

# CIRCULAR

## OUTLINE

- Limit on Special War Risks P&I cover for 2020 policy year remains US\$500 million.
- “Bio-Chem” exclusion remains, and a supplementary cover for “Bio-Chem” risks in respect of crew and legal costs limited at US\$30 million continues to be available.
- A portion of these covers is provided in accordance with the requirements of the US Terrorism Risk Insurance Act of 2002 (Act), as amended by the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) of 2015 and the Terrorism Risk Insurance Program Reauthorization Act of 2019 (Public Law 116-94, 133 Stat. 2534).

TO THE MEMBERS

## **SPECIAL WAR RISKS P&I EXCESS COVER AND BIO-CHEM COVER AND US TERRORISM RISK INSURANCE ACT OF 2002, AS AMENDED BY THE TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT OF 2019**

### **War Risks P&I Excess Cover**

At their meeting on 3rd February 2020, the Directors reviewed the basis on which special war risks P&I cover could be made available to Members in accordance with the proviso to Rule 5E, and determined that this cover should be made available to Members for the 2020 policy year in accordance with the terms of the attached Directors’ Resolution of 3rd February 2020.

The terms on which the War Risks P&I Excess Cover will be provided for the 2020 policy year are in most respects the same as for the 2019 policy year, including the limit of cover of US\$500 million.

However, for the 2020 policy year there is a change to the definition of the excess, which in past years has been the greater of either (a) the ‘proper value’ of the entered ship, deemed solely for this purpose not to exceed US\$100 million, or (b) the amount recoverable in respect of the claim under any other policy of insurance. For the 2020 policy year, the deemed ‘proper value’ will be changed from US\$100 million to US\$500 million.

Members should note that they are deemed to have underlying cover with conditions equivalent to this cover, equal to the proper value of the ship. In the event that a ship is not so insured, this cover will respond as if an underlying cover with a limit up to the proper value were in place, except that for a vessel with a proper value of more than US\$500 million, the deemed underlying excess shall be US\$500 million.

The effect of this change is that Members who have ships valued individually at more than US\$100 million and who do not purchase primary war risks insurance will have a larger gap in their cover for the 2020 policy year (to fund for their own account). Members are therefore recommended to review their war risks arrangements to ensure they understand their exposures in respect of any ship valued at more than US\$100 million.

As per the previous policy years, the cover will only respond to claims in excess of the proper value of the entered ship as defined in Rule 5D, now deemed not to exceed US\$500 million or whatever sum is recoverable from war risk underwriters, whichever is the greater.

Members are reminded that where payment by the Club under a guarantee or a certificate is in respect of war risks, Members shall indemnify the Club to the extent such payment is recovered or would have been recoverable under a standard P&I war risk policy.

## **Bio-Chem Cover**

The Directors also decided to provide cover for “Bio-Chem” claims in respect of crew risks and legal costs relating to all P&I liabilities that are excluded from the War Risks P&I Excess Cover by virtue of the “Bio-Chem” exclusion, on the same terms as for the 2019 policy year, including the limit of this cover, which is US\$30 million.

Claims on this cover will again be pooled with the International Group clubs in excess of the Club retention of US\$10 million for the 2020 policy year. The detailed terms and conditions of the cover are set out in the attached Supplementary Directors’ Resolution of 3rd February 2020. The principal provisions are that:

1. Cover will be from the ground-up (in excess of a Member’s usual deductible), but limited to US\$30 million for any one accident or occurrence or series of accidents or occurrences arising from one event each vessel.
2. The limit of cover (US\$30 million) will apply to all interests for each vessel in aggregate regardless of the number of interests and regardless of whether or not they are entered in different P&I clubs (e.g. owners, charterers and sub-charterers).
3. To avoid excessive aggregation of risk, cover will have a cancellation provision (24 hours’ notice).
4. Areas of particular sensitivity may be excluded from the cover by the decision of the Directors.
5. No additional premium will be charged for the cover.

## **Notices of Coverage – US Terrorism Risk Insurance Act of 2002 (Act), as amended by the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) of 2015 and the Terrorism Risk Insurance Program Reauthorization Act of 2019 (Public Law 116-94, 133 Stat. 2534)**

On 20th December 2019, the Terrorism Risk Insurance Program Reauthorization Act of 2019 (Public Law 116-94, 133 Stat. 2534) (“TRIPRA”) was signed into law, extending the TRIA programme for another seven years through 31st December 2027.

