



COMMENTARIES

# The Marine Hull and Machinery Insurance Package

(French Form dated July 1<sup>st</sup>, 2010)





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## FOREWORD

Like other major markets of marine insurance, the French market offers model insurance policies, which insurers and assureds can refer to, in order to define their contractual relations. The parties are of course free to adapt the reference form as they see fit. The French market has always offered and used such documents, called "Marine Hull Insurance Policies".

Together with Insurance Brokers (*Union des Courtiers d'Assurance Maritime et Transports* – U.C.A.M.A.T.) and Ship Owners (Insurance Committee of "Armateurs de France"), the French Federation of Insurance Companies (*Fédération Française des Sociétés d'Assurances*) has drawn up a new set of policies. On the occasion of this cooperation that allowed the French market to meet the right balance in its contractual conditions, it seemed appropriate to accompany that work with a commentary that makes a general presentation and sheds light on one or another of its provisions.

Some principles of French Law are also reminded or explained on that occasion. In this regard, we should thank the AFDM (French Maritime Law Association), whose works, namely a guide and a translation of Title VII Book I of the "Code des assurances" applicable to marine insurance, are presented in Annex of these commentaries.

## ■ PREAMBLE

### I – A FULLY REVAMPED VERSION OF THE FRENCH HULL INSURANCE TERMS

Basically, the new French Hull Insurance Package follows the main solutions implemented in the previous French Policies, but the presentation has been entirely reviewed and new provisions have been incorporated to reflect the best international practices.

### II – A COMPREHENSIVE PACKAGE

#### **The Package is made up of four main parts:**

- *All Risks Marine Hull and Machinery Insurance Policy, French Form, dated July 1<sup>st</sup>, 2010*  
(The "Marine Conditions")
- *Marine Hull Insurance Conditions covering War, Piracy, Terrorism and similar risks, dated July 1<sup>st</sup>, 2010*  
(The "War Conditions")
- *Marine Insurance Conditions covering Loss of Income of sea-going vessels, dated July 1<sup>st</sup>, 2010*  
(The "Loss of Income Conditions")
- *Additional clauses, dated July 1<sup>st</sup>, 2010*

**The clauses/conditions contained in the French Forms dated July 1<sup>st</sup>, 2010 are merely intended as a guidance recommended by the French Federation of Insurance Companies and nothing shall prevent the Insurer and the Assured from agreeing on other conditions.**

The Package is destined to worldwide Ship Owners, Ship Managers or Ship Operators who have insurable interests in vessels of all type excepting the following:

- fishing vessels;
- river and inland waters vessels;
- yachts and leisure boats;
- building risks.

### III – TAILOR MADE SOLUTIONS

The provisions of this Package can of course be completed or amended by particular conditions and endorsements which will give the Assured the opportunity to build a tailor made solution fulfilling his particular requirements and needs.

It is to be noted that particular conditions and endorsements will always take precedence if they conflict in any way with the Package.

**The Assured can build his contract as he wishes** by adding to the Marine Conditions every other optional part available in the Package. The War Conditions and the Loss of Income Conditions can be taken separately but they are linked to the Marine Conditions as they refer to its provisions. The Assured will only have insurance cover under those parts if this has been specifically agreed with the leading Insurer in the particular conditions or in any later endorsements.

The Package has been **designed to avoid gaps** in the vessel's insurance cover.

### IV – THE PACKAGE PROVIDES INSURANCE AGAINST ALL RISKS

The Package provides insurance against ALL RISKS. Except for "Marine hull insurance Conditions covering War Risks, Piracy, Terrorism and similar risks, dated July 1<sup>st</sup>, 2010", covered perils are not named. In other words, covered perils are not named as such: all accidents arising from the use of the Insured Vessel and causing loss or damage to the Insured Vessel or to a third party or causing loss of income to the Ship Owner are covered except the few cases excluded.

The term "accident" which is used in the Package expresses the idea of a fortuitous event (as far as the insurance contract is an aleatory contract). This is the principle according to which, under French Law, insurance coverage applies only in case of loss attributable to fortuitous events occurring within the policy period.

Once the Assured has established that the Insured Vessel has suffered a loss or damage arising from a fortuitous accident or caused a loss or damage to a third party during the period of insurance and within the geographical area covered by the policy, the Insurer cannot escape liability under the policy unless he can establish that the loss or damage resulted from a peril excluded under the insurance contract.

To satisfy the onus of proof, the Insurer needs to establish:

- a) that the peril is excluded,
- b) the link of causation between the loss or damage suffered by the Insured Vessel and the excluded peril,
- c) that the excluded peril invoked to decline cover is **the proximate cause** (namely the deciding cause factor) of the loss or damage to the Insured Vessel.

### V – A PACKAGE CONTRACT SUBJECT TO FRENCH LAW

**The Package is subject to and construed in accordance with the French "Code des assurances".**

French Maritime Law does not consist of pure theoretical principles, but is more drawn from the practical solutions used by the practitioners, thus giving a modern set of rules kept up-to-date by the French Legislator.

Let's not forget: French Law provides greater security to the Assured. It certainly belongs to him to demonstrate the reality of loss and the elements allowing him to make use of his contract, but within an ALL RISKS guarantee, such as provided by the Marine Conditions, this evidence will be relatively easy to bring. It will be necessary in most cases to show that the damage occurred during the insured period. **Moreover, the proof of loss is free and the Assured has a probationary freedom to establish that the conditions of guarantee are gathered. Finally, as indicated above, the Insurer who would invoke exclusion would need to bring back proof.**

A free translation of the provisions of the French "Code des assurances" relating to Marine Insurance is attached to these commentaries, together with a short French Marine Insurance Law Guide prepared by the French Maritime Law Association, giving a clear legal analysis by experts.



# MARINE CONDITIONS

## I – SCOPE OF THE POLICY

### 1 – Risks covered

#### Risks covered under the Marine Conditions:

- Physical loss of or damage to the Insured Vessel, leased equipment, parts taken off the vessel.
- 4/4 THS Collision Liability or contact with Fixed or Floating Objects.
- Salvage, General Average, Sue and Labour and associated legal costs.

Each category of risks is covered per accident up to the full Agreed Value which means that the policy covers up to three times the Agreed Value of the Insured Vessel.

#### a) Loss and damage to the Insured Vessel

Total loss (actual total loss and constructive total loss) as well as particular average are covered.

Claims for loss or damage to the vessel are limited to the amount of the Agreed Value, which is a binding agreement regarding the value of the vessel not subject to any alteration or variation, except in the case of fraud.

The vessel is defined in the policy as including the hull, the propulsion and power generation machinery, navigation instruments, apparatus, fixtures, fittings, installations, annexes and equipment. All leased or hired equipment on board are also covered under the policy. It is furthermore provided that parts temporarily taken off from the vessel (for example: part of the propulsion system during repair works) remain covered subject to the prior agreement of the Insurers if the period of removal from the vessel lasts over sixty days.

All stores, provisions, bunkers owned by the Assured are also covered in so far as not separately insured.

#### b) 4/4 THS in respect of collision or contact with fixed or floating objects

The Marine Conditions include the cover of third party claims arising out of the collision or contact of the Insured Vessel with fixed or floating objects (4/4<sup>ths</sup>) or structure. This cover also applies in case of damage caused by the vessel's hawsers, anchors and chains and annexes.

This cover excludes loss of or damage to or loss of use, delay to any other vessel, inland craft, fixed or floating object or structure or to any other property, caused otherwise than by collision or contact with the Insured Vessel.

Damage to the environment or damage resulting from pollution or contamination and cargo liabilities are excluded as well as other liabilities usually covered by P and I Insurers.

#### c) Salvage, General Average, Sue and Labour Expenses and associated legal costs

The Marine Conditions cover all expenses – including legal costs – relating to the vessel's contribution to General Average, to Salvage charges, and to Sue and Labour (namely any expenses incurred in order to – or to attempt to – avoid or minimize the consequences of an insured peril) as well as legal costs incurred in respect of third party liability.

Insurers also take over the cost of surveys following a loss, even if at a later stage, it appears that the loss or damage is not covered under the policy or falls under the contractual deductible.

Any LOF nowadays will incorporate more and more the SCOPIIC clause. According to such clause Salvors will have the benefit of remuneration for all the efforts and means to protect the environment through a specific agreed price for each item of the salvage operation. Hull & Machinery policy is there to pay for Salvage only as long as such operations were successful to safeguard the vessel.

Therefore in those cases when the vessel is a total loss notwithstanding effort taken under LOF incorporating the SCOPIIC clause, Salvage charges payable to a Salvor under article 14 of the 1989 London Convention on Salvage are not covered under the policy, this cover being granted by the P and I Insurers.

But as referred to in article 13 paragraph 1 (b) of the International Convention on Salvage (1989) any sum the Assured shall pay in respect of the skill and efforts of the salvors in preventing or minimizing damage to the environment is covered.

## 2 – Risks excluded

### The exclusions are listed in article 1.2 of the Marine Conditions.

As mentioned above, the Insurers have the burden of proving that the loss of or damage to the Insured Vessel and/or the liabilities, costs and expenses incurred by the vessel have been proximately caused by a peril excluded under the Marine Conditions.

### 2.1 – Risks excluded under law

Articles L.172-13 and L.172-18 of the French “Code des assurances” excludes cover of certain risks. These exclusions can be found in the Marine Conditions as follows:

- Any insurance contract is an aleatory contract, which means that the occurrence of an accident giving rise to a claim under the policy has to be uncertain and fortuitous. As a consequence the Marine Conditions insurance contract does not cover loss or damage, third party liabilities or expenses arising from INHERENT VICE of the vessel (see article 1.2.1. A 3°) in accordance with article L.173-4 of the French “Code des assurances”. The same reasons justify the exclusion of WEAR AND TEAR (see article 1.2.1. A 3°).
- The policy (article 1.2.1. A 2°), in accordance with article L.172-13 of the French “Code des assurances” which excludes the Assured’s acts or omissions qualified as “faute intentionnelle” or “faute inexcusable”, excludes loss, damage, third party liability or expenses resulting from any “personal act or omission of the Assured committed with intent to cause such damage, or recklessly and with knowledge that such damage would probably result”. This exclusion applies to similar acts of any onshore senior officer to whom the Assured has delegated decision-making authority in connection with the Insured Vessel (Managers, Heads of Agencies, Port Captains, Heads of Technical Departments).
- In accordance with article L.172-18 of the French “Code des assurances”, articles 1.2.1. A 6° and 1.2.1. A 7° of the Marine Conditions exclude loss, damage, third party liability or expenses resulting from “Blockade Running”, smuggling, unlawful, prohibited or clandestine trade, confiscation, sequestration and requisition”.
- In accordance with article L.172-18 of the French “Code des assurances”, the article 1.2.1. A 5° of the Marine Conditions excludes loss, damage, third party liability or expenses arising from any seizure or arrest or any other financial cause because by nature the Marine Conditions cover is mainly a property and casualty insurance. The same reason explains the exclusion of “the costs and expenses resulting from the ordinary operation of the Insured Vessel” (see article 1.2.1. C 3°).

### 2.2 – Risks usually covered under P&I Insurance

- P&I Insurers cover losses, damages and expenses resulting from “Removal, destruction, marking or lighting of the wreck of the Insured Vessel and leased equipment and of any cargo or other property on board of the Insured Vessel”. It is therefore excluded under the Marine Conditions (see article 1.2.1. A 4°).
- The same applies to the exclusion under article 1.2.1. C 5° of the Marine Conditions regarding costs and expenses and/or delay resulting from quarantine, health measures or disinfection.
- P&I Insurers cover liabilities and expenses resulting from death or personal injury. These risks are excluded under article 1.2.1. B 6° of the Marine Conditions.
- Articles 1.2.1. B 4° and B 5° exclude liabilities, costs and expenses in respect of cargo carried on board the Insured Vessel or arising from obligations assumed by the Assured under the provisions of a contract he has entered into.

