or expenses incurred pursuant to a contract entered into by the Member for the provision of services by the Vessel (other than a U.S. owned, operated or managed Vessel) which would not have been incurred had that contract contained a division of liability as between the parties which either
   - **a** is in accordance with the premium conditions set out in Appendix I B or with the terms of entry; or
   - **b** has been approved by the Association after the date of entry, and for which a variation in the Premium Rating has been agreed.

Guidance

(A) Introductory remarks

The Member has a duty both prior to, and after, the conclusion of the contract of insurance, to make full disclosure to the Association of all circumstances that the Association would consider to be relevant when deciding whether, and on what conditions, to accept the entry. See Rule 6. The Member also has a duty to disclose circumstances that arise after the conclusion of the contract of insurance that result in an alteration of risk. See Rule 7. Such duties include the duty to disclose the terms of any contract or indemnity that may expose the Member to additional liability etc. Therefore, a prudent Member should actively seek to disclose such contractual terms to the Association in order to enable the Association to take such terms into account when considering the overall risk. In case of doubt, the Member is strongly advised to consult the Association before agreeing the terms of any contract or indemnity.

(B) The Association shall not cover liabilities, losses, costs or expenses… (Rule 42.1)

Rule 42 is a reflection and a recognition of the principle that cover is made available only for those risks that are regularly and routinely encountered by the majority of the membership. Consequently, the risks that are routinely encountered by the majority of the members by virtue of contractual terms that are commonly and regularly used in the industry should be, and are, shared between the membership as a whole. However, if a Member incurs a liability that arises solely as a result of contractual terms that are not regularly and routinely used by the majority of the membership, such risks should not be, and are not, shared by the membership as a whole.

(C) …which would not have arisen but for the terms of a contract…that result in a greater liability than follow from terms of contract which are customary… (Rule 42.1.a)

Rule 42.1.a gives practical effect to this basic principle by providing that cover is not automatically available for liabilities, losses, costs and expenses that arise, not as a result of the use of customary or standardised contractual terms, i.e. terms that are broadly accepted in the industry as the norm, but as a result of terms that are more onerous for the Member. While the Member has the freedom to agree to such onerous terms should he find it necessary and/or commercially advantageous to do so, he should not expect the Association to use its funds to bear the cost of any liability etc., that is greater than if terms of contract which are customary in the area where the Vessel operates had been used.

If the exclusion in Rule 42.1.a shall be invoked in respect of a claim that otherwise by its nature is a named P&I risk, the Association as insurer will have the burden to establish that governing terms of contract in the relevant case result in greater liability than what is customarily in the area where the vessel operates. As an example, a complete waiver of the right to limit liability pursuant to governing international conventions as implemented in national law may be deemed to result in greater liabilities than follow from terms of contract that are customarily in the relevant area of operation and might give the club a basis to invoke the exclusion. However, cover is unavailable only to the extent that the Member's liability has been increased by the use of terms or clauses that are not approved by the Association.

(D) …which result from or would not have arisen but for…having used terms of contract which the Association has prohibited… (Rule 42.1.b)

The Association regularly issues circulars that are designed to make Members aware of clauses in contracts and/or indemnities that are considered to be onerous for Members, together with comments that are intended to clarify the availability of cover. In some instances, the Association will make it clear that it does not approve certain onerous terms of contract and that cover will not, therefore, be available for liabilities that arise as a result of the use of such terms, save that cover is excluded only to the extent that the Member's liability has been increased by the use of terms or clauses that are not approved by the Association.

(E) The Association shall not cover liabilities,…incurred pursuant to a contract…which would not have been incurred had that contract contained a division of liability as between the parties which either…is in accordance with the premium conditions…or with the terms of entry (Rule 42.2.a)

The premium rating of the individual vessel agreed at the commencement of the period of entry assumes that the premium conditions specified in Appendix 1 B to the Rules and any special terms and conditions as agreed in the terms of entry are adhered to. The premium conditions in the Rules

assume that the division of liability between the parties follows the 'knock for knock' model with some deviations. See Appendix 1 B to the Rules, the full text of which is included in paragraph (H) below for ease of reference. See also the guidance to Rule 58 as to the knock for knock principle.

Rule 42.2 (a) excludes liabilities and losses incurred pursuant to unusual or more onerous terms of contract than specified in the premium conditions and other terms of entry especially agreed. The exclusion is technically linked to the Member's failure to adhere to the premium conditions specified in Appendix 1 B to the Rules and any special terms agreed. The Members adherence to the assumptions specified in the premium conditions and other terms especially agreed is a fundamental prerequisite for determining the right premium for the risk at the commencement of the insurance. For that reason, liabilities and losses which the Member would not have incurred if the contractual division of liabilities between the Member and the contractor or operator had been in accordance with the premium conditions or other terms of entry agreed will be excluded.

(F) The Association shall not cover liabilities,…incurred pursuant to a contract…which would not have been incurred had that contract contained a division of liability as between the parties which either …has been approved by the Association after the date of entry, and for which a variation in the Premium Rating has been agreed. (Rule 42.2.b)
Rule 42.2 (b) governs a situation where special terms of contract or indemnity in a charterparty or other contract of employment for the entered vessel necessitate a variation in the premium rating during the period of entry for the Association to confirm cover due to increased risk exposure.

During the period of entry, the Member may seek guidance and advice from the Association as to terms of contracts and indemnities in charterparties or other contracts of employment that shall govern the work or services to be performed by the vessel. If a Member during the period of entry looks to the Association for cover in respect of liability etc., that arises solely as a result of unusual or onerous terms of contract or indemnity in a charterparty or other contract of employment the Member has entered into or is in the process of entering into, the Association will need to consider and approve such terms of contract or indemnity before it can confirm that cover is available in respect of such increased risk and whether any variations shall be made in the premium rating originally agreed at the commencement of the period of insurance as a result of potential increased or altered risk exposure.

Having approved the special terms of contract or indemnity based on which a variation in the premium rating has been made, Rule 42.2 (b) excludes liabilities and losses that would not have been incurred if the relevant contract had contained a division of liability as approved by the Association.

In other words, the exclusion is linked to the Member's failure to adhere to the division of liability that has been reported to and approved by the Association and which has been the basis for the variation in the premium rating made during the period of entry. Liabilities and loss arising out of more onerous terms of contract and indemnities than approved by the Association and being the basis for a variation of the premium rating during the period of entry, will not be covered.

(G) …(other than a U.S. owned, operated or managed Vessel)… (Rule 42.2)
The effect of the bracket in Rule 42.2 is to exempt US owned, operated or managed units from exclusions directly linked to adherence of the premium conditions. See paragraphs (D), (E) and (F) above. On the other hand, US owned, operated or managed units will be subject to the exclusions in Rule 42.1. See paragraphs (A), (B) and (C) above.

An US owned, operated or managed vessel means in this context a mobile offshore unit entered in the Association on behalf of an owner, operator or manager being a citizen or corporate citizen of the United States, having his principal place of business in the United States or who is operating out of the United States. Generally, such a vessel is deemed to involve higher risk than non-US business. Liabilities and losses arising out of casualties having occurred in the United States or areas subject to US law and jurisdiction will represent a higher exposure than if similar incidents or claims had occurred in other countries where mobile offshore units frequently are operating.

Against this background, entries of such vessels are subject to special terms and restrictions. See for example Rules 43 and 57.2. Further, the standard premium conditions set out in Appendix I, section B, to the Rules do not apply for US owned, operated or managed units. Entries of such vessels will be subject to special terms and conditions, including premium conditions, agreed between the Association and the Member in each particular case. For that reason, the linking of exclusion in Rule 42.2 to adherence of the premium conditions as set out in Appendix I, section B, does not work for US owned, operated or managed vessels. By virtue of the bracket such vessels have been exempted from Rule 42.2 but will be subject to any other special terms and conditions agreed in each particular case.

(H) Premium conditions - Paragraph B of Appendix I to the Rules
The premium conditions referred to in Rule 42.2, included in paragraph B of Appendix I to the Rules, reads as follows:

B Terms of Contract (Rule 42.2)

1 Introduction

a) The premium conditions set out in this paragraph B are applicable for all Vessels except US owned, operated or managed Vessels.

b) *The Premium Rating agreed with the Member, and the cover available to the Member are subject to any contract entered into by the Member for the provision of services by the Vessel containing a division of liability which is either*

i *in accordance with these premium conditions or with the terms of entry; or*

ii *approved by the Association after the date of entry, and for which a variation in the Premium Rating is agreed.*

c) *For the purpose of these premium conditions:*

i *"Operator" means the party chartering the Vessel by way of a charterparty or other form of contract, including any other party having an owning interest in the field being serviced by the Vessel;*

ii *"Operator Group" means the Operator their respective co-venturers, its and their parents and Affiliates together with the other contractors of Operator;*

iii *a Vessel shall be deemed to be an accommodation vessel if the Association so determines.*

2 *Guidelines indicating how various contractual arrangements entered into by the Member will influence Premium Rating.*

Except to the extent set out specifically in relevant cases below, the following divisions of liability in contracts entered into are acceptable within the standard cover and Premium Rating:

a) *Where the Member is liable for the injury, illness or death of his own employees and the employees of any of his sub-contractors.*

b) *Where the Member is liable for loss of or damage to his own property and property belonging to any of his sub-contractors, provided that cover is conditional upon the Member obtaining a hold harmless agreement from any of his sub-contractors in respect of liability for the sub-contractor's property in the care, custody or control of the Member, onboard or outside the Vessel.*

c) *Where the Member is liable for the injury, illness or death of the Operator's employees, or the employees of the Operator Group, subject as follows*

Note: In the event that the Member obtains a hold harmless undertaking from the Operator in respect of the Operator's employees, there shall be a rebate of 5 per cent of premium on the first USD 50 million of cover.

In the event the Member obtains a hold harmless undertaking from the Operator in respect of the employees of the "Operator's Group", there shall be a rebate of 10 per cent of premium on the first USD 50 million of cover.

i In the case of accommodation vessels (including flotels), where the Member is liable in tort for the injury, illness or death of the accommodees of the Operator Group, provided that the number of such accommodees at risk does not exceed 15 persons.

Note: In the event of the number of such employees exceeding 15 persons, cover is available for each excess tranche of up to 50 persons at an additional premium of 15 per cent on the first USD 50 million of cover, but subject always to a maximum additional premium of 50 per cent.

ii In the case of accommodation vessels (including flotels), where the Member is strictly liable in contract for the injury, illness or death of accommodees of the Operator Group, provided that the number of such accommodees at risk does not exceed 15 persons.

Note: In the event of the number of such employees exceeding 15 persons, cover is available for each excess tranche of up to 10 persons at an additional premium of 5 per cent on the first USD 50 million of cover, but subject always to a maximum additional premium of 100 per cent.

d) Where the Member is liable in tort for loss of or damage to property of the Operator's Group, provided that cover is conditional upon the Member obtaining a hold harmless agreement in respect of liability for such property in the care, custody or control of the Member, on board or outside the Vessel.

Rule 43 US owned, operated or managed Vessels

1 The Association shall not cover under the entry of a US owned, operated or managed Vessel any liability, loss, cost or expense of any description howsoever arising out of or relating to:
   - **a** any liability resulting from personal injury, bodily injury, occupational disease, or death in respect of any employee including without limitation "borrowed employees" of the Member that may arise under any workers' compensation law, unemployment compensation, or disability benefit laws, the United States' Longshore and Habor Workers' Compensation Act, and any other form of maritime employers liability (other than Jones Act, general maritime law remedies of the United States and any claims under the Death on the High Seas Act) or any similar laws, and/or by reason of the relationship of master and servant, nor to any employee of the Member in respect of injury to or the death of another employee of the Member injured in the course of such employment; or
   - **b** any liability to the spouse, child, parent, brother or sister, or dependent of any employee as a consequence of paragraph (a) above; or
   - **c** any liability which any director, officer, partner, principal, employee or stockholder of the Member may have to any employee of the Member (other than liability that may arise under Jones Act, general maritime law remedies of the United States and any claims under the Death on the High Seas Act).

2 The exclusions from cover under Rule 43.1(a) and (b) apply:
   - **a** whether the Member may be liable as an employer or in any other capacity; and
   - **b** to any obligation of the Member to share damages with or repay any party who is required to pay damages because of the injury.

Guidance

(A) The Association shall not cover under the entry of a US owned, operated or managed Vessel any liability, loss, cost or expense of any description howsoever arising out of or relating to… (Rule 43.1)

An US owned, operated or managed vessel means in this context a mobile offshore unit entered in the Association on behalf of an owner, operator or manager; being either a citizen or corporate citizen of the United States; having its principal place of business in the United States; or who is otherwise operating out of the United States. Generally, US owned, operated, or managed vessels are deemed to involve higher risk than non-US business. Liabilities and losses arising out of casualties subject to US law and jurisdiction will normally represent a higher exposure than if similar incidents had occurred in other countries where mobile offshore units

frequently are operating. Against this background, entries of US owned, operated or managed vessels are subject to special terms and restrictions. Besides this Rule 43, Rules 42.2, 57.2 and Appendix I, section B contain special requirements for US owned, operated or managed units.

The effect of the introductory paragraph of Rule 43.1is to exclude cover for US owned, operated or managed vessels in respect of the categories of liabilities, losses, costs and expenses specified in Rule 43.1 (a), (b) and (c) below. It is referred to liabilities 'of any description howsoever arising out of or relating to' the listed categories of claims. This means that the list of excluded liabilities and losses must be interpreted broadly.

In practice the exclusions in this Rule 43 for US owned, operated or managed units comprise primarily personal injury or personal injury related claims against the Member in respect of his employees or borrowed employees as discussed in (B) and (C) below. Such claims would have been covered under Rules 19 and 20 but for the provisions of this Rule 43. On the other hand, personal injury claims in respect of individuals not being deemed to be employees or borrowed employees of the Member are not caught by the exclusion in Rule 43. Further, other named P&I risks, for example, collision, FFO, pollution, property damage and wreck removal etc are also covered for US owned, operated or managed vessels regardless of whether the relevant claims are subject to US law or not.

(B) …shall not cover…liability, loss, cost or expense of any description howsoever arising out of or relating to…any liability resulting from personal injury, bodily injury, occupational disease or death… (Rule 43.1.a)
The category of liabilities, losses, costs and expenses excluded pursuant to Rule 43.1.(a) are described as 'personal injury, bodily injury,, occupational disease, or death'. Since the description shall be interpreted broadly, this will comprise any type of personal injury related claims including both physical and mental injuries or illnesses. It will also comprise both claims enforced by the injured party himself or his estate in case of death. As to claims from the employee's relatives, dependants or other survivors, see Rule 43.1 (b) and guidance in paragraph (H) below.

It is expressly said that an occupational disease for this purpose shall be treated as a personal injury subject to the exclusion. The expression 'occupational disease' will typically mean any disease contracted by the employee primarily as a result of an exposure to risk factors arising from work activities. A special feature of occupational disease claims is the 'long tail', i.e. that claims are made many years after the injured persons were exposed to the relevant risk factors. An example is asbestos related occupational disease claims. Such claims are sometimes made more than ten years after the claimants were exposed.

(C) …any employee including without limitation "borrowed employees" of the Member… (Rule 43.1.a)
The exclusion will apply in respect of claims relating to personal injury etc., in respect of an employee of the Member. An employee means in this context a person employed by the Member, or a co-assured which for this purpose must be deemed to be Member (see the guidance to Rule 1.1), under a contract of employment entitling the employee to wages or salaries.

The exclusion operates only to the extent the personal injury claim is enforced by an employee of the Member or a co-assured. A personal injury claim enforced by a third party not being an employee of the Member or co-assured nor a 'borrowed employee' as discussed below, will not be subject to the exclusion.

The expression 'borrowed employee', means, as the name implies, an employee borrowed by the Member for any period of time from another company. Broadly speaking a borrowed employee is an employee who is freed by his original employer to work for another employer, the latter is often referred to as the second employer. In the context of this Rule 43.1 the Member will be the second employer and treated as the borrowed employee's employer for the purpose of worker's compensation law if the Member exercises control over the borrowed employee and the borrowed employee is free from the control of his original employer.

(D) …arise under any worker's compensation law, unemployment compensation or disability benefit laws, the United States' Longshore and Harbor Workers' Compensation Act, and any other form of maritime employers liability…or any similar laws,… (Rule 43.1.a)
The exclusion in Rule 43.1 will only apply to claims enforced under worker's compensation law, unemployment compensation or disability benefit laws, United States' Longshore and Harbor Workers' Compensation Act (LHWCA), and any other form of maritime employers' liability law or similar laws. This will include a wide range of legislation, legal instruments, and regulations comprising both federal statutes and state legislation in the United States. The exclusion will apply as long as it can be demonstrated that the relevant claim is enforced on the basis of a federal law or state law or any other legal instrument that can be described as workers' compensation laws, unemployment compensation or disability benefit laws or any other form of maritime employers' liability laws.

A special reference is made to LHWCA. This is a federal law that gives medical and other defined benefits to certain maritime employees. The act covers longshoremen, harbour workers, and other maritime employees such as those who load and unload vessels. Pursuant to the LHWCA injured workers who suffer from temporary, permanent, partial, or total disabilities will be

entitled to benefits. The benefits shall cover a portion of lost wages, all reasonable and necessary medical treatments, and travel expenses associated with receiving those medical treatments. The LHWCA also covers surviving spouses of employees who have died of work-related injuries.

To invoke the exclusion in Rule 43.1, the Association must demonstrate that the relevant claim is enforced on the basis of any workers' compensation law, unemployment compensation or disability benefit laws, the LHWCA or any other form of maritime employers laws or similar laws.

(E) …by reason of the relationship of master and servant,… (Rule 43.1 a)
The 'relationship of master and servant' means in practice a relationship similar to that between an employer and an employee although not codified in a written contract of employment and legislation. The legal effect of including the reference to the 'relationship of master and servant' is that the exclusion will apply even if a claim from an employee or a borrowed employee (see paragraph C above) is enforced pursuant to the legal doctrine based on the 'relationship of master and servant'.

(F) The Association shall not cover…any liability, loss,…arising out of or relating to:…any employee of the Member in respect of injury to or the death of another employee of the Member injured in the course of such employment… (Rule 43.1.a)
The individual employee or borrowed employee of the Member is not named as assured or co-assured in the relevant contract of insurance as set out in the vessel's certificate of entry in the Association. Thus, the individual employee will not as of right be entitled to insurance coverage. The final proviso of Rule 43.1.a is added to make it clear that the cover will not comprise the liability incurred by any employee of the Member is respect of injury to or death of another employee of the Member injured in the course of the employment.

(G) …(other than Jones Act, general maritime law remedies of the United States and any claims under the Death on the High Seas Act)… (Rule 43.1.a)
The effect of the brackets is to exempt traditional liability claims enforced pursuant to maritime legislation such as the Jones Act, the general maritime law remedies of the United States and the Death on the High Seas Act (DOHSA) from the exclusions in Rule 43. In simple words, a P&I entry of an US owned, operated or managed unit will cover traditional maritime liability claims relating to personal injury to crew enforced on the basis of Jones Act, DOHSA and general maritime law while, on the other hand, claims enforced on the basis of workers' compensation schemes and legal remedies other than Jones Act, DOHSA or the general maritime law will be excluded.

Under the Jones Act (46 U.S.C. § 688 (1920)) a seaman or his dependants can recover damages from the seaman's employer for negligence resulting in injury to or death of the seaman in the course of his employment. The term 'seaman' has been defined for the purpose of the Jones Act as persons more

or less permanently assigned to a vessel in navigation and who contribute to the function of the vessel in navigation. However, the Jones Act is not restricted to US seamen or US flagged vessels. If US law shall apply because, for example, the wrongful act took place in the United States, also non-US seamen may try to bring claims under the Jones Act.

The Death on the High Seas Act (DOHSA) (46 U.S.C. §§ 30301–30308) provides a right of action for the personal representatives of a deceased crew member against the owner or other persons or corporations liable for the death when the death is caused by a wrongful act on the high sea. A claim under the DOHSA can only be brought for the exclusive benefit of a surviving spouse, parent, children or dependent relatives.

The above legislation is normally supported by the general maritime law of the United States. Under US law an owner is required to keep the vessel in a seaworthy condition and to provide the vessel or ship with crew and equipment which are reasonable fit for their intended use. The standard is not perfection but reasonable fitness to perform the operations or other intended use of the vessel.

(H) …any liability to the spouse, child, parent, brother or sister, or dependent of any employee as a consequence of paragraph (a) above… (Rule 43.1.b)

Rule 43.1.b excludes expressly any liability to spouse, child, parent, brother or sister, or dependent of any employee, including borrowed employees, in respect of the categories of claims that are excluded pursuant to Rule 43.1.a above. See the guidance in paragraph (A) to (G) above. However, claims enforced on the basis of DOHSA are not subject to the exclusion. This is the effect of the parenthetical in Rule 43.1 (a). See the guidance in (G) above.

(I) …any liability which any director, officer, partner, principal, employee or stockholder of the Member may have to any employee of the Member… (other than liability that may arise under Jones Act, general maritime law remedies of the United States and any claims under the Death on the High Seas Act). (Rule 43.1.c)

Directors and Officers' liability is not a named risk under a P&I entry. Thus, the individual director, officer, partner, principal, employee or stockholder of the Member is not named as assured or co-assured in the terms of entry. However, in order to avoid any doubt, Rule 43.1.c states expressly that no cover is available for liabilities any director, officer, partner, principal, employee or stockholder of the Member may have to any employee of the Member.

The inclusion of the brackets is to re-confirm that claims enforced pursuant to the Jones Act, the general maritime law remedies of the United States and the DOHSA are exempted from the exclusions in Rule 43. (See guidance in (G) above). However, as long as the individual director, officer, partner, principal,

employee or stockholder etc are not named as assured in the terms of entry, they will in any event have no cover as of right.

(J) The exclusions from cover…apply…whether the Member may be liable as an employer or in any other capacity; and…to any obligation of the Member to share damages with or repay any party… (Rule 43.2)
Rule 43.2.a emphasizes that the exclusions of claims as described in Rule 43.1 shall apply irrespective of whether the Member becomes liable in his capacity as employer or in any other capacity. It is the nature of the relevant claim and the legal basis on which it is enforced that is decisive and not the capacity in which the Member incurs the relevant liability, loss, cost or expense. See the guidance to Rule 43.1 above.

Finally, Rule 43.2.b states that the nature of a claim and the legal basis on which it initially is enforced (being the decisive factors for whether or not the exclusions in Rule 43.1 shall apply) do not change when the Member may be obliged under contract or operation of law to indemnify a party who has been obliged to pay damages in respect of such claims first.

Part III Defence cover

Chapter 1

Risks covered

Rule 44 Cases pertaining to the operation of the Vessel

The Association shall cover legal and other costs necessarily incurred in establishing or resisting claims concerning the following;

a charterparties and other contracts of employment;
b loss of or damage to the Vessel or general average;
c delay of the Vessel;
d property damage, personal injury or loss of life;
e repairs or deliveries to the Vessel;
f salvage or towage;
g agents or brokers;
h insurance contracts pertaining to the Vessel;
i customs, harbour or other public or quasi-public authorities, but not taxes and/ or tariff.

Guidance

(A) ...legal and other costs...incurred in establishing or resisting claims... (Rule 44)

Subject to the limit imposed by Rule 49 cover is available under a Defence entry for legal and other costs that are incurred by the Member in relation to the various types of disputes that are discussed below. Like the P&I cover, the Defence entry is a named risk insurance. Only the categories of claims and disputes listed in Rules 44 and 45 are covered subject to other restrictions and limitations.

However, if such costs are recoverable under the P&I cover pursuant to Rule 30, then Defence cover is not available. Similarly, Defence cover is not available if P&I cover for such costs would have been available but for the fact that the Member has entered the vessel for P&I risks on special terms that exclude P&I cover for such costs. For example, if the relevant Member has excluded crew liability from his P&I cover, Defence cover is not available for the costs that are incurred by him in defending a crew claim. Furthermore, if the Association declines to cover the costs under a Member's P&I cover on the basis that they have been incurred without the agreement of the Association as required under Rule 30, the Member cannot seek alternative cover for such costs under the Defence cover.

However, if the Member has entered the vessel for a P&I risk but cover is not available for the particular claim in respect of which the costs have been incurred because of an exclusion or limitation that is applicable to that particular category of claim under the P&I Rules in general, Defence cover may, nevertheless, be available. For example, a vessel is entered for FFO risks under Rule 24, but a FFO claim from the owner of a port pursuant to the

governing condition of use is excluded pursuant to Rule 42.1 on the grounds that the terms agreed resulted in greater liability than follows from terms of contract that are customarily in that port. However, cover is available under the vessel's Defence entry for legal and other costs incurred by the Member to defend himself against the claim, although only for legal and other costs that are necessarily and reasonably incurred. In other words, the Association will not support cases the merits of which do not justify support.

As a general requirement, Defence cover is available only for those legal and other costs that are necessarily and reasonably incurred in pursuing or resisting claims that have arisen:

a in direct connection with the operation of the vessel, or the acquisition or disposal of the vessel, and

b in respect of the Member's interest in the vessel, and

c out of events that occur during the period of entry of the vessel for Defence risks in the Association.

Cover is available for the costs that the Association considers will, if incurred, assist in the ascertainment or protection of the Member's legal rights except for costs that are excluded pursuant to Rule 46, or costs that the Member must bear because of his agreed deductible, or because of the other obligations that he has in relation to claims, as noted below.

The phrase 'legal costs' includes the cost of advisory services that are provided to the Member by external lawyers, barristers, associates, paralegals etc., at any stage of the case, as well as the cost of legal representation before a court or arbitration or any other tribunal. However, it should be noted that the phrase 'legal costs...necessarily incurred in establishing or resisting claims' includes legal costs that may be incurred by the Member's opponent if the Member is obliged to pay such costs pursuant to an arbitration award, or the judgment, decree or order of a court or other tribunal, or pursuant to a settlement agreement that has been approved by the Association. However, the Defence cover does not compensate the Member for any liability or loss that he may incur in relation to the underlying claim in respect of which the costs have been incurred.

Cover is also available for 'other costs' that are necessarily and reasonably incurred in order to pursue or resist claims that are made by, or against, the Member, e.g. costs that are incurred when employing the surveyors or experts that may be necessary if the dispute involves issues that have a high degree of technical content.

It is important to emphasise that, notwithstanding the availability of Defence cover, the Member still has the obligation to obtain information and to

provide assistance at his own cost and for his own account in circumstances where such services should normally be performed by him or by his employees or by other persons that are regularly engaged by him. This obligation includes the obligation to make such employees or other persons available to attend meetings or to appear before a court, arbitration or any other tribunal whenever this may be necessary. Consequently, cover is not available for the work done, and time spent, by the Member's own in-house lawyers and other staff even if such involvement is necessary, substantial and productive. See guidance to Rule 40.1 f. and Rule 62.

(B) …charterparties and other contracts of employment (Rule 44.a)
Cover is only available for legal and other costs that are incurred by the Member in connection with disputes that arise under various types of contracts that govern the use of the vessel. So long as the contract relates to the vessel that is the subject of the Defence entry, the nature of the contract of employment is irrelevant. Consequently, Defence cover is available for costs that are incurred for disputes that arise in relation to a charterparty or any other kind of similar contract of employment. It is not necessary for the purposes of Rule 44.a that the contract of employment or charter party that is the subject matter of the dispute should previously have been approved by the Association. Given the wide range of contracts of employment that are entered into by Members, it would be impractical for the Association to review them all. In any event, the Association will not support cases the merits of which do not justify support. See also the guidance to Rule 46 below.

Typical categories of claims for which cover is available under this Rule include claims that are made under charterparties or contracts of employment by or against the Member for the cancellation, withdrawal or non-delivery of the vessel, or for hire, off-hire (due to technical defects or deficiencies of the vessel), delay, detention or other monies, or that relate to the vessel's suitability or otherwise to perform the particular operation.

(C) …loss of or damage to the vessel or general average… (Rule 44.b)
In principle, Defence cover is available for legal and other costs that may be incurred by the Member in pursuing or defending claims for loss of, or damage to, the vessel. However, if the Member is the owner of the vessel, he would normally have a right to be indemnified against any such loss or damage by his hull and machinery insurers under his hull policies. Such insurers would be entitled pursuant to their subrogation rights to pursue recovery claims against any third parties that are considered to have caused or contributed to the loss or damage. Pursuant to Rule 52.1.a Defence cover is not available for legal and other costs that are incurred by the Member to defend or pursue claims that are covered under the hull policies or would have been so covered had the vessel been fully insured on standard terms.

Cover is also available under Rule 44. b for costs that are incurred by the Member in connection with disputes that relate to general average, e.g. disputes as to whether a particular expense should be allowed in general average, or for the recovery or enforcement of undisputed but unpaid contributions from other parties.

(D) …delay of the Ship… (Rule 44.c)
Cover is available under Rule 44.c for costs that are incurred by the Member in connection with claims resulting from the delay of the vessel.

Therefore, cover is available for costs and expenses that are incurred by the Member in connection with claims for demurrage. However, cover is also available in other circumstances, and regardless of whether the claim is made by the Member against a third party, e.g. when the vessel has been delayed as a result of the fact that another ship or floating structure has blocked the entrance to a port or river, or if it is made by a third party that may cause delay to the vessel by arresting it in order enforce his rights against the Member.

(E) …property damage, personal injury or loss of life… (Rule 44.d)
In most cases, P&I cover will be available for legal costs relating to claims that arise in these circumstances pursuant to Rule 30. However, Defence cover is available under Rule 44.d in circumstances where cover is not available under the P&I Rules because of an exclusion or limitation that is applicable under such Rules in general. See the comments under paragraph (A) above.

