Standard Club
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# Offshore & Renewables contracting guide

## Industry expertise

# Introduction

As part of our service to members, we provide individual contract reviews. Our reviews clarify how members' P&I cover responds to liabilities under the contract and/or highlight where terms are particularly onerous and, as a consequence, special terms need to be applied to provide cover. They also identify any potential risks falling outside cover. This guide is intended to be used as a single point of reference to aid members to fully understand the terms and issues raised in our reviews. It includes:

1. The main features of P&I cover.
2. Common provisions and exposures assumed under contract.
3. Exclusions from poolable P&I cover based on: (a) type of contract; (b) type of operation; and (c) type of ship.
4. The P&I solutions we can provide.

We hope this guide is useful to members, brokers and anyone who would like more information about P&I insurance.


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# 01. P&I Cover

The offshore and renewables sectors carry a unique set of risks, meaning offshore members usually require extended or alternative P&I covers. This section provides a brief overview of poolable cover, and extended and alternative covers.

## Poolable cover

P&I clubs provide mutual indemnity cover to their members for liabilities arising out of the management and operation of an entered ship. P&I cover responds to a wide range of liabilities including personal injury to crew, cargo loss and damage, oil pollution, wreck removal and dock damage.

Together, 12 P&I clubs make up the International Group of P&I Clubs (IG) who share (or pool) claims between themselves in agreed proportions. Among other things, the pooling agreement sets out the types of claims that can be pooled and those that are excluded from pooling.

Poolable P&I cover responds to members' legal liabilities – those liabilities imposed on members by law. This includes liabilities incurred by a member in tort, such as negligence, or under statute – for example, under pollution or cargo conventions, or under acceptable contracts.

An important feature of the mutual system is that no single member unfairly subsidises, or is subsidised by, the other members. As a result, certain activities and exposures considered outside mainstream shipping do not have the benefit of poolable P&I cover.

## Extensions to mutual cover

To help our members, we provide extensions that cover some excluded risks which can be bought back alongside a member's mutual cover.

**Our main cover extensions for offshore members – up to a fixed limit – are:**

1. **Contractual extension**

   **Members are often required to assume some liabilities under their contracts which they would not otherwise have had 'at law'. These contractual liabilities are therefore excluded from poolable cover. Our Contractual extension covers contractually assumed liabilities relating to P&I risks within the scope of cover according to the members' terms of entry.**

2. **Specialist Operations extension**

   **Poolable cover excludes certain P&I liabilities arising during the course of performing specialist operations. Our specialist operations extension reinstates cover for certain liabilities, such as damage to, pollution from, or wreck removal of existing property during these operations.**

3. **ROV and divers extensions**

   **Poolable cover excludes liabilities arising out of the operation by the member of ROVs and other underwater vehicles, and the activities of professional and commercial divers, where the member is responsible for such activities. The ROV and divers extensions cover third-party liabilities arising out of these operations/activities.**

We can cover most ships under poolable terms, together with one or more of the extended covers. This allows our members to have the benefit of poolable cover and limits whenever possible, plus have extended cover(s) for non-poolable risks. However, provision of the extended covers is subject to contract approval, so we must approve the contract before extended covers can be provided.

Please note, poolable cover excludes all liabilities incurred by ships/units carrying out drilling and production operations in connection with oil or gas exploration or production. These ships/units can only be covered under the Standard Offshore Rules.

The IG provides P&I cover for approximately 90% of the world's ocean-going tonnage. Each club is an independent, non-profit-making mutual insurance association controlled by its members through a member committee or board of directors.

# 02. The effect of contracts on P&I cover and potential risks

Contractual arrangements can affect access to poolable P&I cover. In this section, we will examine common contractual exposures and how P&I cover can respond.

We aim to proactively advise members how contracts may affect poolable P&I cover and advise them of any extensions to cover that the contractual liabilities may require.

The basic principle of mutual P&I cover is members should not assume responsibility under contract for any loss for which, under applicable law, they would not otherwise be liable, or in respect of which, they would otherwise be entitled to exclude or limit liability. Poolable cover does not respond to liabilities that a member incurs voluntarily under contract, because to do so could confer a commercial advantage on one member over another.

However, in the offshore sector, many contracts are negotiated on 'knock- for-knock' terms. Under a typical knock-for-knock contract, each party assumes responsibility and indemnifies the other party for liabilities relating to their own, their contractors' and their subcontractors' property and personnel, regardless of the other party's fault or neglect. These contracts fall under poolable cover – if they are balanced and do not expose the member to wider liabilities than those imposed on their contractual partner, and the member has not waived their right to limit liability under applicable law.

Where a member has contracted on knock-for-knock or other terms that are acceptable under the pooling agreement and those terms are not upheld in court, then poolable cover can still respond.

Where a contract is not acceptable for poolable cover, in respect of liabilities arising during non-specialist operations, the member may purchase a fixed-limit contractual extension. This can cover P&I liabilities assumed by the member under the contract for which they would not otherwise have been liable 'at law'.

To trigger cover under the contractual extension, we must first approve the contract. The normal provisions of P&I cover still apply under the extension – claims must arise directly out of the operation or management of the entered ship, and must be covered under the rules or the Certificate of Entry. Any exclusions in the rules or the Certificate of Entry will continue to apply unless we specifically reinstate excluded risks.

The following provisions are commonly found in offshore contracts, such as towage, construction/ installation, and drilling and production contracts, which can materially influence the member's exposure. We consider each of these provisions and examine how cover can respond.