Liability, loss and expenses for damage to the environment and wildlife (article 1.2.1. B 3°), are also excluded including but not limited to reef and corals, as well as liabilities, loss or expenses resulting from a pollution or contamination or threat there of arising from escape or release of polluting substances (except pollution or contamination sustained by a vessel or craft – or any cargoes thereon – with which the Insured Vessel is in collision) (article 1.2.1. B 2°). The P&I Insurers provide cover in respect of these liabilities and expenses.

- As this is covered by P&I Insurers, the Marine Conditions exclude under article 1.2.1. B 2° any liability for “special compensation” payable to a salvor under article 14 of the International Convention on Salvage dated 1989 or under any similar provision. But any sum the Assured shall pay in respect of salvage remuneration where the skill and efforts of the salvors in preventing or minimizing damage to the environment have been taken into account as referred in article 13 paragraph 1 (b) of the International Convention on Salvage (1989) are not excluded.



### **2.3 – Risks excluded under the Marine Conditions due to the Assured’s negligent act or omission**

- Reference is hereby made to the comments above (see Risks excluded under French Law) in respect of article 1.2.1. A 2° and article 1.2.1. C 2°, which exclude loss or damage incurred by the Insured Vessel as a result of the cargo being shipped in breach of the applicable regulations or any recognized trade practice with knowledge of the Assured.
- Article 1.2.1. A 1° excludes any loss, damage, liability or expenses directly attributable to the failure of the Assured to comply with all statutory requirements of the Vessel’s Flag State relating to the construction, adaptation, condition, fitment, equipment, operation and manning of the Insured Vessel. The Assured’s compliance with these regulations is required not only at the inception of cover, but also throughout the period of insurance.

### **2.4 – Risks excluded because of their particular nature**

- Article 1.2.2. excludes losses, damages, liabilities and expenses resulting from ionising radiation, contamination by radioactivity or by toxic, explosive or hazardous materials. This is a provision known as the “Race Clause” applied by all markets.
- Article 1.2.1. C 1° excludes expenses resulting from repair or replacement of parts affected by latent defects.
- Article 1.2.1. C 6° excludes fines, penalties, punitive or exemplary damage.

### **2.5 – Risks excluded under the Marine Conditions, but which can be covered under optional insurance**

- War, piracy, terrorism and similar risks as defined in article 1.2.3. and which can be covered under *Marine Hull Insurance Conditions covering War, piracy, terrorism and similar risks* of the Package.
- Piracy, whatever its nature (political or lucrative) is excluded under Marine Conditions but is fully covered under *Marine Hull Insurance Conditions covering War, piracy, terrorism and similar risks* as a War Risk. The advantage of not differentiating between the two different natures of piracy is to avoid any discussion whether the particular nature of the piracy is covered.
- Loss of income (article 1.2.1. C 4°) can be covered under *Marine Insurance Conditions covering Loss of Income of sea-going vessels* of the Package.

## **3 – Time and place of the policy**

### **Period of insurance**

Unless otherwise agreed in the Particular Conditions, the cover is concluded for a period of 12 months, as defined in article 1.4.1. There is no automatic renewal of the policy after completion of the 12-month period. In the Particular Conditions any other period may be agreed by Insurers.

### **Navigation and mooring**

The Insured Vessel remains covered under article 1.4.3 of the Marine Conditions whether in use, moored, laid up under repair, whether floating, onshore or in dry dock. However, unless otherwise agreed in writing by the Insurers, the Vessel would not be covered during transformation or conversion works including “jumboisation”, lengthening, widening and any other type of extension works.

### **Towage, salvage and transhipment**

Under article 1.4.4 of the Marine Conditions, any towage of the Insured Vessel except when she is in need of assistance or engaged in a salvage operation, or when she is in port, on roads or in rivers or canal, is considered as an aggravated risk, which should be notified to the Insurer as soon as possible in order to enable the Insurer to take appropriate measures such as survey of the operation, modification of the insurance conditions including an additional premium. The same regime applies to transhipment outside her normal commercial operations which are also perceived as circumstances of enhanced risks.

### **Lay-up**

Unless otherwise agreed by the Insurers, as defined in article 1.4.5 there will be no return of premium for lay-up of the Insured Vessel. However, at the request of the Assured, “Full Return Terms” providing for the return of premium even in case of lay-up of the Insured Vessel can be agreed subject to the terms of the specific additional clause available in the Package.

## **Navigating limits**

The restricted navigating limits, considered as an aggravated risk, are described in article 1.4.6.

Except with the prior agreement of the Insurers, who are entitled to require appropriate precautionary measures to be taken, and/or particular terms and conditions, and/or additional premium as a condition of coverage, there will be no cover under the Policy whilst the Insured Vessel is sailing, mooring or laid-up within the waters defined as Enhanced Risks Areas, unless the Insured Vessel is obliged to enter such areas by force majeure or to render salvage services to a vessel in distress.

Before entering into those restricted navigating limits the Assured must give prior written notice to the Insurer and agree any amendments of the terms of cover and/or any additional premium required by the Insurer.

## **II – GENERAL PROVISIONS**

The contract evidenced by the Marine Conditions is a contract of good faith involving a close cooperation between both parties. Both Insurers and the Assured are strongly involved in the Marine Venture especially in case of claims.

A number of provisions within the policy are aimed at quality shipping through standards of safety and security.

### **Classification of the vessel**

Classification is an essential element to be taken into account by the Insurers when assessing risks: as defined in article 2.1.1 the Vessel must be properly classed with a Classification Society agreed by the Insurers and must be class maintained with an agreed Classification Society throughout the entire duration of the policy.

It follows that any change of Classification Society must be immediately notified to the Insurers.

Being classed is not sufficient in itself: the Assured must also comply within the delay required by any recommendations, requirements or restrictions imposed by the Classification Society as regards seaworthiness of the Insured Vessel.

### **ISM Code**

In respect of article 2.1.2 the Assured undertakes at the inception and throughout the entire duration of the policy to ensure that the Insured Vessel complies with ISM Code requirements, namely holds a valid Safety Management Certificate and the Ship Owner/Ship Operator holds a valid Document of Compliance.

### **ISPS Certification**

According to article 2.1.3 the Assured undertakes at the inception and throughout the entire duration of the policy to ensure that the Insured Vessel complies with ISPS requirements imposing that the Ship Owner/Ship Operator hold a valid International Ship Security Certificate.

### **Sanctions**

Compliance with the recommendations of the Classification Society and with ISM and ISPS regulations are a condition of validity of the policy (see article 2.1.4). Any breach of one of those duties may lead to the cancellation of the insurance contract with a fourteen days notice.

Furthermore, notwithstanding the right of cancellation of the policy, the Insurer is relieved from any liability for any loss, damage, liability or expense as from date of the breach whether such loss, damage, liability or expense is or is not attributable to such a breach.

### **Duty of disclosure**

It is the duty of the Assured to disclose on conclusion of the policy (see article 2.2.1) all circumstances that may affect the risk as well as any alteration of the risk during the period of cover. Failure to comply with this obligation of disclosure may render the policy null and void if committed on concluding the policy and may lead to the termination of the policy, if committed during the period of cover.

However, as the objective of the French law is to protect the Assured, the sanction of the breach of the obligation of disclosure is not automatic; the Assured's rights are protected when he is able to prove his good faith.

When the Assured can establish that the misrepresentation or non disclosure was made in good faith at the conclusion of the contract, the policy will be maintained. However, in case of claims, the Insurers will only be liable to pay a proportionately reduced indemnity, calculated in proportion to the premium that was paid as



compared to the premium that should have been paid had the correct information been disclosed, unless the Insurers can establish that if they had known of the true facts not disclosed or misrepresented, they would never have accepted to cover the misrepresented risk.

From the moment he becomes aware of any change resulting in a significant aggravation of risk during the policy period (see article 2.2.2), the Assured has sufficient delay time, namely 14 days, to declare this change. From then on, the continuation of the contract depends on knowing where the aggravation comes from. When the aggravation of risk is not due to the Assured, the contract shall remain in full force and effect provided that the Assured pays an additional premium corresponding to the nature of the revised risk as fixed by the Insurers. When the aggravation is due to the Assured, the Insurer may terminate the contract or require an increase of premium.

If the Assured did not make the declaration within 14 days, but he demonstrates his good faith, the risk remains guaranteed in proportion to the premium perceived with regard to the one that should have been perceived, except when the Insurer establishes that he would not have covered the risk if he had known it. In the latter case the Insurers shall be entitled to terminate the contract at time of the alteration of the risk.

### **Payment of premiums**

Premiums are payable on the dates and places provided in the policy.

In case the premium or any instalments of the premium have not been paid in due time by the Assured, the Insurers will be entitled either to suspend the cover or to seek cancellation of the policy.

In respect of article 2.3.2 of the Marine Conditions, the suspension or cancellation of the policy will only take effect fourteen calendar days after a formal written request of payment has been addressed to the Assured. This formal letter will be sent to the latest address declared to the Insurers as per any policy endorsement. The policy will be automatically reinstated at 00.00 hours G.M.T. on the day after the payment of the overdue premium is effected by the Assured.

During the time when cover is suspended, the Insurers will have no liability whatsoever under the policy in respect of any loss, damage, liability or expenses resulting from any accident occurring during any period of suspension. However, the Insurers remain entitled to receive full premium including the period during which cover is suspended.

The suspension or cancellation of this policy for non-payment of premium will have no effect against any third parties acting in good faith and who are beneficiaries under the policy following a transfer of rights or assignment of rights signed and endorsed under the policy prior to the issuance by the Insurers of the notice of suspension or cancellation.

### **Preservation of recovery rights**

The Assured and the Insurers have a common interest in avoiding or reducing the effects of marine losses affecting the Insured Vessel.

One of the obligations that follow from this principle is that the Assured takes all necessary steps to preserve any recovery rights against third parties, as defined in article 2.4.

The Assured will accordingly inform the Insurers as soon as he becomes aware of any terms and conditions which either exclude or limit the Assured's rights of recovery against ship yards.

In case where any right of recovery against shipyard are limited or excluded, the Insurers so informed may request payment of an additional premium – and/or deductible.

However when a partial or total waiver of recovery against a third party arises from its standard general contractual terms and conditions, the Insurers shall be bound by such waiver terms.

If the Assured fails to notify the Insurers as required under the Marine Conditions, the Insurers will be entitled to pay a proportionately reduced indemnity unless otherwise decided by them.

### **Preventive and mitigation measures**

The same spirit of effective co-operation requires that the Assured takes due care of the Insured Vessel and takes any and all reasonable measures necessary to safeguard the Vessel from an insured peril and/or to limit or minimize the effects and consequences of such an insured peril.

If the Assured fails to take the appropriate due measures, Insurers are entitled to take such measures as they deem necessary. Any intervention of the Insurers in such circumstances will be entirely without prejudice and without acknowledgement of liability from their part for any consequences of such intervention and without thereby admitting liability under the policy.

Furthermore, when the Assured has failed to comply with his duties as mentioned in article 2.5 of the Marine Conditions, the Insurers will be entitled to proportionately reduce the indemnity normally payable under the policy.

### **Avoidance, cancellation or termination of the insurance contract**

The contract shall be or may be avoided, cancelled or terminated in accordance with the terms and conditions set out in the Marine Conditions.

Marine insurance contracts are generally concluded between industry professionals and the Insurers will consider writing a business after having assessed the risk profile of a particular prospected client and the decision is taken on the basis of defined parameters.

It follows that the policy may be terminated in specific situations where the parameters affecting the assessment of risks have substantially changed.

#### **1. When the control of the vessel is transferred to third parties, namely:**

- If the Vessel is sold;
- If the Vessel is chartered out on a bareboat basis;
- If more than 50% of the shares in the Insured Vessels are sold;
- If more than 50% of the shares in the registered owning company are sold.

