



# Commentary Part 4

Chapters 17-19

**The Nordic Marine Insurance Plan of 2013 - *Version 2016***

Based on the Norwegian Marine Insurance Plan of 1996, Version 2010

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Part four  
OTHER INSURANCES

# Chapter 17

## Special rules for fishing vessels and small freighters, etc.

### General

Chapter 17 coordinates the rules relating to insurance of fishing vessels and small freighters, and contains conditions for hull insurance (Sections 2 and 3), catch and equipment insurance (Sections 4 and 5) and shipowners' liability insurance (Section 6) and loss-of-hire insurance for fishing vessels (Section 7). This Section is not applicable unless it has been explicitly agreed that the insurance is also to cover loss of hire.

A number of rules which are common to these insurances are singled out in Section 1. Furthermore, all the insurances under this Chapter are subject to the rules in part I of the Plan (Chapters 1 to 9).

### Section 1

#### Common provisions

#### Clause 17–1. Scope of application

Chapter 17 provides a special insurance cover for small vessels and constitutes a supplement to the other rules of the Plan. The hull part of this Chapter (Sections 2 and 3) is an addition to the general hull part of the Plan (Chapters 10 to 13), while the special insurance for catch and equipment (Sections 4 and 5) and the liability insurance (Section 6) do not have any parallel in the Plan. The special rules on loss-of-hire insurance for fishing vessels (Section 7) supplement the general provisions on loss-of-hire insurance in Chapter 16 of the Plan. However, there is no clear dividing line between vessels that are insured according to Chapters 10 to 13 of the Plan and vessels that are insured according to Chapter 17. Certain fishing vessels and freighters are thus insured on so-called hull conditions for ocean-going vessels (Chapters 10 to 13). It is therefore necessary to have a rule determining the applicable cover if this is not clear. According to Cl. 17-1 the rules in Chapter 17, Sections 1 to 7, shall only apply to the extent that this is explicitly stipulated in the **insurance contract**. The provision has the greatest practical significance in relation to the hull cover because there are two sets of rules to choose between here. If hull insurance has been effected on Plan conditions without Chapter 17, Sections 2 and 3, being mentioned in the **insurance contract**, only the rules in Chapters 10 to 13 shall apply.

Given that the provision relating to the scope of application is contained in Section 1, Sections 4 to 6 must be stated in the **insurance contract** in order to be applicable. As mentioned, the Plan does not contain any alternative covers for these insurances. If it is not stated that a catch and equipment

insurance or an owners' liability insurance has been effected, the vessel will therefore be sailing without such cover on Plan conditions.

Insurance for catch and equipment according to Sections 4 and 5 and owner's liability insurance according to Section 6 may, as mentioned, be tied to a hull cover on the general hull conditions of the Plan in Chapters 10 to 13. In that event, the common rules in Section 1 apply to the catch and equipment insurance and the liability insurance, but not to the hull cover. The consequence of this is that the hull cover is not automatically renewed, cf. Cl. 1-5, sub-clause 3, and that the ordinary rules relating to trading areas, classification and safety regulations must be adhered to.

### **Clause 17–2. Renewal of the insurance/Ref. Clause 1–5**

The non-mandatory rule in the Norwegian Insurance Contracts Act (ICA) Section 3-6 concerning automatic renewal has been departed from in Cl. 1-5, sub-clause 3, of the Plan, which establishes that the insurance is not renewed unless this has been specifically agreed. Many of the persons effecting insurances in this industry do not have professional offices. It may therefore be problematic for them to be required to ensure that the insurance is renewed, particularly if it expires while they are at sea. However, the reinsurance is frequently not finalised until immediately before the insurance takes effect, and insurers do not want to bear the risk if it turns out that reinsurance is not obtainable on the conditions anticipated 30 days before the renewal. The problem of reinsurance may be resolved by the insurers cancelling the insurance not less than 30 days before expiry, if it is not clear whether satisfactory reinsurance is obtainable. This special rule has therefore been maintained in the form of a rule providing for automatic renewal if the insurance is not cancelled 30 days before the date of expiry.

In the rule regarding automatic renewal it is specified that in such case the insurance is renewed at the same premium and on the same conditions as before, cf. sub-clause 1. If the insurer does not wish to renew the insurance, or if he is only willing to renew it on different conditions or at a different premium rate, he must follow the procedure set out in sub-clause 2, cf. below.

The basic rule in sub-clause 1 is that the insurance remains in force on the same conditions and at the same premium rate unless it is cancelled within 30 days prior to expiry of the insurance period, cf. above. If the insurer wishes to cancel the insurance or change the premium rate or the conditions, it now follows from sub-clause 2 that he must notify the person effecting the insurance of this within one month of expiry of the insurance period. The person effecting the insurance is thereby given a reasonable amount of time to consider alternative cover. For **insurance contracts** that run for several years, the decisive point in time for the insurer's duty of notification will be when the multi-year **insurance contract** is about to expire. Thus the provisions do not apply to payments of due premium during the period covered by the multi-year **insurance contract**.

Under sub-clause 3, the person effecting the insurance has a time limit of 14 days before expiry of the insurance period to consider the insurer's renewal offer. If he notifies the insurer, before the time limit expires, that he does not wish to accept the renewal offer, this will result in the contract lapsing from the date the insurance period expires unless the parties agree on new conditions. On the other hand, if the person effecting the insurance fails to respond within the time limit, he is bound by the renewal at the proposed premium rate and on the proposed conditions. Therefore, if the person effecting the insurance accepts an offer from a competing insurer, it is important that he at the same time ensures that the previous contract is cancelled within the specified time limit. Otherwise, he will be bound by two insurance contracts, in which case he must ask one of the insurers to release him from the contract.

If the insurer wishes to renew the insurance on the same conditions and at the same premium rate, it will not be necessary for him to send notification pursuant to sub-clause 2. If, in such a case, the person effecting the insurance should not wish to renew the insurance, possibly not on the same conditions or at the same premium rate, he must notify the insurer accordingly within the same time limit as stated above, i.e. 14 days prior to expiry of the insurance period. Otherwise the insurance will remain in force on the same conditions and at the same premium rate pursuant to sub-clause 1.

### **Clause 17–3. Trading areas for fishing vessels/Ref. Clause 3–15**

The consequence of the rules relating to trading areas being placed in Section 1 is that they automatically become applicable to all three types of insurance, hull, equipment and liability insurance.

The basic rule for vessels insured under Chapter 17 is that the trading areas are as indicated in Cl. 3-15 of the Plan with Appendix, unless otherwise provided by the **insurance contract**. In such case, the system of sanctions for conditional and excluded trading areas applies in the normal manner. For freighters, any departure from Cl. 3-15 must be explicitly stated in the **insurance contract**, cf. the fact that Cl. 17-3 applies only to fishing vessels. The normal procedure for freighters is that the trading areas in the **insurance contract** are linked to what is stated in the vessel's trading certificate. Furthermore, it is normally only a matter of ordinary and excluded trading areas, so that navigation in conditional trading areas, which are regulated in Cl. 3-15, sub-clause 2, is not relevant.

Such a procedure may also be used for fishing vessels, cf. sub-clause 1 which states that the provision only applies unless "otherwise provided in the **insurance contract**".

For fishing vessels, however, there is a need for a standard solution that is different from the one that follows from Cl. 3-15 and the Appendix. On the one hand, parts of the fishing fleet operate close to

ice-strewn waters, and therefore need an extension of the normal trading areas northwards. On the other hand, there is a considerable risk associated with small fishing vessels that operate in remote waters. A special rule regarding trading areas for fishing vessels is therefore incorporated into Cl. 17-3, sub-clause 2. The trading area is 55 degrees east longitude south of Novaya Semlya and 65 degrees east longitude north of Novaya Semlya, cf. point III, second sentence, of the Appendix and maps nos. 4 and 5. To the west the limits are 65 degrees west longitude north of Saint John and 75 degrees west longitude south of Saint John, cf. point III, third sentence, and maps nos. 4 and 6. The trading area includes ports on the east coast of the USA and Canada north of 40 degrees north latitude, cf. the fact that the southerly limit at 40 degrees north latitude. On the other hand, the seaward approach to the St. Lawrence River and the Hudson Bay are outside the trading area.

The trading area to the north is open/scattered drift ice concentration (4/10-6/10) or higher. This limit applies in all directions, see point III, last sentence, of the Appendix. The purpose of this limitation is to ensure that the vessel does not enter waters where there is ice. It may be difficult to achieve such a limitation by means of a fixed geographical specification because the ice limit will vary considerably. The trading area is therefore linked to the ice charts issued by the Norwegian Meteorological Institute (DNMI). The ice charts distinguish between "ice free", "open water", "very open drift ice", "open drift ice", "close drift ice", "very close drift ice" and "fast ice". The trading limit is stated to be the limit between "very open drift ice" and "open drift ice", cf. the wording "open/scattered drift ice concentration (4/10-6/10) or higher". In this context, 4/10 indicates the lower limit for "open drift ice".

The ice limit may move during the period between the publishing of two ice charts. For the definition of trading limits, the most recent ice chart available from the Norwegian Meteorological Institute is the decisive factor. The question as to whether or not the chart is available must be subject to an objective assessment. If the assured has failed to obtain the most recent chart made available to the public, this must therefore be his risk.

If the ice limit has moved from one chart to the next, the assured has a duty to remove the vessel from waters where the concentration of ice is too high. In such a situation, however, the vessel must be given time to proceed into a permitted trading area. Consequently, the vessel cannot be deemed to have proceeded beyond the trading limits if it reacts promptly to new information about the ice limit, even if the vessel, strictly speaking, was in an excluded trading area for a brief period of time.

Within the specified trading area, premium rates must be determined on the basis of the operating area of each individual fishing vessel.

The provision relating to trading limits in the general part of the Plan stipulates ordinary trading limits, a conditional trading area and an excluded trading area. A vessel may sail within the conditional trading area, but if the insurer has not been notified of this, an additional deduction shall be made in

the event of damage. For fishing vessels a slightly simpler system is used: if the assured wishes to proceed beyond the trading limits defined in the **insurance contract**, permission must be obtained in advance, possibly subject to payment of an additional premium. Areas beyond the trading limits specified in the **insurance contract** are automatically regarded as excluded. Trading in these areas shall therefore be treated in accordance with the rules relating to excluded trading areas in Cl. 3-15, sub-clause 5. This means that the insurance automatically ceases to be in effect when the fishing vessel enters the area, but that the insurance comes into effect again if the vessel leaves the excluded area before expiry of the insurance period. As mentioned above, a similar system can also be applied to freighters, but must in such case be agreed in the **insurance contract**.

The rules in Cl. 17-3 apply only to "fishing vessels". Consideration was given to whether there was a need to define the term "fishing vessels", but in view of the strict marking and registration rules, this was considered unnecessary. If the vessel is registered as a fishing vessel and has been given a registration number, it must be regarded as a fishing vessel under Cl. 17-3, even if it is used for purposes other than fishing in a specific situation.

The rules in Cl. 17-3 relating to trading areas must be viewed in conjunction with the authorities' regulation of the trading area for certain vessels, cf. the Norwegian Maritime Directorate's Regulation of 4 November 1981 No. 3793 relating to trading areas. The rules for fishing, whaling and sealing vessels are contained in Chapter IV. The trading area stipulated by the authorities is normally described in a trading certificate for the vessel in question. As a rule, the trading area in the trading certificate will be more limited than the area specified in sub-clause 1. If the insurer wants the trading area under the insurance to coincide with the trading area in the trading certificate, this must follow from the **insurance contract**, cf. sub-clause 1. Normally, however, this type of official regulation is only in the nature of a special safety regulation in relation to the insurance, cf. Cl. 17-5 (b). Under these rules, if a vessel proceeds beyond the trading limits specified in the trading certificate, this will only have consequences for the insurance coverage if the infringement can be ascribed to the assured, or someone with whom he may be identified, and if there is a causal connection between the infringement and the casualty. This means that the sanction will be somewhat less strict than it would have been pursuant to Cl. 3-15, sub-clause 3.

If the vessel has lost its trading certificate, the rules in Cl. 17-4 shall apply.

It may in certain cases be expedient to state the vessel's type of use in the **insurance contract**. Infringements of the stated type of use must in that event be considered an alteration of the risk under Cl. 3-8 et seq. If the vessel is used contrary to the stated purpose, the insurer is free from liability, provided that he can prove that he would not have accepted the insurance if he had known that the alteration would take place, cf. Cl. 3-9, sub-clause 1. If he would have accepted the insurance, but on

other conditions, he is free from liability if the casualty was caused by the alteration of the risk, cf. Cl. 3-9, sub-clause 2. In addition, the insurer has the right to cancel the insurance, cf. Cl. 3-10.

#### **Clause 17–4. Class and ship control/Ref. Clause 3–14 and Clause 3–8**

Sub-clause 2 was amended in the 2013 Plan.

Cl. 3-14 of the Plan is based on the assumption that the vessel is in class and establishes that the insurance will automatically lapse in the event of loss of class. Change of classification society is deemed to be an alteration of the risk, cf. Cl. 3-8, sub-clause 2, last sentence. However, there is no reason to introduce such an assumption for vessels that are insured under Chapter 17, see *sub-clause 1*, which merely establishes that *if* the vessel is classed with a classification society at the inception of the insurance, Cl. 3-14 and Cl. 3-8, sub-clause 2, shall apply in the normal way. The provision means that the insurance lapses if the assured cancels the class and proceeds to sail legally under the rules of the vessel's flag state.

Vessels which are not in class will be subject to the vessel's flag state. According to the rules of the Norwegian Maritime Directorate, fishing vessels and freighters of more than 50 gross registered tonnes will be issued a trading certificate. For vessels of less than 50 gross registered tonnes the rules differ to a certain extent for fishing vessels and freighters respectively. Fishing vessels shall - depending on their length - have an equipment certificate/safety certificate, which is a simplified form of trading certificate, whilst the freighters shall have a simpler form of equipment certificate called a survey certificate.

Trading certificates, equipment certificates, safety certificates and the like issued by the vessel's flag state have the same significance as class has for larger vessels. At the same time it is a condition for coverage on Plan conditions that these are vessels with a length of 15 meters or more. Norwegian vessels with a length of less than 15 meters are insured on separate conditions according to the mandatory rules of the Norwegian Insurance Contracts Act. Under *sub-clause 2, first sentence*, the insurance of a vessel that is not in class is made subject to the condition that it has a valid certificate according to the rules of the vessel's flag state. This sentence was amended in the 2013 Plan. Previous versions referred to the rules of the Norwegian Maritime Directorate instead of the rules of the vessel's flag state. The term "certificate" covers trading certificate, equipment certificate/safety certificate, survey certificate and any other form of certificate which the vessel's flag state might issue. The lapse of a valid certificate will for such vessels result in the lapse of the insurance, cf. *second sentence*, which refers to the rules relating to the loss of class. This provision may seem strict, but the reaction is necessary because normally it should take a lot more to lose a trading certificate or another certificate than it does to lose a class.

Orders from the vessel's flag state are regulated in Cl. 3-22.

### **Clause 17-5. Safety regulations/Ref. Clause 3-22 and Clause 3-25**

**Section 7, sub-clause 1, of the Norwegian Ship Safety Act No. 9 of 15 February 2007 reads as follows in English translation:**

*“The operator of the ship shall ensure that a safety management system which can be documented and verified is established, implemented and developed in his organisation and on the individual vessels in order to identify and control the risk and also to ensure compliance with requirements laid down in a statute or in the actual safety management system. The contents, scope and documentation of the safety management system shall be adapted to the needs of the operator and his activities.”*

There has been discussion on whether Section 7 of the Norwegian Ship Safety Act applies to ships below 500 gt. The reason for this discussion is that the ISM Code has not been made applicable for ships below 500 gt. However, the Norwegian Maritime Authority has reiterated that said Section 7 pursuant to Section 2 of the Act is applicable for all ships except pleasure craft less than 24m length.

Similar provisions as in Section 7 of the Norwegian Ship Safety Act do not exist in the other Nordic countries whose legislation refers to the standard of the ISM Code when it comes to what ships have a statutory obligation to apply safety management systems.

