

APPENDIX IEligible persons - Clauses 1.1(z) and (mm) etc.Category 1.

Any owner, owner in partnership, owner holding separate shares in severalty, part owner, trustee or bareboat or demise charterer of any Insured Vessel, any manager or operator having control of the operation and employment of an Insured Vessel (being such control as is customarily exercised by a shipowner), and any other person in possession and control of any Insured Vessel, provided that no person falling within category 2 below is insured under the same Entry.

Category 2.

(A) A charterer (other than a bareboat or demise charterer) of an Insured Vessel, provided that there are no other persons falling within category 1 or category 2 insured under the same Entry.

(B) A charterer (other than a bareboat or demise charterer) of part of an Insured Vessel, provided that:-

- (a) in the determination of the relevant Association, that person charts part of that Insured Vessel for the purposes of a regular liner service provided by him; and
- (b) there are no other persons falling within category 1 or category 2 insured under the same Entry.

Category 3.

An insurer of protection indemnity risks which has directly reinsured such risks with an Association and which has qualified as an eligible person in accordance with the procedures and subject to the conditions of Appendix IX.

Category 4.

The following categories of co-assured, provided that

- (a) any such person is co-assured under an Entry with an Association; and
- (b) any such person is co-assured with an Insured Owner falling within categories 1 or 2 above; and
- (c) a Rule in or substantially in the following form has been adopted by the Association with which such co-assured has an Entry:-

“Conduct of any one of the parties insured hereunder which is sufficient to bar that insured's rights under this policy shall bar the rights of recovery of all the said insured”.

(A) Any person being

- interested in the operation, management or manning of an Insured Vessel<sup>8</sup>; or
- the holding company or the beneficial owner of an Insured Owner insured under the same Entry (being an Insured Owner falling within categories 1 or 2 above); or
- the holding company or the beneficial owner of a co-assured Insured Owner which is a person interested in the operation, management or manning of an Insured Vessel; or
- any mortgagee of an Insured Vessel or financial institution (or its subsidiary or affiliate) as the owner leasing an Insured Vessel to an Insured Owner falling within category 1 above

provided in each such case that

- (a) such person is named in the terms of Entry; and
- (b) such person shall be jointly and severally liable with the Insured Owner insured under the same Entry (being an Insured Owner falling within either of categories 1 and 2 above) for all calls, contributions, premium or other sums due under the terms of Entry<sup>9</sup>; and
- (c) the cover afforded to such person is restricted by the incorporation in the terms of Entry (whether in the Rules of the relevant Association or otherwise) of a clause in or substantially in the following form:-

“The cover afforded to (insert name(s) of co-assured) shall extend only to risks, liabilities and expenses arising out of operations and/or activities customarily carried on by or at the risk and responsibility of shipowners (or, in the case of a Charterer's Entry, charterers) and which are within the scope of the cover afforded by the Rules and any special terms set out in the Certificate of Entry”.

(B) Any person, provided that

- (a) such person is named in the terms of Entry; and
- (b) such person is not a charterer of the whole or any part of the Insured Vessel insured under that Entry; and
- (c) the cover afforded to such person is restricted by the incorporation in the terms of Entry (whether in the Rules of the relevant Association or otherwise) of a clause in or substantially in the following form:-

<sup>8</sup> A Pool Manager can be a co-assured in respect of the liabilities of the insured shipowner pool member. However, unless he is also an affiliated or associated charterer to whom a co-assurance is afforded under category 4 (D), his risks as a charterer will not be covered under the co-assurance provided by category 4(A), should he charter as a principal.

<sup>9</sup> As an exception to the requirement for joint and several liability, Associations may if necessary agree to waive the co-assured premium liability requirement for US Government/US Government Agencies including Military Sealift Command and Marad.