Despite being approved for poolable cover, there are numerous ways these clauses can be eroded or otherwise made defective, so placing the member outside poolable P&I cover and reliant on contractual extension cover. The starting point for any consideration as to whether a knock-for-knock contract is poolable must be the definition of knock-for-knock in the pooling agreement, which requires the liability and indemnity provisions to be balanced and reciprocal to be poolable.

## Contractual indemnities

**Knock-for-knock**

There are numerous ways in which these clauses can be eroded or otherwise made defective so as to place the member outside poolable P&I cover and reliant upon Contractual Extension cover. The starting point for any consideration as to whether a knock-for-knock contract is poolable must be the definition of knock-for-knock in the Pooling Agreement. This reads as follows:

*'Knock for Knock'* – a provision or provisions stipulating that

i. Each party to a contract shall be similarly responsible for loss of or damage to, and/or death of or injury to, any of its own property or personnel, and/or the property or personnel of its contractors and/or of its and their sub-contractors and/or of other third parties, and that

ii. Such responsibility shall be without recourse to the other party and arise notwithstanding any fault or neglect of any party and that

iiii. Each party shall, in respect of those losses, damages or other liabilities for which it has assumed responsibility, correspondingly indemnify the other against any liability that that party shall incur in relation thereto

This includes an agreement which satisfies the definition of knock-for-knock, save only that it contains a reciprocal gross negligence 'carve-out' – ie. a provision excluding claims arising from gross negligence from the knock-for-knock agreement.

The language used in the definition requires the liability and indemnity provisions to be balanced and reciprocal to be poolable. This means that, if the member assumes liability for their own property and personnel, and that of its own contractors and subcontractors, the other party must also take liability and give an equally wide indemnity which includes its own contractors and subcontractors.

If the charterer is only liable and indemnifies the member for their own personnel (but not their contractors or subcontractors), the contract will still be balanced and poolable if the member's own liability and indemnity obligations are also limited to the member's own personnel. However, we would always suggest indemnities include both parties' contractors and subcontractors.

**Cover for unbalanced groups**

There are a large number of contracts where the liability and indemnity provisions are unbalanced. For example, if the member is required to assume responsibility for the property and personnel of their contractors and subcontractors, but the charterer is not, the latter is providing a limited indemnity. In this case, because the provisions are not reciprocal, where liabilities fall on the member due to their contractors or subcontractors, those liabilities are not poolable.

In practice, the member's non-poolable exposure will arise from injury to, illness or death of personnel (and property, if covered by us) of the member's contractors and subcontractors for which the member is obliged to indemnify the charterer. Therefore, if the member employs subcontractors and has a liability to indemnify the charterer even if the liability arises out of the charterer's group's negligence, then such liability will fall outside the scope of poolable cover and the Contractual Extension would be required to respond to this non-negligent liability. This is typically more of an issue in contracts for offshore or subsea construction or maintenance work, where the member is more likely to employ contractors or subcontractors, rather than in straightforward supply boat charterparties.

**Knock-for-knock provisions must incorporate indemnities and apply regardless of fault**

The knock-for-knock definition in the pooling agreement requires the division of liability to be regardless of fault or neglect – or if it contains a carve-out for gross negligence, then it should be reciprocal (please see further comments below) – and for each party to indemnify the other. It is not uncommon to see contracts that are defective because they lack indemnities or do not include language that requires the parties to take liability regardless of fault or neglect.

The indemnity provisions are important because they protect the member if they are sued by a party who is not bound by the contract. For instance, the member may be sued directly by one of the charterer's employees or other contractors if they suffer injury or damage caused by the member's negligence. The provisions in the charterparty will not be binding on other parties so as to prevent them suing the member. Without an indemnity, the member will be unable to recover their liability to any other parties from the charterer, since the division of liability in the contract may be held to refer only to claims between the two parties to the contract. It is therefore essential for the parties to agree to fully indemnify and hold one another harmless in respect of claims for which they are liable under the contract. This avoids the possibility of third-party claims undermining the contractual division of liability.

It is also important that the contract states clearly that the division of liability and the provision of indemnities apply regardless of fault or negligence, or breach of duty – whether contractual, statutory or otherwise. Any carve-out for gross negligence should also be clearly stated. Under the laws of many countries, including England, clear language is required before a court or tribunal will uphold provisions allowing a party to avoid the consequences of its own fault or negligence. Therefore, a simple division of liability between the parties without such language may only be effective in cases where the claim is not due to the fault of either party.

### Hybrid arrangements

'Hybrid' contractual arrangements are becoming more common. These allow for liabilities to be negligence-based up to a certain level, and allocated on a knock-for-knock basis above that level, these capped, fault-based liabilities may still be eligible for poolable cover (except where they relate to loss of, damage to, or wreck removal of towed property or cargo on certain heavy-lift vessels (see below)).

Any capped, non-fault-based liabilities with a knock-for-knock in excess could only be covered under a contractual extension.

### Gross negligence/wilful misconduct exceptions

An increasingly common feature in knock-for-knock contracts is wording stating the limitations, exclusions or indemnities do not apply if caused by the indemnified party's gross negligence or wilful misconduct. The effect of this is that contractual liability caps or exclusions of liability (for example, relating to consequential loss) will not apply in the case of gross negligence or wilful misconduct.

Gross negligence is more serious than simple negligence, and may involve a serious mistake or serious misconduct, but it is not necessarily wilful. Wilful misconduct, on the other hand, may involve someone intending to commit, or being reckless as to whether they are committing, a breach of duty.