A portion of the War Risks P&I Excess Cover and the “Bio-Chem” Cover afforded to Members pursuant to the Directors’ Resolutions are provided in accordance with the requirements of the US Terrorism Risk Insurance Act of 2002, as amended by the TRIPRA of 2015 and 2019, and give coverage for losses arising out of “acts of terrorism,” as defined in Section 102(1) of the Act and as required by Section 103(c) of the Act. Cover for losses caused by certified “acts of terrorism” can be partially reimbursed by the US government under a program established by the Federal Law. Under the program, the United States pays 80% of covered terrorism losses exceeding the statutory established deductible paid by the insurance company providing the cover in the 2020 calendar year, and 80% of such losses in the 2021 calendar year. The Act, as amended, also imposes a program trigger on the government’s compensation: i.e. insurers cannot have the benefit of the government’s compensation unless the aggregate industry insured losses from a certified act of terrorism exceed a certain insured loss or “trigger” amount. The trigger amount in the 2020 calendar year and any calendar year thereafter until 2027 is US\$200 million. In addition, if the aggregate insured losses exceed US\$100 billion during any program year, the government shall not make any payment for any portion of the amount of such losses that exceeds US\$100 billion, and no insurer that has met its insurer deductible shall be liable for the payment of any portion of that amount that exceeds US\$100 billion.

Although no additional premium is charged for coverage for “acts of terrorism”, a premium of US cents 0.25 per gross ton entered is deemed to be attributable to the US risk in accordance with the terms of the Act.

Yours faithfully

**THE MANAGERS**

**For more information**

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## **RESOLUTION A**

### **War Risks P&I Excess Cover Special Cover under Proviso to Rule 5E Directors' Resolution of 3rd February 2020**

WHEREAS, in accordance with Rule 5E of the Association's Rules coverage for certain war and similar risks, including acts of terrorism, is excluded under the general mutual indemnity undertaking. Special cover is nevertheless provided for these same certain risks under the proviso to Rule 5E and in accordance with each individual Owner's terms of entry; and

WHEREAS, the Terrorism Risk Insurance Act of 2002 (TRIA) (Public Law 107-297), as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 and further amended by the Terrorism Risk Insurance Program Reauthorization Act of 2015 and the Terrorism Risk Insurance Program Reauthorization Act of 2019 (Public Law 116-94, 133 Stat. 2534), makes provision for a Federal quota share indemnification to participating insurers for insured losses resulting from certain acts of terrorism occurring through 31st December 2027; and

WHEREAS, this Association, meeting the definition of "insurer", is required to make available coverage for "acts of terrorism" as defined in TRIA and is entitled under the program to an indemnification by the Secretary of the Treasury of 80% in 2020 calendar year and in any calendar year thereafter until 2027 of losses resulting from certified acts of terrorism in excess of the insurer's deductible, and

WHEREAS such indemnification will be available in the 2020 calendar year and in any calendar year thereafter until 2027 only if aggregate insured losses sustained by all insurers with respect to acts of terrorism during the calendar year exceed US\$200 million; and

WHEREAS, the Directors on behalf of the Association's membership have considered whether coverage of TRIA-defined acts of terrorism could be removed from the special cover and made subject to the general mutual indemnity undertaking but have concluded that acts of terrorism, as the other perils subject to the special cover, remain unsuitable for a general mutual indemnity undertaking; and

WHEREAS, no Owner responded affirmatively to the initial offer made by this Association to provide cover of TRIA-defined acts of terrorism on the basis of additional premium rates designed to fund the TRIA deductible and retention without mutual indemnity or the reinsurance available to the special cover; and

WHEREAS, the Directors have determined to provide the Special War Risks P&I cover including cover for terrorism risks as for the current Policy Year and that the estimated cost for TRIA-defined coverage remains US cents 0.25 per entered ton.