“Notwithstanding the fact that ..... are hereby named in their capacity as ..... as co-assured in this Certificate of Entry, the cover of the Association will only extend insofar as they may be found liable to pay in the first instance for loss or damage which is properly the responsibility of [Insured Owner falling within categories 1 or 2 insured under the same Entry], and nothing herein contained shall be construed as extending cover in respect of any amount which would not have been recoverable from the Association by [Insured Owner falling within categories 1 or 2 insured under the same Entry] had the claim in respect of such loss or damage been made or enforced against him. Once the Association has made indemnification under such cover it shall not be under any further liability and shall not make any further payment to any person or company whatsoever, including [Insured Owner falling within categories 1 or 2 insured under the same Entry], in respect of that loss or damage”.

(C) Any person associated with or affiliated to an Insured Owner insured under the same Entry (being an Insured Owner falling within categories 1 or 2 above), provided that

- (a) such person is not specifically named in the terms of Entry; and
- (b) the cover afforded to such person is restricted by the incorporation in the terms of Entry (whether in the Rules of the relevant Association or otherwise) of a clause in or substantially in the following form:-

“Should a claim in respect whereof an Insured Owner named in this Certificate of Entry is insured by the Association be made or enforced through a person or company affiliated or associated with such Insured Owner, the Association shall if so requested by the Insured Owner indemnify such person or company against any loss which as a consequence thereof such person or company shall have incurred in that capacity provided always that nothing herein contained shall be construed as extending to any amount which would not have been recoverable from the Association by the Insured Owner had such claim been made or enforced against him. Once the Association has made such indemnification it shall not be under any further liability and shall not make any further payment to any person or company whatsoever, including the Insured Owner, in respect of the loss or damage in respect of which the claim was brought”.<sup>10</sup>

(D) A charterer of an Insured Vessel, being a charterer which is affiliated to or associated with an Insured Owner of that Insured Vessel insured under the same Entry (being an Insured Owner falling within categories 1 or 2 above), provided that

- (a) the charterer shall be named in the terms of Entry; and
- (b) the charterer shall only be covered by the Entry for the risks, liabilities and expenses in respect of which the affiliated or associated Insured Owner has cover

<sup>10</sup> Like category 4(B), category 4(C) provides a “misdirected arrow” cover but for unnamed affiliates or associates of the Insured Owner.

and for the purposes of this sub-paragraph (D) a charterer shall only be affiliated to or associated with the Insured Owner if

- (i) both the Insured Owner and the charterer are under common ownership; or
- (ii) the Insured Owner or the charterer respectively either owns at least 50% of the shares in and voting rights of the other or owns a minority of the shares in the other and can procure that it is managed and operated in accordance with its wishes.

(E) Any person (a “contractor”) who has entered into a contract with an Insured Owner insured under the same Entry (being an Insured Owner falling within categories 1 or 2 above) for the provision of services to or by the Insured Vessel, and any subcontractor of the contractor, provided that

- (a) the contractor is named in the terms of entry; and
- (b) the contract has been approved by the Association with which the Insured Vessel is entered; and
- (c) the contract includes a Knock for Knock agreement; and
- (d) the co-assured shall only be covered for liabilities, costs and expenses which:
  - are to be borne by the Insured Owner under the terms of the contract; and
  - would, if borne by the Insured Owner, be recoverable by the Insured Owner from the Association with which the Insured Vessel is entered.

APPENDIX VExcluded Losses - Clause 5

The following losses shall be Excluded Losses save only as they may be treated as sue and labour expenses or expenses incurred by direction of an Association:

1. Hull damage

Loss of or damage to the Insured Vessel or any part thereof, other than by confiscation resulting from a breach of customs regulations.

2. Equipment damage

Loss of or damage to any equipment on board the Insured Vessel or to any containers, lashings, stores or fuel thereon, to the extent that the same are owned or leased by the Insured Owner or any associated person.

3. Repairs

The cost of repairs to the Insured Vessel or any charges or expenses in connection therewith (other than items recoverable under the Rules of an Association in respect of general average).

