

Offshore Contract Review Letter – Offshore rules

Cover for contractual liabilities

Offshore contracts are reviewed in order to establish whether the club can cover P&I liabilities arising thereunder under the club's Offshore P&I rules. However, the club's review of contracts is not intended to confirm blanket cover for all liabilities arising under a contract. If a contract is approved by the club this does not mean that all liabilities incurred by the member thereunder are covered, since the normal P&I rules and the member's terms of entry will still apply.

The club aims to proactively advise members of the effect of the contractual arrangements they have concluded in terms of normal poolable P&I cover and any extra extensions to cover which the contract liabilities may require, so that we can provide a level of comfort in terms of the member's cover before any potential liabilities arise.

Excluded risks

Liabilities arising during some operations are excluded from club cover under rule 5. These include liabilities in respect of contract works or failure to perform arising out of specialist operations (such as construction, installation and maintenance of offshore structures, dredging, blasting, pile-driving, well stimulation, cable or pipe-laying, core sampling, and depositing of spoil etc), liabilities arising out of the operation by the member of underwater vehicles, and liabilities arising out of the activities of divers for which the member is responsible. These and any other liabilities excluded under the rules and the member's terms of entry remain excluded even if the club has reviewed the contract unless the member has also purchased a specific cover for the liabilities in question.

Co-assured

If the contract requires the member's contractual partner to be named on the P&I cover, the wording should make clear that the cover is restricted to liabilities which are properly the responsibility of the member under the contract. In such cases the member's contractual partner can be named as Co-assured under rule 13, which entitles him to "misdirected arrow" cover, but not to cover for liabilities which are his responsibility under the contract.

If the contract requires the member's insurers to waive their rights of subrogation against the member's contractual partner or his insurers, the wording should make clear that rights of subrogation are only to be waived in respect of liabilities which are properly the responsibility of the member under the contract. Otherwise the member's contractual partner could argue that the clause is intended to encompass all of the member's liabilities covered by insurance, regardless of the contractual division of responsibility for such liabilities. This is not correct; the club will only give waivers of subrogation in respect of those liabilities which are properly the responsibility of the member under the contract.

Depending on individual member's requirements the club reviews individual contracts, either during the negotiation process or subsequently, or may by agreement carry out a general contract audit. When the club has reviewed a contract, cover is granted on the basis that the liabilities therein will remain unchanged. Should any contract wording change substantively, either in the final signed version or by reason of addenda being agreed, the contract should be reviewed again by the club.