Section 7 of the Norwegian Ship Safety Act is in itself a safety regulation as defined in Cl. 3-22 of the Plan; breach of which will be governed by Cl. 3-25. However, as Section 7 of the Norwegian Ship Safety Act is so vague it will for practical purposes be very difficult to invoke it against the assured until the Norwegian Maritime Authority has adopted a regulation setting out what a safety management system for vessels under 500 gt. should comprise. For ships or vessels or other crafts or units that are subject to the ISM Code, reference is made to the Commentary to Cl. 3-22 and Cl. 3-25 where it is made clear that the ISM Code is a safety regulation pursuant to the definition in Cl. 3-22; breach of which is governed by Cl. 3-25.

The provision provides three special safety regulations for the insurance of fishing vessels and freighters and comes in addition to Cl. 3-22 *et seq.* in the general part of the Plan.

Due to the fact that it is incorporated in the Section containing common rules, it is applicable also to equipment and liability insurance. The purpose of the provision is to avoid any deliberate fisheries, etc. under difficult ice conditions with a high risk of ice damage.

The provision constitutes “a special safety regulation laid down in the insurance contract” under Cl. 3-25, sub-clause 2. This means that the assured must be fully identified with anyone “whose duty it is on behalf of the assured to comply with the regulation or to ensure that it is complied with”. This will normally be the duty of the master of the vessel. As a special safety regulation Cl. 17-5 (a) also prevails over the provision relating to the situation where the owner is the master of the vessel in Cl. 3-25, sub-clause 1, second sentence. If the owner himself is the master of the vessel, he will therefore forfeit coverage if the vessel sustains damage due to negligent ice-forcing.

*Sub-clause 1 (a)* applies only to ice-forcing. Ice-forcing presupposes that the vessel proceeds through ice as the result of a deliberate choice. It further follows from the rules relating to safety regulations that the damage must be a foreseeable consequence of this choice. If ice damage is sustained accidentally, e.g. by striking against drift ice in open sea, this does not constitute ice-forcing. Nor does the provision cover “ice-forcing” in order to avert major damage or total loss where a vessel has unexpectedly become ice bound; this would constitute a measure to avert or minimise loss. On the other hand, sub-clause (a) will apply if the master has deliberately proceeded into an area where it is foreseeable that the vessel will become ice-bound.

It is further a condition that the forcing concerns “ice”. If the vessel is sailing in an open lane, this does not constitute ice-forcing. This was earlier stated explicitly in the Special Conditions, but is superfluous. Furthermore, the content of the term “ice” can be difficult to define precisely. The term must be defined on the basis of discretionary criteria, such as the thickness, solidity and extent of the ice. There may also be reason to take into consideration the time of year in question and whether any ice-breaker service has been organised. A certain support may also be obtained from the ice classification requirements.

*Sub-clause (b)* concerns the trading certificate, which is referred to in Cl. 17-3. As mentioned, the trading certificate defines the trading area as it has been determined by the authorities for the vessel in question. The provisions contained in the trading certificate automatically constitute safety regulations under Cl. 3-22. However, the advantage of mentioning them specifically here is that the identification rule in Cl. 3-25, sub-clause 2, second sentence, becomes applicable.

Orders from the vessel’s flag state are not subject to any special regulations. If the assured fails to comply with orders issued by the flag state, the trading certificate might become invalid, in which case the insurance will automatically lapse according to Cl. 17-4.

*Sub-clause (c)* concerns vessels at quay or laid up, and is consequently more extensive than Cl. 3-26, which merely concerns vessels laid up. For fishing vessels and freighters it is more practical to stay in port than to be laid up. There is moreover a special need for safety regulations in connection with the

risk of theft, because it is normally quite simple to gain access to this type of vessel. It is therefore the assured's duty to provide daily supervision of the vessel and its moorings and furthermore to secure the vessel and its equipment. The provision also contains a requirement that the equipment shall be kept in such a way that it can only be removed by the use of tools.

### **Clause 17–6. Savings to the assured**

The provision is taken from the P&I conditions in the 1964 Plan, but contains a general principle of insurance law and has therefore been generalised.

## **Section 2 Hull insurance**

### **General**

Section 2 deals with the standard cover of hull insurance for fishing vessels and freighters (the Coastal Hull Insurance Conditions). The provisions in Section 2 are supplementary to Part II of the Plan, Chapters 10 to 13, relating to hull insurance. This was previously stated in the Commentary, but has now also been included in the text of the Plan, cf. Cl. 17-7.

In addition to the provisions in Section 2, this insurance is therefore subject to the common provisions in Section 1 and the provisions in the general part I of the Plan (Chapters 1 to 9) and part II relating to hull insurance (Chapters 10 to 13).

The system of a standard cover for fishing vessels and freighters and an extended cover for fishing vessels has been retained in that the standard cover is incorporated in Section 2, while the extended cover is incorporated in Section 3. With the exception of a few rules, the provisions of the normal cover are common to fishing vessels and freighters. It is therefore practical to deal with these collectively. As regards the few provisions which only concern one of the types, this will be evident from the actual provision and the Commentary.

In accordance with the general system of the Plan, the most practical approach is for deductibles and machinery damage deductions to be agreed on an individual basis. Hence, it is sufficient here to apply the rules in Cl. 12-16 and Cl. 12-18. There was also agreement that the new for old deductions were cumbersome and outdated, and that they should therefore be deleted and replaced by machinery damage deductions and deductibles which took into account the age of the vessel and machinery and the sum insured. However, insurance without new for old deductions is conditional on these deductions being compensated for by the other deductions. If the assured is not willing to accept a sufficiently high level of deductible and machinery damage deductions, the insurers must therefore be

entitled to incorporate provisions concerning new for old deductions in the individual **insurance contract**.

### **Clause 17–7. The relationship to Chapters 10 – 13**

The provision states that for hull insurance the rules of Chapters 10 to 13 apply, with such amendments as follow from Cl. 17-7A and Cl. 17-10 to Cl. 17-17 inclusive. Certain amendments in the general rules of the Plan, see Cl. 17-8 and Cl. 17-9, also apply. The reference to Cl. 17-7A is new in the 2013 Plan.

### **Clause 17–7A. Fixed equipment temporarily removed from the vessel**

This Clause is new in the 2013 Plan. The two sub-clauses used to be found in Cl. 10-2 sub-clause 2 and 3.

It is an absolute prerequisite for this extended cover that the object has been on board before it was stored ashore. This extension of the insurance applies only to the explicitly stated objects, viz. fixed equipment for fishing vessels. The cover only applies where the insurer is notified before the vessel leaves port about what equipment has been brought ashore, its value and where it is stored in order for it to be covered. Lastly, the only risks this cover of objects removed from the vessel comprises, is fire and burglary through forced entry into a locked storage building or room.

The term “burglary” is identical to "burglary" as defined in Section 9 of the English Theft Act 1968:

“A person is guilty of burglary if

- (a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2) below; or
- (b) having entered into any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.”

The cover also has a special safety regulation obliging the assured to store the equipment in a locked storage building or room.

Sub-clause 2 establishes that in the event of a total loss of the vessel, a deduction shall be made from the total-loss compensation for the value of the stored equipment.

### **Clause 17–8. Change of the open or *agreed* insurable value/ Ref. Clause 2–2 and Clause 2–3**

According to the rules of the Plan, the parties may choose between open and **agreed** insurable value, cf. Cl. 2-2 and Cl. 2-3. An open insurable value is fixed at the “full value of the interest at the

inception of the insurance”, cf. Cl. 2-2. However, an **agreed** insurable value is fixed by agreement between the parties when the insurance is effected, cf. Cl. 2-3. According to Cl. 2-3, such an **agreed** insurable value is binding unless the assured has given misleading information about matters that are relevant for the **agreement**. There are, however, possibilities of demanding a revision of the **agreed** insurable value in the event of market fluctuations, cf. Cl. 2-3, sub-clause 2.

A common denominator for open and **agreed** insurable value is thus the fact that in principle there is no basis for taking into account any changes in value after the contract is entered into (unless the right to a revision in Cl. 2-3, sub-clause 2, becomes applicable). However, the value of a fishing vessel is largely contingent on the vessel’s fishing rights, and it is therefore necessary to have a provision that entitles the insurer to take account of changes in such rights. The *first sentence* imposes a duty of notification on the assured in two situations. The first situation was defined in earlier versions of the Plan as changes in concession conditions. This wording has been amended to “conditions prescribed by public authorities relating to the vessel’s fishing rights”. This amendment was necessitated by changes in fisheries **insurance contract**, such as the introduction of perpetual fishing rights. Fishing rights now go by a variety of names, such as concessions, structural arrangements, unit quota systems, participation rights, etc., depending on the type of fishing the vessel is engaged in and the size of the vessel. The wording “concession conditions” is therefore no longer adequate to cover changes of relevance to the insurer.

Such changes may have a direct impact on the value of a fishing vessel and create the need for a renegotiation of the **agreed** insurable value. Similarly, there will in connection with the determination of an open insurable value be a need to take such factors into consideration. In the second situation, the assured shall notify the insurer if he has accepted an offer of a state destruction subsidy which is lower than the **agreed** insurable value. The state will often offer a subsidy to break up the vessel in order to reduce the fishing fleet. Because it may take some time from when the offer is accepted until the vessel is taken out of service, the assured will need insurance in the interim period. If the assured has accepted an offer for such a subsidy which is lower than the **agreed** insurable value, it is natural that the insurer is given a right to renegotiate the **agreed** insurable value. Similarly, it should be possible to take this fact into account in connection with a subsequent calculation of an open insurable value.

The *second sentence* provides the insurer with a right to demand a reduction of the open or **agreed** insurable value in cases such as mentioned in the first sentence. This provision thus gives the insurer a possibility of renegotiating the **agreed** insurable value during the insurance period. If the assured has failed to give the necessary notices, the insurer must nevertheless have the right to set aside the **agreed** insurable value in a subsequent settlement.

It follows from Cl. 2-4 that the question of under-insurance must be based on the **agreed** insurable value, even if it is set aside under sub-clause 1. The rule entails that if the **agreed** insurable value is 5, the real value 2.5, and the sum insured 4, the insurer will be liable for 4/5 of 2.5, i.e. 2.

If the assured has accepted an offer for a state subsidy to break up the vessel, and the vessel is damaged before being broken up, the insurer will be liable in the normal way. In the event of a total loss, the insurer will be liable for total-loss compensation. Such compensation will be deducted from the state subsidy. The same applies if the vessel at the time of condemnation has an unrepaired damage for which the insurer is liable. Damage which has already been repaired and indemnified will, however, not have any influence on the condemnation settlement.

If the parties disagree as to whether there is any reason to reduce the **agreed** insurable value, or about the size of the reduction, the provisions in Cl. 2-3, sub-clause 3, shall apply. The question will then be decided with final effect by a Nordic average adjuster designated by the assured. The provision shall be applied by analogy if the parties disagree about the significance of the said matters for a subsequent calculation of an open insurable value.

When the parties renegotiate the **agreed** insurable value, they must also negotiate the possibility of a reduction in premium.

#### **Clause 17–9. Damage to lifeboats, fishing, whaling and sealing tackle and catch/ Ref. Clause 4–7 to Clause 4–12 and Clause 4–16**

The dories, fishing gear and catch have in principle been lifted out of the hull insurance through the exception in Cl. 10-1, sub-clause 2. The insurer is nevertheless in principle liable for damage to such objects if the damage occurs during a measure to avert or minimise loss. Damage to or loss of such objects should, however, be covered by the owner himself on the basis of a “knock-for-knock” line of thought. Where several fishing vessels are operating together, it is foreseeable that equipment will be damaged in various connections. Instead of involving the owner’s own insurance company or that of the party causing the damage in an often difficult insurance settlement with complicated evidentiary problems, it is therefore more expedient to let the owner bear his own damage.

The provision in Cl. 17-9 therefore explicitly excludes such damage from the cover in cases where it is connected with a measure to avert or minimise loss only applies to fishing vessels and not to freighters.

#### **Clause 17–10. Hull and freight–interest insurance/Ref. Clause 10–12**

Today separate total-loss insurances for fishing vessels and freighters are not normally offered. However, the owners wish to have such an offer. It has therefore been stated explicitly that the hull

insurer may consent to the effecting of interest insurance. In that event, the reduction rule will only apply to interest insurances which are larger than what the hull insurer has consented to.

### **Clause 17–11. Condemnation/Ref. Clause 11–3**

The condemnation limit is 90% in relation to Cl. 11-3. A limit of 80% is too advantageous when taking into account that the average age of the fleet is far higher today than 30-40 years ago, that the international marine insurance market relies on a condemnation limit of 100%, and that the value of the concession is part of the insurable value of fishing vessels, at the same time as this value is retained by the assured in a condemnation settlement.

### **Clause 17–12. Damage to the hull of vessels which are not built of steel/ Ref. Clause 12–1**

*Sub-clause 1 (a)* is first and foremost relevant to insurance of vessels deserving of preservation.

*Sub-clause 1 (b)* is not intended to cover more unforeseeable forms of striking against ice, e.g. where an ice floe has drifted out from a branch of a fjord to an open area of water where there is normally no ice.

*Sub-clause 1 (c)* excludes caulking of hull and deck. This is typical maintenance work, and it will not be easy to decide to what extent the caulking has in reality been necessitated by the casualty.

The exclusion does not cover expenses incurred in caulking those parts of hull and deck which have to be replaced as a result of the casualty. Here the caulking represents a normal cost of renewal of a part of the vessel, and it must therefore be covered.

### **Clause 17–13. Limited cover of damage to machinery**

**The Commentary to Cl. 17-13 was amended in 2016.**

The Clause provides limited cover for damage to machinery. On the other hand, extended cover for damage to machinery may be effected in accordance with Cl. 17-18.

The first part of the *first sentence* specifies that the insurer is “only” liable for the enumerated perils.

The second part of the *first sentence* states the perils covered by the insurer. This part of the provision was amended in the 2013 Plan. The damage must be a result of collision, striking, an earthquake, an explosion outside the engine room, fire, or of the vessel having sunk or capsized. The term “engine room” replaces the term “machinery” in the earlier versions of the Plan. It comprises only the main and auxiliary engine rooms. Further, it is new in the 2013 Plan that the insurer is liable where the vessel has been filled with water as a result of a breach of a hose or a pipe onboard the vessel.

**The breach may occur on the hose/pipe itself or at any couplings/sockets, provided the hose or pipe couplings/sockets are fitted either in accordance with Nordic Boat Standard or public statutory rules applicable to the vessel. Thus, consequential damage of a leakage which arises suddenly and unexpectedly and is a result of external influence or faulty material will be covered. Such damage is not covered if attributable to a breach of a hose or a pipe that has not been statutory fitted as described above.** The insurer will cover that peril provided the breach was not caused by corrosion or age. A breach caused by corrosion or age is a maintenance issue or rather lack of maintenance. It is the duty of the assured to carry out maintenance. The insurer's liability for "the vessel having sunk or capsized" also applies when the vessel is moored.

The *second sentence* stipulates an exception to the rule in the first sentence as regards damage to electronic equipment. If such damage is caused by bad weather and the same casualty causes damage to hull or superstructure, the damage to the electronic equipment shall be covered.

**Clause 17-14. Costs incurred in saving time/Ref. Clause 12-7, Clause 12-8, Clause 12-11 and Clause 12-12**

The provision excludes the time-loss element in the ordinary hull conditions from the cover under the coastal hull insurance conditions.

**Clause 17-15. Deductions/Ref. Clause 12-15, Clause 12-16 and Clause 12-18**

*Sub-clause (a)* refers to ice damage. This sub-clause was amended in the 2013 Plan. Previous versions of the Plan stated that damage resulting from striking against or contact with ice north of 75° north latitude and the waters of Greenland, including the Strait of Denmark, was covered subject to specified deductions. According to the 2013 Plan the deduction will be the subject of individual negotiations where *inter alia* the strength of the hull and ice class will be taken into account. According to the Plan, the deduction applies only to partial damage in accordance with the general system of the Plan.

*Sub-clause (b)* refers to electronic equipment. The deduction will be the subject of individual negotiations where *inter alia* the age of the equipment can be taken into account. It is therefore unnecessary to make the size of the deduction dependent on the age of the equipment in the actual Plan text.