4. Loss of hire

Claims by or against the Insured Owner relating to loss of freight or hire on the Insured Vessel or any proportion thereof unless such loss of freight or hire forms part of a claim for liabilities in respect of cargo.

5. Salvage of Insured Vessel

Salvage of an Insured Vessel or services in the nature of salvage provided to an Insured Vessel and any costs and expenses in connection therewith other than

(a) such liabilities, costs or expenses as may arise by reason of life salvage;

(b) costs and expenses under any of the following:-

(i) Article 14 of the International Convention on Salvage 1989; or

(ii) Article 14 of the International Convention on Salvage 1989, as incorporated into Lloyd's Open Form of Salvage Agreement (1980, 1990 or 1995) or into any other salvage contract approved by the Association with which the Insured Vessel is entered; or

- (iii) 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 with which the Insured Vessel is entered.
- (c) ship's proportion of general average or salvage paid by an Association after the exercise of a discretion granted under its Rules; or
- (d) contribution by cargo or some other party to the maritime adventure to general average, salvage or special charges payable by the Insured Owner solely by reason of a breach of the contract of carriage, provided that in cases where an Association makes advances to an Insured Owner in respect of cargo interests proportion of general average prior to determination of liability therefor, it shall be a condition for pooling under this Agreement that the following conditions have been satisfied
  - (i) at least three (3) calendar months shall have elapsed from the time when the final general average adjustment has been issued before the advance is made. Where an adjustment is issued in more than one stage a right to pooling arises in respect of all stages;
  - (ii) advances shall be limited to a maximum of eighty per cent (80%) of cargo's proportion of general average, net of ship's sacrifices;
  - (iii) counter-security shall be obtained from the Insured Owner against the possibility of a recovery from cargo interests, in the form of a guarantee from the Insured Owner as well as a legal assignment of any recovery of contributions from cargo interests;

and provided always that no regard need be paid to the merits of the claim against cargo interests.

6. Charter cancellation

Loss arising out of cancellation of a charter or other engagement of an Insured Vessel.

7. Bad debts

Loss arising out of irrecoverable debts or out of the insolvency of any person including insolvency of agents.

8. Demurrage, detention and delay

Claims by or against the Insured Owner relating to demurrage on, detention of or delay to an Insured Vessel unless such demurrage, detention or delay forms part of a claim for liabilities in respect of cargo.

9. Wilful misconduct

Claims arising in circumstances where there has been wilful misconduct on the part of the Insured Owner (being an act intentionally done, or a deliberate omission by the Insured Owner, 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) such as would enable the Association to deny cover, save where the Association has given security to third parties before becoming aware of the said circumstances.

10. Breach of class and statutory compliance warranties

Claims incurred which result from an occurrence involving a breach of either of the following warranties unless the Association has in its discretion waived compliance with such warranty:

- (a) that the Insured Vessel remain fully classed;
- (b) save where a person falling within category 2 of Appendix I is insured under an Entry, that the Insured Owner comply or procure compliance with all statutory requirements of the state of the Insured Vessel's flag relating to the construction, adaptation, condition, fitment, equipment and manning of the Insured Vessel and at all times maintain or procure the maintenance of the validity of such statutory certificates as are issued by or on behalf of the state of the Insured Vessel's flag both in relation to such requirements and in relation to the International Ship Management (ISM) Code and in relation to the International Ship and Port Facility Security (ISPS) Code.

11. Contracts and indemnities

Liabilities, costs and expenses which would not have arisen but for the terms of a contract or indemnity entered into by an Insured Owner, unless the terms of that contract or indemnity are permissible in accordance with and not otherwise excluded by:

- (a) any paragraph of this Appendix V, or
- (b) where not provided for by any other paragraph of this Appendix V, the following principles<sup>15</sup>.