(F) …repairs or deliveries to the Vessel… (Rule 44.e)
Cover is available for costs and expenses that are incurred by the Member in connection with claims that relate to the repair of the vessel, e.g. claims against a repair yard. However, the Member is expected to keep the vessel insured for hull and machinery risks during any period of repair, and, pursuant to Rule 52.1.a, Defence cover is not available for disputes that are covered by such hull policies.

Cover is also available for costs that are incurred in connection with disputes that relate to deliveries of all kinds to the vessel, e.g. bunker, equipment, provisions, spare parts, stores and other items except to the extent that such costs are incurred in relation to claims for damage to the vessel which are, or should have been, covered under the vessel's hull policies. For example, Defence cover is available in the case of a dispute that has arisen as to whether bunker fuel that has been delivered to the vessel is within the contractual specifications.

Furthermore, cover is available for costs that are incurred in relation to disputes regarding services and deliveries provided to the vessel. However, cover is available only if such services are provided in relation to the direct operation of the vessel, such as, for example, costs that are incurred in relation

to a bunker survey or the provision of security guards but not for costs and expenses that are incurred in relation to disputes between the Member and a law firm that has negligently drawn up a bunker supply contract to be used by the Member on a general basis, or similar commercial agreement, since such claims do not arise directly in relation to the operation of a particular vessel.

Finally, cover is excluded pursuant to Rule 47 for costs and expenses that are incurred for disputes that arise between the Member and service providers that are the agents, representatives or servants of the Association.

(G) …salvage or towage (Rule 44.f)
Defence cover is available under Rule 44.f for legal costs and expenses that are incurred in relation to disputes that arise in connection with salvage or towage operations that are carried out for the purported benefit of the vessel. However, a distinction is drawn between the cover that is available for disputes that relate to salvage services that are afforded to the vessel and salvage services that are afforded by the vessel. Defence cover is available in principle in both situations but subject to restrictions.

If the Member is the owner of the vessel to which salvage services are being afforded, the remuneration that is payable by him to the salvors or to the party that is towing the vessel is usually recoverable under the hull policies of the vessel. If so, the legal and other costs that arise in relation to such disputes are also likely to be recoverable under the hull policies. Consequently, Defence cover is not available if the costs are recoverable under the hull policies or would have been so recoverable had the vessel been fully insured on standard terms without deductible. See Rule 52.1.a. Therefore, Defence cover is available only if the costs are not recoverable under the hull policies, e.g. when there is a dispute as to whether the services that have been rendered to the vessel are truly ‘salvage’ services.

Defence cover is also available when salvage or towage services have been rendered by the entered vessel, although this is in practice less likely in the case of a mobile offshore unit.

(H) …agents and brokers… (Rule 44.g)
Cover is available under Rule 44.g for costs that are incurred in connection with disputes that arise with all kinds of agents and brokers, e.g. with chartering or insurance brokers or with manning agents, provided that the dispute relates to the acquisition, operation or disposal of the vessel. However, cover is not available in relation to a dispute that has arisen between the Member and the Member’s agent that is a joint member, co-assured or affiliate, e.g. a co-assured manning agent.

(I) …insurance contracts pertaining to the Vessel… (Rule 44.h)
Cover is available under Rule 44.h for costs that are incurred in connection with disputes that arise in relation to contracts of insurance for the entered vessel, e.g. a dispute with hull underwriters as to whether a particular loss is covered by the hull policies. However, this Rule must be read in conjunction with Rule 47.1 that excludes cover for disputes that arise between the Member and the Association, e.g. in relation to a dispute concerning the P&I entry of the Member.

(J) …customs, harbour or other public or quasi-public authorities, but not taxes and/or tariffs (Rule 44.i)
Rule 44.i is primarily intended to make Defence cover available for costs that are incurred in connection with disputes arising as a result of the visit of the vessel to a port or place of operation. The operation of vessels may expose owners and/or charterers to legal disputes with public or quasi-public authorities. It is generally recognised that it is in the best interests of the membership that Defence cover should be made available for legal and other costs that are incurred in connection with such disputes. Typical examples are disputes that arise between Members and customs authorities in relation to the quantity of consumables that is being carried on board, between Members and local authorities in the country where the vessel operates or between the Member and harbour authorities concerning the amount that is properly payable for port dues or pilotage.

However, Defence cover is not intended to cover tax disputes or disputes in relation to tariffs and this type dispute is therefore specifically excluded under Rule 44.i. Accordingly, Defence cover is not available for any disputes that relate to a Member's liability for tax or tariffs whatsoever. This would include, for example disputes in relation to all taxes or tariffs that are payable as result of the operation of the Vessel or the actual or deemed place of residence or business of the Member.

Rule 45 Cases pertaining to acquisition or disposal of the Vessel

The Association shall cover legal and other costs necessarily incurred in establishing or resisting claims in connection with;

a building, purchase or mortgaging of the Vessel, including claims in connection with the future employment of the Vessel being built or purchased, provided always that the Vessel has been entered in the Association for Defence cover at the latest on signing the relevant contract;

b sale of the entered Vessel;

c conversion of the Vessel, including claims in connection with the future employment of the Vessel being subject to conversion, provided always that a separate agreement, pursuant to which the Association agrees to provide Defence cover for such legal and other costs, has been entered into with the Association at the latest on the signing of the relevant contract for the conversion of the Vessel.

d alterations to the Vessel, including claims in connection with the future employment of the Vessel being subject to alteration.

Guidance

(A) The Association shall cover legal and other costs necessarily incurred in establishing or resisting claims... (Rule 45)

Subject to the limits that are imposed by Rule 49 cover is available under a Defence entry for legal and other costs that are incurred by the Member in relation to the various types of disputes that are discussed below. For an explanation of the phrase 'legal and other costs necessarily incurred in establishing or resisting claims', see (A) of the guidance to Rule 44. This phrase includes also legal costs that may be incurred by the Member's opponent if the Member is obliged to pay such costs pursuant to an arbitration award, or the judgment, decree or order of a court or other tribunal, or pursuant to a settlement agreement that has been approved by the Association

(B) ...building, purchase or mortgaging of the Vessel... (Rule 45.a)

Cover is available under Rule 45.a for legal and other costs that are incurred by the Member in connection with disputes that relate to the construction and/or purchase of a vessel.

The disputes that can arise in connection with the building of a vessel include issues such as whether the vessel has been built in accordance with, and in fulfilment of, the agreed specifications, or issues relating to the time at which the vessel should be delivered to the Member. The disputes that can arise in connection with the purchase of a vessel include issues relating to its condition at the time of its delivery to the buyer, or in relation to the place of delivery, or the terms of payment.

Cover is also available for legal and other costs that are incurred by the Member in connection with a mortgage of the vessel. A mortgage is a contract whereby a third party such as a bank from whom the owner has borrowed money to purchase the vessel, is given a proprietary interest by way of security over the vessel for the repayment of the loan. Mortgages and other rights shall be registered in the relevant ship register or shipbuilding register. For Norwegian vessels it means the Norwegian International Ship Register (NIS) or the Norwegian Ordinary Ship Register (NOR). Registration of the mortgage and any other rights in the ship register is necessary to obtain legal protection.

(C) ...including claims in connection with the future employment of the Vessel being built or purchased... (Rule 45.a)
Defence cover is also available for legal and other costs that are incurred by the Member in connection with claims that relate to the future employment of the vessel being built or purchased. For example, cover is available for a dispute that has arisen because of the cancellation by a contractual party of a future charterparty for a vessel under construction, subject to the entry conditions that are specified below.

(D) ...provided always that the Vessel has been entered...at the latest on signing the relevant contract governing the building or purchase… (Rule 45.a)
Defence cover is available under Rule 2.3.c only in respect of events that occur during the period of entry of the vessel.

However, in some circumstances, the disputes that are itemised in Rule 45.a may be the result of events that have occurred before a vessel as defined in Rule 1 can be entered with the Association. Therefore, to ensure that the vessel is entered in the Association for Defence cover prior to the occurrence of the event that gives rise to the dispute, Rule 45.a obliges the Member to ensure that the vessel is entered for Defence risks at the latest by the time that the building or purchase contract has been signed. This is often referred to as “pre-delivery Defence cover”.

In the case of disputes arising in connection with the building of a vessel, Rule 45.a should be read in the light of Rule 50.c. stating that Defence claims arising in connection with the building of the vessel shall be deemed to have arisen at the date of signing the building contract. For example, if a claim has arisen as a result of an event that has occurred before the contract has been signed, e.g. as a result of a misrepresentation by the shipyard of its abilities to carry out the contract works, the event that has given rise to the claim shall, for the purpose of Defence cover, still be deemed to have arisen at the date the building contract was been signed as long as the vessel was entered for Defence latest at that time.

(E) ...the relevant contract... (Rule 45.a and c)
When considering whether or not to confirm Defence cover for disputes that have arisen under a particular contract, the Association may be influenced by the provisions of the particular contract. Whilst the Association has no proprietary interest in the subject matter of the dispute, it has a responsibility to the membership as a whole to ensure that funds are not dissipated in relation to disputes that are caused either wholly or in part by the fact that the Member has agreed to terms that are considered to be unwise. The Association will not cover a case the merits of which does not justify support. See the guidance to Rule 46 below.

Each case turns on its own facts and it is not possible to give specific examples of terms that are considered to be unwise. However, the Association would normally expect the contract to be written in the English language and to be subject to the law and jurisdiction of a country where the Association has the possibility to monitor the matter and where the Member can expect to receive a fair and just hearing before a tribunal having the required competence and expertise in the resolution of this type of disputes. Thus, choice of law and jurisdiction clauses may be of interest.

(F) ...sale of the entered Vessel. (Rule 45.b)
Cover is available under Rule 45.b for legal and other costs that are incurred by the Member in relation to the sale of a vessel, but not in relation to the disposal of it by other means. In this context, a 'sale' means a contractual transaction that transfers the bona fide title to the vessel as from an agreed time in consideration for the payment of remuneration. However, it should also be remembered in this connection that the Member's cover for Defence and P&I risks will cease automatically upon the transfer of the vessel to a new owner by sale pursuant to Rule 17.2.d. Consequently, the Association has no liability pursuant to Rule 18.2 for "anything occurring after cessation" of cover unless the dispute relates to events that have occurred before the time of cessation.

For example, a vessel is sold to a scrap yard for demolishing and delivered to the buyer on 1 June. Five months later, on 1 November the same year, an accident occurs at the yard while the vessel is demolished, and it is subsequently established that the yard failed to comply with governing safety rules and regulations. Third party claims are, inter alia, made against the former owner of the vessel on the alleged grounds that he sold the vessel to a scrap yard without the necessary qualifications and certifications. In this case no cover is available under the Defence cover for legal costs incurred in resisting the clams. The event giving rise to the alleged claims is deemed to have arisen when the accident occurred on 1 November while cover had ceased five months earlier, on 1 June the same year.

On the other hand, if the scrap yard in the above example, as the buyer, had made a claim against the Member, as the seller, under the contract of sale based on alleged misrepresentations by the sellers of the vessel and what it contained at delivery on 1 June, defence cover may be available under Rule 45 b. For the purpose of defence cover the event giving rise to the case would have been the delivery of the vessel under the contract of sale on 1 June while the vessel still was entered.

(G) ...conversions of the Vessel... (Rule 45.c)
A contracts relating to the conversion of a vessel is treated as a special risk. For that reason, Defence cover is available for legal and other costs that are incurred by a Member in relation to conversion risks only if the Association has agreed to do so pursuant to a separate agreement entered into between the Member and the Association no later than the date on which the relevant contract for conversion of the vessel has been signed by the Member. The rationale for the need for this special clause is that a conversion of a vessel carries risks that are inherently similar to those that affect ship building.

Consequently, Defence cover for conversion risks can only be made available if the pre-condition has been satisfied, namely that the Association has been given the opportunity before the Member has signed the conversion contract to consider the risks that are involved and has confirmed its agreement to make Defence cover available for such risks. Therefore, it is recommended that Members should discuss the probable terms of such contracts with the Association in sufficient time before the contracts are signed and should be guided by the comments made in (E) above as to the terms of the conversion contract.

(H) ...including claims in connection with the future employment of the Vessel being subject to conversion or alteration... (Rule 45.c)
The explanation for this provision is described in (C) above.

(I) ...alterations to the Vessel... (Rule 45.d)
A distinction must be made between, on the one hand, 'alteration', defined by DNV GL as '…a change that does not affect the basic character or structure of the vessel it is applied to', and, on the other hand, 'conversion', defined by DNV GL as a '…change that substantially alters the dimensions, carrying capacity, engine power or the type of the Vessel'. See DNV GL Rules for Classification of Ships, section 1.2. While 'conversion' disputes can be compared with shipbuilding disputes that shall be subject to special terms as specified in Rule 45 c and discussed under (G) above, the same will not be the case as far as 'alteration' disputes are concerned. 'Alteration' disputes do not necessarily represent a special risk necessitating special terms of cover.

For this reason, 'alteration' disputes are itemized separately in sub-paragraph (d) in Rule 45. The effect of the distinction between 'conversion' and 'alteration' disputes, as explained, is that cover for alteration disputes under Rule 45 d (in contrast to conversion disputes under Rule 45 c) is not dependent on the pre-condition that a separate agreement is made between the Association and the Member prior to conclusion of the alteration contract between the Member and the relevant yard or supplier.

(J) …including claims in connection with the future employment of the Ship being subject to alteration… (Rule 45 d)
Reference is made to the explanatory notes under (C) above.

Chapter 2

Limitations etc. on Defence cover

Rule 46 Excluded costs

1 The Association may decline to cover under a Defence entry all or part of the Member's costs, where it is of the opinion that;
   - **a** there is no reasonable relation between the amount in dispute and the costs which are likely to be incurred;
   - **b** there is no reasonable relation between the prospects of succeeding in establishing a claim or of having the claim enforced or the liability averted and the costs which are likely to be incurred;
   - **c** the Member has failed to carry out its obligations under these Rules;
   - **d** the claim is unreasonable or tainted with illegality or other improper conduct;
   - **e** for any other reason Defence cover should not apply.

2 The Association shall be under no liability to reimburse a Member for costs incurred;
   - **a** before the Association has been notified of a claim under the Defence cover;
   - **b** by the employment of lawyers, expert and other advisers appointed by the Member without the Association's approval.

Guidance

(A) …The Association may decline to cover under a Defence entry all or part of the Member's costs, where it is of the opinion that… (Rule 46.1)
Subject to the comments made in (C) below the Association has a wide discretion to decline to make Defence cover available under Rule 46.1. Such discretion will normally be exercised by the manager or other administrative officers of the Association after consideration of any submissions made on behalf of the Member. Furthermore, even if the Association does not decline cover in total, it has a wide discretion to determine the maximum level of costs that are recoverable under any particular Defence entry and the maximum level of costs that are recoverable in any particular case. The Defence cover comprises only legal and other costs that in the view of the Association are necessarily and reasonably incurred.

The general right of discretion that the in-house lawyers of the Association have to determine the exclusion or restriction of Defence cover, or the control or direction of the handling of Defence cases, on a case-by-case basis must be distinguished from the right that the Board of Directors has under the Articles of Association to exercise its discretion to pay compensation for claims that are not covered under the Rules. However, the right that the in-house lawyers or other adminstrative officers have to decline cover is itself subject to the overriding right of discretion that is vested in the Board of Directors of the Association under the Articles of Association.

(B) …there is no reasonable relation between the amount in dispute and the costs which are likely to be incurred… (Rule 46.1.a)
Rule 46.1.a gives the Association the right to exercise control over the manner in which costs are incurred to ensure that they are not disproportionate to the quantum of the claim that is the subject matter of the dispute. Therefore, in deciding how much use should be made of legal or other assistance, the Association is usually influenced and guided by what a prudent Member would have done if he did not have insurance cover for legal costs. As an illustration, the Association will not support a case where legal costs of about USD 100,000 are likely to be incurred in collecting a claim amounting to USD 50,000 even if it is undisputed.

The Association has the right to retain control of the conduct of the claim and, in particular, to deal with cases internally whenever it is deemed appropriate to do so in order to avoid or minimise the expense of external lawyers and other consultants. Furthermore, if external lawyers, surveyors and other experts are to be appointed, the Association will require to be consulted before this is done since the Association has the overriding right to decide who is to be appointed, retained or dismissed. See Rule 46.2 b and Rule 62.3.

(C) …there is no reasonable relation between the prospects of succeeding in establishing a claim or of having the claim enforced or the liability averted and the costs which are likely to be incurred… (Rule 46.1.b)
When administering the availability of the Defence cover the Association is guided by the fundamental principle that the resources of the Association must not be dissipated to the disadvantage of the membership as a whole by supporting cases the merits of which do not justify such support. Accordingly, if the Association is of the opinion that there is no reasonable correlation between the prospects of success in establishing or defending a claim and the costs that are likely to be incurred in order to do so, the Association has the right to decline cover for the Member's costs either in whole or in part. In other words, the scope of the cover will depend on the likelihood of success.

Similarly, even though it may be possible to obtain a default or summary judgment or award at an acceptable cost, the expense of enforcing such a judgment or award may not be cost-effective particularly if enforcement procedures in the opponent's country of domicile would require certain issues to be relitigated or proved. Therefore, the Association has the right to decline to cover costs, not only when the Member's opponent is bankrupt, but also when that party is no longer able to pay his debts or is likely to have to cease trading if the Member's case succeeds.

(D) …Member has failed to carry out his obligations under these Rules… (Rule 46.1.c)

In considering how discretion should be exercised in any particular case, the Association will take account of whether the Member has complied with his obligations under the Rules. A distinction is drawn in this respect between those obligations that are considered to be fundamental conditions of cover for both P&I and Defence cover, such as those that are specified in Chapter 3 of Part 1 of the Rules, and other less fundamental requirements. For example, if the Member is in breach of the obligation that is imposed upon him by Rule 8 in relation to the classification or certification of his vessel, the Association does not have the discretion to make Defence cover available to any extent for claims that arise as a result. However, if the Member is in breach of his obligation to provide the Association promptly with all documents and information that are necessary in order to evaluate the merits of the case, or to allow the interview of relevant persons as set out in Rule 62.1, the Association has the discretion either to reject the claim or to reduce the sum that is payable to the Member. See Rule 62.2. Such a distinction is equally relevant to P&I cover as well as to Defence cover.

(E) …the claim is unreasonable or tainted with illegality or other improper conduct… (Rule 46.1.d)

Rule 46.1.d permits the Association to decline cover for a claim for which the Member seeks Defence cover if the claim is either unreasonable or tainted with illegality or other improper conduct. Therefore, Rule 46.1.d should be read in conjunction with other Rules such as Rules 51 and 53. Furthermore, although the Association has a discretion whether or not to support a claim that is tainted with 'improper conduct,' should such 'improper conduct' amount to 'wilful misconduct' of the Member, the Association has no such discretion since cover is automatically excluded in such circumstances under Rule 53.

Rule 46.1.d is broadly drafted to permit the Association, in the interests of the membership as a whole, to exclude claims which do not, in its opinion, deserve support under the Defence cover. Therefore, even if the claim for which Defence cover is being sought does not amount to illegality or improper conduct, the Association has the discretion to exclude claims that it considers to be unreasonable and which do not, therefore, deserve support under the Defence cover.

Finally, Rule 46 should be read in conjunction with Rule 48 which gives the Association further rights to decline to provide Defence cover based on the manner in which the Member has conducted himself in relation to a particular case.

(F) …for any other reason Defence cover should not apply… (Rule 46.1.e)
Whilst the Association has a very wide discretion to exclude cover under Rule 46.1.e, it will not normally refuse to make Defence cover available if the Member has acted prudently and has complied with the terms and conditions of entry.

(G) …costs incurred…before the Association has been notified of a claim… (Rule 46.2.a)
Rule 46.2 is intended to remind Members of their obligation to report claims to the Association promptly and makes it clear that the Association has the right to refuse to reimburse a Member for expenditure that the Association considers to have been unnecessarily incurred. See guidance to Rule 62.

(H) …costs incurred…by the employment of lawyers, experts and other advisers appointed by the Member without the Association's approval. (Rule 46.2.b)
This Rule makes it clear that the Association is not obliged to reimburse costs that have been incurred by the Member in relation to the appointment of external lawyers, advisers and experts unless such appointment has been approved by the Association. This provision underlines the right and duty of the Association to control the handling of Defence cases for the benefit of the membership as a whole by ensuring that membership funds are used only to secure the appointment of competent support services at a cost effective price. See guidance to Rule 62.

Rule 47 Disputes with the Association and other Members – unpaid sums

1 The Association will not cover under a Defence entry costs of cases against the Association itself, its subsidiaries, other Gard group companies, agents, representatives or servants.

2 No cover shall be available under Defence entries to either party where a dispute arises between Joint Members, affiliates or associates of the Member or any combination thereof.

3 No Member shall be entitled to cover under a Defence entry so long as premiums or other sums of whatsoever nature owed to the Association, whether in respect of Defence or P&I cover or otherwise, remain unpaid.

Guidance

(A) …costs of cases against the Association itself, its subsidiaries, other Gard group companies, agents, representatives or servants… (Rule 47.1)

It would be an anomaly and contrary to the best interests of the membership as a whole if Defence cover were to be made available for the costs that are incurred by Members in order to pursue claims against the Association, or to defend claims that are brought against Members by the Association. Consequently, Defence cover is not available for legal and other costs that are incurred by Members in order to pursue claims against, or to defend claims brought by, the Association, its subsidiaries, or any other Gard group company or any person that is acting on behalf of the Association,, its subsidiaries or any other Gard group company.

The exclusion of cover applies whether the claim relates to P&I or Defence cover or to any other insurance. It applies not only to cases between the Member and the Association itself, but also to cases between the Member and any of the Association's subsidiaries or other Gard group companies. The latter alternative is intended to clarify that, where an insurance is entered with Assuranceforeningen Gard – gjensidig -, cover will not be available for costs of cases against other Gard companies irrespective of whether these are subsidiaries or other companies which are part of the Gard group, e.g. Gard Marine & Energy Limited or Gard Marine & Energy Insurance (Europe) AS. Where the insurance is entered with Gard P. & I. (Bermuda) Ltd., the latter alternative will not have any independent relevance, as all companies in the Gard group are subsidiaries of Gard P. & I. (Bermuda) Ltd.

The exclusion in Rule 47.1 also applies where the Gard group company is one of several claimants/defendants in a legal dispute with the Member. For instance, Defence cover will be excluded pursuant to Rule 47.1 in a legal dispute between the Member and his hull insurers, if a Gard group company is one of the hull insurers and as such a party in the legal dispute. This

exclusion applies irrespective of whether the Gard group company is the claims leader for the hull insurers, or not.

However, the Association may decide, on a case-by-case basis, to provide discretionary cover even if Defence cover is otherwise excluded pursuant to Rule 47.1. This discretion will as a rule not be exercised where the Gard group company is the claims leader. On the other hand, where the Gard group company is not the claims leader, the Association may, after having considered the specific circumstances of the case, decide to exercise discretion to cover costs of pursuing a claim against the hull insurers.

In addition, Defence cover not being available with respect to claims against the Association or other Gard group companies. Defence cover will also be excluded with respect to costs of cases against any agents, representatives or servants of the Association or any other company in the Gard group. For example, Defence cover is not available for the costs incurred by a Member in bringing a claim against a surveyor appointed by the Association for alleged negligence or malpractice.

(B) …dispute arises between Joint Members, Co-assureds, affiliates or associates of the Member or Co- assureds or any combination thereof. (Rule 47.2)

It would also be an anomaly and contrary to the best interests of the membership as a whole if Defence cover were to be made available to finance disputes between parties that are covered under the same contract of insurance. Consequently, defence cover is not available for legal and other costs that are incurred by Members in relation to disputes between joint members, co-assureds or their affiliates or associates. For example, Defence cover is not available for legal and other costs incurred by the owner (the Member) in relation to a dispute with his ship manager being named as co-assured under the vessel's certificate of entry.

(C) …sums of whatsoever nature owed to the Association…remain unpaid… (Rule 47.3)

A Member is not entitled to Defence cover so long as any money is due from him to the Association, regardless of whether the outstanding amount relates to Defence or P&I cover or to any other sum that is owed to the Association.

For the purposes of Rule 47 the unpaid sum need not relate to the entry of the particular vessel for which the Member requests Defence cover and need not be due from the Member himself but from joint members or co-assureds.

(D) …monies recovered for a Member…shall be paid over to the Member, except that the Association may…retain any amount due to the Association (Rule 47.4)

The amount in dispute in Defence cases is not covered by the Association. For that reason, it is emphasized that recoveries made by the Association on behalf of a Member in Defence cases as a starting point forthwith shall be transferred to the Member. However, Rule 47.4 entitles the Association to retain any amount recovered on behalf of a Member in a Defence case to the extent the Member owes any sum to the Association. Rule 47.4 ought to be read in the light of Rule 13.1 allowing the Association to set-off any amount due from the Member to the Association against any amount due from the Association to the Member. See Rule 64.3.

Rule 48 The Association's right to control and direct the handling of a case - withdrawal of cover

1 The Association shall have the right, if it so decides, to control or direct the conduct or handling of any case or legal and other proceedings relating to any matter in respect whereof legal and other costs are covered under a Defence entry and to require the Member to settle, compromise or otherwise dispose of the case or legal and other proceedings in such manner and upon such terms as the Association sees fit.

2 The Association may, in its sole discretion, at any stage of the handling of the case, decline to cover under a Defence entry the legal and other costs involved where;

- **a** the Member, without the Association's authority, or contrary to its advice, proceeds with the case in a manner which in the view of the Association is undesirable;
- **b** the Member refuses to settle the case on conditions which the Association recommends or which are recommended by lawyers acting on behalf of the Association or the Member;
- **c** any of the circumstances set out in Rule 46 above subsequently materialise or are brought to the attention of the Association.

Guidance

(A) ...to control or direct the conduct or handling of any case or legal and other proceedings... (Rule 48.1)

Rule 48.1 gives the Association the express right to control and direct the handling of a case that falls within the Defence cover and the right to require the Member to settle, compromise or dispose of the case on the basis and terms that the Association deems to be appropriate in all the circumstances, failing which the Association has the right, pursuant to Rule 48.2 to cease to continue to provide Defence cover. The right that is given to the Association to decline cover under Rule 48 is all-embracing and relates to all aspects of case handling. See also the guidance to Rule 62 in general as to the Member's obligations with respect to claims.

(B) ...The Association may, in its sole discretion...decline to cover... (Rule 48.2.a)

Rule 48.2.a gives the Association the right, at any stage of the case, to discontinue its support if the Member proceeds with the case contrary to the Association's advice, or without its authority, in a manner that the Association considers to be undesirable. The Association is likely to consider that a case is proceeding in an undesirable manner if the Member has, in the light of all the circumstances and the nature of the case, taken steps that are considered by the Association to be inappropriate, unnecessary or unlikely to lead to a better or more cost-efficient resolution of the case. The Association can also decline

to provide cover when a Member has proceeded with a case that he has not reported to the Association, or where, notwithstanding the fact that he has received the Association's support or authority to take certain specified steps, or received the general support of the Association up to a certain stage of the proceedings, the Member has subsequently dealt with the case in a manner that exceeds such authority.

(C) ...the Member refuses to settle the case... (Rule 48.2.b)
The interests of the particular Member in settling a case will not necessarily be the same as those of the Association acting, as it must, on behalf of the membership as a whole. The Association must, when recommending particular courses of action, act not only in the interests of the particular Member, but also in the wider interests of the membership as a whole. Consequently, Rule 48.2.b gives the Association the right to decline cover if a Member refuses to settle a case on the terms that are recommended by the Association or by lawyers that are acting on behalf of the Association or the Member.

(D) ...the Association may...at any stage...decline cover where...any of the circumstances set out in Rule 46 subsequently materialise... (Rule 48.2.c)
Rule 48.2.c gives the Association the right to decline cover when it becomes aware at a later stage of the case of the circumstances that are described in Rule 46 even if the Association has provided cover for legal and other costs that have been incurred at earlier stages of the case. In some instances, material facts do not become available immediately, and therefore, Rule 48.2.c is necessary in order to protect membership funds in the event that a Member should argue that the Association has waived its right to refuse further support for a case by virtue of the fact that it has provided support at earlier stages of the case. However, if the Member is in breach of the obligations that he has under the Rules with regard to claims, the Association may be entitled in such circumstances to reclaim from the Member any costs and/or expenses that it has paid to the Member or to a third party on behalf of the Member pursuant to Rule 62.2.b.

Rule 49 Limitation

The maximum limit of cover under a Defence entry is USD 1 million per event or series of events arising out of the same occurrence.

Guidance

(A) …limit of cover under a Defence entry is USD 1 million per event… (Rule 49)

The Defence cover available for legal and other costs falling within the scope of Rule 44 and/or Rule 45, is subject to an overall limit of insurance of USD 1 million per event. The Association has no liability whatsoever to compensate a Member for any legal or other costs net of deductible that exceed this amount when incurred by him in relation to such claims. In contrast to the Defence cover for ordinary merchant ships, there is no distinction between cases covered under Rule 44 and disputes falling within the scope of Rule 45 as far as the limit is concerned.

(B) …per event or series of events arising out of the same occurrence. (Rule 49)

Under a Defence entry an 'event' will typically be a single dispute or claim, as for example a claim for outstanding hire from the charterer or a dispute with the repair yard with regard to the final invoice for work being done. For example, legal and other costs incurred in connection with legal proceedings commenced for the purpose of resisting certain items of the repair yard's final invoice will be deemed to have arisen out of one event and subject to the limit of USD 1 million.

When it is referred to 'series of events arising out of the same occurrence', it means that several different claims or disputes are deemed to have arisen out of the same occurrence and for that reason be subject to the USD 1 million limit in the aggregate. For example, a major marine casualty such as a main engine breakdown, may give rise to several categories of claims. The charterer may make a claim for damages against the Member as owner based on alleged misrepresentation of the description of the unit. The Member may file a claim against the hull insurer who has declined cover. Finally, a dispute can arise as to remuneration under the towage contract. In this example one is faced with a series of various claims or disputes, all of which falling within the scope of the Defence cover by nature, arising out of the same occurrence. Such claims or disputes arising out of the same occurrence will be subject to an overall aggregate limit of USD 1 million.

