



Shipowners' P&I

Version 1/2022

This year we have done yet another review of our Shipowners' P&I policy wording 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 substitutes and crew unemployment, personal injury and loss of life other than crew, contracts and indemnities, wreck removal, 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.

The new wording of the Shipowners' P&I – Version 1/2022 can be found [here](#).

Part 1 – Protection & Indemnity

Section 3 – Substitutes and Crew unemployment

We have added the test of reasonability in Section 3.2 with respect to the costs of accommodation and any other subsistence or expenses following a wreckage or total loss of the Insured Vessel.

The amended section will read as follows:

3.1 Liability to pay expenses necessarily incurred in securing or engaging, sending and subsequently repatriating a substitute to replace a member of the Crew, who shall have died or been left behind in consequence of illness, injury, desertion or any other cause, where such expenses could not be reasonably avoided. Wages shall only be recoverable as part of the said expenses when payable to a substitute engaged abroad while awaiting or during repatriation.

3.2 Liability to pay wages to a member of the Crew during unemployment in consequence of the wreck or total loss of the Insured Vessel, not exceeding 2 months. This cover will include a contribution by the Company to the reasonable costs of accommodation and any other subsistence or expenses of a member of the Crew, for this same period.

3.3 Exclusions and limitations

3.3.1 Cover under subsection 3.2 is limited solely to a member of the Crew identified in the crew list of the Insured Vessel at the time of the wreck or total loss and to no other person.

Section 6 – Illness, personal injury and loss of life (persons other than Crew)

We deleted some of the restrictive wording in this section in order to extend the scope of cover. As a result, employees of the Assured, supernumeraries and other persons, such as shore personnel of the Assured when visiting the Insured Vessel, are now included in the covered risks under this section.

The amended section will read as follows:

6.1 Liability to pay damages or compensation for illness, personal injury or loss of life of persons other than Crew and Passengers, including hospital, medical or funeral expenses incurred in relation to such illness, personal injury or loss of life where such liability arises on board the Insured Vessel or during her Operation.

6.2 Exclusions and limitations

6.2.1 Cover under this section is limited to liabilities arising out of a negligent act or omission on board or in relation to the Insured Vessel.

6.2.2 Liability to persons engaged with the handling of Cargo shall be limited from the time of receipt of that Cargo at the port of shipment until delivery of that Cargo at the port of discharge.

6.2.3 No claim shall be recoverable under this section where the liability arises under the terms of any contract or indemnity and would not have arisen but for those terms, unless those terms were previously approved by the Company in writing in accordance with Section 8 (Contracts and Indemnities).

Section 8 – 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 (Protection & Indemnity) and are not excluded in Part 4 (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 4) as follows:

32.1 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:

[...]

32.1.14 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 8 (Contractual liabilities).

Section 12 – Wreck removal

We have extended cover under this section in order to include also perils related to the presence or involuntary shifting of the wreck. This amendment addresses liabilities directly resulting from other ships or cargo running into the wreck, which may cause various losses such as property damage, loss of life or pollution, provided these liabilities arise within a period of two years.

The added new sub-section will read as follows:

[...]

12.4 Liabilities, costs and expenses resulting from the presence or involuntary shifting of the wreck of the Insured Vessel, Cargo, equipment or other property on board the Insured Vessel caused by the casualty which led to the loss of the Insured Vessel, Cargo or other property on board. Unless the Company otherwise determines, an Assured is not entitled to be reimbursed by the Company in respect of any liability incurred more than two years after the Insured Vessel, Cargo or other property on board became a wreck.

[...]

Section 19 – 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:

19.1 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 9 (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 15 (Pollution risks).*
- c. Breach of immigration laws or regulations.*

[...]

Part 4 – General Terms and Conditions

Section 29 – 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:

29. The terms and conditions set out in each Class of Insurance, and in Part 3 (War Protection & Indemnity Cover) and Part 5 (Additional Cover and Extension Clauses) if applicable, shall prevail over Part 4 (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 6 (Definitions).

Section 32.1.1 – 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:

32.1 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:

32.1.1 The Assured has failed, whether deliberately, recklessly, or negligently, to exercise reasonable care in the chartering, operation or management of the Insured Vessel including taking reasonable steps to check the solvency and reputation of the other party to any Charter Party.

[...]

Section 32.1.4 – Exclusions and limitations

Furthermore, we amended Section 32.1.4 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:

32.1 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:

[...]

32.1.4 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 shipowner would not have used or allowed to be continued.*

Section 32.1.9 – Specialist Operations exclusion

While the wording of this exclusion sub-section is largely 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 32.1.10 on divers and remotely operated vehicles and Section 32.1.11 on salvage. These can be bought back by means of dedicated buyback wordings. Drilling operations are excluded from cover (see Section 32.1.12). We are still excluding loss of or damage to, the removal of, or any pollution arising from the Contract Work.

The said changes were effected by amending our definition of Specialist Operations (Part 6) and also adding a new definition of Contract Work (Part 6) as follows:

Part 6 - 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 6 – Contract Work

The contract object, including but 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 Insured Vessel is working, or to be used up or consumed in the completion of such project.