IT IS NOW THEREFORE RESOLVED, that in accordance with the proviso to Rule 5E of the Association's Rules, special cover be provided to the Members of the Association for the year commencing at 12 noon GMT on 20th February 2020 against risks, including TRIA-defined acts of terrorism, which are excluded from cover solely by virtue of the provisions of Rule 5E. Unless otherwise agreed in writing, such cover shall be subject to all other terms and conditions of an Owner's entry in the Association and shall be provided upon and subject to the following terms and conditions:

- (1) The risks covered shall be those set out in Rule 2 of the Association's Rules in accordance with each individual Owner's terms of entry as set out in the relevant Certificate of Entry and any Endorsement thereto, except loss, damage or expense arising from an act of terrorism which the Owner incurs, or for which he is liable, as a party to TOPIA.
- (2) This special cover shall be subject to an excess of either:
  - (a) the "proper value" of the entered ship as defined in Rule 5D (which, for the purpose of this resolution only, shall be deemed not to exceed US\$500 million), or

- (b) the amount recoverable in respect of the claim under any other policy of insurance, whether of war risks or otherwise,

whichever shall be the greater, provided that the Directors may authorise the payment, in whole or in part, of any claim or part of a claim which falls within such excess, if in their discretion and without having to give any reasons for their decision they decide that the Owner should recover from the Association.

- (3) The limit applying to this special cover shall be the lesser of

- (a) US\$500 million each ship, any one accident or occurrence or series thereof arising from any one event, or
- (b) such limit as may be applicable to the claim under the Member's individual terms and conditions of entry,

PROVIDED ALWAYS that

where a ship entered in the Association by or on behalf of any person is also separately insured in the name of or on behalf of the same or any other person by the Association or by any other insurer which is a party to the Pooling Agreement in respect of the losses, liabilities or the costs and expenses incidental thereto which are covered pursuant to the terms of this Resolution and/or the equivalent policy provisions of such other insurer, the aggregate recovery in respect of all such losses, liabilities and the costs and expenses incidental thereto shall not exceed US\$500 million or, the limit applicable to the claim under that person's individual terms and conditions of entry if less, each ship, any one event, and the liability of the Association to each such person insured by the Association shall be limited to such proportion of US\$500 million, or the limit applicable to the claim under that person's individual terms and conditions of entry if less, as the maximum claim otherwise recoverable by such person from the Association bears to the aggregate of all such claims otherwise recoverable from the Association and all such insurers.

- (4) All perils included in the special cover shall be subject to the following Chemical, Biological, Biochemical, Electromagnetic Weapons and Computer Virus Clause:

“This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith:

- 1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from
  - 1.1 any chemical, biological, bio-chemical or electromagnetic weapon.
  - 1.2 the use or operation, as a means for inflicting harm, of any computer virus.
  - 1.3 Clause 1.2 shall not operate to exclude losses (which would otherwise be covered under the terms of this policy) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.”

- (5) At any time or times before, or at the commencement of, or during the currency of any Policy Year of the Association, the Directors may in their discretion determine that any ports, places, countries, zones or areas (whether of land or sea) be excluded from the insurance provided by this special cover. Save as otherwise provided by the Directors this special cover shall cease in respect of such ports, places, countries, zones or areas at midnight on the seventh day following the issue to the Members of notice of such determination in accordance with Rule 41 of the Association's Rules. Unless and to the extent that the Directors in their discretion otherwise decide there shall be no recovery from the Association under this special cover in respect of any claim howsoever arising out of any event, accident or occurrence within the said area after such date.

- (6) Whether or not notice has been given under Clause (5) above, this special cover shall terminate automatically:
- (a) upon the outbreak of war (whether there be a declaration of war or not) between any of the following countries: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China and this insurance excludes loss, damage, liability or expense arising from such outbreak of war;
  - (b) 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 and this insurance excludes loss, damage, liability or expense arising from such requisition.
- (7) Notwithstanding any other term or condition of this insurance, the Directors may in their discretion cancel this special cover giving 7 days' notice to the Members (such cancellation becoming effective on the expiry of 7 days from midnight of the day on which notice of cancellation is issued by the Association) and the Directors may at any time after the issue of notice of such cancellation resolve to reinstate special cover pursuant to the proviso to Rule 5E on such terms and conditions and subject to such limit as the Directors in their discretion may determine.
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## **RESOLUTION B**

### **War Risks P&I Excess Cover Special Cover under Proviso to Rule 5E Supplementary Directors' Resolution of 3rd February 2020**