Rule 50 Insurance event

For the purposes of the Defence cover, the event giving rise to a claim shall be deemed to arise as follows:

a claims arising out of contract (subject to paragraphs (b) and (c) below), in tort or under statute: when the cause of action accrues;

b claims for salvage or towage: when the services are commenced;

c claims arising in connection with the building of a vessel: at the date of signing the building contract.

Guidance

(A) For the purposes of Defence cover the event giving rise to a claim shall be deemed to arise as follows… (Rule 50)

The Association provides cover for liabilities, losses, costs and expenses that arise solely out of events that occur during the period of entry as laid down in Rule 2.3.c. However, insurance claims and disputes may sometimes be caused by the cumulative effect of a number of different events, or by events that occur at a time that cannot be easily determined. This makes it difficult for the Member and the Association to determine whether cover is available in the particular circumstances, whether one or more deductibles should be applied, whether the steps that the Rules require to be taken promptly or within a stated time limit have been taken within such time, and whether notice of the claim has been given to the Association within the time bar specified in Rule 61 etc.

The provisions of Rule 50 are intended to establish how and when claims or disputes are deemed to have occurred for the purposes of the Defence cover.

(B) …claims arising out of contract...in tort or under statute: when the cause of action accrues… (Rule 50.a)

When a Member seeks Defence cover from the Association for a claim that is made in contract or in tort or pursuant to statute, the time at which the event that gives rise to the claim is deemed to occur is the time when the relevant cause of action accrues. The time at which a cause of action accrues is determined by the law that governs the particular claim. For example, under both English and Norwegian law, a cause of action for the purposes of a contractual claim is the act or omission that has caused a breach of the contract whereas the cause of action for the purposes of a claim in tort is the act or omission that has caused loss, damage or injury to another person or to that person's property.

(C) ...claims for salvage or towage: when the services are commenced… (Rule 50.b)

The term 'salvage or towage' includes not only the services that are rendered during the course of the salvage or towage operation, but also the preparatory work that may be necessary before commencement of the salvage or towage operation, e.g. the inspection and survey of a casualty, or the pumping out of water, or the carrying out of temporary repairs to make a damaged vessel ready for salvage. Therefore, the time when towage or salvage services commence may predate the actual salvage or towage. Rule 50.b establishes that, for the purposes of Defence cover, the event that gives rise to claim for salvage or towage is deemed to have occurred when salvage or towage services as defined above commence.

(D) …claims arising in connection with the building of a vessel: at the date of signing the building contract. (Rule 50.c)

Rule 50.c should be read together with Rule 45 that includes specific provisions relating to the Defence cover that is available in connection with the building of a vessel. Rule 50.c provides that the event that has given rise to a claim relating to the building of a vessel is deemed to have arisen at the date that the building contract is signed, and Rule 45 provides that Defence cover is available only if the vessel has been entered for defence cover at the latest on signing the relevant building contract. Likewise, Defence cover for claims or disputes in connection with conversion (in contrast to alterations as discussed under Rule 45) of the vessel will only be available if the Association has agreed to provide Defence cover pursuant to Rule 45.3 latest on the date of the signing of the relevant contract between the Member and the yard for the conversion of the vessel.

Part IV
General limitations etc. on P&I and Defence cover

Rule 51 Unlawful trade and sanctions

1 The Association shall not cover liabilities, losses, costs or expenses arising out of or consequent upon the Vessel carrying contraband, blockade running or being employed in or on an unlawful, unsafe or unduly hazardous trade, activity or voyage.

2 The Association shall not indemnify a Member against any liabilities, costs or expenses where the provision of cover, the payment of any claim or the provision of any benefit in respect of those liabilities, costs or expenses may expose the Association and/or its Agent to any sanction, prohibition, restriction or adverse action by any competent authority or government.

3 The Member shall in no circumstances be entitled to recover from the Association that part of any liabilities, costs or expenses which is not recovered by the Association from any reinsurer because of a shortfall in recovery from such reinsurer by reason of any sanction, prohibition or adverse action by a competent authority or government or the risk thereof if payment were to be made by such reinsurer. For the purposes of this paragraph, "shortfall" includes, but is not limited to, any failure or delay in recovery by the Association by reason of the reinsurer making payment into a designated account in compliance with the requirements of any competent authority or government.

Guidance

(A) Introductory remarks

The aim and purpose of Rule 51 is to ensure that the Membership funds are not dissipated by the payment of claims that are considered to be contrary to the aims and purpose of the Association. Many of the activities in which vessels are engaged on a day-to-day basis can be considered to have some degree of danger and it would be unrealistic and illogical for a marine liability insurer to withhold cover purely on that basis. However, some activities are considered to involve a greater, and unacceptable, degree of risk to the mutual membership. Therefore, it is considered important from the point of view of mutuality that the Association does not provide cover for liabilities, losses, costs and expenses that arise as a result of activities that are considered by the majority of the membership to be unwise or unsafe or unduly hazardous and the purpose and aim of Rule 51 is to exclude cover for such risks and to, thereby, encourage Members to act prudently as to the operation of their vessels.

(B) …arising out of or consequent upon… (Rule 51.1)

Cover is excluded under Rule 51.1 only if there is a causative link between the liabilities, losses, costs or expenses that the Member incurs, and one or more of the specific events to which reference is made in the Rule, e.g. employed in or on an unsafe or unduly hazardous activity.

(C) …contraband, blockade running… (Rule 51.1)
In contrast to ordinary merchant ships, carrying contraband and blockade running may not be very relevant for mobile offshore units normally being stationary or operating at the same place or in the same country for a longer period of time.

The term 'contraband' is associated with war or conflicts. It describes cargo or goods that is likely to assist a country that is at war or involved in a conflict, and which may, therefore, be seized by another party to the war or conflict, even if it is carried onboard a neutral vessel. Cargo or goods of any nature can be considered to be contraband if it is susceptible to seizure by opposing governments or parties, e.g. foodstuffs or medical supplies that are intended to sustain opposing forces.

'Blockade running' occurs when an attempt is made, whether successfully or not, to call at ports or places to which access is denied by naval or other military forces, or which are declared to be blockaded by a country or an international organisation such as the United Nations.

(D) … unlawful, unsafe or unduly hazardous trade, activity or voyage. (Rule 51.1)
A trade or voyage may be unlawful if it contravenes the laws of one or more countries. The laws of the following countries may be relevant in this regard: the country where the Member is domiciled or carries on business, the country of the vessel's registration, the country or countries where the vessel operates, or the country the law of which applies to the contract of employment. The Association does not treat the legal requirements of any one country as being either conclusive or more important than the law of any other country in this respect. However, the fact that the voyage or trade is considered unlawful by a particular country may be considered by the membership to be particularly relevant when considering whether the particular Member should have allowed the vessel to be engaged in the particular trade or activity. What is relevant for the purpose of Rule 51.1 is the objective assessment of the Association acting on behalf of the membership as a whole rather than the subjective knowledge of the particular Member.

It is the fact that the trade or activity is considered to be unlawful in the above sense that is relevant for the purposes of Rule 51.1. Therefore, if the trade or activity is in fact lawful in the sense discussed above, but the Member or someone on his behalf, nevertheless, commits an unconnected unlawful act whilst performing the otherwise lawful trade or activity, cover is not excluded under Rule 51.1. However, if such act has been committed wilfully by the Member personally, or by someone who is the 'alter ego' of the Member, cover may be excluded pursuant to Rule 53.

Rule 51.1 should be read together with Rule17.2.i which provides that the Member will cease to be covered if the vessel, with the consent or knowledge of the Member, is being used for the furtherance of 'illegal purposes'. There are, however, two important differences between these two Rules:

a) Rule 51.1 merely provides that the Member is not covered for claims "arising out of or consequent upon" the vessel being engaged in an unlawful trade or voyage, whereas Rule 17.2.i provides that the entry of the Member's vessel in the Association automatically ceases in such circumstances without the need for any notice of cancellation.

b) Further, Rule 51.1 excludes cover if a trade or activity is considered to be unsafe or unduly hazardous and one in which the particular Member should not have allowed the vessel to have been engaged even if the Member cannot be said to have consented to do so with knowledge of its unlawful nature. On the other hand the vessel's entry in the Association will cease under Rule 17.2.i only if the vessel is being used for the furtherance of illegal purposes with the consent or knowledge of the Member. Since the availability of cover under Rule 51.1 depends on the objective assessment of the Association acting on behalf of the membership as a whole rather than on the subjective knowledge of the particular Member, the burden of proving that the trade or activity was unlawful, or unsafe or unduly hazardous will normally be on the Association. This will be assessed on a case-by-case basis, but it is likely that the question of whether a trade or activity is or was unlawful will be more clear-cut than the question of whether a trade or activity was unsafe or unduly hazardous.

As stated above, many of the activities in which vessels are engaged on a day-to-day basis can be considered to have some degree of danger and it would be unrealistic and illogical for a marine liability insurer to withhold cover purely on that basis. However, some activities are considered by the majority of the membership to involve a greater, and unacceptable, degree of risk that should not be underwritten by a mutual underwriter. Consequently, cover is withheld under Rule 51.1 only when the particular trade or activity is considered to be unduly unsafe or hazardous.

The term 'unduly hazardous' must be considered in the light of the facts of the particular case. Virtually all activities involve a degree of hazard, but such hazard is, provided due care and attention is exercised, manageable and can be reduced to a level that is consistent with acceptable normal operational standards. Hazards that exceed such a standard are likely to be considered to be 'unduly' high and thus to require an extra degree of care and attention which, if not adopted by the Member, may give rise to unacceptable and excessive risk for which cover is not generally available.

(E) The Association shall not indemnify a Member against any liabilities... where the provision of cover may...expose the Association to any sanction... (Rule 51.2)

Rules 51.2 and 51.3 were introduced with effect from the 2011 policy year as a result of the introduction of new sanctions clauses into the reinsurance contract the purpose of which is to protect reinsurers against exposure to any sanctions, prohibitions or restrictions that may be applied by individual states and/or international organisations. Rules 51.2 and 51.3 are intended to ensure that the cover that is provided by the Association to its Members is 'back to back' with the reinsurance cover that is provided to the Association by market reinsurers, and to thereby avoid the risk that the Association may be exposed to liabilities, costs and expenses for which there would be no reinsurance protection or for which there would be a shortfall in reinsurance recovery.

Unlike Rules 16.3 and 17.4, Rules 51.2 and 51.3 do not provide for the termination or automatic cesser of the contract(s) of insurance for the subject vessel(s). Therefore, subject to Rules 16 and 17 where applicable, the contract(s) of insurance will remain in force, albeit that the Association will not be obliged to indemnify the Member in the circumstances that are described in Rules 51.2 and 51.3.

Furthermore, Rules 51.2 and 51.3 have wider application than Rules 16.3 and 17.4 in that they apply in circumstances where the Association may be exposed to, or be unable to recover under the governing reinsurance agreement as a result of, "any sanction, prohibition, restriction or adverse action by any competent authority or government."

Rule 51.2 provides, firstly, that the Association shall be under no legal obligation to indemnify a Member for any liability, cost or expense in circumstances where the mere provision of insurance cover for the subject liabilities, costs or expenses may expose the Association and/or its Agent as defined in Rule 1.1 to any sanction, prohibition, restriction or adverse action by any competent authority or government. In recent years, various sanctions regimes have been adopted by the United Nations, the European Union and by individual countries including the United States, the United Kingdom, Bermuda and Norway imposing sanctions on business activities that contravene the prohibition rules including the insurance of such business activities and the transfer of funds to sanctioned countries or sanctioned individuals or corporate entities. The prohibitions apply in particular to business activities and designated or listed individuals or corporate entities in countries such as Iran, Russia, Syria and Venezuela. It is realistic to assume that similar sanctions may well be promulgated against other countries in the future.

Rule 51.2 applies in circumstances where there is a risk that the Association and/or its Agent may be exposed to sanctions etc., as a result of the payment of claims or the provision of any benefit in respect of the subject liabilities, costs or expenses. For example, the Association is not obliged to pay any sums to a third-party claimant pursuant to any final judgment, award or settlement agreement, if the third-party claimant is domiciled in Iran and subject to sanctions and such payment might expose the Association and/or its Agent to sanctions for having contravened any regulations that prohibit or restrict such payment. Similarly, the Association is not obliged to indemnify a Member that has made such payment and thereafter seeks recovery from the Association under the P&I insurance if the provision of such indemnity might expose the Association and/or its Agent to any risk of sanction. This provision also applies to the payments of costs and expenses for P&I correspondents and/or legal services in the country that is subject to such sanctions, if such payment contravene regulations that prohibit or restrict the transfer of funds.

The Association will invoke this provision if it believes that it may be exposed to sanctions, even if the underlying transaction is legal. For example, even if the vessel is carrying out operations that has been duly licensed by the US and/or any other relevant authority, and is therefore, not in breach of any relevant sanctions regime, the vessel could still be involved in a casualty in for example Iranian territorial waters or could make contact with a fixed or floating object in such waters. If the person or entity that is pursuing a claim in such circumstances is a designated or blacklisted citizen or corporate citizen under an applicable sanctions regime, the Association would not be able to make any payments in relation to such a claim.

(F) The Member shall in no circumstances be entitled to recover from the Association that part of any liabilities, costs or expenses which is not recovered by the Association from any reinsurer because of a shortfall in recovery from such party or reinsurer by reason of any sanction, prohibition or adverse action by a competent authority or government… (Rule 51.3)
Rule 51.3 makes it clear that the Association is not obliged to pay compensation to any Member in respect of any liabilities, costs or expenses if the Association is not able to be indemnified for such payment by reinsurers because of the applicability of any sanction, prohibition or adverse action on the part of any competent authority or government. The provision also makes it clear that the inability to recover from reinsurer(s) is also deemed to occur where such parties are not permitted by the competent authority or government to transfer funds to the Association, but only to a designated account. It is envisaged that a competent authority or government could well decide to order that payment must be made in this manner as an interim measure, e.g. in order to complete investigations to determine whether payment of the compensation by such parties constitutes a breach of the relevant sanctions regulations.

Rule 51.3 is intended to protect the Association against any shortfall in recovery from the reinsurers by reason of sanction risks. It applies in circumstances where, although payment of a claim or provision of cover by the Association may not expose the Association itself to the risk of sanction, the Association may not be able to recover from a reinsurer by reason of a sanction risk to which that association or reinsurer is exposed (e.g. in another jurisdiction). For example there could be a situation where US reinsurers are not allowed to make the payment that is required under the relevant reinsurance arrangements, in which case, the Association is not obliged to make any payment to the Member of any sum that the Association is not able to recover from its reinsurers.

Therefore, Rule 51.3 has the result that the risk of a shortfall in recovery is transferred from the Association to the relevant Member. Whilst this is disadvantageous to the Member, the Association has a duty to the membership as a whole and such a result is considered to be in the interests of the mutual membership as a whole in order to ensure that the assets of the Association are protected.

Rule 52 Other insurance

1 The Association shall not cover:
   - **a** liabilities, losses, costs or expenses which are covered by the Hull Policies or which would have been covered by the Hull Policies had the Vessel been fully insured on standard terms, without deductible, for an insured value which is at all times not less than the market value from time to time of the Vessel without commitment;
   - **b** liabilities, losses, costs or expenses recoverable under any other insurance or which would have been so recoverable:
     - i apart from any term in such other insurance excluding or limiting liability on the ground of double insurance; and
     - ii if the Vessel had not been entered in the Association with cover against the risks set out in these Rules;
   - **c** liabilities, losses, costs or expenses in relation to a person performing work in the service of the Vessel covered by social insurance or by public or private insurance required by the legislation or collective wages agreement governing the contract of employment of such person, or which would have been so covered if such insurance had been effected.

2 The Association shall not cover under a Defence entry costs which are or can be covered under a P&I entry.

Guidance

(A) Introductory remarks

An owner will normally require several types of insurance to give protection both for his interest in the vessel and against the liabilities that he may incur to third parties in connection with the operation of the vessel. Typically, the owner will take out marine hull and machinery insurance to safeguard the value of his investment in the structure of the vessel, war risk hull insurance to protect him against the war risks that are normally excluded from cover under the marine hull and machinery policies, loss of hire insurance to protect him against loss of revenue, P&I cover to protect him against the claims that may be brought against the vessel by third parties, and Defence cover as protection against the legal and other costs that he will incur when prosecuting or defending claims that are not covered under the P&I cover. He may also choose to take out additional insurances especially designed to protect him against special needs.

These insurances are usually provided by separate insurers on various terms in different insurance markets. Consequently, the owner and his various insurers will wish to avoid overlapping or ‘double’ insurance. The owner will not wish to pay premium twice for the insurance of the same risk whilst the insurers will wish to avoid risks that they expect to be insured elsewhere.

(B) The Association shall not cover: a liabilities, losses, costs or expenses which are covered by the Hull Policies… (Rule 52.1.a)
Rule 52.1.a states expressly that the cover provided by the Association does not extend to liabilities, losses, costs and expenses covered by the hull policies. The P&I cover that is provided by the Association is intended to complement, but not to replace, the hull policies as illustrated by Rules 23 and 24 in respect of cover for liabilities arising out of collision and damage to fixed or floating objects (FFO), respectively.

(C) …would have been covered under standard terms had the Vessel been fully insured on standard terms, without deductible… (Rule 52.1.a)
The exclusion applies not only to the liabilities, losses, costs and expenses that are actually covered by the hull policies that have been taken out by the Member, but also to the liabilities, losses, costs and expenses that would have been covered if the vessel had been insured under hull policies that comply with the requirements of Rule 52.1.a.

Many different 'standard' forms of hull policies are commonly used in the industry and these can provide cover, not only for the loss of, or for damage to the vessel, but also for liability to third parties, e.g. for damage that has been caused by collisions with other vessels, or with fixed or floating objects or other property. Since it is a fundamental requirement for a mutual association that there be uniformity of cover, Rule 52.1 emphasises that cover is not available under the Rules for liabilities, losses, costs and expenses that can be covered under standard hull policy terms.

The Association considers on a case-by-case basis whether the particular liability etc., is, or could have been covered, under 'standard' hull terms. However, for the purpose of the Rules, the Association considers that the full cover that is available under the standard Nordic, English, American, German, Japanese and French conditions is deemed to be cover on standard terms.

Cover is also excluded if the relevant liability, loss etc., is covered under the hull policy, or would have been covered under standard terms, were it not for the applicable deductible(s). For example, if the Member's liability resulting from a collision exceeds USD 100,000 and the Member is insured under a hull policy that gives cover for such liability subject to a deductible of USD 100,000 per incident, cover is not available from the Association for the sum of USD 100,000 that is not recoverable under the hull policy. Similarly, if the Member's liability is less than USD 100,000 so that he cannot claim cover under the hull policy because of the deductible, cover is not available from the Association for such liability. The reason for this is that the Member's acceptance of a high deductible is a means of reducing the premium that is payable under the policy. Consequently, the Association cannot enable the Member to, on the one hand, obtain such a financial benefit while, on the other hand, carry the increased risk that would result of doing so.

(D) …for an insured value which is at all times not less than the market value from time to time of the Vessel without commitment… (Rule 52.1.a)
Furthermore, cover is not available for any liability, loss etc., that is incurred by the Member which he cannot recover under the hull policies because he has failed to keep the vessel insured for its full market value. The vessel's insured value is normally based on its market value at the time that the hull policies are agreed or renewed. However, the market value of a vessel may fluctuate considerably during the period that it is insured under the hull policies. Therefore, the Member is required to monitor the state of the second-hand market closely and to make certain that the value for which the vessel is insured under the hull policies continues to reflect whatever the current market value of the vessel should be from time to time.

For example, if a vessel that has a market value of USD 1 million but is only insured for a value of USD 800,000, incurs a liability following a collision of USD 950,000, the cover that is available under the Hull Policy may be restricted to USD 800,000 because of the failure of the owner to insure the vessel for its full market value. In such circumstances, Rule 52.1.a provides that the Member cannot recover the balance of USD 150,000 from the Association. However, if the vessel is also insured under a standard increased value (IV) hull policy (which is normally subject to a maximum of 25 per cent of the hull policy value), the Member is covered under the two hull policies up to a maximum of USD 1 million and can, therefore, recover the balance of USD 150,000 under the IV policy and has no need to make a claim against the Association for the balance.

The vessel's commercial commitments are not taken into consideration when assessing its market value since such factors might well distort its true intrinsic market value.

(E) …liabilities, losses, costs or expenses recoverable under any other insurance… (Rule 52.1.b)
Whilst a Member is not obliged by the Rules to take out insurances that provide additional cover to that which is provided by the hull policies, some owners and operators do so in order to protect their interests.

Cover is not available under the Rules if there is a duplication or overlap of insurance (commonly called 'double insurance') between the P&I cover and such other insurances. In the event of 'double insurance', the Member is required by the Rules to claim under his other (primary) insurance rather than under the Rules, since the P&I cover that is provided by the Rules in its nature is intended merely to complement the Member's other insurances.

(F) …or which would have been so recoverable apart from… (Rule 52.b.i and ii)
The principle that is explained in (E) also applies in the event that any such other insurance contains a 'double insurance' provision; i.e. a term which

provides that such other insurance is considered to be complementary or subsidiary to P&I insurance or any other insurance that covers the same risk. The Association is not privy to the terms of other insurances and has not accepted to bear the financial consequences of such terms. Therefore, the onus is on the Member and his insurance broker to ensure that such a situation is avoided.

(G) …a person performing work in the service of the Vessel covered by social insurance… (Rule 52.1.c)

For the purposes of Rule 52.1.c, the term 'social insurance' means a national or state insurance scheme, such as for example the Norwegian National Insurance Scheme (Folketrygden), that may entitle individual claimants to certain benefits in the event of death, injury or illness. The P&I cover is not available for liabilities, losses, costs or expenses that are or can be covered by such insurance schemes.

Cover is excluded under Rule 52.1.c for claims that are brought by any persons performing work in the service of the vessel, regardless of whether such persons are employed by the Member. Such persons include crew members, surveyors, pilots, repair workers and other independent contractors. The purpose and aim of the Rule is to ensure that such persons make claims to the maximum extent possible under the appropriate social insurance scheme and not against the Member or the Association. However, the Association will usually reimburse a Member for claims that he has paid in respect of such liabilities, losses, costs and expenses provided that the claims are reduced by whatever compensation that is, or should have been available, under the applicable social insurance schemes.

(H) …public or private insurance required by the legislation or collective wages agreement… (Rule 52.1.c)

The terms of an employment contract, or a collective bargaining agreement, or the applicable law that governs the operations or such contracts or agreements, may require an owner to take out public or private insurance to cover their liability for the death, injury or illness of crew members or other persons that are working on board the vessel. Cover is not available for liabilities, losses, costs or expenses that are covered by such mandatory insurance schemes, or which would have been covered by such insurance schemes if the Member had complied with his obligations to take out such insurance. However, the Association will usually reimburse a Member for claims that he has paid in respect of such liabilities, losses, costs and expenses provided that the claims are reduced by whatever compensation is or should have been available under the applicable public or private insurance scheme.

(l) The Association shall not cover under a Defence entry costs which are or can be covered under a P&I entry. (Rule 52.2)

If cover is available for costs under a Member's P&I entry, in particular under Rules 30 and 31, the Rules require the Member to claim such costs under his P&I entry and not under his Defence entry. Furthermore, if cover is available for costs under the P&I cover that is provided by the Association, but the Member has chosen to exclude certain of those risks from his P&I entry pursuant to special terms of entry, he cannot recover legal and other defence costs that have been incurred in respect of those risks under his Defence entry. For example, if crew risk is excluded from the vessel's P&I cover, the Member cannot recover legal and other costs that have been incurred in respect of crew claims under his Defence entry. Similarly, Defence cover is not available for costs that have been incurred in relation to a claim that, would be covered under the P&I entry but for the fact that the claim is less than the applicable deductible.

However, if the costs are incurred in relation to risks that are subject to a specific exclusion under the Rules for P&I cover in general, such costs may be recoverable under a Defence entry. For example, if a Member has entered into terms of contract that results in greater liability than follows from terms of contract which are customarily in the area where the vessel operates, cover can be available under a Defence entry for legal and other costs that have been incurred by him in relation to a claim or dispute, notwithstanding the fact that P&I cover for such increased risk is excluded by Rule 42.1.

If a particular case involves issues that involve both P&I and Defence cover it is possible that work may be conducted, and legal costs incurred, that benefit both P&I and Defence, e.g. a collision case that involves claims for damage to the other vessel and claims for loss of earnings as a result of the collision. In such cases costs may are normally divided between P&I and Defence. Such a division is normally based on the amount of work that can be attributed to each claim or, if no such division is possible, based on the values that are involved in each claim. If neither approach is possible, the costs may be split 50/50 between P&I and Defence.

Rule 53 Conduct of the Member

The Association shall not cover liabilities, losses, costs or expenses arising or incurred in circumstances where there has been wilful misconduct on the part of the Member, such misconduct being an act intentionally done, or a deliberate omission by the Member, with knowledge that the performance or omission will probably result in injury, or an act done or omitted in such a way as to allow an inference of a reckless disregard of the probable consequences.

Guidance

(A) …arising or incurred in circumstances where there has been wilful misconduct… (Rule 53)

Rule 53 excludes cover where there has been 'wilful misconduct' on the part of the Member, and such exclusion is additional to the exclusions and limitations, both general and specific, that are contained elsewhere in the Rules. Under Rule 16.2. (a), the Association also has the right to terminate the insurance of any or all of the vessels that have been entered by a Member without notice where a casualty or other event has been brought about by the Member's wilful misconduct.

An important distinction needs to be drawn between negligence and wilful misconduct on the part of the Member. Cover is generally available where liability, loss, cost or expense is caused by negligence of the Member, his servants or agents. Where the Member is a corporation, negligence on the part of the Member's board of directors or top management will not affect the right of insurance recovery. It is only 'wilful misconduct' that will deprive the Member the right of recovery. The Association does not insure the Member against liabilities, losses etc., that arise as a result of wilful, i.e. intentional or reckless, misconduct on the part of the Member, since the membership as a whole should not suffer as a result of such serious wrongdoing.

Rule 53 defines what is considered to be 'wilful misconduct' for the purposes of the Rules and the question of whether or not the Member has been guilty of 'wilful misconduct' for these purposes is determined by the provisions of Rule 53 as construed under Norwegian law, which is the law that governs the legal relationship between the Association and the Member. Therefore, the fact that the Member might not be considered to be guilty of wilful misconduct under some other system of law, or in the light of the standards that are adopted in the Member's native country, or in the country where the incident has occurred, is not relevant.

(B) …such misconduct being an act intentionally done, or a deliberate omission with knowledge that the performance or omission will probably result in injury, or an act done or omitted in such a way as to allow an inference of a reckless disregard of the probable consequences. (Rule 53)
For the purposes of Rule 53 the term 'wilful misconduct' includes not only intentional acts but also deliberate omissions. Even if the Member did not intend to cause damage or loss, cover is not available if it can be demonstrated that the Member must, nevertheless, have appreciated that injury would probably result from his acts or omissions, or that he acted in such a way that it is reasonable to infer that the Member did not care about the probable consequences of his acts or omissions.

The wording of Rule 53 is similar to, albeit not identical with, the wording of the more modern international conventions that govern the limitation of liability in the field of transportation. For example, under the Convention on Limitation of Liability for Maritime Claims (LLMC Convention) 1976, the right to limit liability may be lost if it is proved that the loss resulted from a 'personal act or omission committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result'. Therefore, the conduct that can cause the Member to lose his right to limit may also amount to wilful misconduct that could deprive him of his P&I cover even though the right to limit may be adjudged by a law other than Norwegian law and by a court or tribunal other than in Norway.

However, in some circumstances, the Member may be unable to prove his right to limit his liability under the applicable law but may still be entitled to P&I cover because there has been no 'wilful misconduct' on his part. For example, in order to limit his liability under the law of the United States, a shipowner must prove that there has been no 'privity or knowledge' on his part, and similarly, under the 1957 Limitation Convention, he must prove that there has been no 'actual fault or privity' on his part. In both cases, the right to limit liability may be lost if there has been negligence with knowledge but such conduct is not as serious as the wilful misconduct that would be necessary to deny the Member cover under Rule 53. Each and every case will be assessed on its own merits.

(C) …on the part of the Member… (Rule 53)
The intention of the Rule is to penalise the Member only if it can be shown that he has been personally guilty of wilful misconduct. If the Member is an individual, there must be personal wilful misconduct on his part. However, where the Member is a company or some other body corporate, it is necessary to determine which individuals are deemed to be 'the Member' for the purposes of the Rule, i.e. to ascertain who is the 'alter ego' of the Member, or the person whose 'action is the very action of the company itself', a phrase

used by the English courts. In normal circumstances, board members of a company will satisfy this test. Other members of senior management may do so as well. It is only when a claim has been caused by 'wilful misconduct' by the 'alter ego' of the company, such as the board of directors or senior management, that the right of insurance recovery may be lost. Mere negligence on the part of the 'alter ego' of a corporation will not affect the right of recovery.

Wilful misconduct on the part of the crew or some other agent or representative of the Member is not likely to justify the exclusion of cover under Rule 53. However, wilful misconduct on the part of senior employees or independent contractors to whom the Member has delegated important functions relating to the management and operation of the vessel, may be deemed to be wilful misconduct on the part of the Member on the basis that, if the Member chooses to delegate such functions to such persons, he must accept the consequences of that person's wilful misconduct. A Member cannot restrict Rule 53's scope of application by simply delegating the responsibility for important functions and tasks regarding the operation of the vessel to external service providers. Therefore, wilful misconduct on the part of, for example, technical, commercial and crew managers that are appointed by the Member to perform important functions with regard to the vessel may cause the Member to lose his right to cover.