In these circumstances, unless otherwise agreed by the Insurers, the policy will terminate automatically on the date of the change (date of delivery of the vessel under sale, date of delivery of the vessel to the bareboat charterers, date of the transfer of the shares).

#### **2. Unless otherwise agreed in writing by the Insurers, when there is any change of the technical management company, the policy will terminate as from the date of the transfer of the Insured Vessel to another management company. Indeed the quality of the Vessel's technical management is among the key factors taken into account by the Insurers when assessing risks.**

This is the reason why Insurers need to be notified when the Insured Vessel is passed from one management company to another (article 2.6. of the policy).

This clause does not apply when the technical management company is affiliated to the Assured.

#### **3. Unless otherwise agreed in writing by the Insurers, when there is any change in flag as from the date of the change.**

It is stressed that in the above-mentioned cases, the Insurers will not be liable for any loss, damage, liability or expense arising after the date of the relevant change.

## **III – CLAIMS**

### **Notification of claims**

Any accident giving rise to a claim under the Marine Conditions has to be declared by the Assured as soon as he is aware of it, and in any event within 90 days from the date he becomes aware of the incident (see article 3.1).

The Assured may lose his right to indemnity should he fail to comply with this duty.

### **Claims handling**

In accordance with article 3.2, the claims handling service is provided by the leading Insurer who prepares the loss adjustment in accordance with the provisions of the policy and settles the claim once all issues raised by the case have been dealt with.

Despite this provision the Assured remains free to appoint a loss adjuster if he so wishes.

The leading Insurer is empowered by the co-insurers to handle and settle all claims under the policy.

### **Sue and Labour**

It is in the common interest of Insurers and Assureds that all necessary steps are taken as soon as possible to safeguard the Insured Vessel and preserve possible Insurers' rights against third parties (see article 3.3).

Where there is a failure from the Assured in this respect, the indemnity due by the Insurers may be limited to the amount which would have been payable should the obligation have been fulfilled.



## Surveys

Pursuant to article 3.4 of the Marine Conditions, a survey on the nature, extent – including extent of repairs – causes and circumstances of the losses or damages must be carried out within 60 days from the notification of the loss or damage to the Insurers.

The surveyor is appointed according to the Particular Conditions. If nothing has been specified in the Particular Conditions, the surveyor will be appointed by mutual agreement between the Assured and the Insurers.

Survey fees are for the Insurer's account even in cases where the amount of the loss or damage happens to fall below the applicable deductible or where it transpires afterwards that the loss or damage was caused by a peril which is not covered under the Marine Conditions.

## Repairs of damage

It has already been pointed out that the Assured and the Insurers have a common interest in the Marine Venture and as a consequence the Assured has to take all steps to safeguard, protect and maintain his vessel in good condition.

From this principle derives the Assured's obligation to undertake the necessary repairs immediately and in any event within 6-months from the date of notification of loss or damage to the Insurers.

Subject to the written agreement of the Leading Insurers, the above-mentioned delay can be extended.

Where this duty is not complied with, the indemnity payable by the Insurers may be limited to the amount which would have been due should the repairs have taken place within the 6-month period.

## Provision of security

Although under the Marine Conditions the Insurers have no obligation to provide security, Insurers will give due consideration to any request for the provision of security in order to prevent the arrest or to obtain the release of the vessel in case of a third party claim covered under the contract.

# IV – MEASURE OF INDEMNITY

## Settlement per accident

Settlement of claims is made for each single accident. A loss or damage arising from one single proximate cause is deemed to be one incident (see article 4.1.1).

There is one exception to this principle: should the vessel encounter several periods of heavy weather during a single voyage, each of them giving rise to loss or damage to the Insured Vessel, all loss and damage sustained during this single voyage will be deemed to be a single casualty. The same principle applies when the loss of or damage to the Insured Vessel has been caused by ice conditions.

## New for old

Claims are settled under the policy without any deduction based on the "new for old" principle (see article 4.1.2).

## Deductible

Determining the number of accidents is of importance as regards the application of the agreed deductible: one deductible is applicable per accident.

However, it should be noted that cases involving Actual Total Loss, Constructive Total Loss, Salvage, General Average or Sue and Labour Expenses are settled without application of the deductible.

When claims are made in respect of several insured risks arising out of the same single accident, these claims will be settled after deduction of one single deductible (see article 4.1.3).

## Payment of repairs

Claims for loss or damage to the Insured Vessel are settled when repairs are recognised by the appointed surveyor as being necessary to restore the vessel to her condition prior to the relevant accident. All repair costs and replacement expenses shall be supported by invoices paid by the Assured (see article 4.1.4. A).

The Marine Conditions being a property insurance, it will not indemnify the Assured for any commercial or financial loss sustained following the immobilization of the vessel during repairs.

These particular needs can be covered under the Loss of Income Conditions of the Package.

The Assured has an obligation to inform in due time the Insurers before taking any action in respect of repairs. The Insurers are entitled to require that a Ship Yard is selected to carry out the necessary repairs after a proper Call for Tenders has been effected.

If the Assured does not comply with the above obligation, the Insurers are entitled to deduct from the payable indemnity an amount corresponding to 10% of the total invoiced cost of repairs or replacement, without prejudice to other deductibles or deductions applicable under the policy (see article 4.1.4. B).

**Crew wages, maintenance expenses and cost of bunkers are for the Assureds account, except in the following cases:**

- The Insurers will reimburse crew wages, maintenance expenses and cost of bunkers incurred during the period between the drawing up of the ship repair specifications and the final acceptance of the tender.
- The Insurers will reimburse crew wages, maintenance expenses and cost of bunkers incurred whilst the vessel is waiting in a port of refuge for spare parts essential to enable her to complete her voyage. Furthermore any additional expenses incurred by the Assured to expedite the delivery of the necessary spare parts are also reimbursed by the Insurers (see article 4.1.4. C).

### **Superintendent's fees and expenses**

If the Superintendent is an employee of the Assured, the Insurers will reimburse the Superintendent's fees and expenses, including travelling and accommodation costs – but excluding any salary, wages, allowances, taxes and charges – provided they are directly connected to a loss or damage covered under the Marine Conditions.

In case additional works – namely works which are not directly linked with the insured loss or damage – are carried out at the same time, the Insurers will bear the Superintendent's fees and expenses only in proportion to the works directly linked to the insured loss or damage (see article 4.1.4. G).

### **Unrepaired damage**

Claims for unrepaired damage are allowed at the time this insurance terminates: the measure of indemnity will be the reasonable depreciation in the market value of the vessel but not exceeding the reasonable costs of repairs, except in the event of a subsequent total loss. In such a case, only a claim for total loss will be admitted, as the depreciation of the vessel would only be virtual (see article 4.1.5).

### **Abandonment**

Pursuant to article 4.1.6 abandonment of the Insured Vessel may take place in the following cases:

- Actual Total Loss of the Insured Vessel.
- Constructive Total Loss of the Insured Vessel, either because the Vessel cannot be repaired or because the total cost of repair for the Insurers' account – as estimated by the appointed surveyor – reach or exceed the Agreed Value under the policy.
- No news of the Insured Vessel has been received for more than three months. In that case the total loss is deemed to have occurred at the date when the last news of the Vessel was received.

In all above cases, the Insurers are entitled to accept abandonment or to settle the Assured's claim as a total loss without abandonment, i.e. without transfer of ownership of the Insured Vessel to the Insurers.

### **General Average**

The Vessel's contribution to General Average is recoverable under the Marine Conditions (see article 4.1.7) in proportion to the Agreed Value.

Any claim will be adjusted in accordance with the terms of the insurance contract including the Particular Conditions.

Any payment by the Insurers in respect of General Average is subject to a reduction for any partial loss recoverable under the policy.

An optional cover is available in the Package under the "Contributory Value Clause" which offers an extension of cover up to the full contributory value.



### **Limitation of liability in respect of third party claims**

In case where the Assured fails to rely on a limitation of liability regime applicable – under the governing Law or the applicable international Convention – to claims made by third parties against him, the Insurers will not be liable for any amount exceeding the sum payable after application of the limitation of liability regime (see article 4.1.9).

### **Salvage**

If the Insured Vessel is subject to salvage operations, the salvage charges incurred by the Vessel are recoverable under the policy proportionately to the Agreed Value.

An optional cover is available in the Package under the “Contributory Value Clause” which offers an extension of cover up to the actual sound market value.

### **Payment of indemnity**

In accordance with article 4.2.1 of the Marine Conditions, the Insurers undertake to pay the indemnity within 30 days after the remittance by the Assured of all the necessary documentation and the Assured may claim interest on sums not settled within this period.

The sum insured under the policy is automatically reinstated after each incident or occurrence: thus, after a loss or damage, the Assured shall be offered the same amount of financial protection than at the beginning of the cover.

## **V – APPLICABLE LAW AND PROCEDURAL MATTERS**

### **Applicable Law**

This Package is governed by and construed in accordance with French Law. As already mentioned in the foreword, a translation of the provisions of the French “Code des Assurances” relating to Marine Insurance is attached to these commentaries, together with a short French Marine Insurance Law Guide prepared by the French Maritime Law Association, giving clear legal analysis by experts of the law governing the insurance contract.

### **Subrogation**

Payment of a claim under the policy transfers all the Assured’s rights and actions connected to the relevant loss or damage to the Insurers, who are entitled to require a written confirmation of that transfer in a proper receipt and subrogation form to be signed by the Assured (see article 5.2).

### **Time bar**

In accordance with the provisions of French Law, any claim under the Marine Conditions will be time-barred if a legal action is not filed within a period of two years, which starts running from the date of the cause of action.

French law provides that the time bar period may be interrupted or suspended.

Interruption removes the acquired period and makes run a new period of two years. Prescription is interrupted by any action in justice, any forced act of execution or the recognizing of the claimant’s right by the Insurer (see article 5.3).

Suspension occurs when the Assured was unable to act and neutralizes the course of the prescription (when the suspension ends, the prescription starts again running for the time remaining to accomplish). So the prescription is suspended when the parties agree to resort to mediation.

### **Mediation**

Under article 5.4, the Marine Conditions provide for Alternative Dispute Resolutions, namely Mediation, aiming at reaching quick, cost effective, efficient and harmless solutions in the spirit of the objective partnership existing between Insurers and Assureds in the common Marine Venture.

### **Arbitration**

Mediation is proposed as a first stage, and, if no agreement can be reached by the parties, the dispute between the Assured and the Insurers will be submitted to an Arbitration Tribunal set up by the Paris Maritime Arbitration Chamber or any other agreed Arbitration Tribunal (see article 5.5).

# WAR CONDITIONS

## Introduction

The purpose of the War Conditions is to provide cover for the War Risks and War-like or Associated Risks excluded from the Marine Conditions (namely the *All Risks Marine Hull and Machinery Insurance Policy, French Form dated July 1<sup>st</sup>, 2010*) as per its article 1.2.3.

There is a perfect parallelism between the exclusions mentioned in the Marine Conditions and the scope of cover of the War Conditions so that there are no gaps in the Assured's cover.

## I – GOVERNING TERMS AND CONDITIONS

Cover for War Risks is subject to the terms set out in the *Marine Hull Insurance Conditions covering War, Terrorism and Similar Risks, French Form dated July 1<sup>st</sup>, 2010* and expressly subject to the terms and conditions of the Marine Conditions except articles 1.1 – 1.2.3 – 1.3.2 – 1.4.2 – 1.4.4 – 1.4.5 and 1.4.6.

These optional War Conditions can be written separately. However, to avoid gaps in the Assured's insurance coverage, it is recommended to use them together with the French Marine Conditions, both guarantees having been conceived to complement each other.

## II – SCOPE OF THE COVER

The French War Conditions cover all losses, damage, liabilities and expenses resulting from or caused by the war and assimilated perils usually listed in this type of policy.