The term "electronic equipment" covers three main groups, viz. radio equipment, fish-finding equipment and navigation equipment.

Radio equipment includes main transmitters with short-wave and receiver, watch-receivers, AM-VHF telephone monitors, VHF transmitters and receivers, lifeboat transmitters, direction-finding beacons, emergency communication sets for aircraft frequency, receivers and TVs for mess rooms or cabins,

walkie-talkie transmitters and receivers, equipment for communication between bridge, engine room, cabins, mess rooms, and deck, and weather map recorders.

Fish-finding equipment includes sonars, display screens, echo sounders, echo enlargements connected to main sounders, trawl monitors, echo scopes, echo sounders for trawl probes and probe receivers.

Navigation equipment includes gyrocompasses, autopilots, course controllers, all types of radar, electronic logs for satellite navigators and display screens, radio sounders for AM VXF and WT, satellite navigators, Omega receivers and Loran C receivers.

In addition to deductions for electronic equipment, the Plan's rules relating to machinery damage deductions and deductibles, cf. Cl. 12-16 and Cl. 12-18 shall apply. For the sake of clarity, this is repeated in sub-clauses (c) and (d). As regards the basis for calculating the various deductions, Cl. 12-19 applies so that all deductions shall be calculated on the basis of the full amount of compensation according to the Plan before deductions under any of the relevant provisions.

Given that the normal cover has not allowed for new for old deductions, the age of the vessel and the machinery, possibly also the sum insured, shall be taken into account when determining deductions and deductibles. In the event that the agreed deductions do not compensate for the lack of new for old deductions, the insurer may have to agree on individual new for old deductions.

### **Clause 17–16. Collision liability for fishing vessels/Ref. Clause 13–1**

This cover follows Cl. 13-1 as regards general liability for collision and striking. The purpose of this amendment is to ensure that cover includes collision and striking with aquaculture structures, which are **not** covered under P&I insurance. However, cover for collision has now been generalised. At the same time, however, this cover has been limited with regard to collision with vessels and with fishing, whaling or sealing tackle, cf. below.

Under *sub-clause (a)*, cover in the event of “collision with or striking against” another vessel is limited to damage caused to the vessel with fixed accessories. Thus the insurance does not cover floating accessories. “Fixed accessories” means equipment which is normally on board, but is not necessarily “nailed down”. Catch, fishing gear and dories which are not lifeboats are examples of objects which do not constitute “fixed accessories”. Loss of catch and other loss of time are also outside the scope of cover. The provision refers to the “knock-for-knock” principle which is mentioned in the Commentary on Cl. 17-9. When several vessels participate in the same fishing team, collisions between the individual vessels and fishing gear, catch and dories which are in the sea are foreseeable. It serves little purpose to use resources on a detailed distribution of liability in such cases. It is therefore assumed that each fishing vessel owner covers damage to his own equipment. A natural extension of

such a “knock-for-knock” principle is to exclude such damage from the liability insurance of the person who has caused the damage.

Under *sub-clause (b)*, the insurer does not cover any liability for collision with or striking against fishing, whaling or sealing tackle in the sea. This limitation is explained by the fact that this liability is covered under P&I conditions. *Sub-clause (c)* is identical to sub-clause 2 in earlier versions.

The provision is a continuation of the “knock-for-knock” principle mentioned above. When several vessels participate in the same fishing team or operate as pair trawlers, it is expedient to further limit the cover, thereby also excluding damage to or loss of the vessel with fixed accessories from the collision liability.

### **Clause 17–17. Collision liability/Ref. Clause 13–1**

**The heading and the Clause was amended in 2016 to make it applicable for all types of vessels insured under Chapter 17. The amended wording is partly editorial amendments. Also, by adding the new sentence “By a call is meant arrival, anchoring, working, discharging, loading and leaving”, it is made clear that the insurance does not cover any collision liability to the relevant structure or any fish contained therein during the whole period when the insured vessel is calling at the structure. The previous wording was by some owners read to the effect that the exclusion of cover for collision liability only applied if damage occurred during loading or discharge.**

The provision emphasises that the exclusion also **comprises** damage to the actual device and shall apply irrespective of what is loaded or discharged. The provision is first and foremost aimed at floating devices which are easily damaged, such as where the vessel runs into an enclosure for fish and the fish escape. In such cases it is difficult or impossible to determine the extent of damage. The application of the provision is not subject to the condition that there is loss of or damage to live fish; the deciding factor is the nature of the device. If there are several independent devices in the same area, however, liability to another device than the one from which loading or discharging shall take place will be covered.

## **Section 3**

### **Hull insurance – extended cover**

#### **Clause 17–18. Extended cover of damage to machinery**

Section 2 applies in full to the other parts of the hull insurance.

The fact that extended cover for damage to machinery has been agreed will be evident from the **insurance contract**, see *sub-clause 1*. In such case, damage to machinery, electronic equipment, etc.

will be covered in accordance with the ordinary rules of Chapter 12 of the Plan, with certain minor exceptions. These follow in part directly from sub-clause 1, in part from sub-clauses 2 and 3.

Sub-clause 1 refers to Cl. 17-14 and Cl. 17-15, which thereby apply correspondingly in the event of extended cover for damage to machinery.

*Sub-clause 2* states that damage must have been caused by the listed perils in order to be covered. The insurer is liable for damage to other machinery in the usual way, on the basis of the all-risk principle set out in Cl. 2-8. The remainder of the provision is unchanged.

*Sub-clause 3* establishes that costs of removal of the vessel in connection with damage to seine winches and the like are not covered if the damage to machinery is subject to a deduction pursuant to the rules of Cl. 17-15 (c). It is illogical, in a way, that the cover of removal costs will thus be better under Cl. 17-13 (c) than under the present sub-clause in cases where the damage to seine winches and the like is a consequence of the vessel having been subjected to a collision, striking, etc. However, the solution corresponds to the solution that was introduced in the Norwegian Plan of 1996.

## Section 4

### Catch and equipment insurance – standard cover

#### General

Catch and equipment insurance corresponds to the former fishing insurance. In addition to this Section, the general part of the Plan and Chapter 17, Section 1, shall apply. However, Chapter 17, Sections 2 and 3, shall not apply.

Dories are excluded from the Plan according to Cl. 10-1, sub-clause 2.

The sum insured for insurance of catch and equipment is determined in the **insurance contract** on an annual basis or for a round voyage.

#### **Clause 17–19. Objects insured**

The provision states the objects and interests covered by the insurance. *Sub-clause (a), first sentence*, concerns the catch. By catch is meant the quantity taken on board the assured's own vessel at sea.

It is irrelevant whether it was caught by the relevant vessels itself or bought from others at sea.

The provision also covers catch which has been processed, packaged and frozen. However, the provision is limited to the vessel's operation as a fishing, whaling or sealing vessel, and does not apply if the vessel is used as a cold store whilst laid up.

The *second sentence*, establishes that the insurance, subject to certain specific conditions, also covers freight. This applies only where the catch has in actual fact been reported to a fish sales co-operative and the vessel directed to a specific place for unloading before the casualty occurred. It is not sufficient if the reporting, etc. takes place later. In addition to catch and freight, the fishing insurance also covers fishing gear and accessories which are on board the vessel, cf. *sub-clause (b)*. It is a condition that the gear belongs to the assured. The assured may therefore not take on board seines which belong to other owners and obtain compensation for damage to these without this having been agreed in advance with the insurer. The gear must be on board the vessel; gear onshore or in the water therefore falls outside the scope of cover. The gear is deemed to be in the water from the moment setting starts and until it is back on board again. The requirement that the object must be on board is otherwise commented on in more detail under Cl. 10-1.

The reference to Cl. 10-1 in sub-clause (d) is included for the purpose of making it clear that the cover under the fishing insurance will not be extended by agreeing on a more limited scope of cover under the hull insurance.

It follows from Cl. 2-12 that the assured has the burden of proving that he has suffered a loss which is covered by the insurance. This rule entails that the assured must prove that the catch or the equipment was in actual fact on board when it was lost or damaged.

### **Clause 17–20. Insurable value**

The provision states the value of the interests covered by the insurance based on certain “objective” criteria. Sub-clause 1 regulates the insurable value of the catch, while sub-clause 2 determines the insurable value of the other objects which are insurable under an insurance of catch and equipment.

The provision does not prevent the parties to the insurance contract from agreeing on a specific insurable value. However, an **agreement** of the insurable value is not very common for insurance of catch, but is more widely used in insurance of fishing gear, etc.

The basis for the calculation of the insurable value of the catch is under *sub-clause 1* the market price of the catch at the place of loading at the time of loading. The market price of the catch will be the value of the catch to the seller’s hand, before he has incurred costs in connection with the forthcoming transport. The market price is the price at which the catch can be sold, taking into account the seller's place in the chain of distribution.

The value refers to price conditions “at the time of loading”, i.e. at the time when the catch is loaded on board the vessel.

If the catch was reported to a sales cooperative and directed to a specific place for unloading, it follows from the provision that the insurable value also covers freight, “transport surcharge”, see Cl. 17-19 (a), second sentence.

*Sub-clause 2* regulates the insurable value of objects covered according to Cl. 17-19 (b), (c) and (d). Here the insurable value represents the replacement cost of the object at the inception of the insurance. The provision is in accordance with Cl. 2-2. The “inception of the insurance” is the time when the insurer’s liability takes effect. The time for calculating the insurable value under sub-clause 2 is accordingly different from that under sub-clause 1, where the value refers to the time of loading.

### **Clause 17–21. Extraordinary handling costs**

The need for this cover is linked to the problems that arose in winter 1998/99 when a number of fishing vessels proved to have been infected with salmonella due to the fact that the ice used to preserve fish on board was infected with the bacteria. In addition, there is the fact that the authorities set stringent requirements for the destruction of catch in a controlled manner. There is therefore a need for cover of extraordinary costs in connection with the removal and destruction of damaged catch.

The cover applies only when the shipping company has effected insurance for the catch. The insurer is liable for an amount equivalent to the sum insured and is in accordance with the cover for costs of measures to avert or minimise loss, which is largely similar to the cover for extraordinary costs.

### **Clause 17–22. Excluded perils/Ref. Clause 2–8**

The provision states limitations to the perils covered by the insurance, and must be seen in conjunction with the provisions in Cl. 2-8 to Cl. 2-10. According to Cl. 2-8 an insurance against marine perils covers any peril to which the interest is exposed, with the exception of the perils stated in sub-clauses (a) to (d). The war peril has been taken out of the marine-perils cover through the exception in Cl. 2-8 (a) and has been made the object of a separate war-risks insurance under Cl. 2-9. If there is no specific statement as to what perils are covered by the insurance, the rule in Cl. 2-10 is that the insurance covers marine perils under Cl. 2-8.

The exclusions in Cl. 17-22 largely reflect the general principle of insurance law that the insurance shall only cover unforeseeable losses. Losses resulting from the inherent nature of the catch, inadequate packaging, loss in weight or volume of the catch, etc. are foreseeable and should therefore fall outside the scope of cover. *Sub-clause (a)* excludes damage due to the inherent nature or condition of the catch when the catch was taken on board. The exclusion also covers cases where the catch is unable to stand up to the foreseeable exposures on board. This provision is particularly relevant to mackerel and herring in bulk, which are unfit to stand movements on the way to port if the vessel has remained for too long in the field with the fish on board.

*Sub-clause (b)* regulates inadequate packaging and preservation. Inadequate preservation includes cases where refrigerated or frozen catch did not have the correct temperature at the time it was refrigerated or frozen down.

*Sub-clause (c)* excludes loss as a result of ordinary loss in weight or volume.

*Sub-clause (d)* relates to refrigerated or frozen catch. The treatment of refrigerated catch is subject to extensive EU regulation, and buyers also have stringent criteria as regards the quality of the fish. The assured will therefore normally be very careful to ensure that the water is sufficiently cooled down before the catch is taken on board. If the refrigeration plant is not functioning or has not been started up, fish will not normally be taken on board.

Quality standards for frozen fish are so stringent that any thawing may result in loss because the fish cannot be sold at the ordinary price.

If the loss in question has resulted from a delay which has no connection with a preceding casualty, it follows from Cl. 4-2 that the insurer is not liable. It is also conceivable that loss resulting from a delay is excluded through Cl. 17-22 (a), in that the fish has to stand a few days' delay. If, on the other hand, the delay is a result of an earlier casualty, the insurer must be fully liable in the normal way, cf. the cover of further developments according to the Special Conditions. This follows from general rules of causation and applies independently of the cause of the delay or its duration. The fact that damage to the catch develops further during transport to the place of destination is a risk which must be covered by the insurance. However, the insurer's liability for the delay is based on the assumption that the assured could not have avoided this delay. If the assured, following a casualty, chooses instead of taking the vessel directly to a port, to remain at sea in order to prevent loss of time, the loss caused by the delay is not a consequence of the casualty. If it is found that the loss is partly a result of the casualty, partly of a delay, the rule of apportionment in Cl. 2-13 shall be used.

### **Clause 17–23. Deck cargo**

The provision entails that further restrictions are made in the perils covered for deck cargo. In sub-clause (b) the term “dirt” first and foremost covers pollution from the ship's own exhaust system.

### **Clause 17–24. Total loss**

The provision concerns all objects insured under the catch and equipment insurance, i.e. both the catch and the accessories, cf. the introductory words of the provision.

*Sub-clause 1* defines when a total loss has occurred, and is taken from the Norwegian Cargo Clauses Cl. 35, sub-clause 1. Under *sub-clause (a)*, a total loss has occurred if the objects insured have been destroyed. The objects have been “destroyed” where they are totally burnt up, dissolved, evaporated or have leaked out, or where they are in some other way physically totally destroyed. In principle, all objects insured, including the entire catch, must be affected in order for it to constitute a total loss. The rules relating to loss in weight, cf. Cl. 17-25, however, make sub-clause 1 of Cl. 17-24 similarly applicable where part of the objects insured/catch are totally lost. The condemnation rules in sub-clauses (c) and (d) do not call for a more precise definition of the term “destroyed”. On the other hand, the distinction between condemnation and partial damage may be difficult to make. Reference is made to the Commentary on Cl. 17-26.

Under *sub-clause 1 (b)* a total loss has also occurred where the objects insured (including the catch) “have been removed from the assured without any possibility of his recovering them”. The objects have been “removed from” the assured if he does not have physical disposal of them. They have sunk, been washed over board, stolen, impounded or handed over to a wrongful recipient. There is, however, no requirement that the objects shall be physically damaged or impaired. The actual removal must be complete. The objects must have been removed from the assured “without any possibility of his recovering them”.

If the objects have disappeared without there being any basis or information to indicate how this happened, the assured has the burden of proving that the total loss was caused by a peril covered by the insurance.

Rules relating to condemnation are contained in *sub-clause 1 (c) and (d)*. The provision in (c) sets the condemnation limit at 100% for fishing gear and accessories. For other objects, however, the condemnation limit is 90% in line with the solution in the Norwegian Cargo Clauses § 35, sub-clause 1, no. 4. The reason for the difference is that catch, packaging and supplies may be considered equivalent to goods, while the insurance of fishing gear is more similar to an ordinary property insurance.

The condemnation rules apply when the objects insured are so extensively damaged that at least 100% or 90% of their value must be considered lost. When deciding whether the objects are condemnable, damage must be assessed under Cl. 17-25 and Cl. 17-26 and be seen in relation to the insurable value. In the assessment only loss of value resulting from damage covered by the insurance shall be taken into account. If several insured incidents occurred during the transport, it is the aggregate damage which must have resulted in a loss of value of 100% or 90% respectively.

*Sub-clause 2* regulates the further content of a total-loss settlement. The provision corresponds to the Norwegian Cargo Clauses § 35, sub-clause 2. In the conditions for fishing insurance there was no such

rule. The fundamental principle is that the assured is entitled to payment of the sum insured for the object insured, limited, however, to its insurable value, cf. *first sentence*.

If the objects, before becoming a total loss, sustain damage, it follows from the *second sentence* that no deduction shall be made for such damage in the total-loss claim. It is, however, a condition that the damage occurred during the insurance period. For pre-existing damage prior to the inception of the insurance, deductions shall be made, given that such damage will reduce the insurable value of the object correspondingly.