Since a Member is defined in Rule 1 to include co-assured or affiliate, where the context allows, the wilful misconduct of any one of them is deemed to be the wilful misconduct of the Member for the purposes of Rule 53.

Rule 54 War risks

The Association shall not cover under a P&I entry liabilities, losses, costs or expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or its servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liabilities arise or such losses, costs or expenses are 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 purpose of this paragraph (a), an act constitutes an act of terrorism, the Association shall in its absolute discretion determine that dispute and the Association's decision shall be final);

b capture, seizure, arrest, restraint or detainment, (barratry and piracy excepted, provided always that ransom shall not be recoverable unless and to the extent the Association in its absolute discretion determine otherwise), and the consequences thereof or any attempt thereat;

c mines, torpedoes, bombs, rockets, shells, explosives, or other similar weapons of war, provided always that this exclusion shall not apply to the use of such weapons, whether as a result of government order or with the agreement of the Association, where the reason for such use is the mitigation of liability, cost or expenses which would otherwise fall within the cover given by the Association.

Note: Additional cover in respect of war risks is available pursuant to Rule 2.1(b) - see Appendix II.

Guidance

The insurance of marine war risks is a specialised form of insurance that has traditionally been written by specialist marine war risks insurers. Therefore, most marine insurance policies will exclude war risks from the scope of cover that they provide on the basis that such risks should be separately insured. Such exclusions are commonplace in hull and machinery, loss of hire and P&I insurance policies.

(A) The Association shall not cover under a P&I entry liabilities, losses, costs or expenses…when…such liabilities…was caused by (Rule 54)
Like other marine insurers, the Association excludes war risks from the standard terms of the P&I cover that it provides to Members. The express reference to P&I cover clarifies that the war risks exclusion shall not apply for the Defence cover.

Rule 54 excludes cover only in those circumstances where cover would have been available but for the exclusion in Rule 54. Therefore, it must be emphasised that cover is not automatically available simply because the exclusion does not apply in any particular circumstance. If the Member seeks

compensation from the Association he must, nevertheless, substantiate that cover is available for that risk under Part II of the Rules or under any special terms of entry.

The war risks that are excluded by Rules 54.a and b are based on governing market wordings such as the War Risk Exclusion Clauses of the Institute Time Clauses Hulls (1.10.83) save for certain clarifications as to act of terrorism and ransom payments as discussed in more details in sections (J) and (O) below. Rule 54 does also include risks that can occur during times of peace, e.g. the risk of the vessel striking after the end of a war a mine that had been laid during that war. Different courts may construe the relevant risks differently pursuant to different laws but the meaning that is relevant for the purposes of Rule 54 is the meaning that applies under Norwegian law. Since the wording of Rule 54 closely follows that of the standard English hull policy, the Norwegian courts may be influenced by the interpretation that has been given by the English courts in circumstances where there are no relevant Norwegian legal decisions.

Cover is excluded if the war risk is the proximate cause of the particular liability, loss, cost or expense that has been incurred by the Member. Therefore, if the liability etc., has not been caused by a war risk, but occurs at a time when the vessel is affected by war risks, cover is not excluded. For example, cover is not available in circumstances where a Member has compensated a crew member that has been injured by a terrorist bomb. However, cover would be available if the crew member had slipped and had been injured whilst the vessel was operating in a war zone.

Since cover for war risks is excluded by Rule 54, Members should try, whenever possible, to avoid or minimise their exposure to such risks by including clauses in contracts such as charterparties and other contracts of employment to relieve them of liability for war risks to the maximum extent permitted by the applicable law. The Member is also expected to arrange war risks insurances for hull and machinery and P&I risks for such sums and on such terms that will give the Member adequate protection against war risks. In order to assist as much as possible in this regard, the Association has for many years arranged a special war risks P&I cover for the benefit of their Members as set out in Appendix II to the Rules. The terms of this cover are notified to Members each year in a circular from the Association.

(B) …(irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or its servants or agents)… (Rule 54)

If war or one of the other risks that are specified in Rule 58 is the proximate cause of the liability, loss, cost or expense that has been incurred by the Member, cover is excluded even though the negligence of the Member or his

servants or agents has also contributed to some extent to the incurring of the liability etc. For example, if the vessel has foundered since the master has deliberately chosen a course through an area that is known to have mines in order to save voyage time, cover is not available for any crew or wreck removal liabilities that may arise as a result of the fact that the vessel has struck a mine.

(C) …war… (Rule 54.a)
The exclusion is not limited to wars that affect the countries where the vessel is flagged or where her owners live or are domiciled. It applies whenever the vessel encounters, or is affected by, a state of war, no matter where or between whom.

A war is normally defined as a state of armed conflict between countries and it is a question of fact in each case whether there is a war. It is not necessary to demonstrate that there has been a formal declaration of war or some other similar formal act or declaration on the part of any country. However, 'war' does not include sporadic or warlike operations on a scale that does not amount to an established or reasonably settled state of armed conflict albeit that such operations are likely in most cases to constitute 'hostile acts by a belligerent power.'

(D) …civil war… (Rule 54.a)
A civil war has been defined in an English case as 'a war which has the special characteristics of being civil, i.e. internal rather than external'. In other words, it is not a war between countries, but a war between those that are citizens of, or who live within, a country.

(E) …revolution… (Rule 54.a)
A 'revolution' occurs when the established government of a country has been overthrown by the people over whom it formerly ruled and has been successfully replaced by another form of government that then rules over and controls the territory in question and the people who live there. An element of forcible substitution is required, but, provided that there is the actual or implied threat of force, there can be a revolution even if the substitution is achieved without actual force.

(F) …rebellion… (Rule 54.a)
A 'rebellion' occurs when there is organised resistance to the rulers or the government of a country with the aim of supplanting the existing rulers or government or at least depriving them of authority over part of their territory. A rebellion may develop into a revolution.

(G) …insurrection… (Rule 54.a)
An 'insurrection' is very similar to a rebellion. It differs only in that it may be less organised and less widespread than a rebellion. Therefore, an 'insurrection' may be the start of a rebellion and may develop into a rebellion.

(H) …civil strife arising therefrom… (Rule 54.a)
'Civil strife' means major civil disorder during or following a war, civil war, revolution, rebellion or insurrection, e.g. the widespread rioting and looting that may occur after a war due to the breakdown of internal infrastructures and which may result in substantial distress to the inhabitants of that country.

(I) …or any hostile act by or against a belligerent power… (Rule 54.a)
This means an offensive or defensive act of a government or organised rebels in a war or civil war. It may involve co-ordinated military action, but this is not essential.

(J) …or any act of terrorism… (Rule 54.a)
This exclusion was introduced as a result of the modification of the reinsurance arrangements that followed the 11 September 2001 terrorist attacks in New York.

A typical act of terrorism is one in which one or more individuals carry out, or threaten to carry out, acts that are intended to exert influence on a government or another political body, or to frighten all, or parts, of the population of a country. The purpose may be to promote a political, religious or ideological cause. The act may affect an enemy's person or his interests, e.g. when bombs are placed in vehicles or on board ships, when aircraft are set on fire or when oil pipelines are cut. However, an act of terrorism need not necessarily be directed against, or directly affect, an enemy of the terrorists; it may be directed against other parties in order to draw public attention to the cause for which the terrorists are fighting. Acts of terrorism are often characterised by the fact that they endanger the lives of many people, and/or cause extensive material damage.

The question of whether a violent and/or malicious act can be classified as a terrorist act can cause uncertainty and dispute. In a published Norwegian arbitration award (ND 1990, 140 Peter Wessel) it is emphasized that the perpetrator's motive and not the actual measures taken are decisive as to whether a loss should be covered by the marine insurer or war risk insurer. The Association is given the right by Rule 54.1.a to determine in its absolute discretion whether a particular act is considered to be a terrorist act for the purposes of Rule 54.

(K) …capture… (Rule 54.b)
'Capture' is the taking of a vessel (with or without its crew) by an enemy or belligerent power in wartime with the intention of depriving the owners of the vessel and/or the goods on board of their ownership of it. The taking of the property must be accompanied by force or the threat of force.

(L) …seizure… (Rule 54.b)
'Seizure' is a term that is broader in scope than 'capture' and includes 'every act of taking forcible possession either by lawful authority or by overpowering force'. In contrast to 'capture', a seizure can occur whether or not there

is a war. A temporary or permanent taking of possession of a vessel may constitute a 'seizure'. However, it must be accompanied by force or the threat of force.

(M) …arrest, restraint or detainment… (Rule 54.b)
There is no substantial difference between these three perils that individually or collectively embrace any act by a court or local or national government that prevents the free movement of a vessel and, thereby, its ability to comply with employment orders. However, a distinction must be drawn between, on the one hand, an arrest in respect of a civil claim or a restraint or detainment of the vessel, e.g. after a pollution incident, and, on the other hand, an arrest, restraint or detainment of the vessel, and/or its crew by government authorities and enforced with the use, or the threat of the use, of armed forces or other military power. The former type of arrest etc., may give rise to liabilities, losses, costs and expenses for which cover is available under the standard P&I insurance whereas cover is excluded under Rule 54.1.b for liabilities etc., that arise as a result of the latter type of arrest, restraint or detention.

(N) …(barratry and piracy excepted)… (Rule 58.b)
'Barratry' includes every wrongful act that is wilfully committed by the master or crew against the vessel and the goods without the privity of the owner. Mere negligence or recklessness will not suffice; to constitute 'barratry,' there must be wilful intent. Barratry occurs most frequently when crew members take permanent possession and control of the vessel, or sink it deliberately, i.e. scuttle it.

'Piracy' is robbery that is committed at sea for personal gain accompanied by the use, or with the threat of the use, of violence. Therefore, piracy is an act of robbery that is committed without political motive or without the authority of any country. Piracy is normally committed by persons from outside the vessel who board the vessel, whether in port, or in coastal waters, or on the high seas, and acts of piracy encompass a wide range of activities such as the hijacking of the vessel, the taking of money and other valuables from the vessel's safe and/or from persons on board, or the holding or kidnapping of persons for the purposes of ransom. Therefore, acts of piracy may cause death or injury as well as the loss of, or damage to, property.

Despite the violent nature of such activities, barratry and piracy have traditionally been considered to be marine rather than war risks. Consequently, cover is not excluded under Rule 54 for liabilities etc., that are proximately caused by such activities.

(O) …provided always that ransom shall not be recoverable unless and to the extent the Association in its absolute discretion determine otherwise (Rule 54.b)

If war risks cover is placed by the Member with a war mutual, such as DNK or Hellenic, or kidnap & ransom cover is taken out in the market, these insurances may pick up costs like ransom payments. Other market war risk covers may be restricted to war P&I risks expressly excluded under the owner's P&I entry. Since piracy is not specifically excluded under Rule 54, some uncertainty exists as to cover for ransom payments where for example crew members are held as hostages. In order to clarify the position a specific exclusion for ransom payments has been included in Rule 54.b while the Association at same time is given a discretionary right to cover such payments on a case-by-case basis. The discretion shall be exercised by the Board of Directors in each individual case based on the omnibus procedures.

(P) …and the consequences thereof or any attempt thereat… (Rule 54.b)

These words make it clear that cover is not only excluded under Rule 54.b if the capture, seizure, arrest, restraint or detainment is successful. Cover is excluded for liabilities, losses etc., that arise as a result of an attempt to capture, seize, arrest, restrain or detain even if the attempt is unsuccessful.

(Q) …mines, torpedoes, bombs, rockets, shells, explosives, or other similar weapons of war… (Rule 54.c)

The phrase 'other similar weapons of war' is to be construed widely and includes mortars, missiles and all other static or projected explosive devices.

Cover is excluded whether the explosive device is located on or off the vessel and the exclusion applies not only in times of war, but also in times of peace. For example, the exclusion will apply if a bomb, torpedo, shell etc., were to be used as a weapon against the vessel and cause damage even though it did not explode as intended. Similarly, if a vessel, whilst operating in the North Sea, were to strike an old mine from the second world war and cause the mine to explode, cover is excluded under Rule 58.c for any liabilities, losses etc., that arise as a result of such event. However, it is more questionable whether cover would be excluded if the hull of the vessel were to be beached and thereby cause the vessel to become a wreck as a result of striking a mine that had been disarmed and which had, consequently, ceased to pose a warlike threat.

(R) …provided always that this exclusion shall not apply to the use of such weapons…where the reason for such use is the mitigation of liability… (Rule 54.c)

Cover is not excluded under Rule 58.c if weapons of war, and in particular, explosives, are used for the purpose of mitigating, i.e. avoiding or reducing, any liability, loss, cost or expense that would otherwise fall within the scope of the

Association's cover, e.g. where explosives are used to blow up a wreck when such action is the safest and/or the most economic method of wreck removal.

This proviso is applicable only in cases where explosives are used either with the prior agreement of the Association or as a result of a governmental order and even when, in the latter case, the Association has not given its agreement. For the purposes of this Rule a governmental order includes an order that is given by a coast guard or harbour authority or any other council or authority that is empowered to make such orders under national or local legislation or regulations.

Rule 55 Nuclear perils

1 The Association shall not cover liabilities, losses, costs or expenses directly or indirectly caused by or contributed to by or arising from:

a ionising radiation 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 of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

d the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter

other than liabilities, costs and 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 on the Vessel or liabilities, costs and expenses arising out of the use or presence on board the Vessel of equipment or substances containing low-radiation industrial radioactive isotopes customarily used in the offshore industry or naturally occurring radioactive material caused by the operation of the Vessel, provided always that such equipment and/or substances are carried, kept and used in accordance with statutory rules and regulations governing the carriage, custody and use of such equipment and/or substances.

2 The exclusion in Rule 55.1 above 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:

a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777, and any amendments thereto, and/or

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

c an undertaking given by the Association to the International Oil Pollution Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement as amended (STOPIA), or, except where such liabilities, costs and expenses arise from or are caused by an act of terrorism, the Tanker Oil Pollution Indemnification Agreement as amended (TOPIA), and any amendments thereto, and/or

d a certificate issued by the Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, and any amendments thereto, and/or

e a non-war certificate issued by the Association in compliance with either Article IV bis of the Athens Convention relating to the 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 which gives effect thereto, and any amendments thereto, and/or

f a certificate issued by the Association in compliance with article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007, and any amendments thereto

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. Where any such guarantee, undertaking or certificate is provided by the Association on behalf of the Member as 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.

Guidance

(A) Introductory remarks

The processing, carriage and use of nuclear material involves substantial and special risks and is governed by international conventions such as the Brussels Convention Relating to Civil Liability in the field of Maritime Carriage of Nuclear Material 1971. The nature of such risks is very different from that which is faced on a day-to-day basis by the vast majority of vessels. Therefore, even though the Association may discharge certain liabilities, costs and expenses of the Member on behalf of the Member pursuant to, and subject to, the terms of Rule 55.2, cover is made available only in limited circumstances, i.e. in respect of the carriage of 'excepted matter' as defined in (E) below.

(B) …directly or indirectly caused by or contributed to by or arising from… (Rule 55)

Rule 55 is drafted in the widest terms possible to exclude cover for all liabilities, losses, costs or expenses that are caused, or contributed to, either directly or indirectly, by one or more of the various nuclear perils that are listed therein. The use of the phrases 'either directly or indirectly' and 'caused by or contributed to or arising from' emphasise that if the risks that are itemised in Rule 55.1.a have had any material causative impact or influence on the incurring of liabilities, losses etc., cover is not available.

(C) …ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel… (Rule 55.1.a)

The term 'nuclear fuel' refers to a substance that is the source of energy in a nuclear reactor. 'Nuclear waste' refers to all products of the nuclear industry that have no readily ascertainable value, but need special handling because of their radioactive character. Spent nuclear fuel may be considered to be 'waste' if it cannot be re-processed to recover uranium and plutonium.

Rule 55.1.a is primarily designed to exclude cover for risks that arise as a result of the operation of nuclear-powered ships. However, cover is also excluded if the liability, loss, cost or expense arises generally because of nuclear fuel regardless of how and where it is used, or because of nuclear waste from any source, whether or not on board the entered vessel.

Cover is excluded not merely for claims that affect the vessel, its crew, but also for claims for damage to any other property, or for damage to, or the pollution of, the environment, or for injury to any other person. For example, cover is excluded for claims that arise as a result of a collision between a non-nuclear powered vessel that is entered in the Association and a nuclear powered ship that exposes property, persons and the environment to radiation from the nuclear fuel on the nuclear powered ship. Cover is also excluded for losses that may be suffered by the entered vessel as an innocent bystander that is affected by the fall-out of nuclear fuel or waste in the vicinity of the vessel.

(D) …the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof… (Rule 55.1.b)

Rule 55.1.b excludes cover not only for radiation damage, but also for any other form of damage that is caused by the toxic, explosive or any other inherently characteristic nature of a nuclear installation or reactor regardless of whether such installation or reactor is situated on-shore or on a nuclear powered ship. The phrase 'nuclear installation, reactor or other nuclear assembly or nuclear component thereof' encompasses any plant, machinery, equipment or appliance that is designed or adapted for the production or use of atomic energy, or for the storage, processing or disposal of nuclear fuel or nuclear waste.

(E) …any weapon or device employing atomic or nuclear fission and/or fusion… (Rule 55.1.c)

Rule 55.1.c excludes cover for liabilities, losses, costs and expenses that are caused by any form of atomic weapon. Atomic bombs, i.e. those bombs that employ fission techniques, or hydrogen bombs, i.e. those that use a fusion process, are both considered to be 'any weapon or device' for the purposes of Rule 55.1.c, as are any other weapons that use 'other like reaction or radioactive force or matter'.

Cover is excluded regardless of whether the weapon is or is not being used for a warlike purpose. Therefore, cover is excluded for claims that arise as a result of an accident that involves a nuclear weapon.

Although additional war risks insurance may be arranged for the Member by the Association, such insurance is also subject to the same exclusion.

(F) ...the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter (Rule 55.1.d)
This provision is included to ensure that the cover that is available to a Member from the Association in respect of nuclear perils does not extend beyond that which is covered by reinsurance. As stated in section (A) above, Rule 55 is drafted in the widest terms possible to exclude cover for liabilities, losses, costs or expenses whether "…directly or indirectly caused by or contributed to by or arising from…" the various nuclear perils listed therein. Therefore, Rule 55.1.d makes it clear that the exclusion applies to virtually any hazardous properties of any radioactive matter and applies regardless of whether the Member knew of the hazardous properties of the radioactive matter or that the substance or 'matter' was radioactive.

(G) ...other than liabilities, costs and expenses arising out of carriage of 'excepted matter' (Rule 55 proviso)
Nuclear substances are radioactive or volatile to varying degrees, and certain types of nuclear materials can be, and are, routinely carried safely by ships as cargo. Consequently, there is no reason why cover should not be made available in relation to the risks that are involved in such carriage. Therefore, Rule 55 does not exclude cover for liabilities, losses, costs and expenses that arise as a result of the carriage by an entered vessel of 'excepted matter' as defined in the UK Nuclear Installations Act 1965 or any regulations made thereunder. However, cover is available under Rule 55 only when such permitted cargo is carried on the entered vessel. If claims are made in relation to such substances when carried on another ship, or when stored elsewhere, cover is excluded as specified in Rules 55.1.a, b and c.

(H) ...presence on board the Vessel of equipment or substances containing low-radiation industrial radioactive isotopes customarily used in the offshore industry or naturally occurring radioactive material caused by the operation of the Vessel... (Rule 55 proviso)
The second part of the proviso to Rule 55.1 clarifies that liabilities and losses caused by or arising from so-called 'naturally occurring radioactive material', commonly referred to as 'NORM', typically such as sludge or mud generated by the drilling operation, shall be within the scope of cover.

(I) The exclusion in Rule 55.1 above shall not apply to liabilities, costs and expenses of a Member insofar as only... (Rule 55.2)
Rule 55.2 makes it clear that the exclusion in Rule 55.1 does not apply to liabilities, costs and expenses that are incurred by the Association by reason of having issued the certificates, guarantees or undertakings that are specified in Rule 55.2.

The liability regimes for which such certificates, guarantees or undertakings are issued may not protect the Member against liabilities etc., arising as a result of nuclear risks. However, although the Association does not provide shipowners with primary P&I cover for nuclear perils, the shipowner and the Association may incur liabilities, costs and expenses by virtue of the relevant certificates, guarantees or undertakings that have been issued. Such liability would be excluded from the P&I cover unless an exception was made to the exclusion from cover. Consequently, Rule 55.2 provides such an exception and confirms that cover is available for liabilities, costs and expenses that are incurred in such circumstances and which would have been excluded but for such exception.

The wording of Rule 55 reflects the reinsurance policy in order to ensure that the Association is fully protected by its reinsurers.

(J) …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. Where any such guarantee, undertaking or certificate is provided by the Association on behalf of the Member as guarantor or otherwise… (Rule 55.2)
The last paragraph of Rule 55.2 is intended to ensure that when the Member has the right to be compensated for the relevant liabilities etc., under other insurances, a payment that is made by the Association to a third party pursuant to the guarantees or undertakings that are itemized in Rule 55.2 is to be treated as a loan to the extent the Association is entitled to make recovery from such other insurers. The same applies if the event that causes the Association to make payment under the guarantee or undertaking is one that gives the Member a right of recourse against any other third party. In exchange for its agreement to provide a guarantee or undertaking to third parties at the request of the Member, Rule 55.2 gives the Association the right to demand that all rights that the Member has to recover under such other insurance or against any third party should be assigned by the Member to the Association on such terms and to the extent that the Association in its discretion thinks necessary in order to protect the interests of the membership as a whole. The Association will normally require an assignment to be to the greatest extent that is allowed by law and the particular circumstances.

Rule 56 Part tonnage

Where a Vessel is entered with the Association for an insured interest of less than one hundred per cent, the Association shall only be liable to the Member for such proportion of any liability, loss, cost or expense as the insured interest bears to the full one hundred per cent interest.

Guidance

A vessel may be entered for part of her tonnage only. If so, the Member is entitled to recover from the Association only such proportion of any liability, loss, cost or expense that the entered tonnage bears to the full tonnage.

Rule 57 Deductibles

1 Save as set out in Rule 57. 2 below, and unless otherwise agreed, the cover shall be subject to a deductible of USD 10,000 in respect of all liabilities, losses, costs and expenses arising under any one entry from any one event.
2 To the extent the Vessel is:
i) US owned, operated or managed or
ii) the liabilities, losses, costs and expenses are made, asserted or enforced in the US,
the cover shall be subject to a deductible of USD 250,000, unless otherwise agreed with the Association.
3 The standard deductible for all legal and other costs covered under Rules 44 and 45 and incurred by all the Assureds under any one Defence entry and arising out of any one event shall be 25 per cent of the legal and other costs incurred, subject to a minimum deductible of USD 5,000 and a maximum deductible of USD 50,000. The Association shall determine in its absolute discretion in respect of Defence cover, whether any costs and expenses have arisen out of one or several events.

Guidance

(A) …the cover shall be subject to a deductible of USD 10,000… (Rule 57.1)
A 'deductible' is the amount of liability, loss, cost or expense that is insured by the Association which the Member has agreed to bear and which must be exceeded before compensation is payable by the Association to the Member. When the deductible is exceeded, it is only the amount that is in excess of the deductible that is recoverable from the Association. For example, if the Member has agreed to bear a deductible of USD 10,000 and incurs a liability for a claim that is made against him for USD 100,000, the Member is entitled to receive only USD 90,000 from the Association.

A 'deductible' should be distinguished from a 'franchise'. A franchise provides that no claim is paid by the insurer unless it exceeds a specified sum, but that any claim that is made for a sum that exceeds the franchise is paid in full. For example, if the Association has agreed to a franchise of USD 20,000 and the Member incurs a liability for a claim that is made against him for USD 100,000, the Member is entitled to receive USD 100,000 from the Association.

Deductibles reduce the time and expense that would otherwise be spent on handling and processing small claims and allow the Association to concentrate on larger claims. Deductibles also encourage Members to exercise more care in their affairs since, by agreeing a deductible, they retain a measure of financial responsibility for any loss or liability that may arise.

The standard deductible for P&I entries is USD 10,000 in respect of all liabilities, losses, costs and expenses arising under any one entry from any one

event. For example, if a Member is faced with a major marine casualty giving rise to different categories of claims such as oil pollution, personal injury and FFO claims the governing deductible under Rule 57.1 will still be USD 10,000.

However, by use of the phrase “unless otherwise agreed”, the Association and the Member are able to agree that deductibles other than the standard deductibles shall apply to a particular entry. This flexibility enables the Member to increase or decrease the degree of risk that he wishes to retain and also to modify the premium that is payable. Indeed, Members will often prefer to accept higher deductibles in exchange for the payment of lower premiums if this is acceptable to the Association.

(B) ...the Vessel is: i) US owned, operated or managed or ii) the liabilities, losses, costs and expenses are made, asserted or enforced in the US... (Rule 57.2)

A US owned, operated or managed vessel means in this context a mobile offshore unit entered in the Association on behalf of an owner, operator or manager (being a corporation) being a corporate citizen of the United States, having its principal place of business in the United States or who is operating out of the United States. A vessel operating in an area subject to US law and jurisdiction will also be subject to the special deductible set out in Rule 57.2 irrespective of whether the owner or manager is domiciled in or operating out of the United States, inasmuch as any claims arising out of such activities most likely will be enforced pursuant to US law being the law of the place where the alleged tort occurred (lex loci delicti).

US owned, operated or managed units are generally deemed to involve higher risk than non-US business. For that reason the entries of such vessels are subject to special terms and restrictions. See for example Rules 42.2 and 43 and Appendix I, section B. Likewise, liabilities and losses arising out of casualties having occurred in the United States or areas subject to US law and jurisdiction will represent a higher exposure than if similar incidents or claims had occurred in other countries where mobile offshore units frequently are operating.

Against this background the special deductible for US business will work as follows:

The cover made available for US owned, operated or managed vessels shall be subject to a deductible of USD 250,000 in respect of all liabilities, losses, costs and expenses arising under any one entry from any one event regardless of whether the relevant claim is enforced pursuant to US law or not (see Rule 57.2.(i))

The cover made available for any claim enforced pursuant to US law shall be subject to a deductible of USD 250,000 in respect of all liabilities, losses, costs and expenses arising under any one entry from any one event regardless of whether the owner, operator or manager is operating out of the United States (see Rule 57.2.(ii)).

(C) ...standard deductible for all legal and other costs covered under Rules 44 and 45 ...shall be 25 per cent... (Rule 57.3).

Pursuant to standard terms of entry for Defence cover, the Member shall cover 25 per cent of legal and other costs falling within the scope of Rules 44 and 45 and arising out of any one event subject to a minimum of USD 5,000 and a maximum of USD 50,000. This means in practice that if a Member incurs legal and other costs amounting to USD 15,000 in total in order to collect outstanding hire, a minimum deductible of USD 5000 shall apply even if it is more than 25 per cent of all costs incurred. Further, if the Member incurs legal and other costs recoverable under the Defence entry amounting to USD 1 million, the maximum deductible of USD 50,000 shall apply even if it is less than 25 per cent of all costs incurred.

Part V
Miscellaneous provisions

Chapter 1

Joint Members, Co-assureds and affiliates

Rule 58 Cover for Co-assureds and Protective Co-Assureds

1 The Association may agree, subject to the provisions of this Rule 58 and to such other terms as may be required to extend the cover afforded by the Association to the Member to any person who is named in the Certificate of Entry as a Co- assured.

2 The cover afforded to a Co-assured in categories (a), (b) and (c) below shall extend only to liabilities, losses, costs and expenses arising out of operations and/or activities customarily carried on by or at the risk and responsibility of the owner of the Vessel:

- **a** any person interested in the operation, management or manning of the Vessel;
- **b** the holding company or the beneficial owner of the Member or of any Co- assured falling within category a) above;
- **c** any mortgagee of the Vessel or finance institution (or its subsidiary or affiliate) as the owner leasing the Vessel to the Member.

3 Where a Member enters into a charterparty or other contract for the employment of the Vessel (the "Charterparty"), the other party to the Charterparty and its co-ventures, affiliates and associates and any other interested parties may, by agreement with the Association, be named in the Certificate of Entry as a Protective Co-assured under the Member's cover.

4 The Co-assured and Protective Co-assured shall not be entitled to Membership of the Association.

5 The Protective Co-assured party may recover from the Association any liabilities, costs and expenses which are incurred by it and which

- **a** are to be borne by the Member under the terms of the Charterparty; and
- **b** would, if borne by the Member, be recoverable by the Member from the Association.

6 The Protective Co-assured party may not recover from the Association any liabilities, costs and expenses which are to be borne by the Protective Co-assured party under the terms of the Charterparty.

7 The Association agrees to waive any rights of subrogation it may have against the Protective Co-insured party in respect of liabilities, costs and expenses which are to be borne by the Member under the terms of the Charterparty.

8 Provided that an address for notification has been advised to the Association, the Association undertakes to give the Protective Co-insured party notice in writing with the same period of notice as to the Member in all cases where the Association terminates the entry. If termination is attributable to the failure by the Member to pay when due and demanded any premium or other amount due to the Association, the Association undertakes not to exercise such rights without giving the Protective Co-assured party thirty (30) days' notice in writing.

Guidance

(A) The Association may agree…to extend the cover… (Rule 58.1)
The owner or operator of a vessel becomes a Member of the Association when the vessel is entered in the Association. Where a vessel is entered on behalf of more than one owner or operator, the parties on whose behalf the vessel has been entered become joint members of the Association as defined in Rule 1.