It is to be noted that, in order to clarify matters and avoid any discussion on cover issues, Piracy, of whatever type or motivation (lucrative or political) is covered under the War Conditions.

One of the consequences of this transfer, is that, in addition to other cases where the Assured is entitled to abandon the Insured Vessel (see article 4.1.6 of the Marine Conditions), the Assured would be allowed –subject to the terms and conditions of the contract– to declare abandonment of the Ship in case an act of piracy –whatever its type– leads to a continuous loss of free use or deprivation of the Insured Vessel. In such situations, among others where loss of use or deprivation results from “blocking and trapping”, the indemnity comes after a waiting period.

With the same objective of clarity and in order to avoid any gap in the Assured's cover, the War Conditions (article 5), as does the French Insurance Law (article L.172-17 of the French “Code des assurances”), provide that when it is impossible to ascertain whether a loss or damage to the Insured Vessel has been caused by a peril listed in the War Conditions or by a risk covered under the Marine Conditions, then such loss or damage shall be deemed to have been caused by a risk covered under the Marine Conditions.

## III – NAVIGATION LIMITATIONS

The Insured Vessel is covered on a worldwide basis except when she is entering, navigating, laid off or located in waters mentioned in the listed Countries or Areas of Enhanced Risks attached to the insurance contract, as reviewed and amended from time to time.

If the Assured wishes to maintain cover whilst entering into or trading within the territorial waters of such Countries or Areas of Enhanced Risk, he has to notify the Insurers before entering such waters –except when it is established that he was not in a position to do it in due time– and agree the terms, conditions and possible additional premium required by the Insurers.

## IV – CANCELLATION ON NOTICE

Because of the particular nature of the War Risks and associated risks, both the Assured and the Insurers are entitled to cancel the policy at any time subject to a proper written notice of cancellation as per the provisions of article 9 of the War Conditions.



## V – AUTOMATIC TERMINATION

The policy shall terminate automatically upon the outbreak of war between any of the following countries: United Kingdom, United States of America, France, Russian Federation, and People's Republic of China.

The policy shall terminate also when the Insured Vessel has been requisitioned either for title or use.

## LOSS OF INCOME CONDITIONS

### Introduction

The new Marine Insurance Conditions Covering Loss of Income are not based on a mere revision of the existing French Form dated 18<sup>th</sup> January 1990 as considerable amendments have been introduced.

This new form is part of the Package set up by the French Marine Insurance Market and is to be used in conjunction with the Marine Conditions (namely the *All Risks Marine Hull and Machinery Insurance Policy, French Form dated July 1<sup>st</sup>, 2010*) to which it refers as several provisions contained in the latter will govern the Loss of Income cover.

It must nevertheless be emphasised that it is not a requirement for Assureds to cover both classes of risks, Hull and Machinery and Loss of Income in conjunction with the same Insurers. These policies can be placed and written separately, however to avoid conflicts of interests Insurers do recommend a common placement.

### I – SCOPE OF THE COVER

The basic cover provided is the insurance of Loss of Income resulting from physical damage to the Insured Vessel caused by an accident which would be insured under the Marine Conditions.

As the Marine Conditions are on an All Risks basis, the only accidents not covered would be the ones excluded under article 1.2 of the Marine Conditions and/or article 8 of the Loss of Income Conditions, irrespective of the actual scope of cover or deductible amounts specified in the Assureds' Hull and Machinery contract.

The new Form specifies that not only total Loss of Income can be indemnified but also partial loss as defined in II.2.2. below. This means that reduced income due, for example, to decreased speed, or reduced transport capacity of the vessel following an insured accident, can be recoverable from Insurers. Total Loss of Income does not relate to losses following an actual or constructive total loss of vessel, but to an accident which prevents the Assured from fully employing his vessel.

A major extension to the scope of cover is provided through an additional clause (Extension Clause: absence of physical damage) which broadens the insurance coverage to some circumstances which can cause Loss of Income although the vessel may not have been physically damaged. Those circumstances, deemed to be accidents, are the grounding of the vessel, salvage of the cargo, a general average situation and also an accidental physical obstruction preventing the Insured Vessel from leaving any restricted navigable waters. Various exclusions have been listed to clarify the insurance granted under this additional clause. This extension clause has not been included in the Loss of Income Conditions to allow Insurers to tailor the scope and price of the cover to the actual risks to which an Assured is exposed.

It has already been mentioned that no indemnity is recoverable under the Loss of Income Conditions if the loss is caused by risks excluded under article 1.2 of the Marine Conditions. Another important aspect for Assureds is the relationship between the provisions, duties and disclosures listed in section II of the Marine Conditions and their right to recover losses under the Loss of Income Conditions.

If the Assured does not comply with the duties stipulated in article 2.1 of the Marine Conditions then the sanctions in article 2.1.4 shall also be applicable to the Loss of Income cover.

In respect of disclosure, the Loss of Income Insurers can only invoke fraudulent misrepresentation or non-disclosure by the Assured if the Insurers' assessment of the Loss of Income risk has been adversely affected. This is irrespective of the assessment of the Hull & Machinery risk or whether or not an indemnity will be paid under the Hull and Machinery contract because of non-disclosure or misrepresentation.

## II – CALCULATION OF THE INDEMNITY

The indemnity recoverable by the Assured is calculated on the basis of three key elements: the daily amount insured, the period of Loss of Income and the deductible. The parties must specifically agree on those items as specified in the particular conditions which in conjunction with the Loss of Income ones constitute the insurance contract.

The indemnity recoverable following an insured accident causing a Loss of Income is equal to the daily agreed amount multiplied by the period of Loss of Income after the deductible has been deducted from such period. The period of Loss of Income cannot exceed the maximum limits set out in the particular conditions.

### 1 – The daily sum of Loss of Income

The insured amount per day of income lost by the Assured is specified as being fixed and agreed for the amount indicated in the particular conditions. As such it cannot be disputed, increased or on the contrary decreased, by the parties at the time of the claim's settlement except in the case of fraudulent representation whereby the Assured could perceive a daily amount far in excess of the Assured's actual Loss of Income.

Furthermore the Assured is not expected to justify the employment of the Insured Vessel, chartered or unchartered, at the time of the accident. This remains nevertheless subject to the lay up exclusion in article 8 of the Loss of Income Conditions.

Although not specified in the policy the Assured is entitled to amend the daily sum insured during the course of the policy, to integrate any trading or freight market fluctuations.

### 2 – The insured period of Loss of Income

The insured period of Loss of Income following an insured accident is calculated precisely (days, hours, and minutes) and not for each day of 24 consecutive hours to enable the Assured to recover its actual Loss of Income net of the deductible period.

The main consideration in calculating the period is whether or not the Insured Vessel is under a charter party or similar contract at the time of the accident, contract which is to remain in force upon completion of repairs when the vessel resumes its operations. In such case the period of Loss of Income corresponds to the contractual off-hire period.

Where the Insured Vessel is not under charter party, conditions detail the various elements contributing to the overall period of Loss of Income, such as the time to effect temporary repairs, tenders, proceed to the repair yard, for the vessel to be repaired and ready to resume navigation. Furthermore, if justified by the trade in which the vessel is employed, the time taken after repairs to reach the first port of loading of the vessel's usual trading area will be included in the insured period.

As already mentioned the maximum period of Loss of Income (net of the deductible) recoverable is specified in the particular conditions and is generally expressed not only per accident and per vessel but also for the policy year. A fleet limit can also be considered by the leading Insurer upon request of the Assured.

#### 2.1 – Loss of Income period with simultaneous repair works

Where there is a question of Loss of Income and simultaneous repairs the issue is more complicated to the extent that some Conditions do not even mention it.

The purpose of this article is to state clearly how time saved at the yard is to be shared between Assured and Loss of Income Insurers when the vessel is being repaired during one single common period of time for works covered and excluded.

Such complexity results from the various possible combinations of the following situations:

- Simultaneous repairs of insured accidents and works not covered.
- Simultaneous repairs of separate accidents covered under the same Loss of Income contract.
- Simultaneous repairs of insured Loss of Income accidents covered under different policies.

The fundamental apportionment principle applicable is that the common time in excess of the deductible will be shared evenly amongst the parties. As an example:

- Vessel A is insured against Loss of Income with:
  - 14 days deductible



- Daily indemnity = 15 000 USD
- Insured Period of Loss of Income = 90 days

Accident X covered under the Loss of Income requires 50 days of repair works as from entry in the shipyard which is to take place without any delay after the date of the accident.

Repair Works Y not covered require 30 days as from date of entry in the repair yard.

The repair time for each class of repairs covered and excluded having been estimated as if they had been carried out separately as from the first day the vessel enters the yard.

Common repair time in excess of the 14 days deductible = 16 days.

Equal sharing of common repair time = 8 days.

Period of Loss of Income net of deductibles = 8 + 20 days = 28 days.

Indemnity payable = 28 x 15 000 USD = 420 000 USD.

The above apportionment shall only take place if the non covered works do require immobilising the vessel in a yard; normal maintenance works which could have been done at sea by the vessel's crew will not trigger an apportionment of the common repair time.

No apportionment of common repair time is to take place if repair works are carried out simultaneously for accidents insured under the same Loss of Income policy and this as long as the deductible of each accident runs for the same period of time. In this case the Assured is only to retain one deductible period. If on the contrary the deductible for one accident expires before the deductible of the second accident then an apportionment must be conducted. The common repair time which corresponds to the second deductible is to be evenly split between the parties as per the following example.

Two insured accidents covered under the same policy with a deductible per accident equal to 14 days for each accident. Common repair time at the yard for the two accidents is 30 days. The vessel enters the yard on the day the deductible for the first accident is exhausted whilst the deductible for the second accident starts running upon arrival at the yard. The 50/50 apportionment principle will apply to the second 14 days deductible and the Assured can only recover:

Net period of Loss of Income = 30 days - (14/2) = 23 days.

Another case must be addressed when common repair time occurs for accidents covered under different Loss of Income policies. In this case the common repair time is also to be split 50/50 and the deductible period part of common repair time but not running in parallel with the other one will also be apportioned.

Many variants of the above situations can be combined but the general principle has been illustrated: time saved by doing simultaneously repair works is to be apportioned equally between the Assured and Insurers.

For the sake of convenience and in case of simultaneous repairs the clause also contains the apportionment principle to be applied to time lost before and after repairs.

## 2.2 – Partial Loss of Income

Article 2.2.2 defines Partial Loss of Income. This corresponds to decreased income due to reduced speed following for example, engine damage or lower transport capacity resulting from physical damages to holds, cargo handling equipment or other parts of the vessels.

The partial period of diminished income will be converted into a full period as per the estimate made by the surveyor.

Under article 8, it is emphasised that no indemnity will be recoverable for slow steaming which does not result from an insured physical damage but which would be due to an operational decision taken by the Assured.

Article 2.2.2 also emphasises that Insurers will not indemnify Loss of Income for longer periods than the ones which would have resulted if repairs had been done without delays.

The fact that partial Loss of Income is covered does not relieve the Assured from his duties to avoid or minimise Loss of Income, nor to effect the necessary repairs without delay.

## 3 – Deductible

The deductible expressed in days in the particular conditions is applicable to each period of Loss of Income resulting from each insured accident. There will be only one deductible applied even if a single period of Loss of Income results from several delays (temporary repairs, tenders...)

The commencement of this deductible period is as from the first day of period of Loss of Income as defined in article 2.2 of the Loss of Income Conditions.

If the vessel is partially and not totally deprived of income then the deductible period expires only after the partial period converted in a total one reaches the number of deductible days.

In practice the deductibles, as expressed in the particular conditions, can depend on the type of accident with one deductible period for all types of accidents but a higher number of days in case of engine damages.

