

ANNEX 4**COMMENTS ON LIMITATIONS AND EXCLUSIONS IN MLC EXTENSION CLAUSE 2016**

3. There shall be no payment under paragraph 1(a) or paragraph 1(b) if and to the extent that the liability, cost or expense is recoverable under any social security scheme or fund, separate insurance or any other similar arrangement.

Comment

MLC provides that the financial security requirements may be in the form of a social security scheme or insurance or a national fund or other similar arrangements.

Standard A2.5.2 Financial security

3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements.

Standard A4.2.2 — Treatment of contractual claims

2. The system of financial security, as provided for in Standard A4.2.1, paragraph 1 (b), may be in the form of a social security scheme or insurance or fund or other similar arrangements

Seafarers who may benefit from such arrangements should first seek to recover from these sources.

4. The Association shall not discharge or pay any liabilities, costs or expenses under paragraph 1(a) or paragraph 1(b), irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or the Member's servants or agents, where such liabilities, costs or expenses were directly or indirectly caused by or contributed to by or arise from:
 - a. Any chemical, biological, bio-chemical or electromagnetic weapon
 - b. The use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, computer virus or process or any other electronic system.

Comment

This is a standard exclusion for "cyber" and similar risks.

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- (a) The Extension may be cancelled in respect of War Risks by the Association on 30 days' notice to the Member (such cancellation becoming effective on the expiry of 30 days from midnight of the day on which notice of cancellation is issued).
- (b) Whether or not such notice of cancellation has been given the Extension hereunder shall terminate automatically in respect of the War Risks:
 - (i) Upon the outbreak of war (whether there be a declaration of war or not) between any of the following:

United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

- (ii) In respect of any ship, in connection with which cover is granted hereunder, in the event of such ship being requisitioned either for title or use.

Comment

This is a standard exclusion enabling the insurance to be cancelled or terminated in respect of war risks.

War risks are defined as: Liabilities, costs or expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the member or his servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or cost or expense is incurred, was caused by:

a) war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power, or any act of terrorism (provided that, in the event of any dispute as to whether or not, for the purposes of this paragraph (a), an act constitutes an act of terrorism, the decision of the directors of the Association shall be final);

b) capture, seizure, arrest, restraint or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat;

c) mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war, provided that this exclusion shall not apply to liabilities, costs and expenses which arise solely by reason of

(i) the transport of any such weapons whether on board or not, or

(ii) the use of any such weapons, either as a result of government order or with the agreement in writing of the Association where the reason for such use was the avoidance or mitigation of liabilities, costs or expenses which would otherwise give rise to a claim covered under these Rules.

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10. The Extension shall be subject to Rules 30.4.6 and 32.6 [sanctions] and Rule 30.4.2 [nuclear risks].

Comment

Rule 30.4.6 reads as follows:

The insurance shall not cover, 30.4.6 liabilities, costs or expenses where payment by the Association or the provision of cover in respect thereof may expose the Association to the risk of being subject to a sanction, prohibition or any adverse action by a state or international organisation or competent authority.

Rule 32.6 reads as follows:

The Member shall in no circumstances be entitled to recover from the Association that part of any liabilities, costs and expenses which is not recovered by the Association under the Pooling Agreement, General Excess Loss Contract or any reinsurance(s) arranged by the Association because of a shortfall in recovery from such parties or reinsurers thereunder by reason of a sanction, prohibition or adverse action against them by a state, international organisation or other competent authority or the risk thereof if payment were to be made by such parties or reinsurers. For the purpose of this Rule 32.6, "shortfall" includes any failure or delay in recovery by the Association by reason of the parties or reinsurers making payment into a designated account in compliance with the requirements of any state, international organisation or other competent authority.

Rule 30.4.2 reads as follows:

The insurance shall not cover, 30.4.2 nuclear risks' liabilities, costs and expenses

Nuclear risks are defined as: Liabilities, costs and expenses directly or indirectly caused by or contributed to by or arising from

a) Ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel,

b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof,

c) any weapon or device employing nuclear fission and/or fusion or other like reaction or radioactive force or matter, or

d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter

other than liabilities, losses, costs or expenses arising out of carriage of "excepted matter" (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulations made thereunder) as cargo in an entered vessel.