Part 4 - Section 32.1

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:

[...]

32.1.9 The claim is in respect of liability, losses, costs and expenses incurred during the course of performing Specialist Operations, to the extent that these arise as a consequence of:

- a. claims brought by any party for whose benefit the work has been performed, or by any third party (whether connected with any party for whose benefit the work has been performed or not) in respect of the specialist nature of the operations; or*
- b. the failure to perform such Specialist Operations by the Assured or the fitness for purpose and quality of the Assured's work, products or services, including any defect in the Assured's work, products or services; or*

c. any loss of or damage to, the removal of or any pollution arising from the Contract Work including, but 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.

This exclusion shall not apply to liabilities, losses, costs and expenses incurred by the Assured in respect of:

- i. loss of life, injury or illness of Crew and other personnel on board the Insured Vessel; or*
- ii. the wreck removal of the Insured Vessel; or*
- iii. oil pollution from the Insured Vessel;*

but only to the extent that such liabilities, losses, costs and expenses are covered by the Company in accordance with the Policy of Insurance.

Section 32.5 – 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:

32.5 Declared Communicable Disease Limitation

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

32.5.2 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:

32.5.2.1 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 32.5.3;

32.5.2.2 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 32.5.3;

32.5.2.3 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.

32.5.3 The exclusions under Section 32.5.2.1 and 32.5.2.2 above, only apply to any loss, damage, liability, cost or expense of the Assured which exceed(s) USD 10 million per Event.

32.5.4 Section 32.5.3 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.

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

Part 5 – Additional Cover and Extension Clauses

Clause 2 – Salvors clause

This clause has been deleted as these risks are offered under the Special Craft P&I policy only.

Clause 3 [now 2] – Towage liability

We have revised the Towage liability clause in order to provide clearer language with respect to the scope of cover and related requirements, which this additional cover is subject to. The amended clause reads as follows:

2.1 The coverage is hereby extended to include liability, including liability assumed by reason of contract, arising from the towage by the Insured Vessel of another Vessel or object, where

a. there is a contract with the owner of the tow:

- 1. on the United Kingdom, Netherlands, Scandinavian or German standard towage conditions;*
- 2. on the International Ocean Towage Agreements BIMCO TOWHIRE or TOWCON conditions;*
- 3. on any current Lloyd's Standard Form of Salvage Agreement;*
- 4. on terms as between the Assured on the one part, and the owner of the tow and the owners of any cargo or property on board the tow on the other part, that each shall be responsible for any loss or damage to his own Vessel, cargo or other property on his own Vessel and for the loss of life or personal injury of his own employees or contractors, without any recourse whatsoever against the other, that is on "knock for knock" terms; or*
- 5. in countries where the terms of those contracts would not be enforceable at law, contracts in which the Assured contracts on the basis most likely to be effective in upholding the right to limit liability provided always that the towage contract should not impose upon the Assured any liability for the negligence of any other party.*

b. there is no direct contractual relationship with the owner of the tow, there is a charter agreement, which contains:

- 1. "knock for knock" terms, as in sub-clause a.4 above, covering the property of sub-contractors or other contractors of the charterers as well as the property of the charterers themselves; or*
- 2. a separate clause within the charter requiring that all towage be carried out on terms no less favourable than "knock for knock" terms.*

2.2 The contracts set out under Clauses 2.1.a and 2.1.b of this Clause are approved provided these are not amended to increase the liability of the Assured. Any amendment to increase the liability of the Assured must have been approved by the Company in writing.

2.3 Exclusions and limitations

Unless otherwise specifically agreed in writing by the Company there is no cover for:

- 1. towage of rigs or platforms;.*
- 2. towage under a contract governed by US law.*

Under no circumstances shall there be cover for any liability in relation to the tow intended for scrap or break-up not carried out in accordance with any applicable law, statute or convention.

Clause 11 – Claims control clause

We have revised the wording of that clause so that it is more comprehensive and clearer.

The text of the amended clause reads as follows:

The Company shall have sole control over claim settlements, investigations, negotiations and/or adjustments of all claims.

The Assured upon being advised of any claim or any situation likely to result in a claim shall give immediate notice thereof to the Company who upon receipt of such notice shall have the right to appoint representatives.

Further the Assured shall furnish the Company with all information and papers in connection with such claim or such situation and fully co-operate in the settlement negotiation and adjustment thereof.

Part 6 – 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, a couple of definitions have been deleted for being not relevant anymore. In addition, the terms as defined in Part 6 are used more frequently throughout the policy wording, which makes the latter shorter and more reader-friendly.

Two of the definitions are 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 Shipowners' P&I Policy Wording consisting of Part 1 Protection & Indemnity (Class 1), Part 2 Defence Cover for Legal Costs (Class 2) if applicable, Part 3 War Protection & Indemnity Cover if applicable, Part 4 General Terms and Conditions, Part 5 Additional Cover and Extension Clauses if applicable, Part 6 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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