Physical damages due to consecutive periods of heavy weather or ice contacts during a voyage between two consecutive ports shall be deemed caused by a single accident with a single deductible period being applicable. A specific situation needs to be addressed in such a case and when furthermore Loss of Income contract starts and/or expires during the voyage. The apportionment principle then applicable can be stated as per the following example:

A voyage between two consecutive ports lasts 25 days. 15 days under policy year 2007 (deductible 14 days) and 10 days under the policy year 2008 (deductible = 21 days).

The vessel sails 5 days in heavy weather during policy 2007 and 3 days in 2008 (overall 8 days of heavy weather).

The accident generates a Loss of Income period equal to 80 days. This Loss of Income period is apportioned in the following manner.

The 2007 policy covers a period of Loss of Income =  $80 \text{ days} \times \frac{5}{8} = 50 \text{ days}$

The deductible period to be deducted from the 50 days =  $14 \text{ days} \times \frac{5}{8}$ .

The 2008 policy covers a period of Loss of Income =  $80 \text{ days} \times \frac{3}{8} = 30 \text{ days}$ .

The deductible to be deducted from the 30 days =  $21 \text{ days} \times \frac{3}{8}$ .

### **III – EXPENSES TO REDUCE THE PERIOD OF LOSS OF INCOME**

Under article 3 of the Loss of Income Conditions the Assured is reminded of his duty to take measures to avoid or minimise any Loss of Income which could be recoverable under the policy. In doing so he may incur some extraordinary costs and expenses such as, but not limited to, temporary repairs.

If those costs are not wholly or partly recoverable from Hull and Machinery Insurers they are indemnified under the Loss of Income policy.

The Loss of Income Insurers will not indemnify those extra costs which are not recoverable by the Assured because of the deductible applicable under the Hull and Machinery policy.

The Insurers will indemnify the actual extra costs and expenses exposed by the Assured for a maximum amount equal to the number of days saved multiplied by the daily sum of Loss of Income. Such a cap is not applicable if those costs and measures have been previously agreed by Insurers.

### **IV – SURVEY OF DAMAGE**

Article 4 stipulates that a joint survey must be conducted before temporary or final repairs are done and this in case of occurrence of an accident which may result in a claim under the Loss of Income insurance. The maximum delays granted to carry out such survey will depend whether the accident may give rise to a total Loss of Income or to a partial one.

This survey and the ensuing survey report will allow the parties to assess whether the accident is covered (date of occurrence, cause, circumstances...) under the policy but also contribute to evaluate the extent of repairs to be effected and the period of Loss of Income.

The surveyors shall be appointed as per the provisions contained in article 3.4 survey and repairs of the Marine Conditions.



## **V – TENDER AND CHOICE OF THE REPAIR YARD**

Article 5 governs the respective rights of the parties to the Loss of Income policy in respect of the choice of the repair yard.

The Insurers may decide that a tender be conducted to minimise the period of Loss of Income and they must in this case advise the Assured accordingly. The repair yards selected and invited to tender will in practice be agreed between the Assured, the surveyor, the Hull and Machinery Insurers and Loss of Income Insurers.

The ultimate choice of the repair yard shall remain with the Assured but on the understanding that the indemnity payable by the Loss of Income Insurers cannot exceed the one corresponding to the shortest period of income, which will include not only the repair time as quoted by the yards, but also the other elements such as time required by temporary repairs and voyage to the repair yard as described in article 2.2.

If the H&M and Loss of Income Insurers are the same, the choice of the repair yard shall, in practice, be made so as to minimise the total H&M and Loss of Income indemnity payable by Insurers with no possible conflict of interest arising among H&M and Loss of Income Insurers.

Should the H&M and Loss of Income Insurers be different, the choice of the repair yard (and the possible impacts on the period of Loss of Income) shall be a matter of negotiation between the parties involved in the claim.

## **VI – DEFERRED REPAIRS**

The Assured must arrange for the repairs to be carried out without delay and in any cases within 6 months from the date on which the accident is notified by the Assured unless otherwise agreed in writing by the Insurer (see article 6).

## **VII – REPAIRS AND CHANGE OF OWNERSHIP**

Article 7 specifies that once a vessel is sold to a new owner then the Assured is not anymore entitled to claim for any Loss of Income occurring after the vessel's transfer, nor are the rights he had under the Loss of Income policy transferable to the new owner.

Although not specified in the article this would also be applicable to vessels under bareboat charter from the Assured and this by virtue of article 2.6 D of the Marine Conditions.

## **VIII – EXCLUSIONS**

As is customary for this type of insurance, no Loss of Income can be recoverable following actual or constructive total loss of the Insured Vessel. Any insurable interest that the Assured may have in such circumstance can be insured under Total Loss insurances, Hull Interests, and Freight Insurance covers placed separately or in conjunction with the Marine Conditions.

If the Insured Vessel is in a state of constructive total loss as defined under the Marine Conditions and agreed by the Hull and Machinery Insurers, and the Assured elects nonetheless to have her repaired, he will not be entitled to receive an indemnity under the Loss of Income conditions.

Pursuant to article 8, and as already indicated, the Assured is not entitled to recover income lost when the vessel is laid up with no real proven prospects of future employment. This is information that the Assured has to release to Insurers as per article 9 of the Loss of Income Conditions.

Partial Loss of Income resulting from slow steaming, decided by the Assured for commercial reasons and not due to an accident covered under the Loss of Income contract, is not covered under those conditions.

## **IX – CLAIMS INFORMATION**

It is the duty of the Assured to declare, without delay, any accident which may give rise to a claim under the policy to enable Insurers to take all necessary measures to avoid or minimise the period of Loss of Income.

The Assured is also expected to release promptly any document that Insurers may require to assess the claim and indemnity payable.

## **X – CANCELLATION AND RETURN OF PREMIUM**

As stated under article 8, no indemnity is payable following the occurrence of an accident to a laid up vessel. The Assured is, in this case, therefore entitled to cancel the insurance of the laid up vessel if he has not sustained previously an insured accident which may give rise to a claim under the same Loss of Income policy.

For vessels sold or bareboat chartered out, the provisions contained in 2.6 D of the Marine Conditions are applicable.

## **XI – REINSTATEMENT**

The Loss of Income Conditions allow for automatic reinstatement of the limit of liability when exhausted after payment of an indemnity by Insurers and this at terms to be agreed.

## **XII – WAR COVER**

Loss of Income following War and similar Risks can be covered upon the Assured's request through an additional clause.



## ANNEXE

### FRENCH INSURANCE CODE ENGLISH FREE TRANSLATION

#### Disclaimer

This text is a free translation of the part of the French Insurance Code relating to Marine Insurance. It is issued for the sole convenience of the international maritime community.

The A.F.D.M. (*Association Française du Droit Maritime*) shall not in any event whatsoever be liable for the wording and interpretation of this free translation.

It is expressly understood that the original French text takes precedence over this free translation, which is for information purposes only, and that only the French text, as stated in the "Code des Assurances", contains the relevant provisions of French insurance law.

### TITLE VII: MARINE INSURANCE CONTRACTS AND INLAND WATERWAYS INSURANCE

#### Chapter I: General provisions

##### Article L.171-1

(Act n° 92-665 of 16 July 1992, Article 37, I, II, Official Journal of 17 July 1992)

Any insurance contract which covers risks relating to a maritime operation shall be governed by the provisions of the present title. An inland waterway insurance contract shall be governed by the provisions of the present title, excluding articles L.172-5, L.172-11, L.172-17, L.172-26, L.173-7, L.173-13 (4°) and L.173-21 (2°).

##### Article L.171-2

(Decree n° 85-863 of 2 August 1985, Article 2, I, Official Journal of 15 August 1985)

(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

The provisions of articles L.171-3, L.172-2, L.172-3, L.172-6, L.172-8, L.172-9 (1°), L.172-13 (2°), L.172-17, L.172-20, L.172-21, L.172-22, L.172-28 and L.172-31 cannot be excluded by the parties to the contract.

##### Article L.171-3

(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

Any legitimate interest, including expected profit, may be insurable.

There shall be no entitlement to a benefit under the insurance where no loss has been suffered.

##### Article L.171-4

(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

A contract of insurance may be entered into either on behalf of the signatory of the policy or on behalf of another specific person or on behalf of whom it may concern.

A statement according to which the contract of insurance has been entered into on behalf of whom it may concern shall be valid equally as insurance in favour of the signatory of the policy and as a provision for the benefit of a third party in favour of the beneficiary of such clause.

##### Article L.171-5

(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

The provisions of this title shall not apply to contracts of insurance covering risks relating to pleasure cruising or sailing.

Such contracts shall be governed by the provisions of titles I, II and III of the present Book.

However, article L.124-3 shall not prevent the application of the rules relating to the allocation of the indemnity to the limitation fund, as provided for in articles L.173-23 and L.173-24.

##### Article L.171-6

(Act n° 89-1014 of 31 December 1989, Article 56, Official Journal of 3 January 1990 in force on 1 July 1990)

(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

The provisions of the present title shall apply to the French Overseas Territories and to Mayotte.

**N.B.** Article 75 of Act 2001-616 of 11 July 2001: In all legislative and regulatory texts in force in Mayotte, all references to the "collectivité territoriale" of "Mayotte" shall be replaced by the word "Mayotte" and all references to the "collectivité territoriale" shall be replaced by the term "collectivité départementale".

### Chapter II: Rules applicable to various types of marine insurance

#### Section I: Conclusion of the contract

##### Article L.172-1

(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

A contract of insurance shall have no legal effect where the risk has not commenced either within two months of the conclusion of the agreement between the parties or within two months of the date agreed upon for the commencement of the insurance.

In relation to floating policies this provision shall only apply to the first declaration.

#### **Article L.172-2**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Any misrepresentation or non-disclosure by the Assured which adversely affects the Insurer's assessment of the risk shall entitle the insurer to declare the insurance contract null and void, regardless of whether the misrepresentation or non-disclosure has had any effect on the loss or damage suffered by the subject matter insured.

Nevertheless, where the Assured proves his good faith, the Insurer, except where there exists a provision more favourable to the Assured, shall be liable for the indemnity in proportion to the premium paid as compared to that which should have been paid, except where the insurer establishes that he would not have provided insurance cover for the risks if he had known them.

The premium shall not be refunded in case of fraud by the Assured.

#### **Article L.172-3**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Any variation to what has been agreed upon at the conclusion of the contract or to the insured subject-matter of the contract that leads to a substantial alteration of the risk shall terminate the contract of insurance if such variation is not declared to the Insurer within three working days from the date when the Assured became aware of the variation, unless the Assured can prove his good faith in which case the provisions of paragraph 2 of article L.172-2 shall apply.

In the event that the alteration of the risk has not been caused by the Assured, the contract of insurance shall remain valid provided that a payment of the additional premium is made corresponding to the alteration.

In the event that the alteration of the risk has been caused by the Assured, the Insurer shall be entitled either to terminate the contract of insurance within three days from the date when he became aware of the alteration and the premium shall not be refunded, or to obtain an additional premium proportionate to such alteration.

#### **Article L.172-4**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Any insurance obtained after loss or damage or after the safe arrival of the insured subject-matter or of the carrier ship is null and void if such loss or damage was known prior to the conclusion of the contract, either at the place where the contract was signed or where the Insurer or assured was located.

#### **Article L.172-5**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Lost or not lost insurance shall be null and void if it is established that, prior to the conclusion of the contract, the Assured had personal knowledge of the loss or damage or that the Insurer had personal knowledge of the safe arrival of the subject-matter insured.

#### **Article L.172-6**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

If the Insurer proves that either the Assured or his representative acted fraudulently, the insurance cover obtained for a sum in excess of the actual value of the insured subject-matter shall be null and void and the Insurer shall be entitled to keep the premium.

This provision shall also apply where the insured value is an Agreed Value.