However, it may be difficult to establish if there has been gross negligence or wilful misconduct. Often, neither is defined in the contract or under applicable law, or even where there is a definition, it may be wide or vague.

Some clauses refer to gross negligence/wilful misconduct by 'senior supervisory personnel'. Without further detail, 'senior supervisory personnel' is a sufficiently vague wording which could encompass the master and officers on board the ship. This would make the exception more likely to apply than, for example, if it only applied to the conduct of board members or very senior onshore personnel.

Often, deciding exactly what constitutes gross negligence or wilful misconduct depends on the facts. As a result, the certainty and clarity when allocating liabilities – the great advantage of knock-for-knock regimes - is lost. Clearly, if a contract includes a gross negligence or wilful misconduct exception, the indemnifying party may seek to rely on the exception to avoid liability. This can lead to expensive and time-consuming legal disputes, which would have been avoided with a clear knock-for-knock allocation of liabilities.

Liability resulting from wilful misconduct on the part of the 'controlling mind' of the member is excluded from cover.

If members have to accept a gross negligence exception, it is important to ensure that the contract contains a definition of gross negligence which demarcates it from ordinary negligence.

### Consequential losses

We would expect the parties to mutually exclude consequential losses, including loss of production, loss of profit, loss of use and loss of revenue under their contract.

To the extent the member does have an exposure, poolable cover can respond to 'at law' liability for consequential losses that flow from a covered P&I risk and arise out of the operation or management of the entered ship. However, as this exposure could be significant, preserving the right to limit liability 'at law' under the contract is crucial to mitigate the exposure.

### Limitation of liability

The basic principle of poolable cover is that members should not assume liabilities beyond those for which they would be entitled to limit their liability nor waive such rights of limitation. Ideally, the member's right to limit liability against their contractual partner should be specifically preserved. Otherwise, the contractual partner may try to argue the indemnities given by the member and the wording of the contract constitute an implicit waiver of the member's right to limit. In addition, liability caps inserted into a contract may amount to a waiver of the right to limit if the caps are in an amount in excess of the ship's limitation amount under the applicable laws/conventions entitling the member to limit liability.

Unless there is an express waiver of the right to limit in the contract, members should consider if the wording of the contract or liability caps could amount to a potential waiver of the right to limit.

If there is a waiver of the right to limit liability, poolable cover will respond up to the vessel's limitation amount. Above that amount, the contractual extension will be required to respond (subject to the limit of cover).

**Liability by reference to insurance**

In recent years, we have seen clauses in contracts which increase members' potential liability by reference to the availability and/or extent of their insurance. For example, a clause in a contract which provides that the member's liability is capped at a certain figure unless there is insurance in place, in which event they are liable up to the limit of cover under their insurance.

We exclude cover for liabilities arising solely by reference to the availability or extent of insurance. However, this does not leave the member short on cover because, by virtue of this exclusion, the member's liability under the contract should be limited to the amount for which the member would have been liable had the clause varying liability by reference to the availability or extent of insurance not been in the contract.

### Ongoing warranty of seaworthiness

Contracts often contain an undertaking on the part of the owners to make the ship seaworthy at the commencement and throughout the period of the contract. This can affect cover in two ways:

1. The indemnity clauses in certain contracts may not specifically exclude liabilities arising from 'unseaworthiness'. This means the member may not be able to rely on those indemnities in the event of unseaworthiness. Should this be the case, poolable cover can still respond to any resulting 'at law' liabilities (save for non-poolable risks such as loss of, damage to, and wreck removal of towed property and cargo carried on a semisubmersible heavy-lift ship, or any other ship designed exclusively for the carriage of heavy-lift cargo).
2. Cover for cargo liabilities requires members to contract on terms no less favourable than the Hague or Hague Visby Rules. These rules require ships to be seaworthy at the commencement of the voyage, but not throughout the voyage. Cargo liabilities arising due to unseaworthiness after commencement of the voyage in excess of those that would otherwise have been incurred would therefore fall outside poolable cover and can only be covered under the contractual extension.

### Cargo

Poolable cover assumes that the member will carry cargo on terms no more onerous than Hague or Hague Visby terms. However, offshore contracts do not usually incorporate Hague or Hague Visby Rules. Poolable cover will respond in respect of loss of, or damage to, cargo to the extent that the member's liability does not exceed that which would have been incurred had the liability been on Hague or Hague Visby terms. The contractual extension will be able to respond to liability in excess of that prescribed by the Hague/Hague Visby Rules.

### Third-party liabilities

It is acceptable for contracts to be silent in respect of third party liabilities, meaning liabilities will be allocated according to the applicable law.

If the contract does contain a mutual indemnity relating to third-party liabilities, it should be based on fault. The indemnity provisions should also be worded to make clear that it is limited to liabilities of 'true' third parties – ie. parties other than the contractual counterparts or their groups. This is to ensure that any third-party claims relating to loss of, or damage to, the property of the member's contractual partner, their client, or principal will be dealt with under the knock-for-knock clause rather than the third-party liability clause.

However, many provisions use language that exposes the member to wider liability than they would otherwise have 'at law'. For example, the wording could simply state the that the member will be liable and indemnify the charterer for all third-party claims – without any reference to negligence or the position 'at law', or may even go so far as to provide that the member will be liable for third-party claims regardless of the negligence of the charterer or their contractors and subcontractors. Poolable cover will not respond if the member is liable under a contract for third-party claims caused by the charterer's or another party's negligence. In this case, members would need the contractual extension to respond to such claims.