Further, certain categories of co-assureds can be made parties to the contract of insurance subject to the requirements of this Rule 58. Co-assureds are usually companies that are involved with the operation of the vessel. This will typically be a management company performing defined functions and tasks as to the operation and management of the vessel based on delegated authority from the owner. A co-assured can also be a company closely associated with or linked to the Member, as for example a holding company. In general co-assureds are performing functions or have a close association with the Member exposing them to liabilities to third parties in connection with that involvement or association and may be sued by third parties instead of, or in addition to, the Member.

Members, joint members and co-assureds shall be named in the certificate of entry.

(B) …such other terms as may be required… (Rule 58.1)
The Association has the right to impose special terms of cover for co-assureds, but will not usually do so since the cover that is made available to them is normally substantially the same as the cover that is provided to the Member. However, as discussed under section (G) below, it ought to be distinguished between co-assureds pursuant to Rule 58.2 and protective co-assured pursuant to Rule 58.3.

(C) …cover afforded to a Co-assured in categories a, b and c… (Rule 58.2)
The cover that is made available to co-assureds is designed to protect those persons that are most likely to incur liability, as a result of their direct involvement with the operation of the vessel, for liabilities, losses, costs and expenses that arise as a result of activities that are customarily carried on by or at the risk and responsibility of the owner.

For example, cover is available to the managers of a vessel who are responsible for bunkering arrangements, and who receive a claim from a bunkering company for the damage that has been caused to their barge by the allegedly negligent navigation of the vessel by its crew during the course of bunkering operations.

It is important to note that the cover that is available to a co-assured is not wider than the cover that would have been available to the Member had he incurred the subject liability, loss, cost and/or expense.

(D) …any person interested in the operation, management or manning of the Vessel… (Rule 58.2.a)
Companies to whom the Member has delegated management functions either in full or in part can be co-assureds, as can the sub-contractors of such managers, e.g. a crewing agent that has a contract with the owner's crew manager and who is responsible for the supply of crew members from a certain country or region.

The number of co-assureds that may be entered on the certificate of entry, and the different functions for which any particular co-assured may be responsible, will depend on the vessel's type and the nature of the operation or activity in which the vessel is engaged.

(E) …holding company or...beneficial owner… (Rule 58.2.b)
A 'holding company' is a company that is empowered to direct or control another company by virtue of being a controlling shareholder or otherwise. A holding company will typically be the parent company of the group. Legally a parent company is a company which directly or indirectly owns at least 50 per cent of the shares in and voting rights of another company. A company will also be treated as a parent if it otherwise has ability to procure that another company is managed and operated in accordance with its (the parent's) wishes.

The expression 'beneficial owner' means in this context any individual or corporation that ultimately owns or controls the Member or has ultimate effective control over the Member.

(F) …any mortgagee of the Vessel or finance institution.. as owner leasing the Vessel… (Rule 58.2.c)
Mortgagee banks customarily seek to secure their loans by receiving an assignment of the benefit of the Member's cover and by having a 'loss payable clause' endorsed onto the certificate of entry. This gives the mortgagee the right to receive the proceeds of any claim that may be made pursuant to the Member's entry, save that under a standard P&I 'loss payable clause' the insurer shall always be free to make payments directly to third party claimants in respect of liabilities and losses falling within the scope of cover and to make payments under guarantees issued by the insurer in respect of P&I liabilities. Since P&I claims may have statutory lien in the vessel and, thus, better priority than claims secured by mortgage based on agreement, it is also in the interest of the mortgagee that P&I claims are paid to secure the value of the vessel as mortgage object. See also the mandatory provision in Norwegian Insurance Contract Act, section 7-8, first paragraph, stating that the insured's claim against the insurer under a contract of insurance covering third party liabilities cannot be made the subject of legal proceedings for the recovery of claims other than the claim for compensation of a third-party liabilities falling within the scope of cover.

However, an assignment under a 'loss payable clause' does not protect the mortgagee against any liabilities that the mortgagee may incur to third parties in relation to the operation of the vessel. Consequently, a mortgagee may also require protection from the Association against such potential liabilities and Rule 58.2.c entitles a mortgagee of a vessel to become a co-assured and, thereby, to gain protection against liabilities, losses, costs and expenses that it incurs provided that such liabilities, losses etc., arise out of operations and/or activities that are customarily carried on by, or at the risk and responsibility of the owner of the vessel. Therefore, a mortgagee who is a co-assured is protected against claims that are made against it. As a result of the control the mortgagee has exercised over the owner, the mortgagee may be held responsible for the acts and omissions of the shipowner in relation to the operation of the vessel. However, mortgagees do not often seek to become a co-assured pursuant to Rule 58.2 since they would, thereby, become jointly and severally liable with the Member for payment of the premium and other sums that are due to the Association under Rule 60.1.

Further, if a mortgagee enforces his mortgage and enters into possession of a vessel, the cover for the vessel will cease automatically under Rule 17.2.f from the time that the mortgagee assumes such possession. In such an event, the entry of the Member and that of the mortgagee, if he is co-assured pursuant to Rule 58.2, will both cease. Therefore, if the mortgagee wishes thereafter to secure protection from the Association, he must apply for the entry of the vessel in his own name and submit a new application for entry.

However, vessels may also be financed through a lease structure rather than conventional mortgage secured lending. In such a structure the finance institution's security will be ownership through a 'special purpose vehicle' lessor (being the registered owner) controlled by the finance institution. While the Member in such a structure normally will be a bareboat charterer (the lessee), the lessor as registered owner of the vessel qualifies to be listed as a co-assured. The lessor as registered owner may incur liabilities arising out of the operation and/or activities that are customarily carried on by, or at the risk and responsibility of an owner. For example, under the Civil Liability Convention (CLC) governing liability for oil pollution from tankers, the liability is channelled only to the registered owner of the polluting vessel. Reference is made to the explanatory notes to Rule 25 above regarding pollution liability.

(G) …the other party to the Charterparty and its co-ventures, affiliates and associates and any other interested parties may, by agreement with the Association, be named in the Certificate of Entry as a Protective Co-assured under the Member's cover… (Rule 58.3)

In accordance with established practice, Members engaged in the offshore industry may wish to give protection to their contract partner (the 'contractor') under a charterparty or other contract of employment,

against liabilities, losses, costs and expenses for which the Member shall be responsible under the charterparty or other contract of employment and which the Member can recover from the Association. The contractor will then be named as a 'protective co-assured' in the vessel's certificate of entry.

The Association will typically agree to name a contractor as a protective co-assured in the certificate of entry if the distribution of liabilities and losses between the Member and the contractor (including his sub-contractors), as laid down in the relevant charterparty or other contract of employment, is based on the 'knock for knock' principle. In short, the 'knock for knock' principle means that the parties have agreed that the risk and responsibility for death, personal injury and loss of or damage to property is to be borne by the party (including his sub-contractors) that suffers the injury, loss or damage regardless of which party actually caused or contributed to that injury, loss or damage, without any recourse against the other party. However, it is not an absolute requirement that a 'knock for knock' clause has been agreed between the Member and the contractor.

The following example illustrates how the 'knock for knock' agreement and protective co-assured status works in practice. An employee of the Member suffers an injury as a result of the contractor's negligence. The employee files a claim in tort against the contractor. However, the contractor will be protected as a 'protective co-assured' under the Member's entry in the Association because the Member under the 'knock for knock' agreement between the Member and the contractor is responsible for any injury to his (the Members) own employees regardless of whether the injury is caused by the contractor's fault or neglect. Such protection is achieved by naming the contractor as a 'protective co-assured' in the Member's certificate of entry for the vessel to or from which the contractor may render or receive services. The risk of injury to or death of the Member's own employees is a risk the Association already has accepted and received premium for. Thus, the naming of a contractor as a protective co-assured does not increase or otherwise alter the club's exposure.

When the Association gives Member's contractor protective co-assured status it means in practice an acceptance of the distribution of liabilities and losses agreed between the Member and the relevant contractor. The contractor given protective co-assured status is merely protected to the extent the contractor is held responsible for liabilities and losses that shall be the Member's responsibility under the 'knock for knock' agreement and covered by the Member's P&I entry in the Association.

It must be distinguished between 'protective co-assured' under Rule 58.3 and other categories of co-assured as discussed under Rule 58.2. As explained above, the rights of cover pursuant to Rule 58.3 are restricted to liabilities and

losses that shall be the responsibility of the Member under the governing agreement. Protective co-assureds may also, pursuant to special terms of entry, be free from liability for sums that are due to the Association pursuant to Rule 60.1. On the other hand, the protection afforded to co-assureds falling within the categories described in Rules 58.2 above, see sections (C), (D), (E) and (F), is wider. A co-assured under Rule 58.2 is protected to the extent he incurs liabilities or losses of a P&I nature arising out of activities customarily carried on by or at the risk of the owner of the vessel. The cover is not solely dependent on the underlying distribution of liabilities and losses as explained under Rule 58.3 in respect of protective co-assureds.

As to waiver of subrogation and protective co-assured status in general, it is referred to the commentary to Nordic Marine Insurance Plan of 2013, version 2023, section 18-1 (i).

(H) …not...entitled to Membership… (Rule 58.4)
Co-assureds and protective co-assureds are not entitled to membership of the Association and are, consequently, not entitled to attend or vote at general meetings or to share in any surplus upon the dissolution of the Association.

(I) The Protective Co-assured party may recover…liabilities,…which (a) are to be borne by the Member under the terms of the Charterparty; and (b) would, if borne by the Member, be recoverable by the Member from the Association. (Rule 58.5)
While Rule 58.3 allows the Association to name the Member's contractual party as a protective co-assured subject to certain requirements in the underlying charterparty or other contract of employment as discussed in section (G) above, Rule 58.5 codifies that the protective co-assured rights of recovery shall be restricted to liabilities and losses which under the governing contract or charterparty are the responsibility of the Member and which would be recoverable under the Member's entry in the Association if the claims had been made against the Member. In other words, a protective co-assured does not have a better or different rights to be indemnified by the Association than the Member.

(J) The Protective Co-assured party may not recover from the Association any liabilities, costs and expenses which are to be borne by the Protective Co-assured party under the terms of the Charterparty (Rule 58.6).
It is referred to the explanatory notes under section (G) above. Further, Rule 58.6 emphasizes that the protective co-assured is not entitled to be indemnified by the Association in respect of any liability or loss which under the governing charterparty or contract of employment shall be the responsibility of the protective co-assured as contractor. If for example an employee of the contractor is injured while performing work on board

the vessel, the contractor will not be entitled to insurance cover from the Association as a protective co-assured if the risk and responsibility of any injury to the contractor's own employees shall be borne by the contractor under the governing charterparty for which risk the contractor must arrange his own insurances.

(K) …Association agrees to waive any rights of subrogation it may have against the Protective Co-insured… (Rule 58.7)

The waiver of the insurer's rights of subrogation is an important part of the protective co-assured clause. When the Association gives a Member's contractor protective co-assured status it means, as outlined in section (G) above, an acceptance of the underlying distribution of liabilities and losses agreed between the Member and the relevant contractor. When accepting the underlying distribution of liabilities and losses based on for example a 'knock for knock' clause, the Association has waived any right it may have to make a claim of recourse against the contractor. Having compensated the Member as the assured for a liability or loss which shall be borne by the Member under the governing charterparty or other contract of employment, the Association as insurer will not on the basis of being subrogated the Member's rights have any better right against the contractor than the Member would have had. The Association has underwritten the relevant risk on the basis of the distribution of liabilities and losses agreed between the Member and his contractor.

(L) …the Association undertakes to give the Protective Co-insured party notice in writing with the same period of notice as to the Member… (Rule 58.8)

Rule 58.8 deviates from the principal rule that communication with one joint member or co-assured shall be deemed to be communication to all as set out in Rule 60.3. Under Rule 58.8 the Association will be under duty to send separate notices to a protective co-assured if the address for such notification has been sent to the Association. For example, if the entry shall be terminated on 14 days' notice under Rule 16.2.c on the basis of the Member's failure to comply with his duty of disclosure under Rules 6 and 7, separate notice shall be sent to the protective co-assured. The intention behind Rule 58.8 is to protect the protective co-assured against the cover being terminated without the protective co-assured being given an opportunity to rectify the Member's default in order for the cover to continue without interruption or to arrange insurance cover elsewhere for his own account.

(M) …termination is attributable to the failure by the Member to pay when due and demanded any premium…the Association undertakes not to exercise such rights without giving the Protective Co-assured party thirty (30) days' notice in writing (Rule 58.8)

While the entry under Rule 16.2.b can be terminated by the Association on three days' notice when the Member has failed to pay premium when due and demanded, Rule 58.8 offers the protective co-assured better protection. The Association cannot exercise its right to bring an entry to an end due to premium not being paid on time with effect for the protective co-assured without giving the protective co-assured separate 30 days' notice. As outlined above under (L), the cover cannot be terminated without the protective co-assured being given an opportunity to rectify the Member's default in order for the cover to continue without interruption or to arrange insurance cover elsewhere for his own account.

Rule 59 Cover for Affiliates

1 The Association shall extend the cover afforded by the Association to the Member to any person who is affiliated to or associated with the Member.
2 The cover afforded to an Affiliate shall extend only to claims made or enforced against the Affiliate in respect of any liabilities for which the Member has cover and nothing herein contained shall be construed as entitling an Affiliate to recover any amount which would not have been recoverable from the Association by the Member had the claim been made or enforced against the Member.
3 Affiliates shall not be entitled to Membership of the Association.

Guidance

(A) …shall extend the cover afforded…to any person who is affiliated to or associated with the Member (Rule 59.1)
Under Rule 59.1, the Association has an obligation to extend the cover to any person that is affiliated to, or associated with, the Member, but not to anyone who is affiliated to, or associated with, a co-assured.

The words 'affiliated' and 'associated' are not defined, but include individuals and companies in a conglomerate of companies which includes the Member, and who may incur liability as a result of the operation of the vessel despite the fact that such liability should properly be borne by the Member, e.g. the holding company or beneficial owner of the Member or the subsidiaries of that holding company or beneficial owner.

While the Member has the right to name as co-assureds in the certificate of entry all companies etc., that, in his view, run the risk of incurring liability in relation to the operation of the vessel, this may be impractical in the case of large conglomerates that include several companies that are substantially at 'arm's length' from the operation of the vessel. It should also be appreciated that if such companies were to become co-assureds, they would become jointly and severally liable for sums that are due to the Association under the contract of insurance pursuant to Rule 60.1. Therefore, the Member may prefer not to name such companies as co-assureds, but to rely instead on the Association's obligation to extend cover to such a company as an affiliate should it incur liability in relation to the operation of the vessel.

The Association is entitled to set off against any compensation that is paid to an affiliate any amount that is due to the Association from the Member.

(B) …shall extend only to claims made or enforced against the Affiliate in respect of any liabilities for which the Member has cover… (Rule 59.2)
The cover for an affiliate is restricted, in the case of P&I cover, to the liabilities for which the Member has cover, and in the case of Defence cover, to the costs for which the Member has cover. In other words, the amount payable

to the affiliate by the Association shall not exceed the amount that would have been paid to the Member had the claim been made or enforced against the Member. This reflects the same principle that applies in the case of the 'protective co-assured cover' under Rule 58 discussed above. An affiliate has no better right than the Member.

For similar reasons, the affiliate will be required to demonstrate that the Member would have been liable if the relevant claim had been brought against him rather than against the affiliate. However, the cover that is available under Rule 59.2 does differ from the 'protective co-assured' cover in that it extends to situations where the affiliate is a legitimate target for the claim, albeit an additional target to the Member, as long as the claim in its nature is a named risk falling within the scope of risks covered under the relevant contract of insurance. For example, the Rule applies in circumstances where the claimant has succeeded in 'piercing the corporate veil' and persuaded the court that a group of companies should be considered to be a single entity, and that each company in the group is a legitimate target that should share the particular liability in full or part.

(C) …nothing herein contained shall be construed as entitling an Affiliate to recover any amount which would not have been recoverable…by the Member (Rule 59.2)

Besides referring to the explanatory notes under section (B) above, the last part of Rule 59.2 emphasizes that an affiliate has not better or different rights against the Association than the Member.

(D) Affiliates shall not be entitled to Membership of the Association (Rule 59.3)

Like co-assureds, affiliates are not entitled to membership of the Association and are, consequently, not entitled to attend or vote at general meetings or to share in any surplus upon the dissolution of the Association.

Rule 60 Joint Members, Co-assureds, Affiliates and Fleet Entries

1 Joint Members and Co-assureds (other than a Co-assured expressly given cover by the Association in accordance with Rule 58.3) insured on any one entry shall be jointly and severally liable for all sums due to the Association in respect of such entry. Members, Joint Members and Co-assureds (other than a Co-assured expressly given cover by the Association in accordance with Rule 58.3) insured on any entry in respect of one or more Vessel(s) forming part of a Fleet Entry shall be jointly and severally liable in respect of all sums due to the Association in respect of any or all Vessels forming part of the Fleet Entry. For the purpose of this section a Fleet Entry shall mean 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.

2 Any payment by the Association to one of the Joint Members, Co-assureds or Affiliates shall fully discharge the obligations of the Association in respect of such payment.

3 Any communication by the Association to one Joint Member or Co-assured shall be deemed to be communication to all.

4 The conduct or omission of one Joint Member or Co-assured which under these Rules would constitute a breach of the contract of insurance, shall be deemed as the conduct or omission of all the Joint Members and Co-assureds.

5 To the extent that the Association has indemnified a Co-assured or an Affiliate in respect of a claim, it shall not be under any further liability and shall not make any further payment to any person whatsoever, including the Member, in respect of that claim.

6 The liability of Joint Members, Co-assureds, Affiliates and the Member to each other shall not be excluded nor discharged by reason of co-assurance. Any payment to the Member in respect of any liabilities, losses, costs and expenses shall operate only as satisfaction but not exclusion or discharge of the liability of such person to the Member.

Guidance

(A) …jointly and severally liable… (Rule 60.1)

The legal effect of these words is that all parties that have been named as Member, joint members and co-assured(s) on any one certificate of entry are both individually and collectively liable for all sums that are due to the Association in relation to that entry. The Association has the right, in its discretion, to seek to recover any such sums from any one or more Member, joint members and/or co-assureds.

For example, the technical and commercial managers of the vessel may be included on an owner's certificate of entry as two separate and distinct co-assureds for whom cover is available pursuant to Rule 58.2. Should the owner of the vessel subsequently incur financial difficulties and fail to pay premium

to the Association, the Association has the right to recover the sums due from either or both of the co-assured managers. Similarly, if the Association is obliged to pay a third party claim pursuant to the terms of a guarantee that has been issued by the Association at the request of the Member, and it subsequently transpires that cover is not available for such a claim, the Member is obliged to indemnify the Association for such payment. If he is unable to do so, the Association is entitled to seek recovery from the co-assured managers.

Whilst each vessel is entered in the Association pursuant to a separate contract of insurance between the Member and the Association, it is considered to be in the interests of the mutual membership as a whole that the Association should be able to enforce a claim for outstanding premium that relates to one vessel against any other vessel that is part of the same fleet of entered vessels. Therefore, Rule 60.1 includes a 'Fleet Entry' category. If it has been agreed between the relevant Member(s) and the Association that the vessels are to form part of such a Fleet Entry, premiums that are payable in relation to one vessel forming part of the Fleet Entry are also recoverable from all other vessels that form part of the same fleet of entered vessels.

Rule 60.1 regulates the relationship between the Association and the various parties that are insured by it but not the relationship between the parties that are insured by it. Although it does not concern or involve the Association, when a joint member or co-assured has paid monies to the Association in relation to the insurance cover that is provided to another joint member or co-assured, it is normally entitled under most systems of law to recover those sums from the other joint member or co-assured.

An affiliate is not a party to the contract of insurance and has no liability to pay any sums that are due to the Association under the contract of insurance. Therefore, the Association cannot seek recovery from any affiliate of sums that have not been paid by the Member and which cannot be recovered from the Member or any Joint Member or Co-assured. However, the Association has the right pursuant to Rule 13.1 to set off any amount that is due to the Association against any amount that it agrees to pay to an affiliate pursuant to Rule 59. As emphasized in the guidance to Rule 59, the affiliate has no better rights than the Member.

(B) …(other than a Co-assured expressly given cover by the Association in accordance with Rule 58.3)… (Rule 60.1)
Although the Association can require also protective co-assureds to be jointly and severally liable for any premium or sums due to the club in respect of the relevant entry, it has become established practice that protective co-assureds named in the certificate of entry pursuant to Rule 58.3 shall not be jointly and severally liable for premiums and other sums due from the Member to the Association. The governing practice is codified in the bracket in in Rule 60.1.

(C) Any payment by the Association… (Rule 60.2)
If payment is made by the Association to any one joint member, co-assured or affiliate under the terms of entry, this will fully discharge the obligations of the Association to all such persons in relation to such payment. Since the Association has no detailed knowledge of the relationship that exists between joint members, co-assureds and affiliates, the Association is not obliged to ensure that the recipient has accounted properly to these other parties for any payments that are received from the Association which should be transferred to, or shared with, other parties that are entitled to the whole or part of such payments.

Rule 60.2 applies to 'any payment'. In most cases, this would be a payment that is made by the Association by way of compensation for claims, but it could also include other payments such as partial return of deposit premium that has been paid by the Member in advance.

(D) Any communication by the Association… (Rule 60.3)
The Association will often communicate directly with the Member in relation to certain matters, e.g. in relation to debit notes for payment of premium, but may communicate with a co-assured in relation to other matters, e.g. communications with the technical manager for the vessel in relation to any surveys and inspections that may be required by the Association. It is important both for the Association and the wider membership that the Association is able in either case to act on the premise that the communication has been brought to the attention of the relevant personnel or organisation. Consequently, in cases where material prejudice or inconvenience may be caused to one or more Members, joint members or co-assureds that are insured under the same entry as a result of the fact that they have not been informed of any particular fact or notice, Rule 60.3 is intended to protect the Association against allegations that the Association has failed to communicate such matters to all the parties that are insured under the same entry.

It is the responsibility of all Members, joint members and co-assureds that are named in the certificate of entry – and not the responsibility of the Association – to ensure that there is effective communication between such parties in relation to all issues that are relevant to the contract of insurance. Consequently, Rule 60.3 emphasises that the Association is entitled to rely on the fact that any communication that may be sent by the Association to the Member, or to any joint member or co-assured, will be forwarded promptly and properly to any other relevant party. In practice, the Association will normally correspond in relation to claims with one company that has been nominated under the terms of entry. This is usually the Member or one of the joint members, but in some cases, it is the manager of the vessel, or the insurance broker that is appointed by the Member. For example, if the Member has confirmed that communications from the Association are to be

sent to him via his insurance broker, all communications that have been sent by the Association to the broker for onward transmission to the Member are deemed to have the same legal effect as communications that have been sent directly to the Member. Therefore, written notices that have been sent by the Association to the broker for the attention of the Member are treated as having been received by the Member when they are received by the broker.

(E) The conduct or omission of one Joint Member or Co-assured… (Rule 60.4)

When considering whether there has been a breach of the contract of insurance, Rule 60.4 makes it clear that the acts or omissions of one joint member or co-assured are deemed to be the acts or omissions of the Member, all joint members and co-assureds. The rationale for this Rule is that, since the Association has no knowledge of the manner in which the Member organises his affairs, it is the responsibility of the Member to ensure that he appoints trustworthy and competent parties to conduct those affairs. It is in the interests of the membership as a whole that a Member should not, and cannot, by outsourcing or delegating responsibilities, activities or functions that relate to the operation of the vessel to third parties, have better rights vis-à-vis the Association than the rights that he would have had, had he not done so.

Therefore, the Association has the right to terminate the Member's cover under Rule 16.2 or to refuse to indemnify the Member pursuant to Rule 53, if the conduct that would have justified such action, if committed by the Member, has in fact been committed by a joint member or co-assured. It follows that, if the Member or one co-assured under that entry incurs a liability, but another co-assured under that same entry is guilty of conduct that would have given the Association the right to refuse compensation had the liability been incurred by that other co-assured, the Association has the right to refuse to compensate the Member or co-assured that has in fact incurred the liability.

Whilst Rule 60.4 does not refer to affiliates, they are, in any event, not entitled to cover if the Member would not have been entitled to cover had the relevant claim been made against him as explained under Rule 59 above.

(F) …extent that the Association has indemnified a Co-assured or an Affiliate in respect of a claim, it shall not be under any further liability… (Rule 60.5)

Rule 60.5 is intended to protect the Association against the risk that multiple recovery claims may be brought against the Association in respect of the same third party liabilities, losses, costs or expenses by different parties that are either insured by, or offered protection by, the Association under the contract of insurance. Therefore, once the Association has indemnified a co-assured or an affiliate, for a claim, it has no further liability to indemnify any other person whatsoever, including the Member, in relation to that same

claim, or the loss or damage in respect of which the claim was brought.

The Rule applies regardless of the knowledge of the different parties of their respective claims against the Association. For example, the Member may have compensated a third party for a claim in ignorance of the fact that a co-assured had already paid compensation for the same claim. If the Association has indemnified the co-assured for that claim, the Member is not able to demand recovery from the Association for the compensation that has also been paid by the Member.

(G) The liability of Joint Members, Co-assureds…to each other shall not be excluded nor discharged… (Rule 60.6)

The decision of the Supreme Court of the United Kingdom in The Ocean Victory case (2017 1 Lloyd's Rep 521) created a small risk that, where a bareboat charterparty does not provide expressly that an owner is entitled to claim an indemnity from the bareboat charterer for a liability incurred by the owner in respect of, for example, pollution under CLC, the owner cannot bring a recourse claim against the bareboat charterer where there is a provision in the charter that obliges the owner to insure against such a risk for the joint protection of the owner and the bareboat charterer. Such an arrangement constitutes what has been described as an "insurance solution" to any potential recourse dispute between the owner and the bareboat charterer as to which of them inter se is to be responsible for the liability.

As a protection against this legal risk, Rule 60.6 clarifies that co-assurance does not exclude any liability that a co-assured or joint member may have to the owner as Member or assured under the same entry, or vice versa. In other words, the Association's payment of compensation to the Member will operate only as satisfaction of the claim against the Association but not as an exclusion or discharge of the underlying liability of the co-assured or joint member to the Member.

A similar clarification has been made in the Nordic Marine Insurance Plan of 2013, version 2023. See section 8-2, second paragraph, and the corresponding commentaries.

Chapter 2

Claims etc.

Rule 61 Time bar

1 The Member shall have no right to compensation unless it has given notice to the Association of any event which may give rise to a claim on the Association within six months of becoming aware of it.
2 The Member's claim for compensation becomes time-barred three years from the date on which the Member became aware of the claim and of the circumstances that determine its extent.
3 Where a time-bar has not taken effect earlier, the Member's claim for compensation becomes time-barred ten years from the occurrence of the event unless litigation or a general average adjustment is in progress, when the claim becomes time-barred one year after the issue of the final judgment or adjustment.

Guidance

(A) Introductory remarks

Time limits are relevant for a Member in two different situations. Firstly, a time limit may apply to a claim that is made against the Member by a third party, e.g. a personal injury claim. However, different time limits also apply to claims that the Member makes against the Association. Therefore, the time limits that are described in Rule 61, which apply to claims that are made by Members against the Association, should not be confused with the time limits that apply to the claims that are brought against Members by third parties.

(B) The Member shall have no right to compensation unless it has given notice to the Association… (Rule 61.1)

It is in the interests of the membership as a whole to ensure that the Association is able to assess all potential claims against it, and all potential liabilities, in a timely manner. If this is not done, the financial well-being of the Association can be prejudiced, e.g. by the inability to take timely steps to avoid or minimise liability, or by a failure to levy the required level of premiums. Prompt notification also ensures that policy years can be closed as soon as possible. Consequently, Members are obliged to notify the Association promptly of any event that may give rise to a claim on the Association. Rules 61 and 62.1.a both emphasise this obligation and these Rules should be read together.

Whilst there are no formal requirements for the giving of notice to the Association for these purposes, it is obviously sensible that such notices should be given in writing in order to avoid any misunderstanding.

Rule 62.1.a requires the Member to give prompt notice to the Association of any event that may give rise to a claim on the Association, and if this is not done, then the Member's right to compensation may be prejudiced. However,

if the Member does not give notice to the Association within six months of becoming aware of such an event, then Rule 61.1 emphasises that he loses his right to receive any compensation from the Association for any claim that arises as a result of the relevant event.

(C) …of any event which may give rise to a claim… (Rule 61.1)
Notice is required not only of an event that has given rise to a claim against the Association, but also of any event that may give rise to a claim on the Association. Therefore, a Member is obliged to give notice to the Association of events that may possibly give rise to a claim, such as a grounding of the vessel, even if the Member does not think it likely that a claim will materialise.

(D) …within six months of becoming aware of it… (Rule 61.1)
A period of six months after becoming aware of an event is considered to be a sufficiently long period of time for the Member to ascertain whether the event may give rise to a claim on the Association, and to communicate the relevant information to the Association. The Member is deemed to have become aware of the event for the purposes of Rule 61 when notice of it has been brought to the attention of the Member himself, or to the attention of senior executives in the Member's organisation, or to the attention of independent contractors to whom the Member has delegated the particular area of responsibility for the operation and management of the vessel. However, the Member will not normally be prejudiced by the late reporting of an event by the crew, provided that the Member informs the Association as soon as he becomes aware of it.

(E) The Member's claim for compensation becomes time-barred three years from the date on which the Member became aware of the claim and of the circumstances that determine its extent. (Rule 61.2)
Even if the Member does comply with his obligations under Rules 61.1 and 62.1.a to give notice to the Association of an event that may give rise to a claim on the Association, Rule 61.2 requires the Member, including a former Member, to present a claim for compensation to the Association within three years of becoming aware that he has such a claim and of the circumstances that determines its extent.