Principles

1. General

In general, an Insured Owner should not assume responsibility, under contract or otherwise, for liability arising or loss resulting from any act or omission for which, under applicable law, the Insured Owner would not otherwise be liable, or in respect of which, under applicable law, the Insured Owner would otherwise be entitled to exclude or limit liability.

<sup>15</sup> Contracts or indemnities falling within the scope of other paragraphs of Appendix V, eg. towage operations, must satisfy the provisions of those paragraphs and cannot be pooled under this paragraph 11.

## 2. “Knock for Knock”

Notwithstanding paragraph 1 above, an Association may approve and shall be entitled to pool liabilities arising under a Knock for Knock agreement provided that the Insured Owner does not, under any such agreement, intentionally waive any rights of limitation otherwise available to him under applicable law.

## 3. Contracts under which the Insured Vessel provides transportation or other services to or on behalf of other parties

The principles set out in paragraphs 1 and 2 above apply to the terms of any contract under which the Insured Vessel provides transportation or other services to, for or on behalf of any others.

## 4. Contracts under which services, goods or facilities are obtained for or supplied to the Insured Vessel

The Insured Owner shall exercise best endeavours to ensure that the terms of any contract under which services, goods or facilities are obtained for, supplied or made available to the Insured Vessel, comply with the principles set out under paragraphs 1 and 2 above. If the terms of any such contract do not and will not comply with the principles set out under paragraphs 1 and 2 above, liabilities arising thereunder shall nevertheless be eligible for pooling where the Association determines that best endeavours have been exercised to ensure that the contract did so comply and approves such contract by the exercise of a discretion under its Rules.

## 5. Liabilities arising under contracts and indemnities specifically accepted or excluded

Notwithstanding the provisions of this paragraph 11 and the above Principles 1 – 4, the Associations have agreed that the following contracts and indemnities are either not eligible for pooling or eligible for pooling, subject to the other terms of the Agreement:

## (a) Eligible for pooling-

## (i) With regard to Panama Canal indemnities, those given on demand:

- (ia) in order to permit certain large vessels to make an initial trial transit of the Canal at a draught greater than that assigned to the vessel by the Canal Co; and
- (ib) in order to permit transit of an Insured Vessel where by reason of a defect in or deficiency thereto the Insured Vessel does not comply with conditions imposed by the Canal Co, provided such defect or deficiency cannot be rectified by repairs or reasonable remedial action by the Insured Owner.

## (ii) The Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.

## (b) Not eligible for pooling:-

- (i) With regard to Panama Canal, indemnities relating to chocks and bitts and those relating to the construction and fittings of the ship itself and not eligible for pooling under (a)(i)(ib) above.
- (ii) Indemnities to doctors.
- (iii) Indemnities given to a Qualified Individual, spill response organisations or other persons or contractors providing clean up and related services in the event of pollution, which do not comply with the guidelines in the Annex to the Circular of the International Group of 2009.
- (iv) Indemnities in contracts relating to the use of LNG terminals to the extent that the liabilities thereunder:



- (a) would not have arisen had the contract incorporated a limit in accordance with the Requirements below, or
- (b) would not have arisen had such indemnity incorporated in accordance with the Requirements below an exception for the sole negligence of the indemnitee other than under a Knock for Knock agreement.

#### Requirements

1. Subject to 2 below,
  - (i) a contract applicable for the use of an LNG terminal by an Insured Vessel must be subject to statutory limitation or (in the event there is no such statutory limit or it is waived) contractual limitation in an amount not exceeding one hundred and fifty million Dollars (\$150,000,000) or a limit equivalent to that specified under the 1976 Limitation Convention (including any applicable revisions, amendments and protocols thereto);
  - (ii) the right to any such limitation in (i) above must:
    - (a) not be conditional upon the performance of insurance or other obligations by the Insured Owner which cannot reasonably be expected of an Insured Owner entered for full P&I cover, and complying with the terms and conditions of his entry in an Association in the International Group; and
    - (b) in respect of any contractually agreed limitation, encompass all the liabilities under the conditions of use arising from one event.
  - (iii) unless the contract includes a Knock for Knock agreement, any indemnity from the Insured Owner must exclude liability arising from the sole negligence of the indemnitee.
2. Notwithstanding 1 above, if, in respect of liability for wreck removal of the Insured Vessel, or crew, the contract does not comply with 1(ii)(b) and/or 1(iii) above, that liability shall nevertheless be eligible for pooling if the Association determines that the Insured Owner exercised best endeavours to ensure that the contract does so comply.