Members should also look out for third-party liability provisions that are widely worded or unclear, such as those that provide that the member will be liable for all claims merely 'caused by' them or their ship. Without a specific reference to negligence, the member could be held liable for claims regardless of whether they are negligent or not – for instance, if the ship drops an anchor on a pipeline because the charterer has given the member incorrect information. Claims arising under such provisions will not be poolable if they expose the member to claims wider than those for which they would be liable in the absence of the contract. Instead, members would need the contractual extension to respond to such non-negligent liability.

We also see contracts requiring the member to assume liability for third-party claims arising out of all work to be carried out under this charterparty and similar wordings. These are even wider in their potential effect, since there is no actual link between causation and the member's activities, and so, in the event of an incident, it is open for the charterer to argue that the intention of the clause is for the member to be liable even when the claim is caused by the charterer, or someone they are responsible for. Members should remember that P&I cover is limited to claims arising directly from the management or operation of the entered ship.

If the contract does include a mutual indemnity in respect of third-party liabilities, it should be based on fault: that is, the liabilities should be 'at law' and the indemnity provision should be worded to make clear that it is limited to pure third-party liabilities only.

### Mutual hold harmless agreements (MHH)

Often, liability for charterers' other contractors' and subcontractors' property and personnel is dealt with by a mutual hold harmless scheme. Such schemes are intended to govern the relationships between various parties who are working simultaneously on an offshore project but who have not contracted directly with one another.

Each party signs an identically-worded liability and indemnity agreement known as a mutual hold harmless agreement (MHH). This provides that the signatory will indemnify any other signatory of the agreement for liability relating to the first party's own property and personnel. It may often also include consequential loss – regardless of fault or negligence. This creates an acceptable knock-for-knock scheme between the signed-up parties.

Provided it is compulsory for all of the charterers' other contractors and subcontractors to sign the MHH, these schemes are a reasonable substitute for a comprehensive contractual knock-for-knock regime encompassing the charterer's other contractors and subcontractors. The disadvantage is the member must rely on the charterer's other contractors to abide by the mutual MHH and to indemnify them in respect of any claim. This can be a drawback since the member may not be in a position to check those parties' financial strength and insurance position. There can also be issues if the charterer fails to ensure all its other contractors and subcontractors sign up to the MHH. While contracts frequently provide that the charterer will 'use its best endeavours' (or similar wording), to persuade its other contractors and subcontractors to sign up, in such cases, the member has no guarantee that they will sign, and no recourse if they do not. As a result, (assuming the other contractors and subcontractors fall outside the definition of 'charterer's group') the member will have an 'at law' exposure in respect of their personnel and property. However, these liabilities may still be poolable, except in the case of towage and heavy-lift operations (which are discussed further below).

Another drawback of MHH agreements is the provisions are often not wide enough to include wreck removal of or pollution from property. As set out below, this can be a problem in the case of towage and heavy-lift operations.

Mutual hold harmless schemes are intended to govern the relationships between various parties who are working simultaneously on an offshore project but who have not contracted directly with one another. Provided that signature of the Mutual Hold Harmless Agreement is compulsory for all of the charterer's other contractors and subcontractors, these schemes are a reasonable substitute for a comprehensive contractual knock-for-knock regime encompassing the charterer's other contractors and subcontractors.

### Pollution from the entered ship

Poolable P&I cover will respond to loss or damage caused by pollution from the entered ship and the cost of clean-up of such pollution, regardless of fault, provided that the member has not waived their right to limit liability.

However, clauses that allow the charterer to conduct the clean-up and charge the member for the cost and any claims resulting from the pollution can cause difficulty. While poolable cover can respond to costs we consider reasonable, the Contractual Extension will be required to respond to any costs beyond this.

Ideally, the member should always try to keep control of costs that will ultimately be billed to them.

### Wreck removal of the entered ship

Poolable P&I cover extends to the costs of removing the wreck of an entered ship and cargo on board when required by a competent authority or because we deem the wreck is a hazard to navigation.

Many contracts include clauses where the member also agrees to pay for the cost of removing the wreck of the ship if it interferes with the charterer's or their client's operations, or at the charterer's or their client's request. If there is no wreck removal order and/or the wreck is not causing any hazard to navigation, the liability falls outside poolable P&I cover and can only be covered under the contractual extension.

Members should also remember that poolable P&I cover only responds to the costs of cleaning up the wreckage of the entered ship, its cargo or other property thereon. For this reason, the member should avoid clauses that refer to a general requirement for the member to clean up any wreckage or debris that is not limited to the wreck of the ship itself and its cargo, as these clauses may expose them to liability that will not be covered under P&I insurance.

### Insurance provisions

Members should always review the contract's insurance provisions to ensure they underpin and support the liability and indemnity provisions. This is particularly important as courts will often look at the insurance provisions of a contract to help them interpret the liability and indemnity provisions if the latter are unclear. Where the insurance and liability provisions conflict, the courts may allocate liability to the party which ostensibly has the obligation to insure the risk concerned, even if this conflicts with a straightforward interpretation of the liability and indemnity provisions. Common issues we see in a contract's insurance provisions include:

**Waivers of subrogation**
When a clause simply requires the member's insurers to waive their rights of subrogation relating to the charterer or other parties without further qualification, this can allow the charterer to argue the waiver is intended to cover all claims covered by the member's insurers and is therefore not limited only to claims that fall to the member under the contractual knock-for-knock provisions. This interpretation could severely compromise the knock-for-knock provisions, and therefore the wording of any waiver of subrogation clause should make clear that such waivers are limited to those liabilities that are to be borne by the member under the terms of the relevant contract and are not given in respect of those liabilities that are to be borne by the charterer.

