

# IV Exclusions, Limitations and Warranties

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## **RULE 19 GENERAL EXCLUSIONS**

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The cover provided by this Class is exclusively in respect of the Costs as defined in Rule 2 and specified in Rule 17; in no circumstances shall the Member be covered for any other loss, cost, liability or expense howsoever arising other than such as may be covered under Rule 32(3) or Rule 32(4) (Committee discretion).

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## **RULE 20 RISKS SPECIFICALLY EXCLUDED**

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Subject always to the absolute discretion of the Committee under Rule 32(1), there shall be no recovery from the Association in respect of Costs which arise in respect of:

- Bad Debts 20(1)** Claims against persons from whom there is, in the opinion of the Managers, no reasonable prospect of recovery, taking into account any legal problems of enforcement and any assets available to satisfy a judgement or award.
- Admitted 20(2)  
Debts** Claims against a Member which relate to money owed by that Member and where, in the opinion of the Managers, there is no justification in the Member's refusal to pay.
- 20(3)** Claims against the Association.
- Support 20(4)** Any legal or other proceedings or the appointment of any lawyers or other experts at a time when the Member is not supported by the Association in respect of such proceedings or appointment or when he has failed to comply with a direction issued by the Managers under Rule 31(1) or the Committee under Rule 32(2).
- 20(5)** Matters where the Member knew or ought to have known that he was in breach of any regulations or agreements whether relating to safety, navigation, port requirements, or contracts of employment, or otherwise.
- Road Traffic 20(6)  
Acts** Liabilities arising under any statute regulating the use or insurance of road vehicles.

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**RULE 21 EXCLUSION OF CERTAIN SPECIALIST RISKS**

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There shall be no recovery from the Association in respect of any Costs relating to claims in respect of expenses of an Entered Ship which is:

- Salvage tugs 21(1)** A salvage tug or other Ship used or intended to be used for salvage operations, when the claim arises as a result of any salvage service or attempted salvage service, unless cover has been specifically extended for such operations.
- Drilling and 21(2)  
production  
Ships** Used for drilling, core sampling or production operations in connection with oil or gas exploration or production, including any accommodation unit moored or positioned on site as an integral part of such operations when the claim arises out of such operations.
- Storage 21(3)  
Ships** Used for the storage of oil when either:
- (i) oil is transferred directly from a producing well to the Ship; or
  - (ii) the Ship has oil and gas separation equipment on board and gas is being separated from oil whilst on board (other than by natural venting) and the claim arises out of such separation.
- Dredgers 21(4)** A dredger, when the claim arises out of dredging operations or the depositing of spoil.
- Ancillary craft 21(5)** Used for the operations of pile driving, pipe laying, cable laying or blasting when the claim arises out of those operations.
- Waste Ships 21(6)** Used for waste incineration or waste disposal operations, when the claim arises out of those operations.
- Entertainment 21(7)  
Ships** Moored on a permanent basis open to the public as a hotel, restaurant, bar or other place of entertainment, when the claim arises in respect of hotel or restaurant guests or other visitors or the catering crew of the Ship.
- Underwater 21(8)  
operations** Used for or in connection with the operation of submarines, underwater ships or equipment or the operation of professional or commercial divers when the claim arises out of those operations.
- Specialist 21(9)  
Ships** Used for specialist non-transport operations (other than tugs, firefighting Ships and salvage Ships) including but not limited to blasting, pile-driving, well stimulation, cable or pipelaying, construction, installation or maintenance work, core sampling, depositing of spoil, professional oil spill response or professional oil spill response training where the claim arises out of those operations.

PROVIDED ALWAYS THAT:

Special cover may be agreed between the Member and the Managers under Rule 7.

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**RULE 22 IMPRUDENT TRADING**

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The Association shall not insure a Member against any Costs arising out of or consequent upon an Entered Ship carrying contraband, blockade running, or being employed in an unlawful trade, or performing any voyage or being employed in any trade if the Committee having regard to all the circumstances shall be of the opinion that the nature of the carriage, trade or voyage in respect of which the Ship was engaged was imprudent, unsafe, unduly hazardous or improper.

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**RULE 23 EXCLUSION OF NUCLEAR RISKS**

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Unless otherwise agreed in writing there shall be no recovery from the Association in respect of any liabilities, costs or expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or his servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or cost or expense is incurred, was directly or indirectly caused by or arises from:

- (A) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
- (B) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
- (C) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
- (D) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.