#### **Article L.172-7**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In the absence of fraud, the contract shall be valid to the extent of the actual value of the insured subject-matter and, if the value has been agreed, for the entire sum insured.

#### **Article L.172-8**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Double insurance resulting in the subject-matter being insured for a total sum in excess of the actual value of the insured subject-matter shall be null and void if such insurance was obtained with intent to defraud.

#### **Article L.172-9**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Double insurance obtained without fraud resulting in the subject-matter being insured for a total sum in excess of its actual value is valid only if the Assured notifies such double insurance to the Insurer from whom he is claiming payment of the indemnity.

Each overlapping contract of insurance shall apply to the extent of the value that has been insured by each contract, up to the total value of the insured subject-matter.

#### **Article L.172-10**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Where the insured sum is less than the actual value of the insured subject-matter and unless a value has been agreed, the Assured shall remain his own insurer for the difference between the two values.

### **Section II: Obligations of the Insurer and of the Assured**

#### **Article L.172-11**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The Insurer shall be liable for material damage caused to the insured subject-matter by any peril of the seas or by an Act of God ("force majeure").

The Insurer shall also be liable for:

1. Any contribution to general average in respect of the subject-matter insured, unless such contribution results from a risk excluded by the contract of insurance.



2. Costs incurred, as a result of an insured risk, in order to save the subject-matter insured from a material damage or to minimise such damage.

#### Article L.172-12

*(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

A "free of average" clause shall free the Insurer from any average, whether general or particular, except in cases giving rise to abandonment: in such cases, the Assured shall be entitled to elect between abandonment and an average claim.

#### Article L.172-13

*(Decree n° 85-863 of 2 August 1985, Article 2, II, Official Journal of 15 August 1985)*

*(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Insured risks shall remain covered, even in the event of the Assured's fault or that of his agents on land, unless the Insurer proves that the damage was caused by the Assured's lack of reasonable care in protecting the insured subject-matter from the risks that in fact occurred.

The Insurer shall not be liable for the wilful misconduct or reckless negligence<sup>1</sup> of the Assured.

#### Article L.172-14

*(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The risks are covered on the same terms and conditions in case of negligence by the captain or crew, except as stated in article L.173-5.

#### Article L.172-15

*(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Perils insured against shall remain covered even in case of an unavoidable change of route, of voyage or of vessel or in case of a change ordered by the captain without the knowledge of the ship owner or of the Assured.

#### Article L.172-16

*(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The Insurer shall not cover the risks of:

- a) war or civil war, mines or any other weapons of war,
- b) piracy,
- c) capture, taking at seas (seizure) or detention by any government or other authority,
- d) riots, civil commotions, strikes or lock outs, acts of sabotage or of terrorism,
- e) loss or damage incurred by the insured subject-matter to other property or persons, except as stated in article L.173-8,

- f) loss or damage attributable to the direct or indirect effects of an explosion, release of heat, irradiation due to the transmutation of nuclear atoms or radioactivity or loss or damage attributable to the effects of radiation caused by artificial acceleration of particles.

#### Article L.172-17

*(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Where it is not possible to establish whether a loss has resulted from a war risk or from a peril of the seas, it shall be deemed to have been caused by a peril of the seas.

#### Article L.172-18

*(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The Insurer shall not cover:

- a) physical damage or loss resulting from an inherent vice of the subject-matter insured, except as stated in article L.173-4 regarding latent defects in a vessel,
- b) physical damage or loss resulting from fines, confiscation, sequestration, requisition, health or disinfecting measures or measures resulting from violation of blockades, smuggling, or forbidden or clandestine trading,
- c) compensation or other indemnities arising from any arrest or securities given to release the subject-matter insured,
- d) loss not constituting a physical loss or damage directly affecting the subject-matter insured, such as laying up, delay, difference in exchange rates or impediment to the commercial operations of the Assured.

#### Article L.172-19

*(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The Assured must:

1. pay the premium and charges, in the agreed places and at the agreed times,
2. take reasonable care in all matters relating to the vessel or goods,
3. accurately disclose at the time of concluding the contract, all circumstances of which he is aware that would influence the Insurer in assessing the risks to be covered,
4. disclose to the Insurer, to the extent of his knowledge, any increase in risk that may arise during the contract.

#### Article L.172-20

*(Act n° 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In case of non-payment of premium, the Insurer may elect either to suspend the insurance or to require its termination.

The suspension or termination shall take effect eight days after the Assured has been sent a formal demand to pay by registered letter to his last known address.

(1) Act or omission, committed recklessly and with knowledge that such loss would probably result.

#### **Article L.172-21**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The suspension or termination of the contract of insurance for non-payment of a premium shall be without effect as against third parties in good faith who are beneficiaries of the insurance by virtue of a transfer which has taken place prior to notice of the suspension or termination.

In the event of loss or damage, the Insurer, by means of an express clause added to the contract, may, against the beneficiaries under the contract, set off the claim of the amount of premium due against the indemnity paid out of the insurance of which the benefit is claimed.

#### **Article L.172-22**

*(Act n°. 89-1014 of 31 December 1989, Article 36, II, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In the case of insolvency or bankruptcy of the Assured, the Insurer may, if the formal demand for payment is not followed by payment, terminate the current policy, but the termination shall be without effect towards a third party in good faith who is a beneficiary of the insurance by virtue of a transfer which has taken place prior to any loss or damage and prior to notice of the termination being given.

In the case of licence withdrawal, or in the case of the insolvency or bankruptcy of the Insurer, the Assured may exercise the same rights.

#### **Article L.172-23**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The Assured must take all measures to safeguard the subject-matter insured and must take all measures to preserve his rights against third parties who may be liable.

He shall be liable to the Insurer for any damage caused by any non-performance of this obligation attributable to his fault or negligence.

### **Section III: Payment of the Indemnity**

#### **Article L.172-24**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Loss or damage are paid in particular average, save for the Assured's right to opt for abandonment in cases determined by law or by agreement.

#### **Article L.172-25**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The Insurer cannot be obliged to repair or replace the insured subject-matter.

#### **Article L.172-26**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The Insurer shall pay the general average contribution, whether provisional or definitive, and the salvage charges in proportion to the insured value, less, where applicable, any particular average payable by the Insurer.

#### **Article L.172-27**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Abandonment may be neither partial nor conditional.

Abandonment has the effect of transferring to the Insurer the rights of the Assured over the subject-matter insured. The Insurer shall have to pay the entire sum insured and the effects of the transfer shall date back, as between the parties, to the moment when the Assured has notified the Insurer of his intention to abandon.

The Insurer is entitled, without prejudice to the payment of the insured sum, to refuse the transfer of ownership.

#### **Article L.172-28**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

An assured who makes a false representation in bad faith regarding the loss or damage shall forfeit his right to benefit from the contract of insurance.

#### **Article L.172-29**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The Insurer shall be vested with the rights of the Assured to the extent of the indemnity he has paid in respect of the damage that gave rise to cover.

#### **Article L.172-30**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

If the same risk is covered by several insurers, each shall be liable only for his own respective proportion of the sum insured and shall have no joint liability with any other insurer. Such proportion shall constitute the limit of each insurer's obligation.

#### **Article L.172-31**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Legal claims arising under the contract of insurance shall be subject to a two-year limitation period. The limitation period shall also apply to minors and to other persons without legal capacity.

### **Chapter III: Rules specific to various types of marine insurance**

#### **Section I: Hull insurance**

##### **Article L.173-1**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Vessel insurance may be obtained either for one voyage or for several consecutive voyages (voyage policy), or for a fixed term (time policy).



#### **Article L.173-2**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In respect of voyage policies, insurance cover shall be effective from the commencement of loading operations until the end of unloading operations, but at the latest until fifteen days after the vessel's arrival at her destination.

In the event of a voyage in ballast, cover shall be effective from the time the vessel commences her voyage until the mooring of the vessel upon her arrival.

#### **Article L.173-3**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In respect of time policies, the insurance shall include the first and last day of the cover.

Days shall be calculated on a twentyfour hour basis, based on the local time of the country where the policy was issued.

#### **Article L.173-4**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The Insurer shall not cover loss or damage caused by an inherent vice in the vessel, except if it is a latent defect.

#### **Article L.173-5**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The Insurer shall not cover loss or damage caused by the captain's wilful misconduct.

#### **Article L.173-6**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Where the insured value of the vessel is an Agreed Value, the parties shall mutually refrain from making any other estimate, unless as provided in articles L.172-6 and L.172-26.

#### **Article L.173-7**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Insurance upon safe arrival may be obtained only with the agreement of the vessel's insurers, and shall otherwise be null and void.

When a sum is insured in this respect, the insurable interest is evidenced by the acceptance of the sum thus covered.

The Insurer shall be liable only in the event of total loss or abandonment of the vessel resulting from a risk covered by the policy; the Insurer has no right to the abandoned property.

#### **Article L.173-8**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Apart from personal injury, the Insurer shall indemnify for loss or damage of any kind for which the Assured is liable following third party recourse in case of collision or contact by the Insured Vessel or said vessel's collision or contact with a building or any movable, fixed or floating object.

#### **Article L.173-9**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In respect of voyage policies, the entire premium is due from the time of the commencement of the risk.

#### **Article L.173-10**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In respect of time policies, the premium stipulated for the entire cover period is due in the event of total loss or abandonment recoverable under the policy. If the Insurer is not liable for the total loss or abandonment, the premium is due proportionately to the time on risk until total loss or notice of the abandonment.

#### **Article L.173-11**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In respect of average adjustment, the Insurer shall reimburse only the costs of replacement and repairs acknowledged to be necessary in order to restore the vessel's seaworthiness, excluding any other indemnity for depreciation or laying up, or any other ground.

#### **Article L.173-12**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Whatever the number of events occurring during the term of the policy, the Assured shall be covered for each event up to the limit of the sum insured, save the Insurer's right to request an additional premium after each event.

#### **Article L.173-13**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The vessel may be abandoned in the following cases:

1. total loss,
2. where the total cost of repairs amounts to three quarters or more of the Agreed Value,
3. when the vessel cannot be repaired,
4. where there is no news of the insured subject-matter for more than three months, in which case the loss shall be deemed to have occurred on the date of the last news.

#### **Article L.173-14**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In the event of the transfer or bare-boat chartering of the vessel, the insurance shall legally continue to the benefit of the new owner or charterer, the new owner or charterer being under a duty to inform the Insurer thereof within ten days and to fulfil all of the Assured's obligations to the Insurer under the contract.

However, the Insurer shall be free to terminate the contract within one month of receiving notice of the transfer or chartering. Such termination shall take effect fifteen days after notice thereof.

The transferor or the owner shall be liable for payment of premiums due prior to the transfer or chartering.

### **Article L.173-15**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The transfer of the majority of the shares in a vessel in shared ownership shall entail in itself the application of article L.173-14.

### **Article L.173-16**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The provisions of the present section shall also apply to contracts of insurance covering vessels only for the duration of their lay up in ports, in the roads or other places, whether afloat or in dry dock.

These provisions shall also apply to vessels under construction.

## **Section II: Cargo insurance**

### **Article L.173-17**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Cargo shall be insured either under a single voyage policy or under a floating policy.

### **Article L.173-18**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Cargo shall be insured continuously, regardless of where it is located, within the limits of the voyage defined under the policy.

### **Article L.173-19**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In the event of part of the voyage made over land, on inland waterways or by air, the rules of marine insurance shall apply to the entire voyage.

### **Article L.173-20**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Cargo may be abandoned in case of:

1. total loss;
2. when the total loss or damage amounts to at least three quarter or more of cargo value;
3. when cargo is sold by reason of material damage caused during the voyage to the insured subject-matter by a covered risk.

### **Article L.173-21**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Cargo may also be abandoned in case of:

1. unseaworthiness of the carrying vessel and if the forwarding of the cargo, by whatever means of transport, has not commenced within a three month period;

2. no news from the carrying vessel for more than three months.