The period of three years commences to run when the Member becomes aware that he has the possibility of a claim against the Association and becomes aware of the facts that determine the likely nature and quantum of the claim. These are cumulative, but not precise, requirements. The Member is deemed to have become aware of the possibility of a claim even before he has full knowledge of every last fact and piece of information, e.g. as soon as he is aware that he will incur liability to a third party and that he may be entitled to receive compensation from the Association for that liability, even if it is not completely clear at that time that cover will be available. However, time will only start to run once the Member has sufficient information to enable him to determine the likely nature and quantum of that claim.

Provided that the Member has given timely notice of the event that may give rise to a claim, it would be unusual for a claim to become time-barred pursuant to the provisions of Rule 61.2 since, in the majority of cases, the Member and the Association will work closely together after the occurrence of the event and it will be clear to the Association well within three years that the Member has a claim against the Association and is pursuing such a claim. Therefore, the Association is likely to have made it clear, in the majority of cases, within the three years, that the Member need not take further steps to protect the time bar. However, in some instances, the Association may not be satisfied within that period that cover is in fact available and, although the Association may continue to assist the Member to resist liability or to avoid or minimise costs, it will, nevertheless, reserve its position as to cover. In these rare instances, the Member's claim will become time-barred unless the Member has commenced arbitration proceedings against the Association pursuant to the provisions of Norwegian law as implemented by Rule 91 within the stated period of three years, or has received a time extension from the Association.

(F) …the Member's claim for compensation becomes time-barred ten years from the occurrence of the event… (Rule 61.3)

It is important in any business, and particularly so in insurance business, that an insurer is able to treat its accounts for a particular policy year as final at a particular point in time. Consequently, it is important to be able to specify that no further claims will be accepted by the Association from individual Members after that point in time. However, that requirement is complicated by the fact that some claims that are made against a Member in some jurisdictions may not become manifest for many years after the incident or event giving rise to the claim took place, as for example asbestosis claims in the United States. Accordingly, it is necessary to establish a 'long-stop' time limit which, on the one hand, gives Members protection against the risk of such long-tail claims being made against them but which, on the other hand, protects the interests of the membership as a whole.

Rule 61.3 is such a 'long-stop' time limit. The provision in Rule 61.3 will apply to compensation claims that are made by the Member against the Association a very long time, i.e. ten years or more after the occurrence of the event that gave rise to the claim, and has the result that the Member or former Member against whom claims are made is obliged to bear the risk of such claims himself as cover for such claims is not available from the Association. The Norwegian Insurance Contract Act, section 8-6, and the Nordic Marine Insurance Plan of 2013, version 2023, section 5-24, contain similar provisions. In the insurance business such clauses are normally referred to as 'sunset clauses' inasmuch as they spell out for how long time the insurer will accept claims for compensation arising out of incidents or events that took place while the policy was in force.

The ten year time limit referred to in Rule 61.3 is interrupted, and the Member is thereby protected against the time bar, only when the Association admits liability under the contract of insurance or the Member commences arbitration proceedings pursuant to Norwegian law as implemented by Rule 91. However, if a claim against the Member is still in the process of litigation at the expiry of the ten year period, or if a general average adjustment process is still in progress at that time, the claim will not become time-barred until one year after the issuance of an adjustment or a final award or judgment in the relevant litigation.

The ten year time limit in Rule 61.3 operates in conjunction with, and not instead of, the three year time limit in Rule 61.2. The time bar under Rule 61.2 applies when the Member does not proceed to make a claim within three years of becoming aware of the circumstances of an event, and of the fact that such circumstances give rise to a claim against the Association. However, in certain circumstances, the Member may not become aware of these factors until after three years has expired, in which case, Rule 61.3 provides that the claim becomes time barred ten years after the occurrence of the event. Therefore, the ten year time limit applies even if the Member or former Member does not become aware of the event and of his right to make a claim on the Association in respect thereof until shortly before the ten years has elapsed, or even if he is still unaware of them on the expiry of the ten years.

In some circumstances, the ten year time limit may have the effect of abbreviating the three-year period to which reference is made in Rule 61.2. For example, if the Member becomes aware of the extent of his claim against the Association eight years after the occurrence of the relevant event, the claim will be time-barred after two more years pursuant to Rule 61.3 and not after three more years pursuant to Rule 61.2.

(G) …unless litigation or a general average adjustment is in progress when the claim becomes time-barred one year after the issue of the final judgment or adjustment. (Rule 61.3)

If a claim against the Member is still in the process of litigation at the expiry of the ten year period, or if a general average adjustment process is still in progress at that time, the claim will not become time-barred until one year after the issuance of an adjustment or a final judgment in the litigation in question.

For the purposes of Rule 61.3 the words ‘in progress’ are used in the widest possible sense. It will therefore be sufficient if legal proceedings have been commenced, e.g. by service of a writ or the appointment of an arbitrator, or if an average adjuster has been appointed, even if there has been very little subsequent progress due to procedural or other delays.

For example, if an average adjuster has been appointed before the expiry of the ten year period, and the adjustment is published two years later, the claim against the Association will become time-barred one year after the adjustment has been issued, i.e. thirteen years after the event. However, if at the expiry of the ten year period, the parties are still negotiating general average liabilities but no adjuster has yet been appointed, the claim against the Association will be time-barred on the expiry of the ten years.

Rule 62 Obligations with respect to claims

1 A Member shall:
- **a** promptly notify the Association of any event which may give rise to a claim upon the Association, and of any formal enquiry into a loss or casualty involving the Vessel;
- **b** upon the occurrence of any event which may give rise to a claim upon the Association, take and continue to take all such steps as may be reasonable, including the preservation of any right of recourse against a third party, for the purpose of averting or minimising any liability, loss, cost or expense in respect whereof the Member may be insured by the Association;
- **c** notify and, if possible, consult the Association prior to taking any action as described in Rule 62.1(b) above;
- **d** promptly provide the Association with all documents and information which may be relevant to such event and which are required to enable the Association to determine whether the event is covered according to these Rules and to assess, determine and pay compensation due;
- **e** allow the Association or its appointees to interview any person who in the opinion of the Association may have knowledge relevant to the event;
- **f** not without the prior consent of the Association admit liability for or settle any claim for which it may be insured by the Association.

2 If a Member commits a breach of any of these obligations
- **a** the Association may reject any claim, or reduce the sum payable, in relation to such event; and
- **b** the Member shall reimburse to the Association such part of any costs or expenses incurred by the Association in relation to such event as the Association shall determine.

3 The Association shall have the right if it so decides to control or direct the conduct of any claim or legal or other proceedings relating to any liability, loss, cost or expense in respect whereof the Member is or may be insured, in whole or in part, and to instruct, on behalf of the Member, lawyers and other advisers and experts to assist and to require the Member to settle, compromise or otherwise dispose of such claim or proceedings in such manner and upon such terms as the Association sees fit, provided that no actions or directions of the Association shall imply an obligation to cover the liability, loss, cost or expense. If the Member does not settle, compromise or dispose of a claim or of proceedings after being required to do so by the Association, any recovery by the Member from the Association in respect of such claim or proceedings shall be limited to the amount which would have been recovered if the Memberhad acted as required by the Association.

4 A Member shall, in respect of a dispute which falls under the cover, for its own account, obtain information, make calculations, attend meetings and otherwise provide assistance, where such work can be performed by the Member or by persons the Member has employed or regularly engaged to perform such services.

Guidance

(A) …promptly notify the Association of any event which may give rise to a claim upon the Association… (Rule 62.1.a)

Since all claims and all costs and expenses that are incurred by the Association in handling claims are financed predominantly by the membership as a whole out of premiums that are levied on the membership, all Members have a duty to ensure that any event that may give rise to a claim on the Association is promptly notified to the Association, and dealt with in a manner that minimises the risk to the Association of unnecessary financial loss. The Association has a duty to ensure that claims that are made by individual Members against the Association are administered with proper discipline and cost control, which may require the Association to assume claims handling control in certain cases in order to fulfil this responsibility. Individual Members must seek to comply with the requirements of the Rule to the best of their ability since any failure to do so may give the Association the right to reject any claim or to reduce the compensation that is payable.

The obligations that are imposed by this Rule are mandatory. Notice is required not only of an event that has given rise to a claim against the Association, but also of any event that may give rise to such a claim. Members must notify the Association of any event that may give rise to a claim even if the Member considers it unlikely that such a claim will in fact arise. There are no formal requirements for the giving of notice to the Association for these purposes although it is sensible that such notice should be given in writing to avoid any misunderstanding.

The Member must notify the Association promptly. Rule 62.1.a does not specify exactly what is meant by ‘prompt‘ notice, but the Member is normally expected to communicate information to the Association without delay as soon as he comes aware of the event.

Rule 62.1.a requires the Member to give prompt notice to the Association of any event that may give rise to a claim on the Association, and if this is not done, the Association has the right to reduce or reject the claim pursuant to Rule 62.2.a. However, if the Member does not give notice to the Association within six months of becoming aware of such an event, then Rule 61.1 emphasises that he loses his right to receive any compensation from the Association for a claim that arises as a result of the relevant event.

(B) …take and continue to take all such steps as may be reasonable…notify and, if possible, consult the Association prior to taking any action… (Rules 62.1.b and c)

The combined effect of Rules 62.1.b and c is to require a Member, on the occurrence of an event that may give rise to a claim against the Association, to take steps to mitigate such claim and to notify and, if possible, consult the Association before taking such steps. These Rules are consistent with general principles of marine insurance law that require an insured to act as though he is uninsured and to 'sue and labour' to minimise or prevent loss. If the Member fails to take the steps that are required by Rules 62.1.b and/or c then the Association has the right to either reject or reduce the claim under Rule 62.2.a. However, if the Member complies with his duties under Rules 62.1.b and/or c, cover may be available for extraordinary costs and expenses that are reasonably incurred by him by so doing.

The obligation of the Member to take steps to minimise loss continues until such time as the claim is finalised, and it includes the duty to preserve any rights that the Member may have to claim against third parties since the Association may wish to exercise such rights of recourse by way of subrogation after it has compensated the Member.

The Member is required to take such steps as may be reasonable, and the question of what is 'reasonable' may differ from case to case. For this reason, Rule 62.1.c requires the Member, if time allows, to consult the Association before taking any of the steps that are described in Rule 62.1.b since the Association has substantial experience of the appropriate measures that should be taken in different circumstances and can provide valuable advice in that regard. In view of the ease and speed of modern communication, it is only in exceptional circumstances that a Member will be considered not to have had sufficient time to consult the Association. In any event, when assessing whether any course of action is reasonable, the Association will balance, on the one hand, the cost and appropriateness of taking such action in the light of the loss or damage that has been incurred or is anticipated, and, on the other hand, the time that was available to the Member to take such action.

(C) …promptly provide the Association with all documents and information… (Rule 62.1.d)

Rule 62.1.d requires the Member to disclose all available information to the Association as soon as possible. This is required for two reasons: firstly, to enable the Association to provide the fullest possible advice in the light of the information available; and secondly, to allow the Association to assess the extent to which it should be involved, and the extent to which cover is, or is not, available for any particular matter. This will also include documents and information required for the Association to calculate the loss and to make

the necessary payments of compensation. The latter is usually referred to as the KYC (Know Your Client or Know Your Customer) documentation. The KYC check is a mandatory process the Association has to comply with for identifying and verifying the recipient's identity when, for example, making payments of compensation.

(D) …allow the Association or its appointees to interview any person who in the opinion of the Association may have knowledge relevant to the event… (Rule 62.1.e)
Rule 62.1.e obliges the Member to assist any lawyers, surveyors or other experts that have been appointed by the Association to investigate an event that may give rise to a claim on the Association. The Member is obliged to make his own servants or agents and all other persons who may have information that is relevant to an investigation, available for interview.

(E) …not without the prior consent of the Association admit liability for or settle any claim… (Rule 62.1.f)
It may not be appropriate for the Member to make an admission of liability before a proper and full analysis of the relevant facts and law has been concluded since such an admission may prejudice the Member's prospects of defending or minimising the claim. Similarly, it may not be beneficial for the Member to settle a claim that has been brought against him until all the circumstances and the merits of the case have been properly assessed. In most cases, the Association and the Member will agree on whether a claim should be settled and the basis upon which it should be settled. However, Rule 62.1.f gives the Association the right to direct the Member not to make any admission of liability, nor to settle a case, if it considers that such a course of action is inappropriate having regard to all the circumstances.

If a Member decides to settle a case on terms that do not reflect the true legal merits of the case, e.g. for his own commercial reasons, the Association is likely to decline cover for such settlement either in full or in part pursuant to Rule 62.2.a since the loss that the Member has incurred in such circumstances would not be considered to be a loss that the membership as a whole should share in the spirit of mutuality.

The same considerations apply in relation to both P&I and Defence cover.

(F) If a Member commits a breach of any of these obligations... (Rule 62.2.a)
Rule 62.2 establishes the sanctions that are applicable should the Member not comply with the requirements of Rule 62.1, and such sanctions are applicable irrespective of the circumstances, and regardless of the reasons for the non-compliance.

(G) …the Association may reject any claim, or reduce the sum payable… (Rule 62.2.a)
Rule 62.2.a gives the Association the right to either reject the claim in full, which it will do in cases of flagrant breach, or to reduce the sum that is otherwise payable if the breach has, in the Association's opinion, resulted in additional liability, costs or expenses.

This provision operates both as a supplement to, and independently from, any similar provisions that may apply under other Rules. See for example Rule 48 regarding Defence cases.

(H) …the Member shall reimburse to the Association such part of any costs or expenses incurred by the Association… (Rule 62.2.b)
Rule 62.2.b provides a similar sanction for the costs and expenses that the Association has been obliged to incur if the Member has not complied with the requirements of Rule 62.1, e.g. costs and expenses that have been incurred by the Association in relation to legal services, correspondents or surveyors.

(I) The Association shall have the right…to control or direct the conduct of any claim or legal or other proceedings… (Rule 62.3)
The Association has the right, but not the duty, to control or direct the handling of claims. This right is exercised in most cases and in particular if the claim is substantial or complex or may have a material impact on the operations of other Members or the Association itself. The Association will also exercise such right if it is of the opinion that the manner in which the Member is conducting the handling of the claim and/or any legal or other proceedings is likely to cause material prejudice to the Association, or is otherwise contrary to the best interests of the membership.

(J) …to instruct, on behalf of the Member, lawyers and other advisers and experts to assist… (Rule 62.3)
In most cases, the Member will consult the Association before instructing lawyers, advisers or experts, and this is usually beneficial for both the Member and the Association, as it avoids possible later disagreement. In almost all cases, the Association will wish to be satisfied that the lawyers, surveyors and other experts that are instructed to act on behalf of the Member are those who, in the Association's experience, have the capacity and/or expertise that is necessary to deal with the particular claim and are people with whom the Association already has an established relationship. Therefore, Rule 62.3 gives the Association the right to make such appointments on behalf of the Member whenever it thinks it necessary to do so.

In some cases, a Member may instruct an external lawyer or other adviser in his own jurisdiction to help the Member to fulfil the obligations that he has under Rule 62.1. b, c and d and Rule 62.4. However, since these are obligations that the Member must satisfy in any event in order to secure cover from the Association, cover is not available for the cost of doing so.

(K) …provided that no actions or directions of the Association shall imply an obligation to cover the liability, cost or expense… (Rule 62.3)
Should the Association suggest or direct the appointment of lawyers and other experts, or even appoint such people on behalf of the Member, or suggest or direct a particular course of action, in an effort to assist the Member before it has been established that cover is in fact available for the particular claim, Rule 62.3 makes it clear that the Association does not, by so doing, acknowledge or confirm to the Member that cover is in fact available for the claim. Notwithstanding the provision of such assistance the availability or otherwise of cover will be determined by the provisions of the Rules and any special terms of entry.

(L) …If the Member does not settle, compromise or dispose of a claim or of proceedings after being required to do so by the Association any recovery… shall be limited… (Rule 62.3)
Rule 62.3 goes on to outline the consequences of the Member's failure to settle, compromise etc., the claim or any proceedings as and when required by the Association. In such circumstances, the Association is obliged to limit the compensation that is payable to the Member to the amount that the Association considers would have been recoverable by the Member if the matter been concluded as directed.

If the Association directs a Member to settle a claim, it will normally indicate the maximum figure that will be recoverable from the Association if the Member settles the case as directed by the Association. In the case of P&I cover, this figure will generally be gauged by reference to an available settlement offer, and in the case of Defence risks, by reference to the costs and recoverable costs that have been incurred up to the time of the direction.

(M) A Member shall…provide assistance, where such work can be performed by the Member or by persons the Member has employed or regularly engaged… (Rule 62.4)
Rule 62.4 obliges the Member to play an active role in the claims handling process, and to ensure that the work that can and should be done by the Member or his employees is in fact done in order to avoid or minimise the unnecessary involvement of experts or other third parties and the consequent costs of doing so. Rule 62.4 should also be read in conjunction with Rule 40.1.f which provides that cover is not available for costs that are incurred by the Member in order to provide such assistance to the extent that such costs can reasonably be considered to be the Member's internal administrative costs and expenses.

Rule 63 Exclusion of liability

1 The Association and/or directors and employees of the Gard group shall not be liable for any negligence, errors and/or omissions whatsoever be committed by the directors and/or employees of the Gard group and/or by external lawyers, advisers or other experts, in connection with their employment or engagement with or on behalf of the Gard group and/or the Member.

2 The Association and/or directors and employees of the Gard group shall not be liable for monies which are lost, having been collected by persons engaged on behalf of the Member, or entrusted to such persons.

3 The Association shall not be liable to pay interest on any sums due from it to the Member.

Guidance

It is considered both necessary and reasonable in the context of mutual insurance that the Association and/or directors and employees of the Gard group should not be liable for the consequences of any negligence in the handling of a case or for any advice that is given in relation to a case or to a Member generally, whether on the part of the Gard group's own employees, or on the part of experts, such as lawyers and surveyors, that are engaged to handle the case on the Member's behalf. The reason for this is that any damages or other sums that would be payable to an individual Member in the event of such liability would have to be financed by the membership as a whole, and would, therefore, result in a reduction of the funds that are available to protect the interests of the other Members.

For similar reasons, the Association and/or directors and employees of the Gard group also have no liability for monies that are lost after they have been collected by, or entrusted to, correspondents, agents or other persons that are engaged on behalf of the Member.

Finally, Rule 63.3 establishes that the Association is not liable to pay interest on sums that are payable to the Member regardless of the time that may expire between the moment when the Member incurs a liability, cost or expense, and the time when it is reimbursed by the Association.

Rule 64 Recoveries from third parties

1 When the Member has a right of recourse against a third party for any liability, loss, cost or expense covered by the Association, the Association shall be subrogated to the Member's right of recourse upon payment by the Association to or on behalf of the Member in respect of the liability, loss, cost or expense.

2 Where the Association has made a payment in respect of any liability, loss, cost or expense to or on behalf of a Member, the whole of any recovery from a third party in respect of the case to which that liability, loss, cost or expense relates shall be credited and paid to the Association up to an amount corresponding to the sum paid by the Association together with any interest element on that sum comprised in the recovery, provided however, that

- **a** where because of a deductible in its terms of entry the Member has contributed towards a liability, loss, cost or expense any such interest element shall be apportioned between the Member and the Association taking into account the payments made by each and the dates on which those payments were made; and
- **b** the Association shall retain the whole amount of any award of costs in respect of its own handling of any case; and

3 **a** In respect of any recovery whatsoever under a Defence entry the Association shall determine, at its sole discretion, what part of that recovery represents a reasonable amount (the "Reasonable Amount") that should be allocated to costs and expenses (the "Costs"), regardless of whether any specific agreement, award or order as to costs has been made, and regardless of whether the recovery has been agreed by settlement or decided by a court or other competent authority. When determining the Reasonable Amount, the Association may take into account the proportion of the realistic claim plus interest and Costs that has been recovered and any other matters which the Association considers relevant. Once the Reasonable Amount has been established the Member will be given due credit, if applicable, for the corresponding contribution it has made to the Costs incurred by way of deductible in line with the agreed deductible structure.

b Subject to Rule 64.3.a all monies recovered for a Member with Defence cover shall be paid over to the Member, except that the Association may deduct from such monies and retain any amount due to the Association from the Member.

Guidance

(A) Introductory remarks

The Member may have a right of recourse against a third party for a liability, loss, cost or expense that is covered by the Association. Such right of recourse can arise under a contract between the Member and the third party such as,

for example, the right that arises as result of a clause in a charterparty or other contract of employment that obliges the charterer or contractor to indemnify the Member for any liability that he incurs to a third party.

If the Member has rights or potential rights of recourse against a third party, he is obliged under the Rules to take, and to continue to take, reasonable steps to preserve those rights, in order to protect the interests of the Association, e.g. by ensuring that his recourse claim does not become time-barred or prejudiced in any way by his acts or omissions. See Rule 62.1. However, the Member does not have any obligation to pursue a claim against a third party to its conclusion before he is entitled to compensation from the Association.

Rule 64 regulates the rights and obligations of the Association and the Member in relation to any rights that the Member may have to make recoveries from third parties.

(B) …the Association shall be subrogated to the Member's right of recourse upon payment by the Association… (Rule 64.1)
Rule 64.1 provides that, upon payment of compensation for the Member's claim, the Association is subrogated to any rights of recourse that the Member may have against third parties, whether they be charterers, contractors, the owner of another ship, or any other third party.

Subrogation is a legal term describing the right held by insurers (here the Association) legally to pursue a third party that has caused an insurance loss to the insured (here the Member and/or co-assureds). Having indemnified the Member under the contract of insurance in respect of an insured loss, the right of subrogation entitles the Association as the insurer to recover from a third party having allegedly caused casualty the amount of the claim paid by the Association to or on behalf of the Member in respect of the insured loss(es).

Legally the Association as insurer is subrogated to the claim as it is in the hands of the Member or co-assured(s). For example, if there is a maritime lien or some other security rights connected to the claim, the Association can exercise such rights. In other words, the Association as insurer takes over from the Member the rights that the Member would have in respect of the recourse claim if that claim were to be pursued by the Member himself. However, the Association is subrogated only to the extent that it has compensated the Member. This is important to remember since the recourse claim that may be made against a third party may include items of claim that do not concern the Association, e.g. liabilities, losses etc., that are insured by other insurers and/or uninsured losses that are borne by the Member. For further comments about subrogation, reference is made to the explanatory

notes to the Nordic Marine Insurance Plan of 2013, version 2023, section 5-13.

For example, if the entered vessel has been struck by another ship whilst moored at a berth, and the collision has caused injury to members of the vessel's crew, damage to the vessel and the cancellation of a charter or other contract of employment, the Association will be subrogated to the Member's rights of recourse against the other ship upon payment of compensation to the Member for the crew injury claims. However, whilst the Association will be subrogated to whatever rights the Member has to bring a recourse action against the owners of the other ship for the personal injury claims, the Association will not be subrogated to those parts of the recourse claims that are made in relation to the damage to the entered vessel, or for the financial losses that have been incurred by the Member as a result of the cancellation of the charter or other contract of employment. Therefore, the Member will retain the right to sue the owners of the other ship for the uninsured loss that has been caused by the cancellation of the charter, whilst the right of recourse for the claim for damage to the vessel lies with the hull underwriters who will be subrogated to such claims pursuant to the hull policies.

(C) …the whole of any recovery from a third party…shall be credited and paid to the Association up to an amount…together with any interest… (Rule 64.2)

If the Association has compensated the Member for any particular liability, loss, cost or expense, the Association has the right to receive any and all monies that are recovered from a third party in respect of such liability, loss etc., up to, but not exceeding, the amount that has been paid by the Association.

However, the right of recovery may be complicated if, for example, the claims that are brought against the other colliding ship in the example that is given in (B) were to be settled with the approval of the Association, on terms that 90 per cent of all claims is payable by the other ship. In such circumstances, the hull underwriters will receive 90 per cent of the claim to which they are subrogated under the hull policy, the Member will receive 90 per cent of the uninsured claims and the Association will receive 90 per cent of the personal injury claims to which they have been subrogated under the Rules. The Association is entitled to receive the full 90 per cent even if part of that recovery relates to a deductible that the Member has borne for the crew injury claims since the Association is entitled to receive all of the recovery up to the amount of the compensation that it has paid to the Member before the Member has the right to retain funds in respect of the deductible. This is based on the principle of the "last dollar paid the first recovered."

The recovery claim may also include interest for the time that has elapsed between the date on which the Member has incurred the liabilities, losses etc., and the date on which he has been able to obtain recovery from the

third party. In such circumstances, the Association is entitled to receive its proportion of such interest since the Member has benefited, and the funds of the membership have been depleted, as a result of the fact that the Member has received compensation from the Association before recovering from the third party. Therefore, Rule 64.2 gives the Association the right to receive that proportion of such interest that the sum paid by the Association to the Member bears to the total principal sum that has been claimed by the Member from the third party.

(D) …where because of a deductible in the terms of entry the Member has contributed towards a liability…any such interest element shall be apportioned between the Member and the Association… (Rule 64.2.a)
If the Member has contributed to the settlement of a claim that has been brought against him, and a recovery claim is then brought against a third party to recover the sums that have been paid to the claimants, the Member is entitled to receive that proportion of the interest that is recovered from the third party in relation to such claim that the deductible bears to the total principal amount that has been recovered.

(E) …the Association shall retain the whole amount of any award of costs in respect of its own handling of any case… (Rule 64.2.b)
Whereas the commentary in (C) relates to the principal amount that has been recovered from the third party by way of subrogation and the commentary in (D) relates to the interest that may have been recovered in addition to the principal amount, the commentary in (E) relates to the costs that may have been recovered from the third party.

In the case of the costs that have been incurred in relation to P&I claims, Rule 64.2.b permits the Association to retain out of any recovery that may be made from a third party the whole amount of the costs that have been incurred by the Association that have either been awarded by a court or tribunal or agreed to be payable as part of a settlement. Such costs include travelling costs that have been incurred by Association staff and legal and enquiry costs that have been incurred by the Association under Rules 30 and 31.

However, the costs that have been recovered in relation to Defence claims are allocated between the Association and the Member in the manner described in (F) below.

(F) In respect of any recovery whatsoever under a Defence Entry ... (Rule 64.2 c)
Rule 64.3.a regulates the Association's right to determine what part of the total amount recovered from a third party under a Defence entry shall be allocated to cover the Association's and the Member's costs and expenses (together 'Costs') incurred in connection with making or defending the claim.

The provision only applies where the Member has made a recovery from a third party.

It has always been the case that where a Member settles or compromises a claim the Association has discretion to decide what portion of the settlement sum should be attributable to Costs.

With respect to Costs incurred in relation to court or arbitration proceedings, the court or tribunal rarely decides that one party shall cover the whole of the other party's Costs. If, however, the court or tribunal awards full recovery of the Association's and the Member's actually incurred Costs, the recovered Costs will be distributed between the Association and the Member according to the portion of Costs actually paid by each of them, and both the Association and Member will consequently receive full recovery of their respective Costs.

In many cases, however, the Costs awarded by a court or tribunal will be substantially lower than the actual Costs incurred in obtaining the recovery. For example, Costs incurred in locating and attaching assets for security are usually not recoverable and Costs incurred in seeking enforcement action of any order or award may not be recoverable, moreover, legal costs awarded by a court or tribunal are often lower than the actually incurred Costs. Therefore, the Association may determine that a part of the total amount recovered shall be allocated to cover Costs, regardless of the amount of any Costs awarded by a court or tribunal. This part of the total amount is referred to in the provision as the 'Reasonable Amount'.

When deciding what is the Reasonable Amount the Association will have regard to the entire factual circumstances of the particular case:

- The Association will usually take into account the proportion of the total sum recovered compared to the realistic claim, plus Costs and interest.
- The Association will never recover more than the Costs it has incurred plus interest on that amount.

The Association will give due credit to the Member for the Member's contribution to the Costs by way of deductible in line with the agreed deductible structure.

Allocation and distribution of the 'Reasonable Amount' in practice
The standard percentage deductible for Defence entries is 25 per cent, subject to a minimum deductible of USD 5,000, and a maximum deductible of USD 50,000, see Rule 57.3. Therefore, should the Costs of a Defence claim exceed USD 5,000 the Association will pay the next USD 15,000 and any additional Costs will be borne 25 per cent by the Member and 75 per cent by the Association, up until the Member's maximum deductible of USD 50,000, whereafter any further Costs will be borne by the Association alone subject to the absolute limit of USD 1 million (Rule 49).

Should the Member be successful in making a recovery from a third party in relation to a Defence claim, the Association shall determine in its sole discretion what part of that recovery represents the Reasonable Amount that shall be allocated to Costs.

The Reasonable Amount is to be shared between the Member and the Association in accordance with the Costs that each has paid prior to the recovery in accordance with the agreed deductible structure. If the Reasonable Amount is less than the Costs that have been incurred then such allocation is made in accordance with a system of priority based on the principle of the "last dollar paid is the first dollar recovered."

Example

A. Costs Incurred

If the total Costs incurred are USD 100,000 then:

1. The Member pays the first USD 5,000;
2. The Association pays the next USD 15,000;
3. The Member pays 25 per cent of the next USD 80,000, (i.e. USD 20,000) and the Association pays 75 per cent of that figure (i.e. USD 60,000);

Therefore, the Member pays a total of USD 25,000 and the Association pays a total of USD 75,000.

B. Allocation of the Reasonable Amount

If the Reasonable Amount is determined at USD 50,000 then:

The Association recovers 75 per cent of such Reasonable Amount, i.e. USD 37,500, and the Member recovers 25 per cent, i.e. USD 12,500.

Effect of the minimum deductible

In the above example, the Reasonable Amount only covers part of the Costs exceeding the first USD 20,000 paid (the part to which the Member contributes 25 per cent and the Association contributes 75 per cent). The Costs recoverable by the Member and the Association can therefore be calculated by attributing 25 per cent of the Reasonable Amount to the Member and 75 per cent to the Association.