PROVIDED ALWAYS THAT this exclusion shall not apply to liabilities, costs or expenses arising out of the carriage of "excepted matter" (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulation made thereunder) as cargo in an Entered Ship and agreed by the Managers in writing.

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**RULE 24 EXCLUSION OF RISKS COVERED BY HULL POLICIES**

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The Association shall not insure a Member to any extent whatsoever against any Costs, loss, liability or expense against which the Member would be insured (save to the extent of any franchise or deductible) if the Entered Ship were fully insured either;

- (A) Under Hull Policies on terms not less wide than those of the Lloyd's Marine Policy MAR Form 1/1/82 with the Institute Time Clauses Hulls 1/10/83 attached; or
- (B) Under policies providing for Time Charterers' liability for damage to Hull on terms not less wide than those available under Rule 19(24)(B) of the Rules of Class 3 - Protection and Indemnity - of the Association.

PROVIDED ALWAYS THAT:

Any franchise or deductible to which any such policy is subject shall be deemed not to exceed 1 percent of the insured value.

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**RULE 25 EXCLUSION OF WAR RISKS**

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The Association shall not insure a Member to any extent whatsoever against any costs, loss, liability or expense against which the Member would be insured if the Entered Ship were fully insured under War Risks Policies on terms no less wide than those of the Institute Time War and Strikes Clauses Hulls - Time 1/10/83 and the Institute Protection and Indemnity War and Strikes Clauses Hulls - Time 20/2/87.

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**RULE 26 EXCLUSION OF RISKS COVERED BY PROTECTION AND INDEMNITY POLICIES**

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The Association shall not insure a Member to any extent whatsoever against any cost for which the Member would be insured if the Entered Ship were fully insured under P & I policies on terms not less wide than those of Class 3 - Protection and Indemnity - of the Association current at the time when the claim arises and with no deductible or franchise applicable to claims under those policies.

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**RULE 27 OTHER INSURANCES**

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**Double 27(1) insurance** Unless the Committee shall, in its discretion, otherwise determine there shall be no contribution by the Association to Costs recoverable under any other insurance or which would have been so recoverable:

- i) apart from any terms in such other insurance excluding or limiting liability on the ground of double insurance; and
- ii) if the Ship had not been entered in the Association with cover against the risks set out in these Rules.

**Certification 27(2)** Where any person other than the Association has provided evidence to any authority of the financial responsibility of the Member, there shall be no contribution by the Association to the Member or any such person in respect of any Costs resulting therefrom.

PROVIDED ALWAYS THAT:

This Rule may be waived either:

- (i) by prior agreement with the Association in writing; or
- (ii) if the Committee in its discretion so decides.

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**RULE 28 CLASSIFICATION AND CONDITION OF SHIPS**

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**28(1)** Every Member warrants that every Ship entered by him for insurance in this Class is, and shall remain throughout the period of entry, fully classed with a classification society approved by the Managers and that throughout such period the Member will fully and timely comply with all the rules, recommendations and requirements of such society relating to the Entered Ship.

*Provided always* that the Committee may in its discretion waive compliance with this warranty for such periods and upon such terms as it thinks fit.

**Change of 28(2) classification** Any change of classification or classification society shall forthwith be notified to the Managers in writing, together with all outstanding recommendations, requirements or restrictions specified by any classification society as at the date of such change.

**Information 28(3) from the Member** Where required by the Managers it is a condition precedent to the Member's right of recovery from the Association that the Member shall first have provided to them an assurance that the Entered Ship's class has been maintained, as well as a list of recommendations, requirements or restrictions specified by any classification society and where any periodic docking survey or any special survey of hull, machinery or equipment is overdue, a

statement as to whether or not an extension has been permitted by the classification society. If the Managers so require, such information shall be certified by the classification society.

**Statutory 28(4)  
requirements**

Every Member

(i) shall comply with all the statutory requirements of the state of the ship's flag relating to the construction, adaptation, condition, fitment, equipment and manning of the Entered Ship; and

(ii) must at all times maintain the validity of any statutory certificates which are required and issued by or on behalf of the state of the ship's flag.

*Provided always* that the Committee may in its discretion waive compliance with this Rule for such periods and upon such terms as it thinks fit.

**Information 28(5)  
from  
classification  
society**

Should the Association wish to approach the classification society direct for information, the Member will provide the necessary authorisation.

**Survey 28(6)  
before entry  
or re-entry**

The Managers may as a condition of entry or re-entry of a Ship in the Association require the Member or prospective Member to submit the Ship to survey by a surveyor appointed by the Managers. The Managers in their discretion may require the Member or prospective Member to bear the expense of such survey.