**Co-assurance**
Most contracts require the charterer to be named as a co-assured on the member's P&I insurance. The contract may also refer to a 'co-insured' or an 'additional assured', but the meaning is generally the same. A co-assured is discussed in the pooling agreement as a party who will be permitted to access the member's P&I cover in respect of liabilities that would have been recoverable by the member from us if the claim in question had been brought against the member rather than the co-assured.

If the contract requires the member's contractual partner to be named on the member's P&I cover, the wording should clearly state cover is restricted to liabilities that are properly considered to be the member's responsibility under the contract. In such cases, the member's contractual partner can be named as a co-assured under rule 13.6. This entitles the co-assured to 'misdirected arrow' cover for claims that should fall to the member, but not cover for liabilities that are its own responsibility under the contract.

Courts will often look at the insurance provisions of a contract to assist them in interpreting the liability and indemnity provisions if the latter are not clear.

## Cross liability and 'as owner' provisions

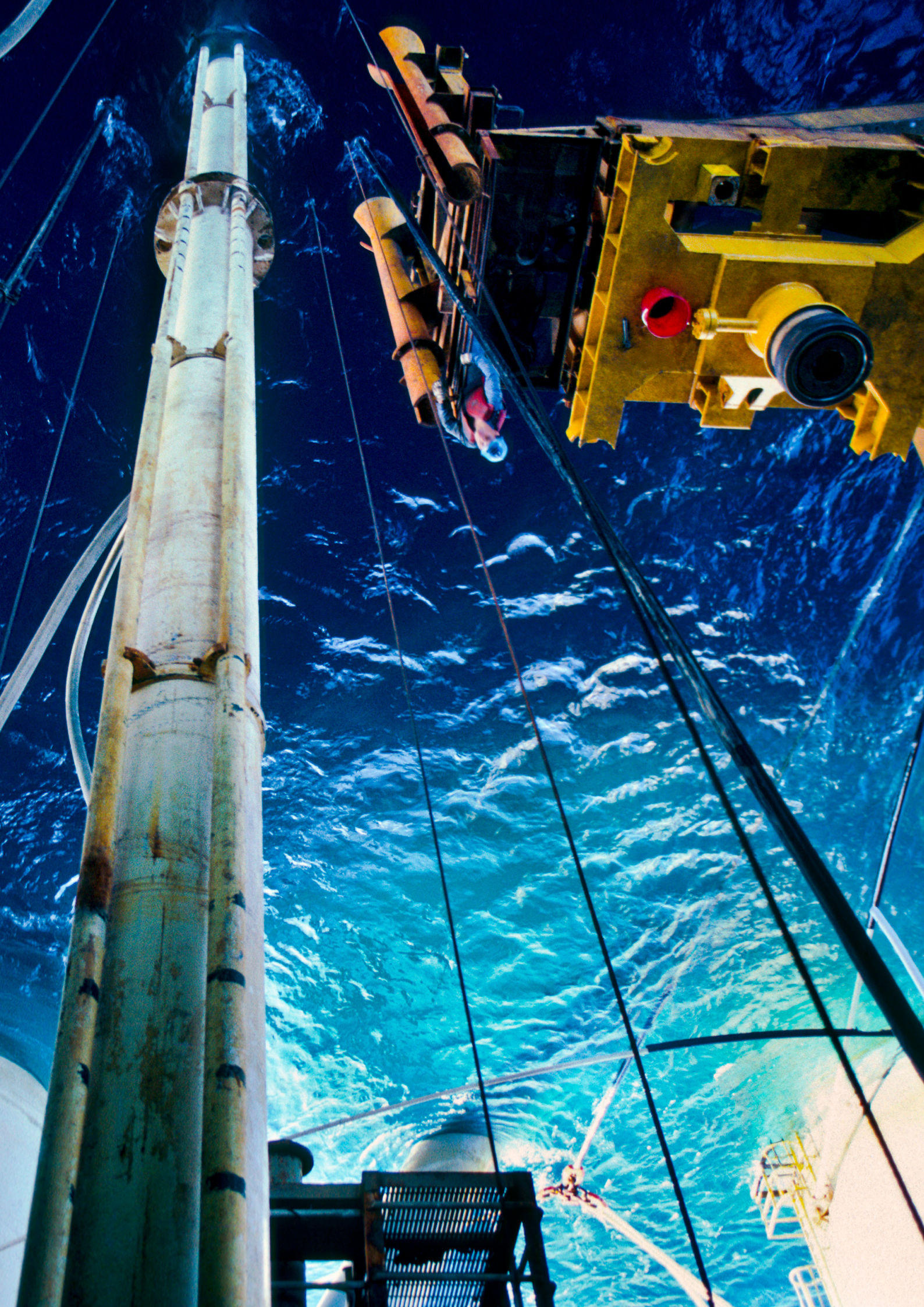
Some forms of contract include provisions requiring the member's insurers to insert a cross liability (also known as severability of interests) clause in the policy wording and/or to remove any 'as owner' language. These particular provisions are problematic and should be deleted insofar as they apply to P&I cover.

