



# Marine Liability Policy for Charterers

Version 1/2022

This year we have done yet another review of the wording of our Marine Liability Policy for Charterers in order to further improve it and make it more user-friendly. Just like last year, our focus is on bringing the policy wording in line with the market developments. In particular, the most prominent amendments are related to contracts and indemnities, fines, specialist operations, and declared communicable disease limitation.

In addition, this year we made efforts to streamline the wording and the concepts applied throughout the policy wording. The result is a more standardised and coherent text.

Customarily, the terms of our current policy wordings (1/2021) will continue to apply to those insurance contracts with a policy start date in 2021. The 2022 terms will apply to those contracts entered into or renewed as from 2022. For your reference, in this circular you will find a short summary of the major changes coming into effect with the new 2022 policy version.

Should you have any specific questions regarding the amendments, kindly direct these to your usual contact person at MS Amlin or to [LPS@msamlin.com](mailto:LPS@msamlin.com).

The new wording of the Marine Liability Policy for Charterers - Version 1/2022 can be found [here](#).

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## Part 1 – Protection & Indemnity

### Section 6 – Contracts and indemnities

We have changed this wording in order to make it more comprehensive. The scope of a potential extension of contractual liability is broadened, still subject to the prior approval of the Company.

The amended section will read as follows:

*Liabilities arising under the terms of a contract or indemnity entered into by the Assured for the provision of services to or by the Insured Vessel and which would not have arisen but for those terms, to the extent that these liabilities fall within Part 1 (Charterers' Liability) and are not excluded in Part 5 (General Terms and Conditions) or in the Certificate of Insurance. The terms of any such indemnity or contract must have been approved by the Company in writing.*

In conjunction with this section, we also adapted the relevant exclusions sub-section in the General Terms and Conditions (Part 5) as follows:

*28.1 Notwithstanding any other term of this Policy of Insurance, there is no insurance under this Policy of Insurance and the Assured shall not be entitled to recover under any Part or Class of Insurance, if:*

*[...]*

*28.1.13 The liability arises under the terms of any contract or indemnity and would not have arisen but for those terms, unless otherwise agreed in writing in accordance with Section 6 (Contractual liabilities).*

### Section 13 – Fines

Fines for smuggling or infringement of custom law are excluded from cover in line with current market practice. The amended sub-section will read as follows:

*13.1 Liability for fines in respect of the Insured Vessel imposed by any court, tribunal, or authority of competent jurisdiction upon the Assured, for any of the following:*

*a. Short or over delivery of Cargo or failure to comply with regulations relating to the declaration of goods or documentation of Cargo, provided that the Assured is insured by the Company for liability under Section 4 (Cargo liabilities).*

*b. Accidental escape or discharge from the Insured Vessel of oil or any other substance, provided that the Assured is insured by the Company for liability under Section 10 (Pollution risks).*

*[...]*

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## Part 5 – General Terms and Conditions

### Section 25 – Application of terms

The section now more clearly defines the contractual terms applying to the contract of insurance as well as their ranking.

The amended section will read as follows:

*25. The terms and conditions set out in each Class of Insurance, and in Part 4 (War Protection & Indemnity Cover) and Part 6 (Additional Cover and Extension Clause) if applicable, shall prevail over Part 5 (General Terms and Conditions) in the event of any conflict between them, but any terms appearing in the Certificate of Insurance shall prevail above all others. Words and expressions in the Policy of Insurance shall have the same meanings as assigned to them in Part 7 (Definitions).*

### Section 28.1.1 – Exclusions and limitations

We have redrafted this section for greater clarity when it comes to the obligation of the Assured in exercising reasonable care in the chartering, operation or management of the Insured Vessel. The amended sub-section will read as follows:

*28.1 Notwithstanding any other term of this Policy of Insurance, there is no cover under this Policy of Insurance and the Assured shall not be entitled to recover under any Part or Class of Insurance, if:*

*28.1.1 The Assured has failed, whether deliberately, recklessly, or negligently, to exercise reasonable care in the chartering, Operation or management of the Insured Vessel.*

*[...]*

### **Section 28.1.4 – Exclusions and limitations**

Furthermore, we amended Section 28.1.4 and re-structured it into sub-paragraphs for better reading and for making the scope of the exclusion clearer. In particular, it specifies that the exclusion applies also to the Assured's servants and agents, and it applies to any breach of duty including a deliberate, reckless or a negligent one. For greater clarity, an objective method is set out for determining what is considered patently inappropriate.

The amended sub-section will read as follows:

*28.1.4 The claim or dispute arose out of or consequent upon:*

- a. the Insured Vessel carrying illegal goods, contraband, or blockade running;*
- b. the Assured recklessly or intentionally employing or causing the Insured Vessel to be employed in an unlawful or unduly hazardous or improper trade or voyage;*
- c. the Cargo being unlawful or unduly hazardous or improper;*
- d. the Assured or its servants or agents causing, or allowing to continue, whether deliberately, recklessly, or negligently, a patently inappropriate method of securing, unsecuring, stowing, dunnaging, loading, carrying, discharging, inspecting, maintaining, or treatment of the Cargo, where a patently inappropriate method is one which a prudent uninsured charterer would not have used or allowed to be continued.*

### **Section 28.1.8 – Specialist Operations exclusion**

While the wording of this exclusion sub-section is retained, the definition of Specialist Operations has been amended in order to exclude from its scope certain operations that are no longer considered of a specialist nature by the market and, as such, they are now included in the standard P&I cover. These operations concern firefighting, exploration and surveying, oil storage, underwater surveying, search and rescue at sea and research at sea. A second set of operations has been added to the definition of Specialist Operations (core sampling, repair, well intervention, decommissioning and power generation), whereas others are now excluded elsewhere – see the new Section 28.1.9 on divers and remotely operated vehicles and Section 28.1.10 on salvage. These can be bought back by means of dedicated buyback wordings. Drilling operations are excluded from cover (see Section 28.1.11).