### **Article L.173-22**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In the event that the Assured who contracted the floating policy has not complied with the obligations provided for by decree, the contract may be terminated forthwith upon the Insurer's election. In such circumstances, the Insurer shall also be entitled to payment of the premium corresponding to non-disclosed shipments.

If the Assured acted in bad faith, the Insurer may exercise the right to take action to recover any payments that he made for claims relating to shipments subsequent to the Assured's first deliberate omission.

## **Section III: Liability insurance**

### **Article L.173-23**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The Assured shall be entitled to an indemnity under liability insurance only where the third party has been indemnified and only to the extent of this indemnification, except in cases where the insurance indemnity is allocated to a limitation fund pursuant to the terms of article 62 of Act n°. 67-5 of 3 January 1967 relating to the status of ships and other seagoing vessels.

### **Article L.173-24**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In the event that a limitation fund is formed, the creditors whose right is subject to limitation pursuant to the terms of articles 58 to 60 of Act n°. 67-5 of 3 January 1967 relating to the status of ships and other seagoing vessels, shall have no right to legal action against the Insurer.

### **Article L.173-25**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Liability insurance, which covers the indemnification of loss that a vessel has caused to third parties and that is covered by the terms of article L.173-8, will have legal effect only in the event of insufficiency of the sum insured under the hull policy.

### **Article L.173-26**

*(Act n°. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Whatever the number of events occurring during the duration of the liability insurance cover, the sum insured by each insurer shall constitute the extent of his liability for each event.



## Chapter IV: Rules specific to various inland waterway insurance

### Section I: Hull insurance

#### Article L.174-1

*(inserted by Act n°. 92-665 of 16 July 1992, Article 37, III, Official Journal of 17 July 1992)*

Hull insurance covers loss or damage incurred by the boat and its insured appurtenances caused by all navigation accidents or Acts of God ("force majeure"), save formal and limited exclusions provided in the contract of insurance.

#### Article L.174-2

*(inserted by Act n°. 92-665 of 16 July 1992, Article 37, III, Official Journal of 17 July 1992)*

The Insurer shall not be liable for loss or damage caused where a boat undertakes a voyage in a state that is unsuitable for navigation or where a boat is inadequately manned or equipped.

Similarly, the Insurer shall not be liable for loss or damage resulting from ordinary wear and tear of the boat.

#### Article L.174-3

*(inserted by Act n°. 92-665 of 16 July 1992, Article 37, III, Official Journal of 17 July 1992)*

The Insurer shall be liable for the general average contribution of the insured subject-matter.

Similarly, in cases where the Assured owns all of the goods on board, the Insurer shall cover loss that would have constituted a general average if the goods had belonged to a third party.

### Section II: Cargo insurance

#### Article L.174-4

*(inserted by Act n°. 92-665 of 16 July 1992, Article 37, III, Official Journal of 17 July 1992)*

Cargo insurance shall cover loss and damage incurred by the cargo caused by all navigation accidents or Acts of God ("force majeure"), save for formal and limited exclusions provided for in the contract of insurance.

#### Article L.174-5

*(inserted by Act n°. 92-665 of 16 July 1992, Article 37, III, Official Journal of 17 July 1992)*

The Insurer shall not be liable for loss or damage that the consignor or consignee, acting as such, has caused by their wilful misconduct or reckless negligence<sup>1</sup>.

The Insurer shall not be liable for damage caused by an inherent vice of the insured cargo, internal deterioration, decline, wastage, lack of packaging or defect in packaging, ordinary leakage in transit or on account of rodents. However, the Insurer shall be liable for damage caused by delay when the voyage has been unusually delayed by an event for which the Insurer is liable.

### Section III: Liability insurance

#### Article L.174-6

*(inserted by Act n°. 92-665 of 16 July 1992, Article 37, III, Official Journal of 17 July 1992)*

The Insurer shall not pay all or part of the insurance indemnity to any other party than the wronged third party as long as such third party has not received indemnification up to the limit of such sum for the pecuniary consequences of the tort for which the Assured is liable.

## FRENCH MARINE INSURANCE LAW GUIDE

### Disclaimer

This guide is issued for the sole convenience of the international maritime community.

The A.F.D.M. (Association Française du Droit Maritime) shall not in any event whatsoever be liable for the wording and interpretation of this guide which is for information purposes only.

### Introduction

This short commentary in the form of a presentation on the provisions of the French Marine Insurance Law has been prepared by the French Maritime Law Association (Association Française du Droit Maritime).

The French Marine Insurance Industry is a real alternative to the traditional London market: the French Marine law and "pensée juridique française" (French Law school) may offer reliable solutions which are interesting for both parties to the insurance contract, Assured and Underwriter.

French Insurance law has a long historical tradition going back to the 17<sup>th</sup> century when the "Ordonnance de la Marine" dated 1681 permitted the first codification in France of Marine Insurance Law. The provisions of this old text were replaced by the Napoleon Code of Commerce dated 1807 which remained in force until 1967.

Following a large review of Maritime Law in the mid sixties, Marine Insurance was modernised. The new provisions incorporated the practice of the use of the policies issued

(1) Act or omission, committed recklessly and with knowledge that such loss would probably result.

by Insurers and broadly accepted by the market. The provisions of the French Marine Insurance Law do reflect the practice of Marine Insurance as elaborated by the industry and its customers and, more important, as experienced by the market.

French Marine Law does not consist theoretical principles, but is more an application of the principles used by the practitioners, thus giving a modern set of solutions kept up-to-date by the French Legislator.

The present guide is a brief presentation of the mechanisms and solutions of the French legal system in Marine Insurance matters. It should not be considered as a legal commentary: it is a pathfinder into the French Marine Insurance system as offered by the market, enabling the reader to know the basic principles and to understand the advantages of Marine Insurance contracts governed by French law.

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## 1 – The contract of Insurance

Marine Insurance Law is codified in the French Code of Insurance (“Code des Assurances”) under Title VII of Book I comprising the articles L.171-1 to L.174-6. It is a specific law for Marine Insurance, excluding the application of the other provisions of the French Insurance Code.

### 1.1 – Scope of application

These provisions govern all contracts relating to marine operations: marine hull and machinery (sea going vessels, fishing vessels), cargo insurance, marine liabilities (P&I covers), off shore installations.

Furthermore, they expressly apply to inland navigation insurance, but exclude contracts related to pleasure crafts which remain governed by the common provisions of insurance law, as they are considered more as property risks than as casualty risks.

### 1.2 – Contents and structure

Marine Insurance law contains the general conditions for the conclusion of a valid contract and for setting up the respective obligations of the parties as well as specific rules applying to the respective types of Marine Insurance contracts.

The structure of Marine Insurance Law is divided into two parts: the provisions established by law on the one hand, and the provisions enacted by decrees giving precisions on the way the provisions of law are to be applied, on the other hand.

Furthermore, mandatory provisions versus those which are open to contractual discussions are determined by law.

### 1.3 – Mandatory provisions

The mandatory provisions determined by law concern the following points:

- Necessity of an insurable interest.
- Duty of disclosure of the risk and of alterations to the risk.
- Penalty in case of insurance value fixed fraudulently in excess of the value of the Assured subject-matter.
- Rules governing double insurance.
- Exclusion of wilful and reckless negligence of the Assured.
- Rules governing the attribution of a loss to a war peril or a peril of the seas.
- Consequences of non payment of premium.
- Cases of insolvency or bankruptcy of one of the parties or licence withdrawal of the Insurer.
- Subrogation provisions.
- Time limit provisions.

## 2 – Aleatory contract – Insurable interest

Two main elements characterise the Marine Insurance contract: First, it is an aleatory contract, subject to the uncertainty of the occurrence of a peril insured. Secondly, the subject-matter of Marine Insurance has to be an insurable interest.

### 2.1 – Aleatory contract

The contract is based on the uncertainty of the realisation of events leading to damages to the subject-matter insured or to third party liabilities: The indemnity has to remain uncertain, otherwise the contract would be null and void.

Any Marine Insurance contract entered into after the loss has occurred and has been known by the Assured is null and void (article L.172-4). Nevertheless when the event giving rise to the loss occurs before the conclusion of the contract but without being known by the Assured, the contract is still valid.

The Marine Insurance contract does not cover the inherent vice of the vessel (article L.173-4): In such a situation, the loss or damage is merely certain to occur to the insured subjectmatter.



The wilful misconduct and reckless fault of the Assured are also excluded from the insurance cover (article L. 172-13): By acting this way, the Assured can almost be certain that a loss or damage will occur.

## 2.2 – Insurable interest

To get the benefit of the Insurance contract, the Assured or any other beneficiary of the insurance must be able to claim an insurable interest.

The Insurance contract provides indemnity for loss or damage to the subject-matter insured, but the person claiming the insurance indemnity must prove that he has suffered himself the loss or damage.

This principle is expressly provided for by the law.

Following this principle, in cargo insurance, the holder of the insurance certificate who is not a party to the contract of insurance must prove that he has an interest on the cargo insured and has suffered a prejudice due to its loss or damage in order to be allowed to claim an indemnity under the contract of insurance.

The prejudice must affect the patrimonial rights of the claiming party.

The Insurance Law allows the cover not only of the material damage, but also of consequential damages (loss of earning, loss of hire, expected profit...).

## 3 – Conclusion of the contract

French Marine Insurance law contains rules relating to the conclusion of the contract applying to the conditions of validity, risks disclosure and sum insured.

### 3.1 – Validity of the contract

French Insurance law does not require the contract to be in a specific form in order to be valid.

Even if a simple oral engagement may constitute a contract of Marine Insurance, the legal reliability and safety of the parties is nevertheless protected by the law: The evidence of the contract is subject to the written form. (article R 172-1 and article R 172-2). In most cases, the insurance slip issued by the broker and signed by the Underwriters provides the required evidence. A simple pricing of the risk or demand of pricing is not sufficient to prove the contract.

The minimum indications that should be provided by the contract are set up in article R 172- 3: Place of underwriting, name and place of residence of the Assured, indications on the subject-matter insured, time and place of the risks, risks covered and exclusions, premium and, if applicable, indication that the cover is written to whom it may concern.

### 3.2 – Duty of disclosure

As most legal systems, French Marine Insurance law imposes on the Assured a duty of disclosure of all material facts known by him concerning the risk and the insured subjectmatter which may impact the Insurer's assessment of the risk.

This duty is mandatory. The sanction of the non disclosure or mis-disclosure is the avoidance of the contract by the Insurer ab initio. The avoidance is subject to three conditions:

- A fact must have been not properly disclosed.
- This material fact must impact the Underwriter's opinion on the risks. In case of knowledge by the Insurer (otherwise than through the Assured) of the non disclosed fact, the Insurer will not be allowed avoid the contract.
- The Assured must have acted in bad faith.

The last condition was introduced by the law in order to protect the Assured: Should he be able to prove his good faith, the Assured should not be penalised by a strict sanction. In such a case, the Insurer is liable up to the proportion of the premium paid as compared to the premium that should have been paid.

The automatic avoidance, as provided for in the English Marine Insurance Act, has not been retained by the French legislator who has taken into account a balance of the interests of the respective parties.

### 3.3 – Sum insured

The determination of the sum insured should be considered as a main object of the Insurance contract. The indemnity, following the principle of the insurable interest, should not exceed the amount of the damages suffered. The insurance contract does not allow the Assured to make a profit from the Insurance indemnity.

The contractual obligation of the Insurer is based on the knowledge of his financial commitment, which is the main material fact to him.