- *Cross liability clauses*

A cross liability clause essentially requires an insurance that covers several different parties, such as a project liability policy, to behave as if each party has their own cover with a separate policy issued to each insured. This is perfectly appropriate when the policy is intended to cover each insured party in their own right. However, charterers named as co-assureds on a member's P&I cover do not have cover in their own right, but rather have the benefit of the member's cover for claims which are properly the responsibility of the member, which in the context of an offshore charter would mean claims for which the member is liable under the charterparty. As the co-assured does not have cover in their own right, a cross liability clause in this context is inappropriate and should not be accepted when it relates to P&I cover. Often contracts explicitly list failure to comply with the insurance requirements as one of the termination for default events, so members may risk the contract being terminated for failure to comply with this provision.

- *'As owner' language*

'As owner' language in insurance policies refers to policy provisions which only allow cover to a shipowner or another party acting in that capacity. Similar language is found in the our rules, which provide that we shall not cover a member for any liabilities incurred by them in a capacity other than the capacity in which we insure them. This means that the member is covered only for liabilities that they incur as an owner under the charterparty. A co-assured charterer may claim on the member's cover if they have to pay for liabilities that are the responsibility of the member under the charterparty, but since the charterer is not claiming on their own insurance and accessing the member's cover to pay for claims that are properly the responsibility of the member as the owner under the charterparty, there is no need to amend our rules.



# 03. Exclusions from poolable cover

The pooling agreement sets out certain exclusions from poolable cover. This section looks at these exclusions and the P&I solutions we offer to support members.

As well as the contractual exposures set out above which limit members' access to poolable cover, the pooling agreement sets out certain exclusions from poolable cover. These are based on the type of:

a. Contract relating to particular activities, such as towage, heavy-lift and accommodation.

b. Operation, such as specialist, ROV and diving operations.

c. Vessel, such as drilling and production.

Below, we look at each of these exclusions and the P&I covers we offer to support members.

## A. Type of contract relating to particular activities

There are special requirements under the pooling agreement for owners involved in towage and heavy-lift operations. The contract must be on acceptable terms for poolable cover to respond.

### Towage by an entered ship

**Cover for towage by an entered ship**
Cover for towage by an entered ship is provided by rule 3.10.2. To be acceptable for poolable cover, the towage must be carried out on knock-for-knock terms (or better) where the member is not liable for loss of, damage to, or wreck removal of a towed ship or object and/or its cargo or other property on board.

Essentially, this means we only provide poolable cover for liability relating to the tow, and cargo or other property on board, only when there is a towage contract in place that protects the member from such liability, but these provisions are subsequently not upheld by a court.

Where the member's contract exposes them to liability for loss of, damage to, or wreck removal of the tow and property thereon, such liability can only be covered under the contractual extension.

To trigger cover under the contractual extension, the towage contract must have been approved in writing by us prior to the tow commencing.

However, if the contract is subject to a jurisdiction where the knock-for-knock concept is unlawful or unenforceable in whole or part, claims may be poolable provided they do not impose any liability on the member for any act, neglect or default of the owner of the tow or any other person, and that they also limit the liability of the member under the contract or otherwise to the maximum extent possible by law.

**Towage contracts**
The language of the liability and indemnity provisions should properly protect the member when relating to towage. For example, if the charterer is an oil company fixing a ship to support a well-drilling programme, the drilling rig is unlikely to be owned by the oil company. As a result, knock-for-knock provisions that refer only to the charterer's property will not be sufficient to protect the member. The wording should ideally provide that the owner will not be liable and the charterer will assume liabilities in respect of loss of or damage to or wreck removal of anything towed by the ship, but in the absence of such clear language, a provision extending the charterer's liability and indemnity provisions to also cover the property and personnel of their other contractors, subcontractors or client is generally acceptable.

In particular, where the towed property falls outside the knock-for-knock agreement in the contract, the member must have a comprehensive hold harmless and indemnity agreement with the owner of the towed property that covers liability for loss of, damage to, and wreck removal of anything towed by the ship. Otherwise, any liability the member may have for loss of or damage to or wreck removal of the tow will not be poolable and the contractual extension will be required to respond.

**BIMCO standard contracts**
There are several industry-standard contracts approved by the International Group, including BIMCO Towcon, Towhire and Supplytime for the provision of towage services. However, members should remember when contracting under BIMCO terms that while these contracts are approved by the International Group, this does not mean that all liabilities incurred under BIMCO contracts will automatically be recoverable. Claims must still fall within members' P&I cover to be poolable.

**Heavy-lift**
Rule 5.13 excludes from poolable cover all liability for loss of, damage to, or wreck removal of cargo on a semi-submersible heavy-lift vessel, or any other vessel designed exclusively for the carriage of heavy-lift cargo, unless the cargo is carried under a contract on Heavycon or similar terms approved by us. This effectively means poolable cover only responds to the owner's liability for loss of, damage to, or wreck removal of cargo on a heavy-lift ship when the carriage contract protects the owner from such liability. Provided the member has contracted on acceptable terms, poolable cover will respond even if the contractual provisions are not upheld by a court. Heavycon is a BIMCO contract on knock-for-knock terms relating to the ship and cargo, and is an acceptable contract for carriage of cargo on a heavy-lift ship.