### **Clause 17–25. Damage to or loss of catch**

Due to the renumbering of the Clauses of Chapter 17 in the 2010 version, the number of the Clause was changed from 17-26 to 17-25.

The provision regulates the claims settlement where catch is damaged or lost without the rules relating to total loss in Cl. 17-24 becoming applicable. Because there is no question of any repairs in respect of a catch in the event of damage or partial loss, as would be the case for other objects covered by the insurance, the provision determines that the assured will in these cases always be entitled to compensation. As regards the size of this compensation, it shall be determined in the same way as under Cl. 17-26, sub-clause 2, and reference is therefore made to the Commentary on that provision.

### **Clause 17–26. Damage to other objects**

The provision regulates settlement in the event of damage to fishing gear, accessories and equipment insured according to Cl. 17-19 (b), (c) and (d).

*Sub-clause 1* is taken from the Norwegian Cargo Clauses Cl. 37, sub-clause 1, and establishes that the insurer is always entitled to demand that damage be repaired, thus ruling out any compensation to the assured for unrepaired damage. Repair means that the object is restored to its original state. Only the insurer may demand repairs. The assured will be referred to the compensation alternative in sub-clause 2. He may not, over the insurer's objection, carry out repairs and claim compensation for the costs incurred in that connection.

The insurer's right to demand that damage be repaired is not unconditional. Repairs must be feasible without "unreasonable loss or inconvenience for the assured". In the evaluation of this question, the length of time such repairs will take must amongst other things be taken into account.

Presumably the costs of repairs will constitute a smaller amount than the sum insured; if not, it will be a case of condemnation under Cl. 17-24, sub-clause 1 (c) or (d). If the insurer has demanded repairs under Cl. 17-26, sub-clause 1, and these repairs turn out to be significantly more expensive than

anticipated, he must, however, pay all costs in full. The same applies if the repairs turn out to be inadequate.

*Sub-clause 2* regulates settlement when the damage is not repaired, either because the insurer is not entitled to demand it, or chooses not to do so. The provision is taken from the Norwegian Cargo Clauses Cl. 37, sub-clause 2. In such cases a cash settlement shall be made based on the determination of a damage percentage for the object. The damage percentage shall reflect the final reduction in the value of the damaged objects, i.e. the market value of the object in undamaged condition in proportion to the value in damaged condition at the place of destination. The damage percentage shall be calculated on a discretionary basis

When the damage percentage has been determined, the insurer's liability will be the product of the damage percentage and the insurable value. However, if the sum insured does not cover the entire insurable value, such under-insurance must be taken into account by a pro-rata calculation of the insurer's liability, cf. Cl. 2-4.

*Sub-clause 3* is taken from the Norwegian Cargo Clauses § 38 and concerns damage to or loss of an object which consists of several parts. It is mainly relevant in the event of damage to fishing gear and similar equipment. Under the provision, the insurer's liability is limited to covering repairs or renewal of the part that is lost. The assured therefore never has the right to demand a new object in the event of such damage.

#### **Clause 17–27. Survey of damage**

Insurance of catch and equipment is not subject to the rules in Chapter 12. It is therefore necessary to have a reference to Cl. 12-10 in order to have authority to carry out a survey of damage.

#### **Clause 17–28. Deductible**

The deductible applies to damage, total loss and loss arising from measures to avert or minimise loss.

## **Section 5 Supplementary cover for nets and seines in the sea**

### **General**

The supplementary cover under this Section cannot be effected separately, but must be effected in combination with the standard cover under Section 4.

### **Clause 17–29. Objects insured**

The distinction between objects which are on board the vessel and objects which are in the sea is commented on in further detail in the Commentary on Cl. 17-19 (b). The insurance does not cover any seines other than ring-nets in the water.

The objects that are insured under the supplementary cover in Section 5 are to a large extent the same as the objects that are insured under the normal cover in Section 4, cf. Cl. 17-19 (b). Normally a sum insured will be agreed for each cover. If a sum insured has been agreed for the objects concerned under the normal cover, but not under the supplementary cover, it must, however, be assumed that the sum insured shall be the same under both covers.

### **Clause 17–30. Excluded perils/Ref. Clause 2–8**

The most common damage is that seines get caught on the sea bed. The insurers are prepared to cover such damage subject to the limitations that follow from sub-clauses (a) to (e). Such cover could actually be achieved by extending the Clause defining liability, while otherwise retaining the principle of a positive specification of the perils covered. Because it is difficult to prove that "currents" and "heavy catch" are causes of damage, the Committee found it more expedient to change to a negative specification of the perils covered, even if such a transition may cause some uncertainty as regards the actual content of the cover. To safeguard the position of the insurer in connection with such a revision of the description of the perils covered, the burden of proof in respect of exclusions has been reversed in relation to Cl. 2-12, cf. below.

Sub-clause (a) entails that the insurer is only liable for loss resulting from the net or seine getting caught in an unknown wreck or unknown wreckage. Damage resulting from ordinary contact with the sea bed, for instance if the net or seine gets caught on natural obstacles that are part of the general character of the sea bed, is not covered.

The wreck is "known" when it is indicated on a chart, in e.g. the Notices to Mariners published by the Norwegian Maritime Directorate or in corresponding foreign publications. The term "unknown" is meant to be an objective criterion. The assured cannot argue that he was not aware of wreckage that has been made known to the public as stated above. On the other hand, the wreckage must be regarded as known if the assured had knowledge of it, even if it might not have been made known to the public.

Sub-clause (d) provides that the insurer is not liable for loss resulting from nets and seines being in contact with ice. Sub-clause (e) is based on the same principle as Cl. 10-3 of the Plan, and establishes that the insurer does not cover losses resulting from normal use of the object insured. This will be the case, for example, where large seines and nets are lost due to the weight of the fish and sea currents.

It follows from the principle in Cl. 2-12, sub-clauses 1 and 2, of the Plan that the insurer, under an all-risks insurance, has the burden of proving that the damage was caused by an excluded peril. Under Cl. 17-30, sub-clause 2, this rule of the burden of proof for exclusions has been reversed, thus placing the burden of proof on the assured. This has been necessary in order to give the assured the better cover inherent in a negative specification of the perils covered.

The earlier exclusions in sub-clause 2 (b) of the provision regarding gear used for shore-locking and the like, sub-clause (c) regarding infringements of statutes or official regulations, and sub-clause (d) regarding measures to avert or minimise loss have been deleted. The exclusion for shore-locking was superfluous because gear is no longer used in that way, while infringements of statutes or regulations are governed by safety regulations. The insurers are willing to cover measures to avert or minimise loss.

### **Clause 17–31. Deductible**

The deductible shall be agreed on an individual basis and be stated in the **insurance contract**.

The deductible shall also apply in the event of total loss.

### **Clause 17–32. Duties of the assured in the event of casualty/Ref. Clause 3–29**

The purpose of the provision is to make it possible to identify lost objects if they are recovered.

This provision comes in addition to the ordinary duty to notify the insurer in Cl. 3-29. In the event of a failure to comply with this duty, Cl. 3-31 shall apply.

The text was slightly amended in the 2013 Plan by changing the wording “Norwegian Fisheries Inspectorate” to “Fisheries Inspectorate”.

## **Section 6 Liability insurance**

### **General**

In addition to the rules in this Section, the common rules in Chapter 17, Section 1, as well as the general part of the Plan, shall apply. It follows from Cl. 4-17, sub-clause 1, that in the event of insurance on Plan conditions the rules in the Norwegian Insurance Contracts Act (ICA) Section 7-6, first sub-clause, relating to an injured party’s right to file a direct claim against the insurer do not apply. In contrast, ICA Section 7-8 is mandatory in any liability insurance in Norway.

### Clause 17–33. Perils covered

*Sub-clause 1, first sentence* specifies the perils covered by the insurance as losses mentioned in Cl. 17-34 to Cl. 17-46. The provision reflects the basic principle that the P&I insurance only covers liability and other losses which are specifically stated. In other words, this is not a general liability insurance. On the other hand, a number of types of loss which are not in the nature of liability, viz. various forms of expenses and damage which the assured may incur, are covered. Such expenses and damage must also be specifically stated.

The provisions in Cl. 17-34 to Cl. 17-46 partly state the nature of the loss, partly the extent to which the loss is covered. Both sets of conditions must be satisfied in order for the insurer to be liable.

While Cl. 17-34 to Cl. 17-46 state the extent of liability, Cl. 17-47 *et seq.* state limitations to the cover. The provision in Cl. 17-33 must therefore also be seen in conjunction with these limitations.

Another fundamental principle for owner's liability insurance is that the cover only includes liability and loss which "has occurred in direct connection with the operation of the vessel covered by the insurance". The claims filed must be specifically linked to the running of the insured vessel. Liability and other loss which concern the shipping business in general, or which are common to several **vessels**, are normally not covered.

Accordingly, all liability and losses in connection with the running of the assured's shore installations, social and other expenses which are not associated with any specific vessel are excluded from the cover. However, it is not a requirement that the loss occurred on board the vessel, or that it was caused by the crew.

The liability which is covered must be a legal liability for damages. The fact that the assured feels obligated from a business or moral standpoint to cover a loss is not sufficient. Legal liability normally means the personal obligation to pay for which the assured is liable to the extent of all his assets. However, also liability *in rem* where the assured is only liable with certain objects, typically the vessel and freight, is covered by the insurance. The country under whose law the liability occurs is also irrelevant, as is whether it is a contractual liability (e.g. cargo liability), or liability outside contractual relations (e.g. collision liability), and on what basis the liability is founded. However, contractual liability is subject to certain limitations according to Cl. 4-15.

The *second sentence* entails that the cover is extended in certain situations to include liability incurred by vessels other than the insured vessel.

*Sub-clause 2, first sentence*, is taken from Cl. 224, sub-clause 1, second sentence, of the 1964 Plan and establishes that the insurer covers liability according to sub-clause 1, irrespective of whether the liability is caused by marine perils or war perils. The liability insurance is therefore basically an insurance against marine perils, cf. Cl. 2-8, as well as against war perils, cf. Cl. 2-9. The war-risks cover is, however, somewhat limited under the second sentence.

### **Clause 17–34. Liability for personal injury**

*Sub-clause 1* defines the cover in the event of personal injury or loss of life. The main rule in the *first sentence* affords a very comprehensive cover. If the injury is “sustained in direct connection with the operation of the vessel covered by the insurance”, the insurer covers the assured’s liability regardless of where and how the injury was inflicted and regardless of whether the assured is liable as personal wrongdoer, or e.g. is liable on the basis of the rules relating to vicarious liability in Section 151 of the Norwegian Maritime Code. The assured’s liability to crew and passengers is nevertheless subject to certain limitations, cf. below.

Nor are any limitations stipulated as regards which items of loss shall be covered. In the event of “personal injury”, liability covers expenses for treatment, expenses for artificial limbs, loss of income during the treatment and loss of future earnings as a result of full or partial disability, cf. Section 3-1 of the Norwegian Compensatory Damages Act (NCDA). In the event of losses more in the line of consequential losses, the assured’s, and hence the insurer’s, liability will, however, be limited by foreseeability considerations.

The term “personal injury” also covers shock and other mental injuries, as well as “compensation for permanent injury” according to Section 3-2 of the NCDA. However, the liability will normally not cover non-economic loss under Section 3-5 of the NCDA. Such liability presupposes that the assured has personally caused the bodily injury intentionally or through gross negligence, in which event the insurer’s liability will normally lapse under the rules in Cl. 3-32 and Cl. 3-33.

If it is a question of “loss of life”, liability will cover loss of provider and funeral expenses, including expenses for shipping home the coffin or urn, cf. Section 3-4 of the NCDA.

Liability under sub-clause 1, first sentence, also covers liability for salvage awards in the event of the saving of life. Such salvage remuneration will only be relevant where a vessel or cargo has been salvaged at the same time, cf. Section 441 of the Norwegian Maritime Code. As regards salvage awards for the salvaging of vessels and cargo, the owner of these assets may recover the award as costs of measures to avert or minimise loss under the hull insurance and the cargo insurance respectively. In the same way, the liability insurer covers salvage awards for the saving of life under Clauses 4-7 *et seq.*, if the salvage operation is in effect a measure to avert or minimise loss. However,

the provision in Cl. 17-34 provides an independent authority for coverage of a salvage award, regardless of whether or not it qualifies as a cost of measures to avert or minimise loss. On the other hand, only salvage awards determined specially due to the saving of life are covered. It is not sufficient that the salvage award as such has probably increased due to the saving of life, without this being specified in a judgment or an agreement.

It is only the assured's liability for life-saving which is covered by the liability insurer. The assured may not claim a refund from the liability insurer for that part of the salvage award which may have been allocated to the cargo interests without liability for the assured. Nor does the liability insurer cover the liability in respect of which the assured may claim cover from the hull insurer under the relevant hull conditions, cf. Cl. 17-47.

As regards the persons who shall be covered by the assured's liability, certain limitations are stipulated. In the first place, the cover under *sub-clause 1, second sentence*, does not include the assured's liability to the crew or their dependents for wages in the event of a shipwreck, death, illness or injury. This insurance is not included in the Plan, and the definition has therefore been incorporated directly in Cl. 17-34. This liability will today normally be covered under an occupational injuries insurance. However, the insurer does cover certain social benefits to the crew under Cl. 17-44 (b)

The crew's personal effects are excluded under Cl. 17-35, sub-clause 2 (c).

The delimitation applies only in relation to "the crew". In the event of injuries sustained by others who work in the service of the vessel without belonging to the crew, e.g. persons who carry out work on board or in connection with the vessel while it is in port, the insurer covers the assured's liability under sub-clause 1, first sentence.

Secondly, the assured's liability for injury sustained by or loss of passengers is only covered where this has been specifically agreed, cf. *sub-clause 2*. The provision applies to passengers and "other persons accompanying the vessel without belonging to the crew" to merely applying to "passengers". Under Skuld's and Gard's P&I Conditions liability for passengers is included in the normal cover. According to the Plan's rules, however, it is necessary to have a separate agreement about this. The requirement for a separate agreement, however, only applies to ordinary paying passengers. Family, friends or others who accompany the vessel are therefore covered in the usual way.

The cover under Cl. 17-34 must be seen in connection with the limitations of liability in Cl. 17-47, sub-clause 3, relating to insurance and social benefits for the crew, and the requirement for limitation of liability as regards liability to passengers in Cl. 17-48.

## Clause 17–35. Liability for property damage

**The Clause was amended in 2016 by adding new letters (d), (e) and (f) to sub-clause 2. The said letters are identical to previous sub-clause 2 (b), (c) and (a) respectively. Sub-clause 3 was consequently deleted. The following sentence was added to new letter (d) "By a call is meant arrival, anchoring, working, discharging, loading and leaving", cf. the corresponding amendments to Cl. 17-17.**

*Sub-clause 1* contains the practically speaking most important cover provision in liability insurance and provides that the insurer covers the assured's liability for damage to or loss of an object which "does not belong to the assured". Loss in the event of damage to or loss of the assured's own objects does not belong under a liability insurance subject to the limitations which follow from Cl. 4-16. The insurance includes liability for damage to objects which are not subject to private ownership, e.g. shell fish and seaweed which are damaged by oil pollution with the result that those who exploit them for business purposes suffer a loss.

By "object" is meant objects of every type or form, real estate as well as chattels. The object may be on board the insured vessel, on board another vessel, or on shore. Certain objects which are on board are nevertheless excluded in sub-clause 2, cf. below. The term "object" furthermore comprises another vessel, a vessel or other floating structure. "Damage" means any form of physical impact on the object which results in a deterioration in value: breakage, water damage, decay, infection, smell and radiation damage, etc. "Loss" covers not only cases where the object has physically been destroyed, but also cases where it has been stolen, impounded or mislaid so that the owner cannot expect to recover it within the foreseeable future.

The insurer covers liability for property damage regardless of the basis on which the liability is founded. It is irrelevant whether it is liability under contract law or non-contractual liability, and it is further irrelevant whether liability is non-statutory or is founded on statutes. The liability therefore covers cargo liability, liability to tugs, liability for property damage in the event of a collision, liability for property damage in the event of oil pollution and other non-contractual liability for property damage, provided liability has "occurred in direct connection with the operation of the vessel covered by the insurance", cf. Cl. 17-33. Cargo liability is subject to certain limitations, see Cl. 17-51 and the assured is furthermore obliged to disclaim liability for damage to and loss of cargo to the extent that this is allowed under current rules of law, see Cl. 17-48.