Marine Insurance allows two main ways of determining the sum insured:

- The Agreed Value, which is agreed at the inception of the contract and will not be changed by the parties during the period of insurance. The only exception hereto is the fraudulent determination by the Assured of this sum. Agreed values are commonly used in Hull & Machinery Insurance.
- The other way is more traditional: Within the scope of the general limit of the policy, the suffered loss has to be evidenced by the Assured. Mainly used in cargo insurance, the policies give the possibility of indemnifying the material loss, but also a part of the expected profit. The exception here also is the fraud committed by the assured by fixing a higher amount than the real value of the subject-matter insured. In that case, the Insurer may avoid the contract. Nevertheless, in absence of fraud, when the sum insured is higher than the value of the subject-matter insured, the indemnity will be reduced accordingly.

Moreover, double insurance written fraudulently is void. Without fraud, the indemnity will be divided proportionally between the Insurers covering the risk. The aim is once more the principle of insurable interest and a different and equitable treatment given to the Assured acting in good faith as opposed to the Assured acting fraudulently.

## 4 – Duty of the Assured

The Assured's duties concern.

- The payment of the premium.
- The disclosure of the risks, at the inception of the contract as explained above, and also at any stage during the execution of the contract: all alterations of the risk must be disclosed to the Insurers.
- Specific obligations upon occurrence of a loss.

### 4.1 – Payment of premium

The premium payment of the premium, together with the disclosure of risks, is the main obligation of the Assured. It is the counterpart of the cover provided by the Underwriter.

The premium has to be paid at the time and place agreed in the contract. It should be noted that the parties may agree a payment in several instalments. As for Hull voyage policies, the entire premium is due at time of the attachment of risks. As for Hull time policies, the premium is entirely due in case of total loss or abandonment of the vessel. But should the French Marine total loss not be recoverable under the policy, the premium is only due in proportion to the time on risks until total loss.

The Underwriter is entitled by law to set off the premium and the indemnities due under the policy. Such a set off is binding on the beneficiaries of the contract (e.g. third party insurance certificate holders in cargo insurance) on condition that the insurance contract provides it expressly.

Non payment of premium allows the Insurer either to cancel or to suspend the effects of the contract after an eight days notice following a registered letter requesting the payment of the premium. This cancellation or suspension shall not be binding on third party beneficiaries of the contract of insurance acting in good faith. This is a matter of protection of the interests of "innocent" holders of insurance certificates involved in international trading.

### 4.2 – Duty of disclosure of alteration of risks

The Insurer has to be notified of all alterations of the underwritten.

The Assured has the obligation to notify the Underwriter of any alteration of the risk within three days notice after he becomes aware of such alteration. Should the Assured fail to do so, the Underwriter has the right to cancel the policy, except when the Assured is able to demonstrate his good faith. In this last situation, the risk insured remains covered in proportion to the premium which has actually been paid.

Furthermore, though the Assured has properly declared the alteration, Underwriters may still cancel the policy if such alteration is due to the Assured. If the alteration is not caused by the Assured, the Underwriter may, or may not, at his option, ask for an additional premium.

### 4.3 – Other duties

Those duties are linked to the general duty of care and the procedure to be followed in the event of a claim.

- The Assured has a general duty of care concerning the subject matter insured. He must not alter the risk, nor act negligently and must take reasonable care concerning the vessel or the goods insured.

- When loss or damage occurs, the Assured must declare it to the Underwriter immediately. In addition to that, the Assured has the duty of appointing a surveyor in order to determine the extent and the causes and origin of the loss.
- The duty of care of the Assured regarding the subject matter insured is still in force after occurrence of the loss: the Assured has the obligation to take all necessary measures to safeguard the object and to minimise the loss. The relevant costs are covered by the Insurance contract (article L.172-11).
- The Assured has an obligation to protect the rights of recovery against any liable third party. After having paid the insurance indemnity, the Insurer may be subrogated in the Assured's rights for recovering the loss against the liable third parties. French law provides that the subrogation rights of the Underwriter are automatically transferred by virtue of the payment of the insurance indemnity and take effect up to the amount actually paid. Then the Insurer steps in the Assured's shoes concerning the recovery action against third parties. It must be noted that the Underwriter must have paid the indemnity on the basis of the provisions of the insurance contract to be entitled to exercise a subrogation recovery: ex-gratia payments do not give the Underwriter any right of subrogation. Notwithstanding the provisions of French law as regards subrogation rights, it is common practice to demand the Assured to restate this transfer of rights in the release signed at the time of payment of the indemnity.

It should be noted that the French Insurance Code provides for a wide protection of both the Assured and the Insurer as well as of third parties in case of bankruptcy or insolvency of one of the contracting parties. The Assured becoming insolvent, the Insurer may terminate the policy, but this termination shall have no effect on third parties acting in good faith claiming under the policy before notice of termination has been given to them.

## 5 – Duties of the Insurer

The main obligation of the Insurer is to pay the insurance indemnity in the event of the occurrence of an event giving rise to a loss which is covered under the provisions of the contract of insurance.

### 5.1 – Risks covered

#### 5.1.1 – General

Concerning the coverage of the risks regarding Marine Insurance, the French Insurance Code contains mainly non mandatory provisions. In this regard, the parties are at liberty to determine the scope of cover, the risks insured and those excluded.

The French Code is in line with the market practice. As a general rule, the insurance contract covers loss and damage to the subject matter insured on an all risk basis, which means that all risks are covered except those which are expressly excluded. The All risks basis is the standard policy of the French market. This solution is in favour of the Assured who does not have to prove the case but only to give evidence of the suffered loss. The Assured does not have to prove the cause and origin of the loss, it is, on the contrary, up to the Underwriter to prove that the peril is excluded.



Parties are of course at liberty to conclude the insurance contract on a named perils basis: the insured risks are enumerated in the policy, total loss being covered in any case. In this case, the Assured will have to prove not only the loss suffered but also that the loss is attributable to a cause covered under the insurance policy.

The Insurer is not liable for loss or damage occurred as a result of the wilful misconduct of the Assured or his reckless behaviour with the knowledge that damage would probably result. This exclusion is a matter of public order under French law: parties cannot exclude it in the contract.

The contract of Marine insurance normally covers the contributions to General Average and the sue and labour expenses.

The cover is held in case of change of route, voyage which has been decided by the Master without the owner's or the Assured's knowledge. The Master is still considered as a representative of the owner who has no real power of decision on him.

The Master's intentional fault is also excluded from cover, though the parties may provide the contrary. As a matter of fact, the Market standard policy includes this exclusion of cover.

War risks, and assimilated war risks such as capture, seizure, arrest, violation of blockade, sequestration, requisition, etc., strike and riots risks and civil commotion risks are excluded from cover as a matter of public order. These risks are covered separately from ordinary risks. Notwithstanding that the parties may provide otherwise in the contract, the Assured is put in a safe position by the provisions of French law where the occurrence of the damage cannot be attributed to a war risk or an ordinary risk: in such cases, the risk is said by law to be an ordinary risk.

Inherent vice of the subject matter insured remains excluded, French law considering that, in such a case, the uncertainty of the damage does not exist so it is therefore uninsurable.

Also excluded by the law, and though not on a mandatory basis, are risks that may not be considered as entering the scope of application of Marine insurance. Marine insurance is mainly a property insurance and a third party liability cover. Cover of non material damages, issuing bank guarantees or pure business risks are *prima facie* outside the scope of Marine insurance contracts. Parties may of course agree otherwise.

### 5.1.2 – Hull Insurance

Specific rules governing the hull insurance are set up in the French Law. As most of the provisions, they also reflect solutions coming from the Market practice.

The hull cover may be written for a single voyage or for a certain period of time. In this last situation, the cover commences on the first day and terminates at the end of the last day mentioned in the policy.

If the vessel is sold or bareboat chartered during the period of validity of the policy, the insurance continues subject to notification given by the new owner or charterer to the Underwriter and approval of the transfer by the Underwriter, who is in any case at liberty to terminate the contract. Otherwise the contract terminates automatically. Though the management of the vessel is an integral part of the risk

assessment, the possibility of the continuation of the insurance cover, at the option of the Underwriter is an economical sound solution adapted to the realities of maritime trade.

Regarding the risks covered, French law is grounded on the system of "all risks" cover.

Specific exclusions are provided: inherent vice of the vessel, intentional fault of the Master and physical damage (death and injury) to third parties. The third party liability is limited to collision and contact of the vessel with fixed and floating objects. The French Marine Hull Policy takes over this risk. Hull Insurance is not only a property cover, but also in the event of collision and contact, a third party liability insurance.

### 5.1.3 – Cargo insurance

The cargo insurance contract is a door to door cover even if part of the voyage has been performed by land, air or inland waterways.

It can be written for one single voyage or on the basis of an open policy, where several shipments are covered under one policy if these were performed during the currency of the policy.

### 5.1.4 – Liability insurance

The main provision regarding Marine liability insurance is the right for direct action against the Underwriter available to third parties. The third party victim of an accident for which the Assured is liable is entitled to have a direct action against the liabilities' Insurer.

The Insurer's liability will not exceed the liability of the Assured himself, especially when the vessel owner may establish a limitation fund according to the 1976 /1996 LLMC Convention.

## 5.2 – Payment of indemnity

The insurance indemnity is the main duty of the Insurer as being the counterpart of the premium paid by the Assured. The Insurer is liable for the indemnity under the contract when the loss or damage is covered.

The indemnity may be settled in particular and/or general average. The French Hull and Cargo policies cover the Assured's general average contribution, up to the Agreed Value in Hull Insurance and in full in Cargo Insurance.

### 5.2.1 – Particular average

Particular average means partial loss or damage to the subject matter insured.

#### • Hull Insurance

Payment of the indemnity as particular average in hull insurance will take into account the costs of repair and replacement of parts of the vessel in order to restore her seaworthiness.

The Insurer is not liable for depreciation or indemnities for lay up.

Each casualty gives rise to a separate settlement. The Assured is covered up to the sum insured (the Agreed Value in Hull insurance) for each separate casualty. The sum insured is a top limit per casualty and not an aggregate value per voyage or per period of time (per year for example).

- **Cargo Insurance**

The French Insurance Code does not contain any specific provisions regarding the settlement of particular average in Cargo Insurance. Loss or damage to cargo could be settled up to the amount of the prejudice suffered. As a matter of practice, in accordance with the provisions of the French Marine Cargo Policy, the amount of the loss is determined by comparison of the value of the insured cargo in its damaged condition with that which it would have had in sound condition at the same time and place.

### 5.2.2 – Situations giving right to abandonment

The Insurance Code does not mention directly the case of total loss or constructive total loss of the vessel or cargo insured, but introduces the mechanism of abandonment.

In certain situations, the Assured is entitled to abandon the subject matter insured to the Insurer, who then becomes owner of the vessel or cargo. Nevertheless, the Insurer is in any case entitled to refuse such abandonment and will have, upon such refusal, to pay the indemnity in full to the Assured. The acceptance of the abandonment by the Underwriter was a frequent situation in the past, but has become exceptional nowadays.

In any case, the situations giving rise to abandonment are those which give the right to claim the total loss of the subject matter insured.

The abandonment may be claimed:

- in the event of total loss of the vessel or cargo,
- loss to the subject matter insured up to more than  $\frac{3}{4}$  of its value,
- when the cost of repairs of the vessel exceeds the Agreed Value,
- where there was no news of the Insured Vessel or of the vessel carrying the cargo insured for more than 3 months,
- where the insured cargo has been sold during the voyage by reason of the occurrence of a covered risk.

In all these cases, the insurance indemnity may be claimed in full.

It should be noted that all actions under the Insurance contract are time-barred by a two years period. The beginning of the two years period is normally situated at the time of the occurrence giving rise to the insurance indemnity:

- for the action concerning the payment of the premium, at the date when the relevant premium was due,
- for any action concerning partial loss or damage, at the date of the event giving rise to the right of indemnity or at the date on which the insured cargo arrived or should have arrived at destination,
- for any action concerning an occurrence giving rise to abandonment, at the date of the occurrence,
- for third party liabilities or salvage and General Average contributions, at the date of the payment or the date of the introducing of any proceedings against the Assured.