**Accommodation**
The pooling agreement excludes liabilities relating to injury to, or illness, or death of non-marine personnel on the ship employed other than by the member, where the ship is providing accommodation to these personnel in relation to their employment on or about an oil or gas exploration or production facility – unless we have approved a contractual allocation of risk. The minimum requirement for any contractual allocation is knock-for-knock. To the extent that is not upheld in the courts, poolable cover can respond. Otherwise, any liability relating to these personnel, can only be covered under the non-marine personnel extension.

When a ship provides accommodation to personnel and their employment is not on or about an oil or gas exploration or production facility, our benchmark would still be that members should contract on knock-for-knock terms. However, the general contracting principles of the pooling agreement would apply, with poolable cover available if the contractual allocation is knock-for-knock or fault-based.

## B. Type of operation

The pooling agreement recognises certain operations are considered too specialised a risk to have full access to poolable P&I cover. This means some 'at law' liabilities while performing these operations, and any liabilities assumed under contract which the member would not otherwise have had 'at law' are excluded from poolable cover.

### Specialist operations

**What are specialist operations?**
Rule 5.11 contains an exclusion of liabilities, costs and expenses during, and as a consequence of, specialist operations. This term includes works such as construction, installation and maintenance of offshore structures, dredging, blasting, pile-driving, well intervention, cable or pipe-laying, core sampling and depositing of spoil, power generation, and such other operations as the parties to the pooling agreement may agree. The list of specialist operations is 'non-exhaustive' so clubs must consider each type of activity on its own merits against the background and intention of this exclusion.

**The specialist operations exclusion**
The exclusion does not apply to injury, illness, or death claims relating to personnel on board the entered ship, nor to liabilities in respect of oil pollution from the entered ship or removal of the wreck of the entered ship, since these are claims that are common to all shipping. These liabilities are therefore covered under poolable P&I cover even when the ship is performing specialist operations (subject to an acceptable contract).

The specialist operations exclusion is formulated in three parts:

1. Exclusion of liabilities arising out of the specialist nature of the operations. For example, if a dredger damages a buried pipeline in the course of dredging, this would be a liability arising out of the specialist nature of the operation, because the pipeline would not have been damaged if the ship had not been dredging. An extension to cover can be purchased to cover these risks. See 'Cover for liabilities arising out of specialist operations' below.
2. Exclusion of liabilities arising out of the member's failure to perform the specialist operation, and the fitness for purpose or quality of their work, which is a commercial risk for the member to bear (or insure elsewhere).
3. Exclusion of liabilities arising as a consequence of loss of or damage to the 'contract work', which will normally be covered under an 'all risks' policy, such as a 'construction all risks' (CAR) insurance. Like the specialist operations exclusion, the description of contract work is deliberately non-exhaustive, recognising each project will involve different project property. The exclusion includes – but is not limited to – 'materials, components, parts, machinery, fixtures, equipment and any other property which is, or is destined to become a part of the completed project which is the subject of the contract under which the ship is working, or to be used up or consumed in the completion of such project'.

**Cover for liabilities arising out of specialist operations**
A limited extension is available to reinstate cover for claims excluded by the first limb of the specialist operations exclusion (rule 5.11(i)). This extension covers claims arising out of the specialist nature of the operation. It does not give blanket cover, and claims must still fall within the P&I rules. Even if a member has purchased an extension, the other two parts of the specialist operations exclusion (failure to perform and in respect of the contract work) will still apply.

Most specialist operations are performed under contract. If a contract exposes a member to wider liabilities than would be acceptable for poolable cover, the member would need the specialist operations extension (or contractual extension). Cover for these liabilities must be specifically agreed by us, and we would also need to approve the contract.

**Third-party liabilities during specialist operations**
The benchmark that contracts involving specialist operations are assessed against expects members to obtain an indemnity from the Company for loss of, damage to, and pollution from permanent third-party and existing Company Group property in the area where the ship will be carrying out the works.

### Divers, mini-submarines and ROVs

**Cover for liabilities arising out of ROV operations**
Poolable cover excludes liabilities arising out of the member's operation of submarines, mini-submarines and diving bells, which includes remotely operated vehicles (ROVs) and other underwater vehicles (rule 5.14(1)).

The ROV exclusion only applies if it is the member who is carrying out, or is responsible for, the ROV operations. It does not apply if the entered ship has been chartered out as a platform for ROV operations and the underwater vehicle is being operated from the ship by another party.

The exclusion will apply when the member is using their own equipment or is otherwise responsible for the operation of the ROV. However, we can provide a limited extension of cover in respect of the excluded liabilities. The extension will only cover third-party liabilities arising out of the operation of the ROV and is subject to the contract works exclusion. It does not cover damage to, or loss of, the underwater vehicle itself, but will respond to wreck removal of the underwater vehicle.

**Cover for liabilities arising out of the operations of divers**
Poolable cover excludes liabilities arising out of the activities of professional or commercial divers where the member is responsible for those activities (rule 5.14(2)). When the member is not responsible for the activities of the divers, for instance, in circumstances in which the entered ship has been chartered out as a dive platform, and the charterer or another party is responsible for engaging the divers, the exclusion will not apply. We are able to provide an extension of cover for third-party liabilities arising out of diving activities which is also subject to the contract works exclusion. However, the extension does not cover liability assumed under contract for injury to, or the death of, the divers themselves. Employer liability insurances are available in the commercial market which can respond. The exclusion in respect of divers does not apply in respect of:-

a. Activities arising out of salvage operations being conducted by the ship where the divers form part of the crew of that ship and where the member is responsible for the activities of such divers,
b. Incidental diving operations carried out in relation to the inspection, repair or maintenance of the ship or in relation to damage caused by the ship, or
c. Recreational diving activities

**Third-party liabilities during ROV and diving operations**
We would similarly expect members to obtain an indemnity from the Company for loss of, damage to, and pollution from, permanent third-party property in the area where the ROVs and/or divers will be performing the works.