Cl. 17-35 only regulates liability for property damage. Loss resulting from incorrect description of goods in the bill of lading or from the goods being handed over to a wrong recipient does not constitute liability for property damage. However, these types of liability are in certain contexts covered under Cl. 17-36 and Cl. 17-37. But, if liability for property damage occurs, then not only the

part of the liability which corresponds to the reduction in the value of the object will be covered, but also the part which is associated with any consequential loss, cf. the wording “liability resulting from damage to or loss of”.

*Sub-clause 2 (a)* is normally superfluous, see Cl. 4-16, second sentence, which excludes the relevant objects if they are owned by the assured. Furthermore, the provision in Cl. 17-47 will exclude these objects if they are insurable under the rules in part II, part III or part IV, Chapter 17, Sections 2 to 5, of the Plan.

*Sub-clause 2 (e)* excludes damage to or loss of live fish carried in the vessel. Under the rules of the Norwegian Maritime Code, it may be uncertain whether the assured has the right to disclaim liability for damage to or loss of live fish. This issue has now been resolved in a Supreme Court ruling, cf. the 2001 Norwegian Supreme Court Reports, p. 676, whereby the disclaiming of liability for live fish was found invalid, cf. Section 254, fourth sub-clause, of the Norwegian Maritime Code. However, the insurers are under no circumstances willing to accept this liability. It is therefore excluded from the cover according to *sub-clause 2 (d) and (e)*. The provision must be seen in conjunction with the limitation of liability in Cl. 17-17, which establishes that the hull insurer does not cover liability under Cl. 13-1 for damage to or loss of fish or devices for keeping live fish in connection with calling at such an installation for loading or discharging.

**Previous sub-clause 3 referred to “freighters, including well-boat” and led sometimes to confusion amongst owners of so-called working-boats. The term “freighter” refers to the Norwegian Maritime Authority’s definition which comprises all kinds of ships that are not passenger- or fishing vessels.**

### **Clause 17–36. Liability for description**

The *first sentence* establishes that the insurer covers the assured’s liability for inadequate or incorrect description of the goods or other incorrect information in the bill of lading or similar document.

In principle, the liability covers all types of liability under bills of lading. If liability is imposed under the principle of estoppel, see Section 299, third sub-clause, of the Norwegian Maritime Code, it will, however, normally be a cargo damage liability and accordingly be covered under the rules in Cl. 17-35.

Liability is covered even if the vessel’s crew or the owner’s employees have been grossly negligent in connection with the issue of the bill of lading. By contrast, the assured will not be covered if he has himself been grossly negligent, cf. Cl. 17-49, sub-clause 1.

Liability under bills of lading applies to “a bill of lading or similar document”. The term “bill of lading” comprises both shipped bills of lading (Section 292 of the Norwegian Maritime Code), through bills of lading (Section 293 of the Norwegian Maritime Code) and received-for-shipment bills of lading (Section 294 of the Norwegian Maritime Code). In connection with transshipment, not only liability under bills of lading where the bill of lading is issued in connection with the loading of the insured vessel is covered, but also where the bill of lading is issued by an earlier carrier on behalf of all concerned.

By other “similar documents” is meant other documents issued as evidence of goods received for carriage. A practical example is the non-negotiable sea waybill (Section 308 of the Norwegian Maritime Code). Admittedly, goods in transit will rarely be bought or paid for on the strength of the description of the goods in such a sea waybill, but it does happen. If the assured then becomes liable under general liability rules for negligent, incorrect or incomplete description of the goods, etc., this will be covered under this provision.

The last part of the provision contains a limitation of the insurer’s liability. If the assured or the master of the vessel knows that the description in the document of the cargo, its quantity or condition is incorrect, the insurer is not liable. This provision concurs with the solution in, e.g. Gard’s P&I Conditions. On the one hand, it is sufficient that the master of the vessel knows that the description is incorrect. The assured is not required to know. On the other hand, the exclusion does not cover negligence. The assured or the master must have definite knowledge that the description is incorrect.

### **Clause 17–37. Liability for the misdelivery of goods**

The cover of the assured’s liability for wrongful delivery is on *inter alia* Gard’s P&I Conditions.

The basic principle is admittedly still that the assured’s liability for wrongful delivery is covered, see *sub-clause 1*. However, due to sub-clause 2, this principle will in reality only be relevant where the goods are carried on a sea waybill or some other non-negotiable document. In that case liability for wrongful delivery acquires an entirely different content than in the event of carriage under a bill of lading, because such non-negotiable documents do not constitute evidence of the right to the cargo. The assured’s duty to hand over the goods is therefore not tied to the document in the same way as under a bill of lading, where he is obliged to hand over the goods to the third party who presents the document in the port of discharge. In the event of non-negotiable documents, the assured shall hand over the goods to the consignee stated in the document, possibly to some other consignee named by the consignor, see Section 308 of the Norwegian Maritime Code. If the goods are handed over to someone else, and the assured incurs liability in that connection, such liability will be covered under sub-clause 1.

*Sub-clause 2* initially establishes that liability for wrongful delivery is not covered if the goods are handed over to a person without presentation of a proper bill of lading. The main rule where the carriage in question takes place under a bill of lading will thus be that the insurer does not cover the liability for wrongful delivery incurred by the assured because the goods were handed over to someone who is not entitled to them without presentation of the bill of lading. However, the rest of sub-clause 2 stipulates a small exception to this rule. The assured's liability for wrongful delivery in such a situation is in fact covered if the goods were carried by the assured in accordance with a sea waybill or some other non-negotiable document and handed over as prescribed by this document, but he incurs liability under a bill of lading or some other negotiable document issued by or on behalf of someone else for carriage partly in the assured's vessel, partly in another vessel. Such a situation may arise if a non-negotiable document and a negotiable document have been issued for the same cargo, and the bearer of the negotiable document is someone other than the cargo consignee named in the non-negotiable document. An example may illustrate the situation. Carrier A issues a bill of lading for a shipment from Kristiansund to Kiel. A is in charge of the shipment from Kristiansund to Oslo, while the shipment from Oslo to Kiel is to be handled by sub-carrier B. Under the bill of lading, each carrier is liable for damage to or loss of the goods while they are on board his vessel. B has issued for his leg of the shipment a non-negotiable document with the same named consignee as stated in the bill of lading. However, the bill of lading is transferred to someone else, and this new bearer of the bill of lading demands that B deliver the goods to him. If B has already handed over the goods in accordance with the non-negotiable document, his liability to the bearer of the bill of lading will be covered under the provision.

### **Clause 17–38. General average contributions**

*Sub-clause 1* establishes that the insurer covers the assured's loss resulting from his being precluded from claiming cargo's contribution in general average by reason of a breach of the contract of affreightment. In the event of general average, the assured will normally be entitled to recover cargo's contribution from the cargo owner or his insurer. Basically this also applies where the general average is caused by the assured's breach of contract, e.g. where a fire with major fire-extinguishing damage is caused by defects in the vessel when it last left port, and where this defect was known, or ought to have been known, to the vessel's crew and made the **vessel** unseaworthy. However, in such cases the cargo owner may have recourse against the assured for the general average contributions they are obliged to pay, cf. YAR rule D and ND 1993, p. 162 NH FASTE JARL. If it is the assured who has incurred the general average expenses and who collects the contributions, the cargo owner will exercise his recourse claim by a set-off. If the counterclaim succeeds, the cargo owner will not have to pay the general average contribution, and the assured suffers a loss. This loss is covered by the liability insurer under sub-clause 1. This cover may be seen as a continuation of the coverage of the assured's cargo liability: Formally, the assured will not be precluded from claiming a contribution, but

he has to accept being held liable for the loss which the cargo owner has suffered by the imposition of the duty to pay contribution.

The general average contribution may also be lost or reduced for reasons other than a breach of contract or the cargo's unwillingness or inability to pay, e.g. where the assured does not comply with the time limit for filing the claim. This will in that event be the assured's risk. Nor does the cover extend to excess general average contributions from the cargo, where a loss arises for the assured because sacrifices and disbursements exceed the value of the contributions, at the same time as the cargo owner's liability is limited to the value of the cargo.

The provision applies only in relation to the cargo's contribution. This is due to the fact that the freight contribution shall normally be covered by the assured. However, in the event of sub-chartering, the contribution shall be allocated to the charterer. The failure to pay contributions which may then occur is, however, not covered by the liability insurer.

*Sub-clause 2.* Expenses incurred in connection with the collection of general average contributions will often be recoverable as costs of measures to avert or minimise loss, cf. Cl. 4-7 and Cl. 4-12. However, sub-clause 2 imposes a direct obligation on the liability insurer to cover such costs regardless of whether or not they qualify as costs of measures to avert or minimise loss. The provision is of particular importance if legal proceedings must be instituted in connection with general average, but it also covers other costs in connection with collecting cargo's contribution, e.g. costs in connection with out-of-court collection.

As regards the assured's duties to maintain and secure the claim against the cargo, Cl. 5-16 shall apply.

### **Clause 17–39. Liability for removal of wrecks**

The *first sentence of the provision* provides that the insurer shall cover the assured's liability for removal of wrecks, provided such removal is ordered by the authorities. If the assured becomes liable for the removal of a wreck, it is normally because the vessel has been involved in a collision with another vessel or object, or because it has run aground. To the extent that the liability is covered by the vessel's hull cover, it falls outside the scope of the liability insurance, cf. Cl. 17-47, sub-clause 1 (a) with the exception of excess collision liability, cf. sub-clause 2. Under the Plan, the hull insurance covers liability for the removal of the wreck of another vessel with which the insured vessel has collided, cf. Cl. 13-1, sub-clause 1, but not liability for the removal of the wreck of the vessel itself, cf. Cl. 13-1, sub-clause 2 (i). Liability for the removal of the wreck of the insured vessel is therefore in its entirety covered under Cl. 17-39. Excess collision liability for an oncoming vessel, i.e. liability for the removal of wrecks for the oncoming vessel which exceeds the sum insured for collision liability is

covered partly under Cl. 17-39, partly under the rule of cover for the assured's ordinary liability for property damage, cf. Cl. 17-35.

The provision covers liability for the removal of wrecks "ordered by the authorities". This restriction entails that liability for the removal of wrecks according to contract is not covered by the insurance. Otherwise, the cover is very general. It covers any basis for liability and liability for the removal of wrecks which present an obstruction to traffic according to the port regulations of the country concerned, cf. for Norwegian law the Ports and Waters Act of 17 April 2009, No 19, Section 35, liability for removal of wrecks because the vessel has gone down at a location where the cargo may cause damage, and liability for removal of wrecks as a result of collision to the extent that this liability is not covered under the hull insurance. Both strict liability (e.g. under the Ports Act) as well as *culpa* liability are included. It is also irrelevant whether the costs incurred in removing the wreck concern the insured vessel or another vessel, and it is irrelevant whether the vessel becomes a wreck due to a casualty or for other reasons.

Under Cl. 230 of the Norwegian Plan of 1964, the insurance only covered liability for the removal of wrecks where the vessel was lost in consequence of other causes than war perils. This was due to the fact that the war-risks hull insurer covered liability for the removal of wrecks where the vessel was lost as a result of a war peril. In the Plan, liability for the removal of war wrecks has been incorporated in the liability insurance part in Chapter 15 on war-risks insurance, cf. Cl. 15-21. It must therefore also be included in the liability insurance under Chapter 17.

A vessel is a "wreck" when salvage has been abandoned because it would be unprofitable, i.e. the value of the object to be salvaged is less than the costs involved in salvaging it. It is irrelevant whether the vessel is condemnable under the Norwegian Maritime Code or under the hull conditions.

In practice, it may be difficult to decide when the insurer's liability for removal of wrecks is triggered. When an owner is instructed to remove a wreck, he must without undue delay decide whether he wants to salvage the vessel so that the insurer may start the work of removing the wreck before the port authorities do it.

If the insurer pays the costs involved in removing the wreck, the proceeds will accrue to him, even if the wreck should prove to be worth more than the costs involved in removing it.

The term "liability for the removal of wrecks" also covers the costs of removing the cargo, etc. to the extent that this is necessary in order to remove the wreck. Otherwise the removal of wreckage other than the actual shipwreck will not be covered, e.g. cargo which the vessel has lost, or parts of vessel or cargo which have sunk. Nor does the cover include liability for obstructions to traffic vis-à-vis owners of ports, canals, etc. Only the actual wreck-removal expenses are covered. On the other hand, the cover includes the costs of marking and illuminating the wreck as required by the public authorities.

The *second sentence* states that the insurer's liability also includes the assured's liability for disposal and destruction of the wreck. The reason for this is that such costs must be regarded as part of the costs of removing the wreck.

### **Clause 17–40. Liability for special salvage compensation**

The wording was slightly amended in the 2013 Plan. The reference to Section 449 of the Norwegian Maritime Code in the 1996 Plan was replaced with a reference to “the relevant sections of the Nordic Maritime Codes”.

According to this provision the insurer is required to cover the assured's liability for special compensation to the salvor where the assured is required to pay such compensation under the rules of the relevant sections of the Nordic Maritime Codes or other rules of law or contract rules which are based on article 14 of the International Convention on Salvage of 1989. Article 14 of the Convention, on which e.g. Section 449 of the Norwegian Maritime Code of 1994 is based, arises from the amendments to the international salvage rules relating to prevention of damage to the environment. It appears from Section 446 (b) of the Norwegian Maritime Code, cf. article 13 sub-clause 1 (b) of the Convention, that the ordinary salvage reward shall be fixed taking into account “the skills and efforts of the salvors in preventing or minimising damage to the environment”. The concept “damage to the environment” is defined in further detail in Section 441 (d) of the Norwegian Maritime Code of 1994, cf. Article 1 (d) of the Convention. If therefore the result of the salvor's efforts is that the vessel has been salvaged, wholly or in part, at the same time as damage to the environment has been prevented or minimised, this will be taken into consideration and the salvage reward will be increased. The total salvage reward will be apportioned in the general average adjustment which shall take place after a salvage operation, cf. Rule VI (a) sub-clause 2 of the York-Antwerp Rules. The vessel's general average contribution will be covered by the (hull) insurer in the normal manner according to the rules in Cl. 4-8. If the conditions for a general average adjustment are not met, either because the vessel, freight and cargo belong to the same person, or because the vessel is in ballast, the (hull) insurer will nevertheless cover the vessel's contribution in an assumed general average adjustment under the rules of Cl. 4-9 and Cl. 4-11 respectively.

If the salvor has incurred costs in connection with “salvage operations in respect of a vessel which by itself or its cargo threatened a risk of damage to the environment”, he is entitled to a special compensation from the owner equivalent to his expenses, see Section 449, first sub-clause, of the Norwegian Maritime Code, cf. Article 14.1 of the Convention. If the vessel has been salvaged, wholly or in part, such special compensation shall, however, be paid only to the extent that it exceeds the fixed salvage reward, see Section 449, first sub-clause, second sentence, of the Norwegian Maritime Code, cf. Article 14.1 of the Convention. However, it is not a condition for claiming special

compensation that the efforts were a success in the sense that damage to the environment was prevented or minimised. But, if the efforts were successful, "the special compensation may be increased by about 30% of the expenses incurred by the salvor", and if deemed "fair and just" by "up to 100%", see Section 449, second sub-clause, of the Norwegian Maritime Code, cf. Article 14.2 of the Convention. This special compensation is not recoverable in the general average adjustment, see Rule VI (b) of the York-Antwerp Rules and, accordingly, will not be covered by the (hull) insurer as part of the vessel's general average adjustment contribution.

It follows from the provision that the assured's liability for such special compensation is recoverable under insurance of fishing vessels and small freighters according to the rules in the liability section. This is subject to the condition that liability is provided for by Section 449 of the Norwegian Maritime Code of 1994, or rules of law in other countries that are based on Article 14 of the International Convention on Salvage of 1989. Liability may also be provided for in contract clauses that are based on this Convention, see e.g. Lloyds' Open Form (LOF 1995) Cl. 1 (b). Given that liability for special compensation must be regarded as a special rule relating to costs of measures to avert or minimise loss, cf. Cl. 4-12 relating to costs of particular measures taken to avert or minimise loss, liability is not recoverable within the sum insured under Cl. 17-54, but under the separate sum insured for costs of measures to avert or minimise loss, cf. Cl. 4-18, sub-clause 1, second and third sentences, and the Commentary on Cl. 17-54.