However, if the Reasonable Amount is sufficient, the Costs recoverable by the Member and the Association are not calculated by simply attributing 25 per cent of the Reasonable Amount to the Member and 75 per cent to the Association. In such a case, in accordance with the "last dollar paid is the first dollar recovered" principle, the Reasonable Amount must (i) first be applied to cover the Costs exceeding the first USD 20,000, allowing the Member and the Association recovery of their respective contribution to such Costs; (ii) thereafter, the Reasonable Amount must be attributed to the Association to

recover the USD 15,000 paid by the Association; (iii) finally, any remaining part of the Reasonable Amount will contribute to the Member's payment of the first USD 5,000 (the minimum deductible). Notably, it is only where all the Association's Costs have been recovered in full that the Reasonable Amount will contribute to the Member's minimum deductible.

Example

A. Costs Incurred

If the total Costs incurred are USD 28,000 then:

1. The Member pays the first USD 5,000;
2. The Association pays the next USD 15,000;
3. The Member pays 25 per cent of the remaining USD 8,000 (i.e. USD 2,000) and the Association pays 75 per cent of that figure (i.e. USD 6,000);

Therefore, the Member pays a total of USD 7,000 and the Association pays a total of USD 21,000.

B. Allocation of the Reasonable Amount

If the Reasonable Amount is determined at USD 25,000 then:

a. The Association recovers 75 per cent of USD 8,000 which is the amount paid over USD 20,000 (i.e. USD 6,000) and the Member recovers 25 per cent of that amount (i.e. USD 2,000)
b. The Association receives in full the next USD 15,000
c. Once the Association has received all sums it has paid, the balance of USD 2,000 will be allocated against the minimum deductible and paid over to the Member.

Therefore, the Member receives a total of USD 4,000 and the Association receives USD 21,000.

Effect of the maximum deductible

In the above examples, the contribution to Costs by the Member was less than the standard maximum deductible for Defence entries of USD 50,000. Since the Member and the Association contribute 25 and 75 per cent to the Costs respectively up to the maximum deductible, the Member's maximum deductible of USD 50,000 will be reached when the total Costs reach USD 200,000. At this point any further Costs will be borne by the Association alone, subject to the absolute limit of USD 1 million (Rule 49).

In such cases, in accordance with the "last dollar paid is the first dollar recovered" principle, the Association is entitled to retain out of the Reasonable Amount any amounts that it has paid in excess USD 200,000. The balance is then shared in accordance with the agreed deductible structure:

Example

A. Costs Incurred

If the total Costs incurred are USD 220,000 (i.e. in excess of the Costs on which the Member would pay deductible)

1. The Member pays the first USD 5,000;
2. The Association pays the next USD 15,000;
3. The Member pays 25 per cent of the next USD 180,000 (i.e. USD 45,000) and the Association pays 75 per cent (i.e. USD 135,000);
4. The Member has reached the maximum deductible contribution (USD 50,000) and the Association will pay all Costs in excess of USD 200,000 (i.e. the remaining USD 20,000)

Therefore, the Member pays a total of USD 50,000 and the Association pays a total of USD 170,000.

B. Allocation of the Reasonable Amount

If the Reasonable Amount is determined at USD 100,000 then:

a. The Association recovers in full the USD 20,000 that it has paid in excess USD 200,000;

b. The Association recovers 75 per cent of the balance of the Reasonable Amount (i.e. 75 per cent of the remaining USD 80,000, i.e., USD 60,000); and

c. The Member recovers 25 per cent of the balance of the Reasonable Amount (i.e. 25 per cent of USD 80,000, i.e., USD 20,000).

Therefore, the Association recovers USD 80,000 and the Member recovers USD 20,000.

(G) Subject to Rule 64.3.a, all monies recovered for a Member with Defence cover shall be paid over to the Member, except that the Association may deduct from such monies and retain any amount due to the Association from the Member… (Rule 64.3.b)

Rule 64.3.b gives the Association the right to set-off any amounts that are due from the Member to the Association against any and all monies that have been recovered for a Member in a case for which the Member has been afforded Defence cover. Such amounts include unpaid premiums, deductibles or any other sums but a deduction cannot be made unless the relevant amount is due and payable to the Association at the time that the monies are recovered for the Member. This deduction will be made from the amount recovered after any amount due to the Association under Rule 64.3.a has been reimbursed.

For example, if the Association has recovered the sum of USD 125,000 from a charterer on the Member's behalf in respect of outstanding hire, at a time when a total of USD 25,000 is due to the Association from the Member by way of accrued deductibles, and at a time when the second instalment of the Estimated Total Call for that Policy Year has been debited in the amount of USD 250,000, but has not yet fallen due for payment, the Association is entitled to deduct and retain the sum of USD 25,000 from the recovered amount of USD 125,000, but is not entitled to deduct the second instalment of the Estimated Total Call since this is not yet due for payment. Therefore, the Association must release the sum of USD 100,000 to the Member out of the total sum of USD 125,000 that has been recovered from the third party.

Rule 65 Discharge

Payment of a claim by the Association to a manager of the Vessel or to any other agent of the Member shall fully discharge the Association's liability to the Member.

Guidance

(A) Payment of a claim by the Association… (Rule 65)

Rule 65 does not apply to all payments that may be made by the Association, but only to payments of 'a claim', i.e. a claim that is covered under the Rules and terms of entry, as opposed to other forms of payment such as a return of premium when the vessel is laid up.

Rule 65 merely deals with the payment of claims to the Manager of the vessel or to any other agent of the Member. The Association may also be authorised to pay claims to other parties such as a mortgagee bank pursuant to an assignment to the bank of the Member's right to receive such payments. Such issues are regulated by Rule 69 and typically loss payable clauses and letter of undertaking to the mortgagee agreed in each particular case and not Rule 65. See also guidance to Rule 58, paragraph (F) and Rule 60.

(B) Payment of a claim…to a manager of the Vessel…shall fully discharge the Association's liability to the Member (Rule 65)

Rule 65 should be read in conjunction with Rule 60.2, which establishes that any payment that is made by the Association to one of the joint members, co-assureds or affiliates shall fully discharge the obligations of the Association in respect of such payment. Therefore, if the manager has the status of a joint member, co-assured or affiliate, the effect of such payment is governed by Rule 60.2. However, a manager does not always have such status under the contract of insurance and Rule 65 is intended to protect the Association in the event that a claim is paid to a manager that does not have such status. Therefore, Rule 65 is based on the premise that the Association can reasonably expect the manager of the insured vessel to have an involvement with the claim, and that, consequently, the Association is justified in making such payment to him.

(C) Payment of a claim…to any other agent of the Member…shall fully discharge the Association's liability to the Member (Rule 65)

The Association's liability to the Member for the claim will also be discharged when the Association has paid the claim to 'any other agent' of the Member. In practice, this will usually be the insurance broker that has been appointed by the Member, but, in principle, it may be any person that the Member has nominated as his agent for this purpose, such as a local representative in the country where the third-party claim has arisen. In this context, the word 'Member' is construed in its widest sense pursuant to the definition in Rule 1.1 and will include a co-assured and an affiliate.

However, the Association is discharged only if it is established that the relevant agent is authorised to accept payment. Therefore, the Association's liability to the Member is discharged fully only if it is proved that the broker has been authorised by the Member to receive such payment, or, if his authority in this regard has been withdrawn, that it was, nonetheless, reasonable for the Association to assume that he had such authority when the payment was made. In practice, the Association will not pay claims to a broker in the absence of an express notice from the Member that payment can be made in this manner. Such notice may be in the form of a general notice that confirms that the broker has authority to receive payment in respect of all claims, or in the form of a special notice that is restricted to a particular claim. In the absence of such a notice, the Association will pay a claim directly to the Member, and send notice to the broker that such payment has been made.

Should the Member revoke the authority of a manager of the vessel or any other agent to receive such payments, the Member must give notice of that event to the Association in order to ensure that the Member's position is not prejudiced should the Association make a payment to such a party after his authority has been revoked. In the absence of such a notice, the Association is entitled to assume that payment can still legitimately be made to such a manager or agent, and any such payment will fully discharge the liability of the Association to the Member.

Rule 66 Currency of payments

1 Unless the Association in its sole discretion otherwise decides, the Association shall make all payments for liabilities, losses, costs and expenses covered by the Association in the currency in which the Member's Premium Rating is calculated (the "premium currency").

2 Where the Member has made a payment in respect of any liability, loss, cost or expense which is covered by the Association in a currency other than the premium currency, that payment shall be converted into the premium currency or such other currency as the Association in its sole discretion decides, at the rate of exchange ruling on the day payment was made by the Member.

3 Where a deductible under Rule 57 is expressed in a currency other than the premium currency, the deductible shall be converted into the premium currency at the rate of exchange ruling on the day payment was made by the Member.

4 Where a payment in respect of a liability, loss, cost or expense is due at a fixed time and the Member without valid reason neglects to make payment when due, the Member shall not be entitled to compensation at a higher rate of exchange than that ruling on the day on which payment was due.

5 All rates of exchange for the purposes of this Rule 66 shall be as conclusively certified by the Association.

Guidance

(A) Unless the Association in its sole discretion otherwise decides, the Association shall make all payments…in (the 'premium currency') (Rule 66.1)

The provisions of Rule 66 recognise the reality that it is not possible in an international business environment to carry on business in one currency. However, it is also important for the financial well-being of the Association and of the membership as a whole that, whatever be the currency of a particular payment, the officers of the Association are able to maintain an accurate record of debits and credits that affect the overall financial standing of the Association. Consequently, Rule 66 provides guidelines that are intended to assist that process.

Rule 66 establishes the currency in which the Association shall pay claims to Members. The Association will indemnify the Member in the currency in which the Member's premium rating is calculated (the premium currency). For example, if a Member's premium is rated in US Dollars, he will be indemnified in that currency.

However, in some cases the premium currency cannot be used. It can, for example, be prohibited under the sanction legislation in force at the place where the casualty took place. To enable the Association fully to discharge

its obligations to a Member in respect of liabilities, losses, costs or expenses falling within the scope of cover when the premium currency cannot be used, the Association may in its sole discretion make payments to the Member in another currency than the agreed premium currency.

(B) …shall be converted…into the premium currency… (Rules 66.2 and 66.3)
If a Member has settled a claim in a currency other than his premium currency, Rules 66.2 and 66.3 provide the mechanism for calculating the amount of the indemnity and any deductible that is to apply. Conversion is made from the currency of payment, and from the currency of the deductible, if that is different from the premium currency, to the premium currency at the rate of exchange that prevailed on the date when the Member paid the claim. However, if the Association has exercised its discretion to pay the third party claim directly to the third party on behalf of the Member or made payment directly to a third party pursuant to a ' Blue Card' or a similar guarantee, the conversion is made on the date that the Association made payment.

(C) …the Member…neglects to make payment when due… (Rule 66.4)
If a Member fails without valid reason to pay a claim when due, Rule 66.4 ensures that the Association will not be prejudiced by subsequent adverse exchange rate fluctuations. In such circumstances, the Member cannot recover more compensation than that which he would have been entitled to recover at the rates that prevailed on the date that payment was due.

(D) All rates of exchange…shall be conclusively certified by the Association. (Rule 66.5)
Rates of exchange fluctuate rapidly and constantly, and much time and expense could be incurred to the detriment of the membership as a whole if such issues were to be debated at length on each and every occasion on which the issue arose for consideration. Consequently, Rule 66.5 provides that if there is a dispute as to the correct rate of exchange, the rate determined by the Association is to be conclusive.

Rule 67 Payment first by Member

1 Unless the Association shall in its absolute discretion otherwise determine, it is a condition precedent to a Member's right to recover from the Association in respect of any liability, loss, cost or expense that the Member shall first have discharged or paid the same.

2 The Association shall not be obliged to compensate a Member for a payment made to a third party unless the Member's liability to make that payment has been determined by:
- **a** a final judgement or order of a competent court; or
- **b** a final arbitration award (if settlement of the dispute by arbitration was agreed upon before the dispute arose, or was, with the consent of the Association, agreed upon subsequently); or
- **c** a final settlement of the dispute approved by the Association.

3 Notwithstanding sections 1 and 2 above, where a Member has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a member of the Crew, the Association shall discharge or pay such claim on the Member's behalf directly to such member of the Crew or dependent thereof, provided always that;
- **a** the member of the Crew 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; and
- **c** with regard to liability, costs and expenses falling within Rule 19.2 above any payment made by the Association shall be made as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such payment.

Guidance

(A) ...it is a condition precedent to a Member's right to recover…in respect of any liability, loss, cost or expense that the Member shall first have discharged or paid the same... (Rule 67.1)

It is a fundamental characteristic of a contract of marine insurance that it is a contract of indemnity, and the contract between the Member and the Association is a contract of marine insurance in this sense. Consequently, unless the Association in its absolute discretion determines otherwise, the Member is not entitled to be indemnified by the Association until he has either incurred the relevant loss, cost or expense or discharged his liability to the third party claimant. This is generally referred to as the 'pay to be paid' or 'payment by the Member first' principle.

It follows that no third party has any right to claim compensation directly from the Association in relation to claims that the third party has against the Member except in the limited circumstances described below. Except in those limited circumstances, the Association will pay compensation to the Member only, and will do so only when the Member has first paid or otherwise discharged his liability, loss etc.

However, the Association may decide 'in its absolute discretion' to waive this provision in individual cases and to compensate a third party directly on behalf of the Member. Such discretion can be exercised by administrative officers of the Association. This is normally done when the matter is straightforward and there are no unusual or complicating factors, as this facilitates prompt settlement which benefits all parties. However, the fact that this may occur in individual cases cannot be treated as a general waiver by the Association of the 'pay-to-be-paid' principle.

In limited circumstances, the 'pay to be paid' principle will be in conflict with mandatory law. The scope of policy defences available to the Association in such circumstances will depend on the merits of the case and under which law the direct action claim is made. The Norwegian Insurance Contract Act of 1989 ('Norwegian ICA'), section 7-8, second paragraph, can serve as an example. Pursuant to the Norwegian ICA, section 7-8, second paragraph, a third-party claimant can bring a claim directly against the liability insurer when Norwegian law shall apply if the assured has become insolvent and unable to discharge his liability. Thus, the Association and the Member cannot agree to the detriment of the third-party claimant that the Norwegian ICA, section 7-8 shall not apply. However, when such 'direct action' is permitted under Norwegian law, the Association will usually be entitled to rely on all defences that are, or would have been available, to the Member in relation to the third-party claim, and on all policy defences that the Association would have been entitled to invoke in relation to the Member's claim under the contract of insurance had the Member first discharged his liability to the third party and, thereafter, sought compensation from the Association.

In other circumstances, the Association will provide guarantees, certificates or undertakings to various authorities pursuant to international conventions or local laws that make the Association directly liable to such authorities for claims that such authorities or other third parties have against the Member, e.g. certificates that may be provided by the Association under international conventions such as the CLC, Bunkers,, Nairobi Wreck Removal and Maritime Labour Convention.

(B) The Association shall not be obliged to compensate a Member for a payment made to a third party unless the Member's liability to make that payment has been determined… (Rule 67.2)
Cover is available only for liabilities, losses, costs and expenses for which the Member is legally liable, and cover is not available for liabilities, losses etc., that have been incurred by the Member in circumstances where there is no legal liability to do so. Consequently, Rule 67 is intended to ensure that membership funds are used by the Association only when the Association is satisfied that it is reimbursing the Member for liabilities, losses, costs and expenses for which the Member is legally liable.

The Member's liability may be determined for this purpose by a judgment or order of a competent court, or if the dispute is subject to arbitration, by an award of a competent arbitration tribunal, or by a settlement that has been agreed with the prior approval of the Association. In all cases, the judgment, award or settlement must be final in the sense that it is a final determination of the rights of the parties without the necessity for further legal proceedings, and without the possibility of any further appeal.

Rule 67.2 states that the Association 'shall not be obliged to compensate,' which means, in effect, that the Association has the discretion to compensate the Member in circumstances other than those set out in sub-paragraphs a to c of the Rule. For example, if the Member is obliged, pursuant to the applicable law, to pay compensation or damages to a third party against a judgment that is not a final judgment in the sense that the Member is entitled to recover that amount if the judgment were to be overturned on appeal, the Association has the discretion to compensate the Member at the time that he makes the payment, rather than obliging the Member to remain 'out-of-pocket' until the case is finally resolved.

(C) Notwithstanding sections 1 and 2 above, where a Member has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a member of the Crew, the Association shall discharge or pay such claim on the Member's behalf directly to such member of the Crew or dependent thereof... (Rule 67.3)
To harmonize the standard terms of cover for mobile offshore units with the standard terms of P&I cover for ordinary merchant ships, the Association has for the benefit of members of the crew agreed that the 'payment by Member first' principle shall be waived in the case of claims brought against Members by the crew or their dependants for personal injury, illness or death subject to the provisos in Rule 67.3 a and b. Therefore, Rule 67.3 aligns the Rules for mobile offshore units to the terms and conditions that are applied by the other International Group Clubs in this respect and obliges the Association to discharge or pay such claims if the Member has failed to do so. In other words, the Association is obliged to treat such claims as if the Member

had discharged its legal liability to do so and had thereafter made a claim for recovery against the Association. Consequently, it enables members of the crew or their dependants, as the case may be, to make a claim directly against the Association in these limited circumstances irrespective of whether the Member is insolvent or not as discussed under section (A) above.

(D) ...provided always that; a the member of the Crew or dependent has no enforceable right of recovery against any other party and would otherwise be uncompensated… (Rule 67.3.a)

Rule 67.3 is subject to two provisos, the first of which restricts the ability of the Association to discharge the Member's legal liability to pay such damages or compensation to circumstances in which the crew member or his or her dependent, as the case may be, has no enforceable legal right of recovery from any other party. Consequently, the first proviso mirrors the policy that underpins Rule 52 and the phrase 'any other party' could either be a person or entity that is legally co-responsible with the Member for the occurrence that caused the injury, illness or death, or any social, public or private insurer that is required to indemnify the crew member or his or her dependants by the legislation or collective wages agreement that governs the contract of employment of the crew.

It also follows logically that if a social security provider or some other third party has compensated the crew member and wishes to seek an indemnity from the Association by way of subrogation, or as a result of an assignment of the claim by the crew member, the Association has no liability for such claim since it is clear in such circumstances that the crew or dependent did have an enforceable right of recovery against another party and has not been uncompensated.

(E) ...provided always that, the amount payable by the Association shall under no circumstances exceed... (Rule 67.3.b)

The second proviso to Rule 67.3 provides that the Association's ability to discharge the Member's legal liability to pay such damages or compensation cannot exceed the amount to which the Member would otherwise have been entitled to recover from the Association under the Rules and the Member's terms of entry.

Consequently, if the Member has excluded liability in respect of Crew from the scope of P&I cover under his terms of entry, Rule 67.3 is inapplicable and does not enable the Association to discharge or pay such claim on the Member's behalf directly to the relevant crew member or dependant. Similarly, the right to claim under Rule 67.3 does not extend to any deductible that may apply to the Member's terms of entry.

Proviso (b) also makes it clear that the Association is entitled to apply against the claim any defences that it could have applied against the Member if the Member had made a claim against the Association after discharging his liability to the crew member or dependants. The purpose of this proviso is to ensure that the third party claimant does not acquire any better legal rights against the Association than the Member would have had if the Member had discharged his legal liability and made a recovery claim against the Association. Therefore, the Association is entitled to utilise any available policy defence to the subject claim, e.g. that the personal injury, illness or death has been caused by non-compliance by the Member with the rules, recommendation and requirements of the classification society, or by non-compliance with the statutory requirements of the vessel's flag state relating to e.g. the safe operation or security of the vessel as discussed under Rule 8.

Rule 67.3 is likely to be relevant in most cases where the Member has failed to discharge its legal liability to the crew as a result of insolvency, or the winding up of the operation or some other financial difficulty. In such circumstances, the Member may also have failed to pay premiums or other sums to the Association when due so that, if the claim were to be brought by the Member against the Association, the Association would have the right under Norwegian law, to set off such unpaid premiums etc., against any sums that were being claimed by the Member. Consequently, the Association is entitled to set off against any damages or compensation that is payable to crew members or dependants pursuant to Rule 67.3, any unpaid premiums that are owed by the Member that have fallen due for payment in the two years prior to the time when the Association is called upon to pay damages or compensation to the crew or dependents. Reference is made to the Norwegian ICA, sections 8-3, cf. 7-8 and 7-6.

(F) …provided always that, with regard to liability, costs and expenses falling within Rule 19.2 above any payment made by the Association shall be made as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such payment. (Rule 67.3. c)
Vessels that are subject to the Maritime Labour Convention 2006 as amended, are required to display certificates issued by an insurer or other financial security provider confirming that insurance or other financial security is in place for liabilities in respect of:

- outstanding wages and repatriation of seafarers together with incidental costs and expenses in accordance with MLC Regulation 2.5.2, Standard A2.5.2 and Guideline B2.5, and
- compensation for death or long-term disability in accordance with Regulation 4.2, Standard A4.2.1 paragraph 1b and Guideline B4.2.

The cover for mobile offshore units is harmonized with the P&I cover for ordinary ships and the Association provides the necessary certification (MLC Certificates). However, should the Association be obliged to pay pursuant to an MLC Certificate a liability that falls outside the scope of cover, the Member is obliged to indemnify the Association to that extent. As discussed under Rule 60 above, all co-assureds, Members and Joint Members are jointly and severally liable for all sums due to the Association. See guidance to Rule 19, paragraph (L).

Rule 68 Payments and undertakings to third parties

1 The Association shall be under no obligation to provide any guarantee, certificate, bail or other security or undertaking ("security") for or on behalf of a Member, or to pay the costs of such provision.

2 The Association may at its discretion provide security or pay the cost of such provision in relation to liabilities within the scope of a Member's cover, and may recover any costs incurred thereby from the Member.

3 The Member shall indemnify the Association for any liability the Association may incur to a third party under or in connection with any security issued by the Association for or on behalf of the Member and for any payment made by the Association to a third party for or on behalf of the Member (irrespective of whether that liability was incurred, or that payment was made during or after the period of the Member's insurance by the Association), save to the extent that, had that third party pursued its claims in respect of the relevant liability against the Member rather than against the Association, or had that payment been made by the Member rather than by the Association, the Member would have been entitled to reimbursement pursuant to these Rules.

4 The Protective Co-Assured shall indemnify the Association for any liability the Association may incur to a third party for any payment made by the Association to a third party which are to be borne by the Protective Co-assured party under the terms of the Charterparty.

5 a Where the Association has issued any guarantee, undertaking or certificate as referred to in Rule 55.2 or other bail or security by which it undertakes to directly meet or guarantee any relevant liabilities (together the "Direct Liabilities") and claims in respect of Direct Liabilities alone or in combination with other claims may in the sole opinion of the Association exceed any limit(s) on the cover provided by the Association as set out in the Rules or in the Certificate of Entry, the Association may in its absolute discretion defer payment of any such other claims or any part thereof until the Direct Liabilities, or such parts of the Direct Liabilities as the Association may in its absolute discretion decide, have been discharged.

b To the extent that any claims or liabilities (including any Direct Liabilities) discharged by the Association exceed the said limit(s) any payment by the Association in respect thereof shall be by way of loan and the Member shall indemnify the Association promptly upon demand in respect of such payment and shall assign to the Association to the extent and on the terms that the Association determines in its discretion to be practicable, all the rights of the Member under any other insurance and against any third party.

Guidance

(A) The Association shall be under no obligation to provide…security…or to pay the costs of such provision… (Rule 68.1)

The Association provides indemnity insurance to its Members in accordance with the 'pay to be paid' principle as discussed under Rule 67 above. Consequently, if the Association were to be legally obliged to provide a guarantee, certificate, bail or other security to a third party, that would undermine the 'pay to be paid' principle since the Association would, thereby, become committed to pay compensation directly to the third-party beneficiary of the security. Rule 68.1 recognises the importance of this principle and emphasises that the Association does not have a legal obligation to provide security to third parties on behalf of the Member except in special and very limited circumstances.

Furthermore, if the Member pays a fee to some other security provider to provide security to a third-party claimant in the form of a bank guarantee or bail bond or some other form of guarantee, Rule 68.1 makes it clear that the Association is not obliged to compensate the Member for the costs that are incurred by him in this respect.

(B) The Association may at its discretion provide security or pay the cost of such provision in relation to liabilities within the scope of a Member's cover… (Rule 68.2)

Notwithstanding the above, the Association recognises the importance to a Member of the ability to trade his vessels without any undue risk of arrest by claimants that are seeking security. Therefore, the Association may, as a service to the Member and on a discretionary basis (such discretion can be exercised by administrative officers of the Association), agree to provide security on behalf of the Member, or to reimburse the Member for the cost that he has incurred in order to provide security by other means, e.g. a commission paid for a bank guarantee.

Should the Association exercise its discretion to provide security, it will usually do so only for claims that are, or are expected to be, within the scope of the Member's cover. The Association is less likely to provide security on behalf of the Member if there is doubt whether the claims fall within the scope of cover, or if the claims exceed any applicable limit of cover, or if they fall within the Member's agreed deductible, particularly if a high deductible has been agreed pursuant to special terms of entry. Similarly, it is unlikely that the Association will provide security if the event or claim is likely to cause the Member to incur a liability that is specifically excluded under the Rules, e.g. liability for damage to hole or well as expressly excluded under Rule 37.

The Association will usually agree to provide security only in respect of claims that have already arisen, in the sense that an event has occurred that is likely to result in a claim or claims for which cover is available. In other words, the Association in common with all the other P&I insurers will not, except in special and very limited circumstances such a certificates required under the CLC, Wreck Removal or the Bunker Conventions, agree to provide security before a claim has arisen, i.e. they will not provide what is known as 'anticipatory security'.

The Member will normally request the Association to provide security for a claim that has already arisen when the claimant tries to enforce a claim by the arrest or threatened arrest of the Member's vessel, or by an injunction or other legal measures that prevent the Member from drawing upon funds in bank accounts, collecting freight or hire, or obtaining payment from hull insurers. Such action may cause damage to the Member's business interests since it may delay the operations of the vessel, or affect the Member's cash flow, or his ability to repay his financiers. Since the Association is not obliged to provide security in such circumstances, but has the discretion to do so, the Association will, when deciding whether to exercise such discretion, consider all the relevant circumstances including factors such as whether the Member has paid all premiums and other sums that are due to the Association. The Association will also take account of whether the Member has complied with his other obligations under the Rules. If the Member is in breach of such obligations, the Association is unlikely to exercise its discretion in favour of the Member at least until the Member has rectified such breaches, However, should the Member have failed to comply with those obligations that are considered to be fundamental conditions of cover, such as those that are specified in Chapter 3 of Part I of the Rules (e.g. the obligation to classify or certify the vessel properly pursuant to Rule 8), it is almost certain that the Association will not exercise its discretion to offer security for claims that have arisen during a period when the Member is not fulfilling, or has not fulfilled, such obligations.

If the Association agrees to provide security, it will, in most circumstances, offer its own letter of undertaking (the so-called 'Club letter of undertaking'), which is a form of security that is normally acceptable to claimants in most, but not all, countries. The provision of security in the form of a Club letter of undertaking has many advantages. It can be issued quickly once the amount and the terms and conditions of the security have been agreed. Furthermore, since the Association does not normally make any charge for providing a Club letter of undertaking, the Member does not incur the commission or other charges that a bank or surety bond provider would normally require, and his funds are not 'tied up' as collateral for the provision of such security.

If the claimant insists on receiving security in the form of a bank guarantee, surety bond or other financial guarantee rather than a Club letter of undertaking, the Association does have the ability to assist the Member by doing so. However, it is very unlikely that the Association will provide security in the form of a cash deposit, except where it is necessary to make a payment of cash into court in order to assist the Member to establish a limitation fund under the applicable law. Since such a limitation fund serves as security for all claims in respect of which the Member is entitled to limit his liability, the Association may exercise its discretion to make such a payment if it is mutually beneficial to the Member and the Association to establish a limitation fund promptly.

(C) The Member shall indemnify the Association for any liability the Association may incur to a third party under or in connection with any security…save to the extent that…the Member would have been entitled to reimbursement pursuant to these Rules. (Rule 68.3)

The fact that the Association provides security at the Member's request is not to be treated as an admission by the Association that cover is available for the claim. Security may be, and often is, demanded shortly after the event that gives rise to the claim. A detailed investigation of the circumstances of the event or casualty may not be feasible at such an early stage since it may delay the operation of the vessel. Consequently, security may be provided for a claim for which, at that stage, cover appears to be available.

However, further information may come to light during the course of subsequent investigation or litigation that casts doubt upon the Member's entitlement to cover. For example, it may transpire that the claim arises as a result of circumstances that would deprive the Member of defences or rights of limitation that would otherwise be available to him. Consequently, Rule 68.3 requires the Member to indemnify the Association in respect of any liability that may arise under, or in relation to, any payment that has been made by the Association pursuant to any security that has been provided by the Association on behalf of the Member in circumstances where the Member would not be entitled to receive compensation from the Association for the particular claim if such claim had been enforced against the Member rather than against the security that has been provided by the Association.

It is important to the membership as a whole to ensure that membership funds are not used to pay claims that are not insured by the Association. Accordingly, in order to secure a Member's potential liability to indemnify the Association in such circumstances, the Association may require the Member to provide counter-security as a condition of providing security to a third party on behalf of the Member. It will also require such counter-security if it is clear that only a part of the claim will be for the Association's account, e.g. if the Member's entry is subject to a large deductible or, in the case of collision claims, if the Association covers less than four-fourths of the liability.

The Association has the right to determine the form of counter-security that is to be provided by the Member in such circumstances. For example, the Association may require a guarantee from a first-class bank, or a surety bond from some other financial institution provided that it has an acceptable credit rating. The Association will also normally require such guarantee or surety bond to be issued in, and be subject to, the law and jurisdiction of, a country where the guarantee or surety bond can be easily enforced. This will include guarantees or surety bonds that are issued in Norway and subject to Norwegian law jurisdiction and guarantees or surety bonds issued in the United Kingdom or the United States and which are subject to English or US law and jurisdiction.