## C. Type of vessel

Poolable cover excludes:

1. Liabilities arising in respect of ships or units constructed or adapted for the purpose of carrying out drilling operations in connection with oil or gas exploration or production operations (rule 5.12.1).
2. Liabilities incurred in respect of the ship, being any ship carrying out drilling or production operations in connection with oil or gas exploration or production, to the extent that such liabilities arise out of or during drilling or production operations (rule 5.12.2).

In the scenario where a member has purchased a drilling unit for the purposes of conversion, it is likely that once the vessel has been altered to such a degree that it is no longer capable of, or adapted for drilling because the necessary equipment has been removed, it can be treated as an eligible vessel and therefore poolable cover could apply. We would suggest that in this scenario you consult with your usual club contact at the outset of any conversion to provide clarity as to what cover is appropriate.

For the purpose of these exclusions:

a. A ship shall be deemed to be carrying out production operations if inter alia, it is a storage tanker or other ship engaged in the storage of oil, and either the oil is transferred directly from a producing well to the storage ship, or the storage ship has oil and gas separation equipment on board and gas is being separated from oil while on board the storage ship other than by natural venting (rule 5.12.3).

b. If the ship is carrying out production operations, rule 5.12.2 shall apply from the time that a connection, whether directly or indirectly, has been established between the ship and the well pursuant to a contract under which the ship is employed until such time that the ship is finally disconnected from the well according to that contract (rule 5.12.4).

The effect of the above exclusions means that there is no cover available under the pool at any time for vessels constructed or adapted for oil and gas drilling, while production units (FPSOs, FPUs, FLNGs and MOPUs) are only excluded while they are working or connected to the well.

Production units may be entered with us for poolable P&I cover until they enter the field, for instance while they are navigating, or under tow, to the field, since the risks they run during these operations are similar to those incurred by many commercial ships. If P&I cover is given for a unit being towed, we would expect the member to contract on knock-for-knock terms in respect of the towage.

Floating Storage Units (FSUs) can benefit from poolable cover provided that oil is not transferred directly from a producing well and there is no oil and gas separation equipment on board. This is because they are not involved in production operations and the risks they run are not greatly different to those incurred by a trading tanker.

## FSRUs

FSRUs (Floating Storage Regasification Units) are not caught by the above-mentioned exclusion relating to ships carrying out production operations. Regassifying LNG is not deemed to be 'production operations' for these purposes, as the process merely involves converting gas from its liquid into its gaseous form and/or because the unit would not be connected to a well. As a result, poolable cover can respond in respect of member's liabilities arising from the operation of a FSRU, subject to the rules and the member's terms of entry.

## Standard offshore rules

Where poolable cover does not apply, we can provide owners of drilling and production units with fixed premium P&I cover under the standard offshore rules (SOR). This gives similar coverage to the normal International Group cover, but to a lower fixed limit. However, unlike poolable cover, SOR excludes cargo liabilities. Certain types of fines, such as fines for pollution, are covered, 'as of right', but other fines will be discretionary. Fines are also subject to a $50m sub-limit.

**SOR excludes cover for blowout, control of well expenses and pollution from reservoir**
Members operating FPSOs or other drilling or production units have exclusions in their cover for risks such as blowout, seepage and pollution from reservoir, and control of well expenditure. We do not cover these risks, which are normally insured under specialist insurances written in the commercial market and rated very differently. If the member is a contractor, their contracts should provide for these exposures to be borne regardless of negligence by the oil company they are working for, since they can more appropriately be insured under the oil company's Operator's Extra Expense (OEE) or Energy Exploration and Development (EED) programme.

**Offshore liability extension (OLE)**
Notwithstanding the terms of SOR cover, we are able to provide an OLE up to a maximum limit of $10m for drilling and $25m for production operations. This can extend to cover liability for:

- Third-party property on board (property/equipment held in custody for long periods should ideally be covered under members' property insurances).
- A member's personnel away from the unit – for example, while attending work-related courses or working away from the entered unit on a third-party unit.
- Charterer's liability relating to support vessels hired on knock-for-knock terms. Note this would not include traditional charterer's liability for damage to hull, which should in any event remain the responsibility of the owner under the knock-for-knock agreement.
- Contractual third-party liabilities and clean-up costs arising from pollution from the well or hole – this extension is sublimited to a maximum of $10m ($5m for drilling). This extension is not available to field operators.
- Debris clean-up costs following a casualty.
- Sue and labour costs incurred solely for the purpose of avoiding or minimising any liability against which the member is insured by us.

Excess war risks P&I cover is typically bought at the same time and provided under the Standard Offshore Rules P&I War Risks clause.

Cover provided under the non-poolable extensions, SOR cover and the OLE are provided by us and supported with reinsurance from the commercial market.

**We hope you have found this guide helpful. Please remember, this information is intended to be used as a guide only, and members and brokers should not rely on it as a substitute for specific legal advice. We are happy to provide further advice to members and brokers on the terms of particular contracts as required.**

For further information or advice, please contact your usual club representative.

# Standard Club

Part of **NorthStandard**

Keep up to date by visiting the Knowledge Centre section on our website **standardclub.com**



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