#### 12. Under-insurance

Liabilities, costs and expenses arising in whole or in part because the Insured Vessel was not fully insured under its hull policies for its market value without commitment, save insofar as an Association has made a determination in accordance with its Rules that the value for which the Insured Vessel was so insured was, in the circumstances of the case, reasonably close to its market value without commitment.

#### 13. Contracts of Carriage

Liabilities, costs and expenses in respect of the carriage of cargo arising out of the following (save insofar as an Association shall exercise a discretion under its Rules):

- (a) Contracts for carriage by sea on terms less favourable than those of the Hague or Hague Visby Rules, provided that such liabilities, costs and expenses shall only be Excluded Losses to the extent that they would not have arisen out of a contract subject to the Hague or Hague Visby Rules;

insofar as concerns liabilities, costs and expenses arising out of any such contract for carriage, the reference to discretion in the preamble to this paragraph 13 shall be deemed to be a reference only to a discretion as to whether to accept the claims in respect of such liabilities, costs or expenses exercised after the occurrence of the event which gave rise to them.

- (b) Contracts for carriage partly in an Insured Vessel and partly by some other means of transport, and any such discretion as is referred to in the preamble to this paragraph 13 may be exercised by the Association so as to approve any such contract prior to any liability, cost or expense being incurred or so as to accept any liability, cost or expense after it has been incurred, provided that where an Association shall exercise any such discretion under its Rules it shall take account of the following Guidelines.

1. The through or combined transport should involve shipment of goods for a sea voyage on board an Insured Vessel. Claims in respect of liabilities falling on an NVOCC would not be eligible for pooling. The usual standard of liability should apply for the sea voyage i.e. no voluntary acceptance of liabilities in excess of Hague or Hague Visby Rules.
2. Liabilities in respect of loss or damage to cargo during the land carriage will be acceptable if the liability in the contract of carriage is based on either:
  - (a) the ICC Rules or similar terms; or
  - (b) the road or rail conditions compulsorily applicable in the state where the land carriage takes place; or
  - (c) CMR or CIM terms.
3. Liabilities in respect of loss of or damage to cargo during any period of transportation by air will be acceptable if the liability in the contract is:-
  - (a) subject to and in compliance with the Warsaw Convention 1929 or that convention as amended at The Hague 1955, or the Montreal Convention 1999 whichever is applicable or any equivalent national law; or
  - (b) based on the International Air Traffic Association's air waybill conditions of carriage adopted by IATA resolution 600b(II).
4. Storage will not be acceptable unless it can be considered as a reasonable and necessary part of the through transport operation.
5. As a general rule, a Club should ensure that, so far as possible, the Insured Owner preserves his rights of recourse against others involved in the performance of the contract of carriage. This will be of particular importance in the case of a combined transport bill of lading, where the Insured Owner issuing the bill of lading must preserve his rights of recourse against his sub-carriers, even if the sub-carrier is a subsidiary or associated company of the Insured Owner.

- (c) Deviation or departure from the contractually agreed voyage or adventure which deprives the Insured Owner of the right to rely on defences or rights of limitation which would otherwise have been available to him. Provided always that in relation to any such deviation:

- (i) where an Association shall exercise a discretion under its Rules it shall take account of the Guidelines set out below;
- (ii) where an individual Association has accepted a particular situation as being within its cover, and in so doing it has taken account of the Guidelines referred to in proviso (i) above, it will be covered by this