#### **Clause 17–41. Liability for bunker oil pollution damage and damage to the environment**

Sub-clause 2 regarding damage to the environment was new in the 2013 Plan and the heading was amended.

*Sub-clause 1* of the provision establishes that the insurer covers the assured's liability for bunker oil pollution damage in accordance with the provisions laid down in national legislation that are based on the provisions of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunker Convention). Through this provision, cover under the Plan is expanded to include all liability under the Bunker Convention. This approach tallies with practice, where it has been customary for the parties to agree on a corresponding expansion of cover by incorporating a special Clause in the **insurance contract**.

*Sub-clause 2* was new in the 2013 Plan. It establishes that the insurer covers the assured's liability for damage to the environment. Vessels trading in the waters of the states in the European Economic Area are liable for damage to the environment pursuant to the rules of the EU Directive 2004/35CE of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. The purpose of the Directive is to establish a framework of environmental liability based on

the ‘polluter-pays’ principle, to prevent and remedy environmental damage. The Directive applies where environmental damage and damage to protected species and natural habitats are concerned, to occupational activities which present a risk for human health or the environment. The Nordic countries have made the rules of the Directive part of their national law. In Denmark the relevant acts are Act of 17 June 2008 No 466 relating to environmental damage (Lov om undersøgelse, forebyggelse og afhjælpning af miljøskader - Miljøskadeloven) and Act of 22 December 2006 No 1757 relating to environmental protection (lov om miljøbeskyttelse); in Finland, Act of 29 May 2009 No 383 relating to remedying certain environmental damage (Lag om avhjälpande av vissa miljöskador); in Norway, Act of 19 June 2009 No. 100 Relating to the Management of Biological, Geological and Landscape Diversity (Nature Diversity Act) – (lov om forvaltning av naturens mangfold - naturmangfoldloven); and in Sweden, the Environmental Code of 11 June 1998 (Miljöbalken).

### **Clause 17–42. Stowaways**

The provision regulates expenses and liability relating to stowaways. The assured’s liability and direct expenses resulting from the vessel having stowaways on board are covered. Such liability is first and foremost relevant in the event of deportation, etc., if the stowaways get ashore in a port where they are not wanted.

The term “direct expenses” merely covers “out-of-pocket expenses” in contrast to loss of earnings.

According to the second part of the provision, an exception is made for expenses for board and lodgings that could otherwise have been provided on board. Such maintenance expenses will normally be so low that there is no point in having the insurance cover them.

This provision applies only to “stowaways”. It does not cover the situation where the vessel takes refugees on board for humanitarian reasons.

### **Clause 17–43. Liability for fines, etc.**

According to *sub-clause 1 (a)*, the assured’s liability for immigration and customs fines is covered regardless of who has committed the offence. It is sufficient that the assured becomes liable and that liability has been incurred in direct connection with the running of the vessel. This latter requirement will normally be satisfied if the assured becomes liable for the conduct of the crew or the passengers, even if the offence has no connection with the service or the vessel. The possibility of the assured becoming liable in such cases is a risk in connection with the running of the vessel.

The precondition for the cover is that it is a question of “fines”, i.e. a definite penal sanction. Charges in the form of customs duties or taxes are not covered, even if they might be of a certain penal nature.

*Sub-clause (b)* covers fines resulting from the conduct of the crew. Such fines are covered regardless of the nature of the fine, but the cover concerns only fines caused by the master or the crew. Fines attributable to offences committed by passengers or the assured's people ashore are not covered.

Under *sub-clause (c)*, expenses in connection with orders for deportation of the crew, passengers or other persons accompanying the vessel without belonging to the crew are covered. For the assured, such expenses are in effect the same as fines when he is liable for them. The provision concerns all persons who have accompanied the vessel, i.e. also persons who are neither passengers nor members of the crew, e.g. an itinerant repairman. However, the deportation of stowaways is covered under Cl. 17-42. The cover also extends to a deportation which is foreseeable, e.g. where passengers go ashore or crew is signed off in a port where they have no permit of residence and no home journey has been arranged for them.

The cover under sub-clause 1 presupposes that the assured has "liability" for the fine or the expenses, i.e. a personal liability. However, *sub-clause 2* extends the cover to include such cases where payment can be enforced by detaining the vessel, e.g. by a formal arrest or by denying clearance to depart, or by obtaining security in the vessel, e.g. because there is a maritime lien or some other legal mortgage for the claim. A fine for which the assured is not liable and where payment furthermore cannot be enforced is, however, not covered by the liability insurer.

*Sub-clause 3* makes an exception to the insurer's liability under sub-clauses 1 and 2 for a certain number of specified fines. *Sub-clause 3 (a)* excludes fines resulting from overloading of the vessel. By "overloading" is meant that the vessel lies lower in the water than the allowed mark, normally due to excess cargo, bunkers, ordinary water or ballast water. The reason for the exception is that overloading entails a significant increase in the risk of damage to vessel, cargo and passengers. A similar exclusion is contained in *sub-clause 3 (b)* as regards the fact that the vessel has more passengers than allowed.

The exclusion in *sub-clause 3 (c)* concerning illegal fishing has to do with the fact that increased competition combined with reduced fish resources has resulted in an increased risk of excessive fishing. Many coastal states have strict regulations for permitted fishing zones, the use and size of equipment and prohibition against fishing certain types of fish. Fines resulting from a breach of these rules should not be covered by the liability insurance.

*Sub-clause 3 (d)* excludes fines resulting from inadequate maintenance of lifesaving or navigation equipment and is based on the increased focus on safety. Lifesaving equipment includes not only life boats and life buoys, but also equipment such as life jackets, flares and water tight lights. Maintenance of this equipment includes routine repairs and replacements. By navigation equipment is meant e.g. radar, echo sounders and charts. Most coastal states have minimum requirements regarding the

lifesaving equipment which must be on board the vessel. Breach of such regulations will normally result in a fine, which is thus not covered under the liability insurance.

The exclusion in *sub-clause 3 (e)* concerns the flag state's requirement that a ship shall at all times carry the mandatory certificates on board. As far as Norway is concerned, this is a certificate required by the Norwegian Maritime Directorate. According to Cl. 17-4 the insurance cover will lapse if the valid certificate lapses. In that event, the exclusion in sub-clause (e) is superfluous. The provision is therefore only relevant where the vessel does have a valid certificate, but it is not on board the vessel.

### **Clause 17–44. Liability for social benefits for the crew**

*Sub-clause 1* establishes that the insurance covers the assured's liability for certain specific social benefits for the crew in accordance with the law or collective wage agreements.

Under *sub-clause 1 (a)*, the care and maintenance of the crew on shore in the event of illness or injury are covered. The provision reflects the fact that a seaman who has fallen ill or been injured is, under Section 4-6 of the Norwegian Ship Labour Act, entitled to nursing for the assured's account, on board or ashore, for the duration of his service. If he is ill or injured on termination of his employment, he has the same rights for up to 16 weeks. It is only the expenses for care and maintenance ashore that are covered, not on board the vessel.

The insurer also covers costs in connection with the crew's travel home, including maintenance, in the event of illness or injury or following a shipwreck, cf. *sub-clause 2 (b)*. A seafarer who is left in a Norwegian or foreign port due to illness or injury, or who in signing off suffers from an illness that would have made signing off necessary, is, under Section 4-6 of the Norwegian Ship Labour Act, entitled to a free journey home with maintenance for the assured's account. If his service terminates because of a shipwreck or condemnation, the seafarer is entitled to a free journey home with maintenance, cf. Section 4-6 of the Ship Labour Act.

According to *sub-clause 1 (c)*, costs in connection with the funeral and sending home of the cinerary urn and the deceased's effects are covered. The assured is obliged to cover such expenses if a seafarer dies whilst still in service or whilst he is entitled to nursing or whilst he is travelling for the assured's account, cf. Section 8-3 of the Ship Labour Act.

*Sub-clause 1 (d)* provides for an extension of liability to include liability under collective wage agreements for costs relating to the crew's travel home, including maintenance, in the event of the illness or death of a close relative. This extension was taken from Gard's rule 27 d and Skuld's rule 7.6.1, and brings the liability insurance under Chapter 17 in line with the other P&I covers as far as this point is concerned.

**Clause 17–45. Travel expenses for replacement crew**

The *first sentence* establishes that the insurer must cover the necessary expenses of a replacement, and is based on the fact that a number of countries have rules concerning minimum manning and refuse to let a vessel leave a port unless these requirements are met. If the master or an officer of a vessel falls ill or dies, it may therefore be necessary to have a replacement in order for the vessel to be allowed to leave the port. The cause of death, injury or illness is irrelevant, but the illness or injury must be the primary reason for the termination of service. Only the expenses related to the outward journey are covered, but the place of departure is irrelevant. The cover includes all expenses, e.g. ticket, meals, accommodation during the journey, etc. The cover is, however, subject to the condition that the expenses are deemed “necessary”. If an acceptable replacement can be found locally, therefore, the assured does not have the right to send a replacement from elsewhere at the insurer’s expense.

The *second sentence* restricts the cover further. Only expenses for travel to the first port of call following the death, or the port where the person in question signed off, even if the replacement is in actual fact sent to a port further away, are recoverable.

**Clause 17–46. Expenses for disinfection and quarantine**

The *first sentence* deals with the cover of the costs of quarantine orders and disinfection of the vessel. By “quarantine orders” is meant orders from public authorities, and the expenses are “necessary” to the extent that they must be incurred in order to comply with the order. The reason for the order is irrelevant. It may be a current danger of infection or a general fear of infection.

The cover of necessary expenses in connection with the disinfection of vessel or crew is limited to cases of infectious diseases on board and does thus not cover extermination of insects, bugs, vermin, etc. Nor does it apply to preventive measures, unless they constitute measures to avert or minimise loss.

Under the *second sentence*, operating expenses during the stay will not be covered. Loss of time and other consequential losses will also fall outside the scope of cover.

**Clause 17–47. Limitation due to other insurance, etc.**

Sub-clause 3 (c) was amended in the 2013 Plan.

The definition in *sub-clause (a)* concerns losses which according to their nature are insurable under a hull insurance according to Part II of the Plan, or Part IV, Chapter 17, Sections 1 to 5, or other insurances for ocean-going ships in Part III of the Plan. The provision establishes a strictly complementary delimitation between the liability insurance and the above mentioned insurances. It is irrelevant whether the insurance in question has in actual fact been effected or whether it is

limited quantitatively so that the assured will not get full cover, cf. “according to their nature”. This applies both in relation to limitations which follow from the actual standard conditions, and limitations which follow from individually agreed deductions or deductibles. However, an important exception to this rule concerns collision liability, cf. below.

Furthermore, the cover provided under Plan provisions is of decisive importance. If the assured has taken out insurance on conditions which afford a cover inferior to that of the Plan’s provisions, this will accordingly not result in any extension of the scope of cover of liability.

Overlapping between hull cover and liability cover occurs, partly where the liability insurer covers damage to or loss of the assured’s effects, and partly where the hull insurance covers the assured’s liability, see further *Brækhus/Rein: Handbook of P&I Insurance*, pp. 248 *et seq.* The most frequently occurring overlapping situation concerns collision liability, where the hull insurer according to Cl. 13-1, cf. Cl. 17-16, covers liability in connection with a “collision” caused by the vessel with accessories, equipment and cargo, or tug used by the vessel. However, this cover is subject to a whole series of limitations, cf. Cl. 13-1, sub-clause 2, Cl. 17-16, sub-clause 2, and Cl. 17-17, where the liability insurer comes in (with the exception of Cl. 13-1, sub-clause 2 (a), cf. below). In addition, the liability insurer covers liability which is not covered by the rule in Cl. 13-1, cf. Cl. 17-16. Reference is made here to the Commentary on Cl. 13-1 and Cl. 17-16, and to *Brækhus/Rein* 1.c. pp. 250 *et seq.*

According to *sub-clause 1 (b), first sentence*, the liability insurer does not cover losses as mentioned in Cl. 13-1, sub-clause 2 (a), i.e. liability which arises while the vessel is engaged in towage, or which is caused by the towage, unless it is a salvage operation. The reason for this exclusion Cl. is the increase in the collision risk which arises when the insured vessel engages in towage. The *second sentence*, however, modifies this exclusion as regards liability incurred during towage of a vessel belonging to the same fishing team.

*Sub-clause 1 (c)* concerns losses as mentioned in Cl. 4-16 and contains a delimitation in relation to fire insurance, cargo insurance or other general insurance. According to Cl. 4-16, the liability insurer will in certain cases be liable for damage to the assured’s own property. However, also on this point, the liability insurer’s liability is strictly complementary to general insurance. Losses which according to their nature are insurable under the said general insurances fall outside the scope of the liability insurance. The provision means that the assured normally may not claim compensation for damage to his own cargo according to Cl. 17-35. Such damage could have been covered by cargo insurance.

*Sub-clause 2* represents an important exception to the principle that liability insurance is complementary to hull insurance. The liability insurer covers collision liability which exceeds the amount which the assured may claim under a hull insurance with a sum insured which is equivalent to

the full value of the vessel. The liability insurance here provides a complementary excess cover of the assured's collision liability.

The excess cover concerns liability in excess of “the amount which according to Cl. 13-3 is recoverable under a hull insurance with a sum insured that covers the full value of the vessel”. The “full value” of the vessel means the value (normally the market value) at the time the casualty occurs, not the insurable value in relation to the hull insurance, which is the full value of the interest at the inception of the insurance, cf. Cl. 2-2. However, the **agreed** hull value will be relevant as an element in the assessment of the real value. If the vessel is undervalued, the excess cover does not apply to the amount between the **agreed** hull value and the “full value” of the vessel.

*Sub-clause 2, second sentence*, provides a separate rule regarding collision liability for collision with the assured's own vessel, cf. Cl. 4-16. For excess collision liability for sister ships, a deduction will be made for amounts which could have been covered under insurances as mentioned in sub-clauses (a) and (c). On this point the cover is thus subsidiary also in relation to insurances mentioned in sub-clause (c).

*Sub-clause 3* makes the liability insurance partly subsidiary, partly complementary, in relation to benefits from the Norwegian National Insurance scheme, pension schemes, the Occupational Injuries Insurance and other personal insurance benefits funded by the liable employer. The provision comes in addition to the protection against liability for personal injury which the assured, and hence the liability insurer, already have under Norwegian law pursuant to Section 3-1, third sub-clause, and Section 3-7 of the Norwegian Compensatory Damages Act (NCDA), and which entails that a deduction shall be made in the claims settlement (on an exact amount basis or on a discretionary basis) for the relevant benefits, at the same time as the assured will normally not have any liability to the party who makes the payments. However, the delimitation in sub-clause 3 goes further than the rules of the NCDA.

The provision applies to any type of personal injury, regardless of who the injured party is, and therefore covers any liability for personal injury covered under Cl. 17-34. In addition, it applies to the liability for social benefits for the crew, cf. Cl. 17-44.

According to *sub-clause 3 (a)*, the cover has been made subsidiary to national insurance benefits and benefits from employee or occupational pension schemes. The deciding factor here is the actual amount that the injured party receives from the said schemes. The provision applies only to “employee or occupational” pension schemes. Private pension insurance agreements which the injured party might have therefore fall outside the scope of cover.

As regards benefits covered by insurance agreements which are mandatory under collective wage agreements and which are funded by the liable employer, the cover of liability has, however, been

made complementary, cf. *sub-clause 3 (b)*. The provision is relevant where the assured becomes liable for persons of whom he is the employer, i.e. the vessel's crew and any other employees who might be injured in connection with the running of the vessel. If the assured in his capacity of employer has neglected to take out the mandatory insurance, defaulted on payments of premium, etc., and therefore does not obtain a deduction for these benefits in accordance with Section 3-1, third sub-clause, of the NCDA, the assured must cover this part of the liability himself.