In the light of such survey the Managers may:

(i) refuse the entry or re-entry of the Ship; or

(ii) refuse the entry or re-entry of the Ship until repairs or other action recommended by the surveyor have been carried out to the satisfaction of the Managers within any time limit prescribed by the Managers; or

(iii) accept the entry or re-entry of the Ship on such special terms as the Managers may in their discretion decide.

**Ship 28(7)  
Management  
Appraisal**

Without prejudice to any warranties or other duties and obligations imposed on a Member under these Rules or the general law, the Managers may at any time and from time to time require a Member to undergo an appraisal of the management systems ashore or on board Ship relating to the operation of Ships managed or operated by him by a surveyor appointed by the Managers on a date and at a place agreed between the

Member and the Managers and within such time limit as may be specified by the Managers. The Managers may in their discretion require the Member to bear the expense of such appraisal.

In the light of such appraisal or in the event of failure by the Member to undergo such appraisal within the time limit specified by the Managers, the Managers shall have the power, in their discretion to:-

(i) terminate the entry of all Ships entered by the Member forthwith; or

(ii) amend, vary or impose special terms on the Terms of Entry of Ships entered by that Member with immediate effect in such manner as they think fit, including the exclusion of all or part of the risks specified in Rule 17 (Risks Covered) and Rule 18 (Extent of Cover) for such time or period as they may specify. *Provided always* that if the Member does not accept such amendment, variation or condition he shall have the option of withdrawing the entry of his Ships forthwith.

**Condition 28(8)  
survey**

Without prejudice to any warranties or other duties and obligations imposed on a Member under these Rules or the general law, the Managers may at any time and from time to time require a Member to submit his Entered Ship to survey by a surveyor appointed by the Managers on a date and at a place agreed between the Member and the Managers and within such time limit as may be specified by the Managers. The Managers may in their discretion require the Member to bear the expense of such survey.

In the light of such survey or in the event of failure by the Member to submit the Entered Ship to such survey within the time limit specified by the Managers, the Managers shall have the power, in their discretion, to:

(i) terminate the entry of the Ship forthwith; or

(ii) amend, vary or impose special terms on the Terms of Entry of the Ship with immediate effect in such manner as they think fit, including the exclusion of all or part of the risks specified in Rule 17 (risks covered) for such time or period as they may specify. *Provided always* that if the Member does not accept such amendment, variation or condition he shall have the option of withdrawing his entry of the Ship forthwith.

**Right of 28(9)  
adjudication**

If any difference or dispute between a Member and the Managers shall arise concerning the actions taken by the Managers under this Rule 28, the Member shall have the right to

refer the matter to adjudication by the Committee under Rule 44 (disputes and differences). Pending such adjudication, any such action taken by the Managers shall bind the Member.

**Obligation 28(10)  
of Member**

Notwithstanding the provisions of this Rule 28 nothing shall relieve the Member of his obligation to keep his Entered Ship at all times in a proper condition.

Any recommendations or observations of a surveyor acting under any part of this Rule shall be treated as within the actual knowledge of the Member.

Any failure by the Member to implement the said recommendations shall entitle the Committee in its discretion to refuse, in whole or in part, a claim for recovery from the Association in respect of any incident whatsoever occurring after such recommendations have been made.

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**RULE 29 BYE-LAWS**

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**29(1)** The Committee shall have power to pass bye-laws ordering and prescribing the conditions and/or the form of contracts of carriage generally, or for use in any particular trade, or for any particular port or place.

**29(2)** The Committee may also recommend the use of any particular form of contract of carriage in any particular trade. Members whose Ships are engaged in such trades shall endeavour to use the appropriate form of contract of carriage when the circumstances of the fixture or engagement of such Ships permit.

**Notice 29(3)** Notice shall be sent by the Managers to all Members upon the passing of any such bye-law or issue of such recommendation. The bye-laws or recommendation shall come into operation on the date stated in the notice and shall thereupon be assumed to be incorporated in these Rules and shall be included in, or with, every copy of these Rules issued by the Association as soon as may be conveniently possible. If a Member shall commit a breach of such bye-law the Committee may reject or reduce any claim made by the Member to the extent to which it would not have arisen if the Member had complied with the bye-law and the burden of proving in each case that the claim (or portion thereof) could not have been avoided by such a compliance shall be on the Member. The Committee may further impose such terms upon the Member as it may think fit as a condition of the continuance of the entry of the Member's Ship or Ships in this Class.