WHEREAS, in accordance with Rule 5E of the Association's Rules coverage for certain war and similar risks, including acts of terrorism, is excluded under the general mutual indemnity undertaking. Special cover is nevertheless provided for these same certain risks under the proviso to Rule 5E and the Directors' Resolution of 3rd February 2020 and

WHEREAS, the special War Risks P&I Excess Cover provided to Members pursuant to the Directors' Resolution of 3rd February 2020 contains in Clause 4 a Chemical, Biological, Bio-chemical, Electromagnetic Weapons and Computer Virus exclusion; and

WHEREAS, the Directors have decided that the Association should provide supplementary cover to Members in respect of certain liabilities, costs, losses and expenses excluded by the operation of this clause or by equivalent clauses in other war risks P&I policies.

IT IS NOW RESOLVED, that supplementary cover be provided to the Members of the Association for the year commencing at 12 noon GMT on 20th February 2020. Unless otherwise agreed in writing, such cover shall be subject to all other terms and conditions of an Owner's entry in the Association and shall be provided at no additional premium on the terms and conditions and exclusions set out hereinafter:

#### **1. The risks covered under this supplementary resolution are the Member's liability**

- (a) to pay damages, compensation, costs or expenses in consequence of personal injury to or illness or death of any Seaman (including repatriation and substitute expense, shipwreck unemployment indemnity and diversion expenses) as set out in Rule 2, Sections 2, 3, 4, 5, 6, 7 of the Association's Rules
- (b) for legal costs and expenses as set out in Rule 2, Section 25(B) of the Association's Rules incurred solely for the purpose of avoiding or minimising any liability or risk insured by the Association other than liabilities, costs, expenses, risks recoverable at the discretion of the Directors under Rule 2, Section 24 of the Association's Rules

to the extent that the such liabilities, damages, compensation, costs and expenses are not recoverable under the War Risk P&I Excess Cover or any underlying war risks policies covering the same risks, solely by virtue of the operation of an exclusion of liabilities, costs, losses and expenses directly or indirectly caused by or contributed to by or arising from

- (a) any chemical, biological, biochemical or electromagnetic weapon
- (b) the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system, other than liabilities, costs, losses and expenses arising from
  - (i) explosives or the methods of the detonation or attachment thereof
  - (ii) the use of the entered ship or its cargo as a means for inflicting harm, unless such cargo is a chemical or bio-chemical weapon
  - (iii) the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile

## **2. Excluded areas**

- (a) Unless and to the extent the Directors in their discretion otherwise decide, there shall be no recovery in respect of any liabilities, costs, losses and expenses directly or indirectly caused by or contributed to by or arising out of any event, accident or occurrence within certain ports, places, zones or areas or during certain period as agreed by the Directors.
- (b) At any time or times before, or at the commencement of, or during the Policy Year, the Directors may by notice to the Members change, vary, extend, add to or otherwise alter the ports, places, countries, zones and periods specified in Clause 2(a) from a date and time specified by the Directors being not less than 24 hours from midnight on the day the notice is given.

## **3. Cancellation**

Cover hereunder may by notice to the Member be cancelled by the Directors from a date and time specified by the Directors, being not less than 24 hours from midnight on the day notice of cancellation is given.

## **4. Limit of Liability**

- (a) Subject to Clause 4(b), the limit of the liability of the Association under this supplementary cover in respect of all claims shall be in the aggregate US\$30 million each ship any one accident or occurrence or series thereof arising from any one event.
- (b) In the event that there is more than one entry by any person for Bio-Chem cover as provided herein in respect of the same ship in the Association and/or any other insurer which participates in the Pooling Agreement, the aggregate recovery in respect of all liabilities, costs, losses and expenses arising under such entries shall not exceed the amount stipulated in Clause 4(a) and the liability of the Association under each such entry shall be limited to such proportion of that amount as the claims arising under the entry bear to the aggregate of all such claims recoverable from the Association and any such other insurer.

## **5. Deductible**

Notwithstanding Clause 2 of the Directors' Resolution of 3rd February 2020, the deductible applying to this supplementary cover shall be the deductible applicable to the relevant risk as set out in the Rules and the Member's individual Certificate of Entry or Endorsement.

## **6. Law and Practice**

This cover is subject to English law and practice.