*Sub-clause 3 (c)* makes the cover of liability complementary to the occupational injury insurance. The 1996 Plan referred to the Norwegian Occupational Injuries Insurance Act of 16 June 1989 no. 65. The Nordic 2013 Plan refers to the relevant industrial injuries insurance legislation instead.

According to Section 3 of the Norwegian Occupational Injury Insurance Act, an employer is obliged to take out insurance to cover industrial injuries and industrial diseases for his employees. Losses which according to their nature are covered under this insurance are removed from the liability cover. This applies both in relation to the assured's own employees, to persons whom the assured uses in the service of the vessel, but of whom the assured is not an employer, and for total outsiders, e.g. an injured party on an oncoming vessel in connection with a collision. As regards the industrial injuries insurance, the assured therefore bears the risk that other employers have in actual fact fulfilled their obligation to take out insurance. In practice, the injury will be covered by a pool arrangement if no industrial injuries insurance has been taken out. In view of the fact that the insurance companies involved have recourse against both the employer and the party causing the injury (the assured), cf. Sections 7 and 8 of the Norwegian Occupational Injury Insurance Act, cover under the assured's liability insurance may give the industrial injuries insurance company a motive for a recourse claim against him. However, such injuries should remain with the employer or with the industrial injuries insurance companies jointly.

### **Clause 17–48. Safety regulations/Ref. Clause 3–22 and Clause 3–25**

This rule is patterned on the limitation of liability rule in *inter alia* Gard's Conditions, but in the form of a safety regulation. The assured's duty to incorporate disclaimers of liability is now tied directly to his right to exclusion of liability and limitations of liability according to current rules of law.

By "current rules of law" is meant the rules in force in the State where the liability arises, as well as relevant international conventions. As far as Norway is concerned, the rules are today first and foremost contained in Sections 171 *et seq.* of the Norwegian Maritime Code.

In view of the fact that this is a special safety regulation, the loss of cover is subject to the condition that the assured or anyone who on his behalf is obliged to comply with the regulation, has been

negligent, and that there is a causal connection between the negligence and the liability, cf. Cl. 3-25, sub-clause 2.

### **Clause 17–49. Assured's fault**

*Sub-clause 1* regulates the causing of an event insured against by a negligent act or omission.

The provision supplements and modifies Cl. 3-32 *et seq.* It follows from Cl. 3-32 that the insurer does not cover liability which the assured has intentionally caused, whereas in the event of gross negligence a reduction may be made under Cl. 3-33. However, under Cl. 17-49, the rules have been made stricter: the insurer is completely free from liability if the assured has brought about the loss by gross negligence, or on the basis of a negligent understanding of rules of law or contractual terms.

The reason is the very comprehensive liability cover, *inter alia* in view of the fact that the insurance covers the assured's contractual liability.

The deciding factor according to the first alternative is that the loss was “brought about” by the assured “by a grossly negligent act or omission”. The assessment of the negligence shall therefore be tied to the act or omission, and not to the consequent damage. The gross negligence is not required to have been deliberate.

The second alternative is a special rule relating to mistakes of law in connection with the performance of a contract. In such cases the criterion gross negligence is often difficult to apply. In a business context the assured will often have to take chances, and he may not automatically be deemed to have been grossly negligent if he chooses a solution which may lead to liability. He makes his choice between the various possibilities based on an evaluation as to what will give him the best result. If he is lucky, the profit is his. If he is unlucky, he should not be entitled to transfer the loss to the liability insurer. The rule acquires special significance in relation to so-called “liberty” clauses in charterparties, i.e. deviation, ice, war or strike clauses.

Conception of law is “wrong” when it is in contravention of clear law or practice. That the understanding is “uncertain” means that it is disputed, so that one must be prepared that the courts resolve the issue in the disfavour of the assured. It is not decisive whether arguments may also be submitted in favour of the assured.

*Sub-clause 2* lays down special rules for an assured who is master of the vessel (the master owner) or a member of the crew. The provision was patterned on Cl. 3-25, sub-clause 1, without this entailing any major changes on points of substance. Reference is furthermore made to the Commentary on Cl. 3-25, sub-clause 1, second sentence.

**Clause 17–50. The insurer’s rights in the event of liability**

By the term “the liability amount” is meant the lowest of the injured party’s claim, the limitation amount under the law and the insurer’s maximum liability under Cl. 17-54.

*Sub-clause 2* refers to the mandatory provision in Section 7-8 of the Norwegian Insurance Contracts Act. The fact that the injured party does not otherwise have a direct claim against the insurer appears from Cl. 4-17, sub-clause 1.

**Clause 17–51. Liability for loss that occurred during other transport, etc.**

*Sub-clause (a)* refers to Sections 254 and 274 of the Norwegian Maritime Code, while *sub-clause (b)* refers to Section 285 of the same Act. The provision must also be seen in conjunction with the basic principle in Cl. 17-33 to the effect that the liability insurer only covers loss that occurred in direct connection with the operation of the insured vessel.

Sub-clause (a) excludes liability for cargo arising during the period prior to loading or after discharging or during transport to and from the vessel covered by the insurance when the cargo is not in the carrier’s custody. If the cargo is in the carrier’s custody, e.g. where it is carried out to the vessel in the carrier’s boats, the assured will be liable under Section 274 of the Norwegian Maritime Code, and the liability must normally be deemed to have occurred in direct connection with the operation of the vessel. For passengers a corresponding distinction shall apply according to *sub-clause (d)*.

It follows from sub-clause (b) and *sub-clause (c)* that the assured’s liability to passengers and cargo is not covered while passengers or cargo are in transit with or in the custody of another carrier. As far as the cargo is concerned, it follows from Section 285, second sub-clause, of the Norwegian Maritime Code that the assured can in such cases normally disclaim liability. The same follows from Section 431, subsection 3, of the Norwegian Maritime Code as regards passenger transport.

**Clause 17–52. Limitation of liability for fishing vessels**

The provision refers to the “knock-for-knock” principle which is mentioned in the Commentary on Cl. 17-9 and Cl. 17-16. When several vessels are fishing together in the same fishing team or as pair trawlers, damage to the assured’s own and other vessels with accessories and catch is foreseeable. It is therefore more expedient for the individual owner to cover damage to his own object, possibly via his hull insurance, than having a claims settlement in connection with the liability insurance.

**Clause 17–53. Limitation of the insurer’s liability for measures to avert or minimise loss**

Basically the liability insurer covers costs of measures to avert or minimise loss according to the rules in Cl. 4-7 *et seq.* Provided that the conditions are met, the insurer will be fully liable regardless of the

nature of the loss, damage or expenses in question. As regards liability insurance, however, Cl. 17-53 contains a number of restrictions to this principle. The provision must be regarded as a continuation of the restrictions which follow from Cl. 4-12 concerning particular measures to avert or minimise loss. This means that it cannot be interpreted antithetically, but must be supplemented with Cl. 4-12.

*Sub-clause (a)* is based on the point of view that proper loading and stowage is an operating expense which the assured shall pay himself. This also applies if the work is initially done so inadequately that it has to be done over again. The vessel may be “too heavily loaded” without being overloaded in the ordinary sense.

*Sub-clause (b)* excludes costs incurred in connection with measures which were or could have been taken by the vessel’s crew or with the proper use of the vessel or its equipment. Typical costs here are wages and overtime of the crew and bunkers consumption. If such costs were to be covered as costs of measures to avert or minimise loss in all cases where the measures must be regarded as unforeseeable or extraordinary, cf. Cl. 4-12, this could result in an unnecessarily complicated settlement.

The distinction between operating costs and costs of measures to avert or minimise loss is often difficult to make. Certain costs are to be regarded as operating costs even if they are incurred in connection with measures which, seen in isolation, are unforeseeable or extraordinary, e.g. a minor deviation to avoid a storm centre. It is therefore important to have an inflexible rule in order to reach a conclusion. The provision entails that costs as mentioned in sub-clause (b) are not covered, even if the measures are of an extraordinary nature or are qualified as unforeseeable. Wages and bunkers in connection with a port of refuge call in order to recondition the cargo shall therefore not be covered. As regards the use of the vessel, it is, however, a condition that it is “justifiable”. If it is necessary to force the engine so that there is a deliberate risk of damaging it, the costs of potential damage shall not be covered. Similar considerations apply to the exclusion in *sub-clause (d)*.

*Sub-clause (c)* entails that the liability insurer will not cover as a cost of measures to avert or minimise loss the liability the assured may incur if such a measure delays the vessel.

#### **Clause 17–54. The sum insured as a limit to the insurer’s liability**

The limitation also applies if the injured party files the claim directly against the insurer. If the assured, according to current rules of law, is entitled to limit his liability to the injured party, the insurer is obviously also entitled to invoke this limitation *vis-à-vis* the injured party.

The sum insured applies only to the actual liability for compensation associated with the casualty. If costs of measures to avert or minimise loss have also been incurred, special rules shall apply in accordance with Cl. 4-18, sub-clause 1, second and third sentences.

*Sub-clause 2* specifies that payments under Cl. 4-19 are made in addition to the maximum amount of the **insurance contract**.

### **Clause 17–55. Deductible**

In accordance with the other deductible provisions of the Plan, the actual amount of deductible has been removed from the provision.

## **Section 7 Loss-of-hire insurance for fishing vessels**

### **General comments**

Until a few years ago, insurers did not ordinarily provide loss-of-hire insurance for fishing vessels. This has changed recently since parts of the fleet now fish all year long and the units have become larger and more costly. Thus, an interruption of operations can have significant financial consequences for the assured. This is particularly the case for the seagoing fishing fleet where the largest, most costly units are to be found.

### **Clause 17–56. Relationship to Chapter 16**

Loss of time for fishing vessels is covered on the basis of Chapter 16, subject to the changes that follow from Cl. 17-57 to Cl. 17-61. These special rules are intended to apply only to fishing vessels and not to smaller freight vessels that are also insured on the basis of Chapter 17, Sections 1 – 6. Such freight vessels can obtain loss-of-hire insurance on the basis of Chapter 16 subject to any changes that might be laid down in the individual **insurance contract**.

### **Clause 17–57. Liability of the insurer/applies instead of Clause 16–1**

This Clause corresponds to Cl. 16-1, but replaces Cl. 16-1 in its entirety because it is the provisions regarding hull insurance in Chapter 17, Section 2, that determine whether compensation is payable under the loss-of-hire cover. Sub-clause 2 of Cl. 16-1 has not been incorporated and will therefore not apply to fishing vessels. The reason for this is that these provisions are not presumed to be of any practical significance for fishing vessels.

### **Clause 17–58. Total loss/applies instead of Clause 16–2**

This Clause corresponds to Cl. 16-2, but is subject to the change that follows from Cl. 17-11 to the effect that the threshold for condemnation has been set at 90 %.

**Clause 17–59. Calculation of compensation for fishing vessels/Ref. Clause 16–3**

When calculating compensation for loss of time for fishing vessels, Cl. 16-3 will apply in full in addition to Cl. 17-59, but Cl. 17-59 contains important limitations on the extent of the compensation that can be claimed under the loss-of-hire insurance.

The rationale is that calculating compensation under loss-of-hire insurances for fishing vessels poses special challenges and difficulties compared with ordinary merchant vessels, whether they be seagoing or have a limited trading route along the coast, because fishing vessels are subject to official control of fishing operations. Official control may consist of time limitations on the fishing of certain fish species, quotas for individual fishing vessels and overall seasonal or annual catch quotas. Seagoing fishing vessels will, nevertheless, have possibilities of obtaining a licence or permit to switch from one type of fishing to another in different areas and it will thereby be possible to use the vessel for income-generating fishing operations throughout or during large parts of the year.

Fishing is strictly regulated in almost all European countries as well as internationally through cooperation under the International Council for the Exploration of the Sea (ICES). Legal authority for regulating fishing in Norway is provided by the Act of 6 June 2008 on the Management of Wild Living Marine Resources (Marine Resources Act) (*havressursloven*). The Act empowers the authorities to establish national quotas, group quotas, district quotas and quotas for individual fishing vessels. Permits for individual fishing boat owners to engage in fishing are governed by the Act of 26 March 1999 No. 15 relating to the right to participate in fishing and hunting (*deltakerloven*). Quotas for the different types of fish are fixed for one year at a time by the fishery authorities pursuant to the Marine Resources Act.

Cl. 17-59, *sub-clause 1*, therefore provides very generally that the insurance does not cover losses resulting from the vessel being deprived of income due to regulatory measures introduced by the authorities or from the authorities having stopped fishing operations. The wording “authorities” includes national authorities, authorities in other countries and supranational authorities like the EU. This provision is a logical consequence of the principle expressed in the Commentary on Cl. 16-3 with reference to the English judgment “CAPRICORN”, which determined that loss of time that occurred during a period when the vessel would have been deprived of income regardless of the damage is not recoverable.

Therefore, the question of whether there is a recoverable loss cannot be considered solely on the basis of whether the vessel has been unable to operate regularly due to damage. Consideration must also be given to whether the vessel has been prevented from fishing its full allocated quota of a specific species of fish. If, once the vessel is back in operation after an interruption due to damage, it is able to fish its full allocated quota, the assured has suffered no loss and is thus not entitled to compensation.

This can be illustrated by the following examples:

(1) A purse seiner licensed to fish mackerel suffers damage to machinery on 1 October, as a result of which the vessel is unable to operate until 1 December of the same year. Mackerel is normally fished in the period September-November. Prior to the interruption, the vessel had fished two-thirds of its quota. When it began to operate again on 1 December, the assured was unable to fish the rest of his quota since the fish were no longer present in the Norwegian zone. In this case, the assured has in fact been deprived of the possibility of fishing during the period 1 October to 1 December. In principle, however, the loss will be limited to the time the vessel would need to fish the remainder of its mackerel quota. On the other hand, the vessel could conceivably lose income that it might have earned from alternative fishing operations, such as herring and autumn mackerel fishing.

(2) A fishing vessel is licensed to trawl for Norwegian spring spawning (NSS) herring. The vessel began fishing for herring on 1 February, but due to grounding on 20 February spent 30 days in a yard for repairs. When the grounding occurred, the vessel had fished 30 % of its quota of NSS herring. After repairs of the vessel were completed, it continued to fish for blue whiting, for which it also had a quota. In the autumn of the same year, the vessel resumed fishing for NSS herring and fished its entire quota before the end of the year. The assured was able to fish the remainder of his quota of NSS herring before the end of the calendar year, but missed the opportunity to fish for blue whiting during the period in which repairs were carried out and is thus entitled to compensation for this loss of time, unless the vessel had also fished its full blue whiting quota.

(3) A trawler has a quota to fish sand eel (tobis) in the North Sea. The fishing season starts on 1 May. On that day a fire breaks out on board the boat, which spends 30 days in a shipyard to repair the damage. On 25 May the authorities stop the fishing because the proportion of stunted fish is too high. Fishing is not re-opened that season. The vessel has had a time loss of 30 days, but due to the moratorium on fishing, the vessel would only have been able to fish for 25 days. The recoverable loss of time is therefore limited to 25 days. If, on the other hand, the vessel had had the right to fish other species for which the authorities had not halted fishing activities, the number of days of indemnity is not reduced.

If the assured leases another vessel to fish his full quota while the insured vessel is deprived of income, the costs of such leasing must be recoverable under Cl. 16-11.

Cl. 17-59, *sub-clause 2, second sentence*, provides that quotas which are not fished in full during the quota year due to damage to the vessel, cf. Cl. 17-57, and which the authorities allow to be transferred to a new quota year, are to be regarded as quotas fished in the original quota year if the quota is fished in the new quota year. This provision has been included because in some cases the fishery authorities

may allow quotas that are not fished in full in the quota year to be credited to the quota fixed for the following year. This can apply to both group quotas and vessel quotas. The legal basis for such “transfer” is provided by the individual regulations governing the fishing activities in question, which are laid down pursuant to Cl. 11 of the Marine Resources Act. If, despite the damage, the assured is able to fish his full quota for one year in the course of two quota years, he will not have suffered any loss that is recoverable under the loss-of-hire insurance. However, this is conditional on the displacement in time of the fishing activities not having negative consequences for the assured’s possibility of fishing his full quota for the new quota year or in the form of a reduced quota as a result of the transfer.