If, in the case of a collision or damage to fixed and floating objects, counter-security is to be provided by the hull underwriters, the Association will not normally accept separate security from each individual underwriter for their individual share of the overall risk that is covered under the Hull Policies. The Association will normally insist on the receipt of one, single, counter-security from one underwriter that secures the liabilities of all individual underwriters, e.g. from the 'lead underwriter' if that underwriter has an acceptable credit rating.

(D) The Protective Co-Assured shall indemnify the Association for any liability the Association may incur to a third party for any payment made by the Association to a third party which are to be borne by the Protective Co-assured party under the terms of the Charterparty (Rule 68.4).
As described in the explanatory notes to Rule 58 above, a protective co-assured is only covered to the extent he incurs a liability, loss, cost or expense which are to be borne by the Member under the governing charterparty or contract of employment based on the 'knock for knock' principle. In other words, a protective co-assured is not entitled to recover from the Association any liability, loss, cost or expense which are to be born by the protective co-assured under the governing contract. This is laid down in Rule 58.6. Liabilities, losses, costs and expenses to be borne by the protective co-assured under the governing contract of employment have to be insured by the protective co-assured for his own account elsewhere.

Rule 68.4 makes it clear that if and to the extent the Association has paid any claim which shall be borne by the protective co-assured under the governing contract of employment, the protective co-assured has an obligation to indemnify the Association. Thus, Rule 68.4 supplements the provision in Rule 58 about protective co-assured status and the restrictions on the scope of cover available.

(E) …the Association may in its absolute discretion defer payment of any such other claims or any part thereof until the Direct Liabilities, or such parts of the Direct Liabilities as the Association may in its absolute discretion decide, have been discharged (Rule 68.5.a)

To protect the Association against incurring liabilities in excess of the sum insured agreed (see Rule 34.2) in the terms of entry, Rule 68.5.a gives the Association a discretionary right to prioritize payment of claims it is obliged to pay directly to third parties under Blue Cards (as for example required under the Bunker Convention or the CLC) or other guarantees (the 'Direct Liabilities'), over other claims the Association merely is obliged to reimburse the Member under the terms of entry arising out of the same casualty (the latter category of claims is referred to as the 'Non-Guaranteed Claims'). This could be necessary in situations where the contract of insurance is subject to an overall limit of for example USD 500 million for liabilities and losses arising out of any one event. Rule 68.5 gives the Association as insurer the right to defer settlement of Non-Guaranteed Claims, to ensure that the total amount of claims in respect of a casualty, including both Direct Liabilities and Non-Guaranteed Claims, do not exceed USD 500 million in the aggregate.

(F) …To the extent that any claims or liabilities (including any Direct Liabilities) discharged by the Association exceed the said limit(s) any payment by the Association in respect thereof shall be by way of loan … (Rule 68.5.b)

If the Association is obliged under a blue card or other guarantee to make payment(s) to third party(ies) in respect of liabilities and losses arising out of any one event (the Direct Liabilities) together with payment other Non-Guaranteed Claims arising out of the same event in the aggregate exceeds the agreed sum insured as set out in the terms of entry pursuant to Rule 34.2, any payment in respect of the Direct Liabilities and Non-Guaranteed Claims shall be treated as a loan from the Association to the Member to the extent the payments in the aggregate exceed the agreed sum insured. In exchange for its agreement to provide a guarantee or other undertaking to third parties at the request of the Member, Rule 68.5 gives the Association the right to demand that all rights that the Member has to recover under any other insurance or against any third party shall be assigned by the Member to the Association on such terms and to the extent that the Association in its discretion thinks necessary in order to protect the interests of the membership as a whole. The Association will normally require an assignment to be to the greatest extent that is allowed by law and the particular circumstances.

Chapter 3

Assignment, law, arbitration and amendments to the Rules

Rule 69 Assignment

1 The Member shall not assign or otherwise transfer its rights under its contract of insurance with the Association or otherwise arising pursuant to these Rules, save as provided in Rule 67.2.

2 The Association may, in its absolute discretion, consent to an assignment or transfer by of a Member of its rights as referred to in Rule 67.1, subject to such terms and conditions as the Association deems fit and subject to the Association's right to deduct from any sum due or to become due from the Association to any assignee or transferee of the Member's rights such amount as the Association may estimate to be sufficient to discharge any existing or anticipated liability of the Member to the Association.

Guidance

(A) The Member shall not assign…its rights… (Rule 69.1)

The Association is more than just an insurer; it is a club of Members. The identity and standing of each Member is important to the other Members and the Association has gone to some lengths on behalf of its Members to vet each applicant, its management structure and its vessels before agreeing to accept it as a Member. Therefore, the premium that the Association has attributed to that Member reflects the risk that the Association has assessed the entry of that Member to be in the light of such vetting process. Consequently, it is vital that such important safeguards should not be undermined by the ability of a Member to assign or transfer its rights under the contract of insurance to another organisation that might constitute a bigger risk to the membership and thereby, to the funds of the membership. Rule 69 restricts the ability of a Member to make such transfers outside the control of the Association.

There are various reasons why a Member may wish to assign either in whole or in part the benefit of the cover that is made available to him by the Association, e.g. where the Member wishes to make the benefit of his P&I cover available to a purchaser of the vessel. A Member may also wish to transfer the right to receive the proceeds of any claim that the Member may have against the Association, e.g. to his mortgagee. Such assignments or transfers are prohibited by Rule 69.1 unless they are done with the consent of the Association.

(B) The Association may in its absolute discretion consent to an assignment or transfer by a Member of its rights… (Rule 69.2)

Should the Member wish to assign or otherwise transfer his rights under the contract of insurance, the Member may ask the Association to consent to him doing so. It is not sufficient merely to give notice to the Association that an assignment or transfer has taken place; permission must be sought and obtained from the Association before this is done. Any purported assignment

or transfer that is made without the consent of the Association is null and void and does not bind the Association. Consequently, if no such permission is given, the original contract remains binding as between the Member and the Association, which means that the Member retains all rights and obligations under it, including the obligation to pay premiums and other sums that are due to the Association.

Whilst the Association has an absolute discretion whether or not to consent to the assignment or transfer, or to impose conditions on the giving of consent, it will normally give its consent if the assignment is intended merely to give the third party a right to receive the proceeds of a Member's claim. This is particularly relevant where a Member has assigned the benefit of insurances to a mortgagee bank. In such circumstances, the Association will normally agree to acknowledge receipt of a notice of assignment, and to endorse a 'loss payable' clause on the certificate of entry. Such a clause authorises the Association to pay the proceeds of claims that are made by the Member under the terms of his entry directly to the mortgagee in certain circumstances, and provides that such payment to the mortgagee will discharge the Association's liability for the Member's claim under the contract of insurance. However, the clause continues to entitle the Association to settle all third party claims in respect of which the Member has a right of recovery from the Association, and all third party claims in respect of which the Association has provided financial security.

The Association will also normally agree to confirm to the mortgagee in writing that the relevant vessel is entered with the Association and to notify the mortgagee if the vessel's entry is terminated or ceases.

(C) …subject to the Association's right to deduct from any sum due… (Rule 69.2)

The Association has the right under Rule 69.2 to deduct or retain from any sums that it may agree to pay to any assignee or transferee, such amount that the Association estimates to be sufficient to discharge any liabilities that the Member has to the Association, either at that time, such as unpaid premiums or that the Member may have in the future, such as any forecasted deductibles. The right to deduct is not limited to sums that are due from the Member for the vessel in respect of which the claim arises, but extends to any sums that are due, or estimated by the Association to become due, to it from the Member or his co-assured in relation to any vessel that is entered under that certificate of entry. Consequently, the rights of set-off to which the Association is entitled under Rule 13 are fully preserved vis-a-vis an assignee.

Rule 70 Governing law

The legal relationship between the Association and the Member shall be governed by these Rules and Norwegian law, but the provisions of the Insurance Contracts Act of 16th June 1989 shall not apply, unles mandatory.

Guidance

(A) The legal relationship between the Association and the Member… (Rule 70)

The legal relationship that exists between the Association and the Member under the contract of insurance is separate and distinct from the legal relationship that exists between the Member and third parties. The Association provides cover for operations and activities that are performed by vessels worldwide and the claims that arise out of the operation of such vessels will usually be governed by a variety of laws and regulations. Therefore, in most circumstances, the laws and regulations that apply to claims that are made by third parties against the Member will be different from the law that governs the Member's rights to claim compensation from the Association.

(B) …shall be governed by these Rules and Norwegian law… (Rule 70)

Rule 70 stipulates firstly that the legal relationship between the Association and the Member is to be governed by the Rules. Therefore, the Rules are incorporated into the contract of insurance and are made an integral part of that contract. All the Rules will be so incorporated unless particular Rules are specifically excluded, limited or otherwise varied pursuant to any special terms of entry that may be agreed between the Association and the individual Member.

Rule 70 also establishes that the legal relationship between the Association and the Member is to be governed by Norwegian law. There are two aspects to this statement. Firstly, the Rules are governed by Norwegian law in the sense that they are to be interpreted in accordance with Norwegian law. Secondly, the contract of insurance between the Association and the Member is governed by Norwegian law and all provisions of Norwegian law, including those that govern contracts generally, will apply to the legal relationship between the Association and each Member, unless otherwise follows from the contract of insurance (see (C) below)..

When considering legal issues that arise under a contract of insurance, Norwegian courts will consider applicable written and customary law, the preparatory works (NO:forarbeider) to relevant legal acts, case law, as well as legal literature and articles With respect to the interpretation of marine insurance contracts. Norwegian courts are likely to be guided by how similar issues have been treated in the Nordic Marine Insurance Plan and its

Commentary, in particular where the Rules use expressions that are defined in the Plan, but which do not have a clearly established meaning under the general law.

(C) …the Insurance Contract Act…shall not apply, unless mandatory. (Rule 70)

The Norwegian Insurance Contracts Act 1989 (ICA) regulates both life and non-life insurance. Where the ICA applies it will render the conditions of insurance contracts that are less favourable to the insured than its own provisions null and void.

Pursuant to Rule 70, any provision in the ICA which does not apply mandatorily is excluded from application in the contracts of insurance incorporating the Rules. The Association has utilised its possibility to exclude the ICA from application to the maximum extent. To some degree modelled on the Nordic Marine Insurance Plan, the Rules are intended to be a complete code containing most regulations directly in its wording making them more user-friendly to non-Norwegian Members and clients.

For the most part, the ICA does not apply mandatorily to 'large risks' insurance contracts. 'Large risks' are defined in the Norwegian Regulation to the Insurance Contract Act (NO: forsikringsavtaleforskriften (FOR-2022-03-04-323)), and most of the insurances written by the Association will fall within this definition. However, some provisions of the ICA apply mandatorily also to 'large risks' insurances, and the parties to an insurance contract subject to Norwegian law may not exclude such provisions, for instance Section 7-8, which enables a third party to bring a direct action against the insurer when the assured is insolvent, applies mandatorily. Conversely, where the Member is not insolvent, subject to bankruptcy proceedings, or seeking protection from his creditors in some other way, the 'pay to be paid' principle also applies under Norwegian law. (see also the Guidance to Rule 67 above).

Rule 71 Arbitration

Unless otherwise agreed, disputes between the Association and a Member or a former Member or any other person arising out of the contract of insurance or these Rules shall be resolved by arbitration. Each party shall nominate one arbitrator and those so nominated shall appoint a Chair of the arbitration tribunal. If the arbitrators cannot agree on a Chair of the tribunal or a party fails to nominate its arbitrator, the nomination shall be made by the Chief Justice of the Oslo District Court. Reasons shall be given for the award. Arbitration proceedings shall take place in Oslo.

Guidance

(A) introductory remarks

Court proceedings are, generally, public by nature with the result that documents that are produced in, and statements that are made during, such proceedings are available to the general public, as is the judgement of the court. However, arbitration proceedings are private by nature so that, unless both parties to the arbitration agree, no other party is entitled to have access to the information and evidence that has been disclosed during the arbitration proceedings, or to the award of the arbitration tribunal. Because of the mutual nature of the relationship that exists between the Association and the membership it is considered more beneficial to the parties that any dispute between the Association and a Member is resolved by arbitration rather than by a court. Rule 71 recognises this necessity and sets out the mechanics of the arbitration reference.

(B) Unless otherwise agreed… (Rule 71.1)

Rule 71.1 provides that any dispute that arises between the Association and the Member, or former Member, or any other person that seeks to derive a benefit from the contract of insurance or the Rules, is to be resolved by arbitration in Oslo unless the parties have otherwise agreed. Therefore, if both parties have specifically agreed to do so, disputes may be resolved by a court, or by an arbitration tribunal sitting somewhere other than in Oslo. Furthermore, the parties can agree to do so either before or after the dispute has arisen.

(C) …disputes between the Association and a Member or a former Member arising out of the contract of insurance or these Rules… (Rule 71.1)

Rule 71 applies when there is a dispute between the Association on the one hand, and an existing Member or a former Member on the other hand. In this context, 'Member' includes a Joint Member, co-assured(s) or affiliate(s) as set out in Rule 1.1.

(D) Each party shall nominate one arbitrator... (Rule 71.1)

The Oslo arbitration tribunal shall consist of three arbitrators. Each party shall appoint one arbitrator and then these two arbitrators shall appoint the third arbitrator who shall act as Chair of the arbitration tribunal. If the two

arbitrators appointed by the parties cannot agree on the third arbitrator, the appointment of the third arbitrator shall be made by the Chief Justice of the Oslo District Court. Further, if a party fails to appoint its arbitrator, the appointment shall be made by the Chief Justice of the Oslo District Court. The arbitration proceedings will be governed by the Norwegian Arbitration Act of 14 May 2004 unless otherwise agreed.

The time limit for the commencement of the arbitration proceedings is governed by Norwegian law pursuant to Rule 70. If the issue that is to be arbitrated arises under or is governed by Rule 61, then the time limits that are laid down in Rule 61 will apply. Otherwise, the normal time limit under Norwegian law is three years from the alleged breach of contract or, in the unlikely event that the claimant does not have knowledge of his claim within such period, the claim is time barred at the end of one year after he acquires, or should have acquired, the necessary knowledge, subject to a maximum time limit of ten years from the alleged breach of contract.

Rule 72 Amendments to the Rules

1 The Rules may be amended at any time with effect from the beginning of the following Policy Year, and the Association shall, where practicable, give notice of amendments to Members before 20th January.

2 If, in the determination of the Association, a substantial alteration of risk occurs, as a result of new legislation or for any other reason, the Association may make such amendments to the Rules as the situation may require, giving (save in the case where the amendment involves only the making available of additional cover to the Member) at least two months' notice of the amendment.

3 When war has broken out or, in the determination of the Association threatens to break out, the Association may decide that amendments shall come into force at shorter notice.

Guidance

(A) Introductory remarks

Rule 72 gives the Association the power to change its Rules in various circumstances. It deals with three different situations that reflect the different circumstances in which the Rules may be amended, and the time limits that are appropriate for the introduction of any amendments to the Rules in each circumstance.

The Board of Directors of the Association has the primary responsibility for the Association's Rules and normally exercise such responsibility during the course of their planned periodic meetings. However, should it be necessary to make amendments to the Rules in circumstances in which it would be impractical to call and conduct such a meeting, the Board will normally endeavour to do so by correspondence or by delegating authority to the Executive Committee. For example, this may occur when it is necessary to ensure that the Rules are aligned with changes that have been made to the reinsurance agreement prior to the commencement of a new policy year.

(B) …may be amended at any time with effect from the beginning of the following Policy Year... (Rule 72.1)

Rule 72.1 gives the Association, whether acting through the Board of Directors or, in the case of entries in Gard P. & I. (Bermuda) Ltd., the Executive Committee acting pursuant to authority delegated by the Board, the right to amend the Rules at any time. However, since Members have entered into contracts of insurance with the Association on the assumption that specific rights, duties, terms and conditions will continue to apply to the contract, any amendments that are made pursuant to Rule 72.1 will not take effect until the beginning of the next following policy year. This gives Members the opportunity to consider whether they wish to continue to be insured on such terms and conditions. It also means that the Members' cover will not be affected during the currency of the policy year.

(C) …the Association shall, where practicable, give notice of amendments to Members before 20 January… (Rule 72.1)
A policy year runs from noon GMT on 20 February in any year to immediately prior to noon GMT on the following 20 February. Whenever it is practicable to do so, the Association will give notice of any amendments to the Rules before 20 January in order to give Members at least one month within which to consider the implications of such amendments before the start of the next policy year. However, if it is impractical to give notice by 20 January, the Association may, nonetheless, proceed to make amendments to the Rules for the following policy year.

(D) …in the determination of the Association, a substantial alteration of risks occurs… (Rule 72.2)
Whereas Rule changes are usually planned at the end of a policy year, and take effect from the beginning of the next policy year, Rule 72.2 gives the Association the authority to make Rule changes that take effect during the course of a policy year if there is a substantial, and usually unexpected, alteration of risk that affects all or a substantial category of Members.

A 'substantial' risk is not capable of precise quantitative meaning, but it indicates that the alteration of risk must be serious. Rule 72.2 gives the Association the discretion to determine whether an alteration of risk is, or is not, substantial, and to decide how the Rules are to be amended in response to the alteration of risk. For example, the current cesser/termination provisions of Rules 16 and 17 were amended during the 2010-11 policy year as a result of the new legislation in the United States which sought to impose sanctions on both domestic and foreign entities "underwriting or otherwise providing insurance or reinsurance" for "any activity that could contribute to the enhancement of Iran's ability to import refined petroleum resources." Such legislation (which was likely to be adopted quickly by other countries) had the effect of prohibiting the provision of insurance cover for any vessel(s) regardless of country of flag or registry or beneficial ownership that engaged in trading refined products into Iran and imposed severe sanctions against both companies and individuals that sought to provide such insurance. Such legislation would clearly seriously hamper the ability of the Association to maintain the quality and efficiency of the service that it could provide to the membership generally and therefore, it was considered that this was a substantial alteration of risk that was deemed sufficiently serious to justify making an amendment to the Rules to take effect on 23 April 2010 during the 2010 policy year.

If the Association decides to limit or reduce the level of cover, then the Association is required to give Members at least two months 'notice of the proposed amendment. However, if the Association decides to increase the level of cover, then the Association does not need to give two months' notice of the proposed amendment.

A distinction needs to be drawn between Rule 72.2 and Rule 7. Rule 72.2 will normally apply only where there is an alteration of risk that affects all or a substantial category of Members, and which is caused by events that are outside the power and control of the Association and the Members. However, Rule 7 applies when the alteration of risk affects an individual Member but not the membership at large, and which may entitle the Association, in certain circumstances, to refuse to compensate that Member.

(E) …as a result of new legislation or for any other reason… (Rule 72.2)
Legislative changes have the potential to substantially alter the risks that the Association has agreed to cover. However, substantial changes to the insured risks may also be caused by reasons other than changes in legislation, e.g. as a result of natural disasters that make the transit of particular waters more hazardous.

(F) When war has broken out or, in the determination of the Association threatens to break out... (Rule 72.3)
Rule 72.3 enables the Association to take account of any outbreak of hostilities that will substantially affect the risks that are insured by the Association. The Association may amend the Rules, not only when war has actually broken out, but also when the Association considers that there is a threat that war may break out. War is often preceded by a deterioration of relations, during the course of which the participants issue threats of war or engage in hostile acts against each other. In such situations, Rule 72.3 enables the Association to react quickly to protect the interest of the membership. The Rule gives the Association the authority to introduce amendments to the Rules by giving less than two months' notice if it considers, in its discretion, that there is a danger of war breaking out.

Appendices

Appendix 1 Premium conditions

A Premium adjustment for renewals and termination (Rule 10)

1 **Premium deferral for renewal**

a When a Vessel is entered for a Policy Year, the Association and the Member may agree that a proportion of the premium payable for that Policy Year shall be deferred and shall only be payable in the circumstances described in paragraph A.1(b).

b If the Member terminates the entry pursuant to Rule 15 at the end of the Policy Year referred to in paragraph A.1(a), the deferred proportion of the premium payable shall become payable to the Association on demand. The Member shall have no other liability for payment of the deferred proportion, which shall be deemed to be cancelled on the entry being renewed for the next subsequent Policy Year or being terminated pursuant to Rule 16 or ceasing under Rule 17.

2 **Additional premium on termination**

On any termination of an entry under Rule 16 the Association may levy an additional premium determined by the Association, subject to the following:

i where the loss ratio during the four year period ending on the date of termination, or the period of entry, if less than four years, is between 51 and 75 per cent, the additional premium shall not exceed five per cent of the premium payable in the last year of entry;

ii where the loss ratio during the four year period ending on the date of termination, or the period of entry, if less than four years, exceeds 75 per cent, the additional premium shall not exceed ten per cent of the premium payable in the last year of entry.

B Terms of Contract (Rule 42.2)

1 **Introduction**

a The premium conditions set out in this paragraph B are applicable for all Vessels except US owned, operated or managed Vessels.

b The Premium Rating agreed with the Member, and the cover available to the Member are subject to any contract entered into by the Member for the provision of services by the Vessel containing a division of liability which is either

i in accordance with these premium conditions or with the terms of entry; or

ii approved by the Association after the date of entry, and for which a variation in the Premium Rating is agreed.

c For the purpose of these premium conditions:
   i "Operator" means the party chartering the Vessel by way of a charterparty or other form of contract, including any other party having an owning interest in the field being serviced by the Vessel;
   ii "Operator Group" means the Operator their respective co-venturers, its and their parents and Affiliates together with the other contractors of Operator;
   iii a Vessel shall be deemed to be an accommodation vessel if the Association so determines.

2 **Guidelines indicating how various contractual arrangements entered into by the Member will influence Premium Rating.**

Except to the extent set out specifically in relevant cases below, the following divisions of liability in contracts entered into are acceptable within the standard cover and Premium Rating:

a Where the Member is liable for the injury, illness or death of its own employees and the employees of any of its sub-contractors.

b Where the Member is liable for loss of or damage to its own property and property belonging to any of its sub-contractors, provided that cover is conditional upon the Member obtaining a hold harmless agreement from any of its sub-contractors in respect of liability for the sub-contractor's property in the care, custody or control of the Member, onboard or outside the Vessel.

c Where the Member is liable for the injury, illness or death of the Operator's employees, or the employees of the Operator Group, subject as follows

Note: In the event that the Member obtains a hold harmless undertaking from the Operator in respect of the Operator's employees, there shall be a rebate of 5 per cent of premium on the first USD 50 million of cover.

In the event the Member obtains a hold harmless undertaking from the Operator in respect of the employees of the "Operator's Group", there shall be a rebate of 10 per cent of premium on the first USD 50 million of cover.

   i In the case of accommodation vessels (including flotels), where the Member is liable in tort for the injury, illness or death of the accommodees of the Operator Group, provided that the number of such accommodees at risk does not exceed 15 persons.

   Note: In the event of the number of such employees exceeding 15 persons, cover is available for each excess tranche of up to 50 persons at an additional premium of 15 per cent on the first USD 50 million of cover, but subject always to a maximum additional premium of 50 per cent.

ii In the case of accommodation vessels (including flotels), where the Member is strictly liable in contract for the injury, illness or death of accommodees of the Operator Group, provided that the number of such accommodees at risk does not exceed 15 persons.

Note: In the event of the number of such employees exceeding 15 persons, cover is available for each excess tranche of up to 10 persons at an additional premium of 5 per cent on the first USD 50 million of cover, but subject always to a maximum additional premium of 100 per cent.

d Where the Member is liable in tort for loss of or damage to property of the Operator's Group, provided that cover is conditional upon the Member obtaining a hold harmless agreement in respect of liability for such property in the care, custody or control of the Member, on board or outside the Vessel.

Appendix 2 Additional insurance - War risks P&I insurance for mobile offshore units

The Association has arranged additional War Risk P&I Insurance (the "War Risk P&I Cover") for the benefit of Members insured for P&I risks pursuant to the Rules for P&I cover for Mobile Offshore Units. The terms and conditions for this additional War Risk P&I Cover are as follows:

General terms

The War Risks P&I Cover afforded is subject to the Rules for P&I cover for Mobile Offshore Units (the "Rules"), save that the war risks exclusion in Rule 54 shall not apply.

Scope of cover

The War Risks P&I Cover shall apply to liabilities, losses, costs and expenses as set out in Part II, chapter 1, of the Rules caused by war risks as defined in Rule 54. Such cover will only include liability or loss in excess of the amounts recoverable under the Vessel's Hull and Machinery and/or Crew/Marine War Risks Insurance and any P&I inclusion clauses applicable thereto, but subject always to any special terms of entry agreed between the Association and the individual Member and set out in the relevant Vessel's Certificate of Entry. The maximum limit of cover is equal to the maximum policy limit for P&I risk.

JLC Territorial and Conflict Exclusion Clause

1 The War Risk P&I Cover excludes all loss, damage, liability, cost or expense:

- **a** caused by or arising from or in connection with any Russia-Ukraine conflict and/or any expansion of such conflict; or
- **b** in any area or territory or territorial waters where Russian armed forces, Russian-backed forces, and/or Russian authorities, are engaged in conflict within the territories (including territorial waters) of the Russian Federation, Belarus, Ukraine and any disputed regions of Ukraine, the Crimean Peninsula and the Republic of Moldova.
- **c** arising from capture, seizure, arrest, detainment, confiscation, nationalisation, expropriation, deprivation or requisition for title or use, or the restraint of movement of vessels and cargo in the territories (including territorial waters) of the Russian Federation, Belarus, Ukraine and any disputed regions of Ukraine, the Crimean Peninsula and the Republic of Moldova.

JL2022-019

Bio – Chem Risks exclusion

War Risks P&I Cover shall in no case cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from any chemical, biological, biochemical or electromagnetic weapon.

Notice of Cancellation – Automatic Termination of Cover

1 **Notice of Cancellation ("Notice")**

The War Risk P&I Cover may be cancelled in respect of War risks as set out in Rule 54 by the Association giving 72 hours' notice of cancellation (hereinafter "Notice") with Notice being effective from midnight Greenwich Mean Time on the day Notice is given by the Association. The Association may subsequently agree to reinstate cover, if required, at terms to be agreed by the Association. Any reinstatement of cover shall occur at a time to be agreed by the Association.

2 **Automatic Termination**

2.1 Whether or not the notice of cancellation described in clause 1 has been given, the War Risk P&I Cover shall TERMINATE AUTOMATICALLY:

2.1.1 upon the occurrence of any hostile detonation of any nuclear weapon of war, wheresoever or whensoever such detonation may occur, and/or

2.1.2 upon the outbreak of war (whether there be a declaration of war or not) between any of the following countries: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China."

Appendix 3 Marine Cyber Endorsement, Communicable Disease Exclusion, Coronavirus Exclusion and Five Powers War Exclusion (Rule 40.3)

Marine Cyber Endorsement

1 Subject only to paragraph 3 below, in no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.

2 Subject to the conditions, limitations and exclusions of the policy to which this clause attaches, the indemnity otherwise recoverable hereunder shall not be prejudiced by the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm.

3 Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, paragraph 1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

LMA5403
11 November 2019

Communicable Disease Exclusion

1 In the event that the World Health Organization ('WHO') has determined an outbreak of a Communicable Disease to be a Public Health Emergency of International Concern (a 'Declared Communicable Disease'), no coverage will be provided under this (re)insurance for any loss, damage, liability, cost or expense directly arising from any transmission or alleged transmission of the Declared Communicable Disease.

2 The exclusion in paragraph 1 of this endorsement will not apply to any liability of the (re)insured otherwise covered by this (re)insurance where the liability directly arises from an identified instance of a transmission of a Declared Communicable Disease and where the (re)insured proves that identified instance of a transmission took place before the date of determination by the WHO of the Declared Communicable Disease.

3 However even if the requirements of paragraph 2 of this endorsement are met, no coverage will be provided under this (re)insurance for any:
   a liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for the Declared Communicable Disease whether the measures are preventative or remedial;
   b liability for or loss, cost or expense arising out of any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of the Declared Communicable Disease;
   c loss, damage, liability, cost or expense caused by or arising out of fear of or the threat of the Declared Communicable Disease.

4 As used in this endorsement, Communicable Disease means any disease, known or unknown, which can be transmitted by means of any substance or agent from any organism to another organism where:
   a the substance or agent includes but is not limited to a virus, bacterium, parasite or other organism or any variation or mutation of any of the foregoing, whether deemed living or not, and
   b the method of transmission, whether direct or indirect, includes but is not limited to human touch or contact, airborne transmission, bodily fluid transmission, transmission to or from or via any solid object or surface or liquid or gas, and
   c the disease, substance or agent may, acting alone or in conjunction with other co-morbidities, conditions, genetic susceptibilities, or with the human immune system, causedeath, illness or bodily harm or temporarily or permanently impair human physical or mental health or adversely affect the value of or safe use of property of any kind.

5 This endorsement shall not extend this (re)insurance to cover any liability which would not have been covered under this (re)insurance had this endorsement not been attached.

All other terms, conditions and limitations of this (re)insurance remain the same.

JL2021-014
8 March 2021

Coronavirus Exclusion (for use on marine and energy liability policies)
This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.

This insurance excludes coverage for:

1 any loss, damage, liability, cost, or expense directly arising from the transmission or alleged transmission of:
   a Coronavirus disease (COVID-19);
   b Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2); or
   c any mutation or variation of SARS-CoV-2;
   or from any fear or threat of a, b or c above;

2 any liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for a, b or c above;

3 any liability for or loss, cost or expense arising out of any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of any of a, b or c above or the fear or the threat thereof.

All other terms, conditions and limitations of the insurance remain the same.

LMA5395
9 April 2020

Five Powers War Exclusion
This insurance excludes loss, damage, liability, or expense arising from

a the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

b requisition either for title or use.

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