The said changes were effected by amending our definition of Specialist Operations (Part 7) as follows:

*Part 7 - Specialist Operations*

*The performance of dredging, blasting, pile driving, cable or pipeline laying or recovery, core sampling, construction, installation, repair or maintenance work, depositing of spoil, well intervention, decommissioning, power generation and any other operations of similar nature as the Company may decide.*

*Part 5 - Section 28.1*

*Notwithstanding any other term of this Policy of Insurance, there is no insurance under this Policy of Insurance and the Assured shall not be entitled to recover under any Part or Class of Insurance, if:*

*[...]*

*28.1.8 The claim is in respect of liability, losses, costs and expenses arising out of performing Specialist Operations, unless agreed by the Company in writing prior to attachment.*

## **Section 28.4 – Declared Communicable Disease Limitation**

Pursuant to the changes to our re-insurance programme, we had to update this section which deals with Covid-19 risks. Last year, the market applied a Coronavirus limitation clause based on the frequently used LMA 5395 clause. Considering our strong financial position, we decided to apply an amended version of that exclusions clause in order to still be able to provide cover to our clients for certain Covid-19 claims for amounts up to USD 10 million and in accordance with the conditions of insurance.

This year the insurance market is moving towards a new clause called *Endorsement Excluding a Communicable Disease Following a Public Health Emergency of International Concern (PHEIC)*, shortly referred to as JL2021-014. This clause was drafted to be used in marine liability and energy liability contracts. It is similar to the LMA 5395 clause, however, the new one tries to address not only Covid-19 risks but also any other potential virus that could qualify for a communicable disease. The endorsement also makes the exclusion dependent on the World Health Organisation (WHO). Thus, the exclusion will be triggered when the communicable disease is declared by the WHO to be a public health emergency of international concern. Like last year, we amended the clause in order to be able to provide cover under our standard terms and conditions for amounts not exceeding USD 10 million.

The new section will substitute the amended Coronavirus Limitation [LMA 5395] clause and will read as follows:

### *28.4 Declared Communicable Disease Limitation*

*28.4.1 This clause shall be paramount and shall override anything contained in this Policy of Insurance inconsistent therewith.*

*28.4.2 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'), this insurance excludes coverage for:*

*28.4.2.1 any loss, damage, liability, cost, or expense directly arising from any transmission or alleged transmission of a Declared Communicable Disease, or from any fear or threat thereof, subject only to Section 28.4.3;*

*28.4.2.2 any liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for a Declared Communicable Disease whether the measures are preventative or remedial, subject only to Section 28.4.3;*

*28.4.2.3 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 Declared Communicable Disease or the fear or the threat thereof.*

*28.4.3 The exclusions under Section 28.4.2.1 and 28.4.2.2 above, only apply to any loss, damage, liability, cost or expense of the Assured which exceed(s) USD 10 million per Event.*

*28.4.4 Section 28.4.3 does not apply to any loss, damage, liability, cost or expense of the Assured relating to Passengers and to Persons (other than Crew) on board of the Insured Vessel, unless otherwise agreed by the Company in writing.*

*28.4.5 All other terms, conditions and limitations of this Policy of Insurance remain the same.*

## Part 7 – Definitions

A number of new definitions have been introduced, while the language of some of the existing definitions has been improved for greater clarity. On the other hand, one definition has been deleted for being not relevant anymore. In addition, the terms as defined in Part 7 are used more frequently throughout the policy wording, which makes the latter shorter and more reader-friendly.

One amended definition was already referred to in the paragraphs above dedicated to Specialist Operations. The remaining definitions that have been added or substantially amended read as follows:

### **Application form**

*An application for insurance, duly signed by the Assured, in the standard format stipulated by the Company, providing information material to the risk to be insured and which shall form the basis of the contract of insurance between the Assured and the Company.*

### **Communicable Disease**

*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, 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.*

### **Crew**

*Persons, including the master, contractually obliged to serve on board the Insured Vessel, including substitutes and including such persons while proceeding to or from the Insured Vessel.*

### **Insurance Act**

*The Insurance Act 2015 of the United Kingdom.*

### **Policy of insurance**

*The Company's policy for Charterers' Liability consisting of Part 1 Charterers' Liability (Class 1), Part 2 Defence Cover for Legal Costs (Class 2) if applicable, Part 3 Cargo Owners' Legal Liability (Class 3) if applicable, Part 4 War Protection & Indemnity Cover if applicable, Part 5 General Terms and Conditions, Part 6 Additional cover and Extension Clause (Extra bunker handling costs) if applicable, Part 7 Definitions, and the Certificate of Insurance.*

This circular is meant for guidance purposes only. Should you require more information or assistance, please feel free to contact us.



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