Once the fixed quota for individual vessels or groups has been fished in full, the fishery authorities may grant an extra quota. As a rule, this is done if the fishery authorities see that a great deal of the total quota for individual species of fish remains unfished in the quota year. When the total quota has been fished in full, fishing activities are stopped. If the assured is allocated an extra quota of this nature, it may be taken into account in the calculation of loss. However, such extra quotas may raise difficult issues in practice that must be resolved on a case-by-case basis. If the assured has not been able to fish his full ordinary quota on account of the damage, but would in any event have been allocated an extra quota, he will have suffered a loss. If the assured received the extra quota because he was unable to fish his full ordinary quota, the extra quota could be seen as compensation for the loss of all or part of his ordinary quota. Quotas which the vessel would obviously not have managed to fish are not recoverable. Situations where the vessel would obviously not have managed to fish its quota may arise as a result of poor operational decisions, the unavailability of fish or the fact that extra quotas are allocated so late that they cannot be fished in the quota year or the following quota year in cases where quotas are allowed to be transferred from one year to the next.

Under *sub-clause 2, second sentence*, of the provision, the rule set out in the first sentence, to the effect that quotas fished in full in the new quota year are, in certain cases, to be regarded as having been fished in full in the original quota year, applies correspondingly to quotas transferred by the vessel to other vessels in the quota year. The rationale for this expansion of cover is that shipowners may transfer all or parts of their quota to other vessels in accordance with rules laid down by the authorities. These quotas may be used both in the event of a casualty and in connection with the vessel’s ordinary operations, and consequently will limit the shipowner’s loss.

Due to the quota rules, *sub-clause 3* contains a special rule in relation to the general rule in Cl. 5-2 regarding when the claims adjustment is to be issued. Whether or not the vessel has managed to fish its full allocated quota is not ascertained until the end of a quota year. This means that the insurer will not be able to assess whether the assured has suffered a real loss until the end of the year. The duty to issue the claims adjustment has therefore been deferred to as soon as possible after the end of the

quota year. The same applies when quotas are transferred to a new quota year. In such case, the duty to issue the claims adjustment arises as soon as possible after the end of the new quota year.

Under Cl. 5-6, compensation thus falls due for payment six weeks thereafter. This applies even if the agreed insurance period has expired at an earlier date. This special rule will have relevance for the point in time when interest on overdue payments begins to accrue, cf. Cl. 5-4, last sub-clause. For loss-of-hire compensation, however, interest under Cl. 5-4 will accrue as provided in Cl. 5-4, sub-clause 1, third sentence, from one month after the end of the period for which the loss-of-hire insurer is liable, which will normally be one month after repairs of the vessel were completed, cf. Cl. 16-13. The expiry of the quota year will be of no relevance in this connection. If the insurer wishes to avoid paying interest under Cl. 5-4, he must make a payment on account under Cl. 5-7 in the usual manner.

### **Clause 17–60. The daily amount for fishing vessels/applies instead of Clause 16–5**

This Clause corresponds to Cl. 16-5, but has been rewritten because fishing vessels do not normally have freight contracts and freight rates, but have earnings from fish that are delivered to a fish landing site. Ordinarily, there is no guaranteed price for fish delivered to a fish landing site, and consequently earnings may vary depending on the price levels at any given time. The price level may therefore change during the period before and after a loss of time.

In the case of an open **insurance contract**, the daily amount fixed in the agreement will serve as a sum insured per day. The sum insured multiplied by the number of days of indemnity will constitute the maximum limit for compensation and will form the basis for the calculation of premium.

The daily amount that is recoverable under an open **insurance contract** must be calculated on the basis of the average earnings of comparable vessels during the period in which the loss of time occurred. Variations in price during this period are to be taken into account when calculating averages. As a result of this method of calculation, the assured cannot invoke a right to higher compensation on account of the difference between the prices when the damage occurred and the prices when the vessel was again able to resume fishing.

Any expenses saved or expenses that ought to have been saved as a result of the vessel being unable to operate must be deducted from the earnings.

### **Clause 17–61. *Agreed* daily amount for fishing vessels/ applies instead of Clause 16–6**

The provision establishes that a daily amount agreed in the **insurance contract** is to be construed as the sum insured per day and the insurer's maximum liability per day, unless it is clearly evident that the daily amount is to be regarded as an **agreed** amount. Under this approach, the presumption for an

**agreed** daily amount in Cl. 16-6 has been reversed. The provision is necessary because it is not practical, on account of the authorities' regulation of fishing activities, to provide cover based on an **agreed** daily amount. Such cover should only be provided in cases where the earnings from fishing activities are reasonably stable throughout most of the year.

If **the parties have agreed on the** daily amount, the insurer may only set aside the daily amount if it can be proven that the person effecting the insurance has given “misleading information about characteristics of the subject-matter insured that are relevant for the **agreement**”, cf. Cl. 2-3.

Even if the daily amount is **agreed**, the limitations on compensation prescribed in Cl. 17-59 will apply.

## Chapter 18

### Insurance of mobile offshore units (MOUs)

Wherever used in the Clauses and these Commentaries, “MOU” includes all objects listed under Cl. 18-2.

#### Overview

**This Chapter was substantially amended in the 2013 Plan. In the 2016 Version a new Section 6 on construction risks was added, and Section 5 on war risks was expanded by incorporating all clauses from Chapter 15, amended as appropriate to fit war risks insurance for MOUs. In the 2016 Version, Cl. 18-1 was also amended by adding a new sub-clause 2 to letter (b) and a new no. (3) to letter (e) necessitating amendment also of sub-clause 2 of letter (e). Also letter (h) of Cl. 18-1 was amended in the 2016 Version.**

**By incorporating Chapters 10 – 14 and Chapter 16 in 2013 and in 2016 also Chapter 15 and adding a new Section 6 on construction risks, the purpose to let Chapter 18 provide all relevant clauses on each type of insurance was completed. There are no longer any cross references to any other parts of the Plan except to Part One, which according to the express provision of Cl. 18-1 also constitutes the “background law” for insurance of MOUs unless specifically amended by Cl. 18-1. This applies also for the new Section 6 on construction risks.**

## Section 1

### General rules relating to the scope of the insurance

#### Clause 18–1. Scope of application and applicable rules

**This provision was amended in 2016.**

The *first sentence* establishes that the rules in Part One shall apply unless specifically amended under this Clause. It is no longer deemed necessary to state in cl. 18-1 that Chapter 18 only applies to the extent it is set out in the **insurance contract**. The 1996 Commentary to the previous Cl. 18-1 stated that “there is no clear distinction between ordinary ships that are insured under the general hull insurance conditions of the Plan, Chapters 10 to 13, and offshore structures that are insured in accordance with Chapter 18”. Developments since 1996 have demonstrated that insurance of conventional trading and passenger vessels is a complete different risk from insurance of MOUs. The insurance market is today very much aware of the different risks involved and will know when they are insuring MOUs which appropriately should be covered on the basis of Chapter 18. If the parties should have forgotten to expressly incorporate Chapter 18 in an insurance for MOUs covered on the basis of the Plan, the presumption must be that the insurance is intended to be on the basis of Chapter 18 unless it is apparent from the wording or implied terms that the parties did not so intend.

MOUs are not defined in the Plan but in practice, however, Chapter 18 will first and foremost be used for vessels and other mobile installations that are used for the exploration for, exploitation or storage of natural resources offshore, or in support of such activity. The designation of the insurance as an insurance of “mobile offshore units” means that it accordingly covers both various forms of vessels operating on the continental shelf and various forms of mobile units. It is irrelevant whether the unit is designed like a ship and is a ship (e.g. a drilling vessel or a Floating Production Storage and Offloading vessel “FPSO” or a Floating Production Storage vessel “FPS”), or if it falls outside the normal concept of a ship, e.g. jack-up or semi-submersible units.

The heading of Chapter 18 contains the word “mobile”. This means Chapter 18 is not intended to be used for fixed or stationary installations, e.g. platforms resting on poles rammed into the seabed. Other types of stationary facilities, e.g. pipelines are not intended to be insured on the basis of Chapter 18. However, Chapter 18 is not based on any such absolute distinction between mobile and stationary facilities or structures. The stationary platforms and structures which were the solutions for offshore field developments up until mid 1990s are no longer the chosen concept for new developments, particularly in frontier areas where there is no existing infrastructure in place, and when the field is in deep water. Newer fields have therefore been developed with floating MOUs connected to various equipment placed on the seabed. This underwater equipment may also belong to the owner of the MOU and is then normally comprised by the insurance of the MOU. Chapter 18 has been amended as

appropriate to adapt to applying also to such underwater equipment belonging to the MOU. Traditional fixed installations are for the most part owned by the licence owners and insured under their comprehensive energy insurance arrangements. By fixed installations are thus meant steeljacket or concrete gravity base installations which are placed in the field to be used throughout the life of the field. However, there is no point in drawing a sharp distinction between a mobile and a fixed installation. The parties must evaluate together which insurance conditions that are best suited for insuring their interests.

*Cl. 18-1 (a) Insurable value/Sum insured/Ref. Cl. 2-2 and Cl. 2-3*

**In previous versions, Cl. 18-1, letter (a), sub-clause 1, stated that the sum or sums insured shall be deemed to constitute the assessed insurable value(s) unless circumstances indicated otherwise. This provision was in 2016 made general and moved to Cl. 2-2, sub-clause 2, and thus deleted in Cl. 18-1 letter (a). As a consequence, the remaining sub-clauses were renumbered.**

Cl. 18-1 (a) sub-clause 1 now opens for the parties to agree separate sums insured for the MOU and disconnectable equipment. The reason is that owners of certain MOUs, in particular FPSOs, may also own subsea equipment which is disconnectable from the unit, and left behind on the offshore field location when the MOU is temporarily away from the location. Such equipment, consisting of flexible risers, umbilicals, mooring lines and a buoy, can often represent significant values. When the MOU and such subsea equipment are disconnected and the MOU is away from the field they are no longer exposed to common risks of loss or damage as would be the case when together at the field location. A serious loss to the MOU or the subsea equipment whilst disconnected may render the damaged unit/equipment condemnable if only the value of the unit or the subsea equipment is taken into consideration and not the combined values.

Cl. 18-1 (a) sub-clause 2 provides that when the parties have agreed to insure with separate values, the insurance operates as separate insurances for the MOU and the disconnectable equipment respectively.

Cl. 18-1 (a) sub-clause 3 provides that when the MOU is within the field at which it is to operate, the MOU and its equipment are considered one insured object with the combined scheduled values as the sums insured.

*Cl. 18-1 (b) Perils insured against/Ref. Cl. 2-8 and Cl. 2-9*

**Cl. 18-1, letter (b), sub-clause 2, was added in 2016.**

**Cl. 18-1, letter (b), sub-clause 1**, contains a limitation in the cover of perils and must be seen in conjunction with the rules relating to perils insured in Cl. 2-8 to Cl. 2-10. The Plan has two main types of perils: “marine perils”, cf. Cl. 2-8, and “war perils”, cf. Cl. 2-9. The rules in Chapter 18 are applicable to insurance against marine perils, as well as to insurance against war perils. If no special

agreement concerning perils insured against has been made, under Cl. 2-10 the insurance will only cover “marine perils”. There is obviously nothing to prevent one and the same **insurance contract** covering marine perils as well as war perils.

An insurance “against marine perils” **shall be** an “all risk” insurance **from the outset**: The insurance covers all perils to which the interest is exposed, unless specific exclusions are stated. The exclusions from marine perils appear from Cl. 2-8 (a) to (d). **The exclusion** in Cl. 18-1 (b) comes as an addition to these exclusions.

By contrast, an insurance against war perils **only covers “named perils”, i.e. the war risks insurance** only **covers** the perils “named” in Cl. 2-9. Cl. 18-1, letter (b), **is a relevant exclusion also under a war risks insurance if the blow-out and thus the need for drilling a relief well should have its root cause in a “named” war peril as defined in Cl. 2-9.**

The provision in Cl. 18-1, letter (b), **sub-clause 1**, must also be seen in conjunction with the limitations of the perils insured against which follow from Section 2 of Chapter 18 on H&M insurance, in particular the exclusion for loss due to ordinary use in Cl. 18-4 (cf. Cl. 10-3), and the exclusions for damage due to inadequate maintenance in Cl. 18-19 (cf. Cl. 12-3), and error in design, etc., in Cl. 18-20 (cf. Cl. 12-4).

The background for the provision is the risk of blow-outs, i.e. uncontrolled ejecting of drilling fluid through the drilling hole and into the sea or the air, followed by uncontrolled emission of oil, gas or fluid from the well and into the sea or the air caused by a pressure from the underground. Such blow-out may be followed by ignition of the well fluids and explosion and fire. Blow-outs will often need to be stopped by the drilling of a relief well. It is perfectly conceivable that an insured drilling unit may be requested to drill one or more such wells in order to assist another unit/installation, and it may, depending on the prevailing circumstances, be natural, or even necessary, for such a request to be complied with. Commercial vessels in distress threatening life, environment and property requiring emergency salvage or rescue operations are a natural parallel. For the insured unit to embark on a salvage operation will very often represent a relevant alteration of the risk under the hull insurance, cf. Cl. 3-8 and Cl. 3-9. However, according to Cl. 3-12, sub-clause 2, the insurer automatically covers the added risk involved in “measures taken for the purpose of saving human life” or by “the insured ship salvaging or attempting to salvage ships or goods during the voyage”. A salvage operation which consists in the drilling of a relief well is, however, considered a high risk operation. The risk to the salvaging unit is not comparable to a salvage operation in commercial shipping. It is first and foremost the licensees'/operator's interests which are at stake: the risk of the oil well being destroyed and the risk of extensive pollution liability, etc. The consideration of mutuality which may be said to be the background for Cl. 3-12, sub-clause 2, in ordinary hull insurance is missing here. The provision therefore excludes this special “salvage risk” from the perils insured against. This obviously does not

preclude the possibility of having the risk covered under a separate agreement, possibly subject to an additional premium.

The exclusion for the drilling of a relief well must apply, even if the drilling is ordered by the authorities. According to Cl. 2-8 (b), third sentence, “measures taken by a State power for the purpose of averting or limiting damage” are admittedly covered by the insurance, provided the risk of such damage is caused by a peril covered by the insurance against marine perils. However, the provision in sub-clause (b) must, as a special Clause, prevail over the general provision in Cl. 2-8. It is therefore irrelevant for the insurer’s liability whether it is the operator who decides that a relief well shall be drilled, or whether the operator is acting on the instructions of the authorities.

Earthquake and volcanic eruption are not excluded perils.

**Cl. 18-1, letter (b), sub-clause 2, makes it clear that construction risks insurances pursuant to Section 6 also cover strike and lock-out in the same way as construction risks covered pursuant to Chapter 19, cf. Cl. 19-1, see further the Commentary to Cl. 19-1.**

*Cl. 18-1 (c) Alteration of the risk/Ref. Cl. 3-8*

Storage and use of explosives or radioactive material is a perfectly normal occurrence during operations on the Continental Shelf and therefore constitutes a foreseeable risk, which the insurer can calculate when entering into the contract.

Cl. 2-8 relating to marine perils contains no limitation concerning damage resulting from the storage or use of explosives. Explosion, fire and other damage resulting from such storage or use must therefore be covered in the normal way, unless the assured has breached any of the obligations in Chapter 3. However, Cl. 2-8 (d) nos. 1 to 4 contain general exclusions for various types of nuclear-related risks. If the storage or use of radioactive material causes radiation, radioactive contamination or any other nuclear-related risk as specified in these provisions, resulting loss or damage will therefore fall outside the scope of cover. The same applies to insurance against war risks, see Cl. 2-9, sub-clause 2 (b), nos. 1 - 4.

*Cl. 18-1 (d). Loss of the main class/Ref. Cl. 3-14*

This sub-clause (d) corresponds to Cl. 3-14 with some amendments to adapt to normal modus of operations for MOU. The heading and wording of Cl. 3-14 was amended in the 2013 Plan emphasising that Cl. 3-14 applies only to loss of the main class as opposed to loss of optional additional class notations. The wording of sub-clause (d) is amended in the same way. See further the Commentary to Cl. 3-14.

Sub-clause (d) expressly states that the insurance does not terminate until the on-going operation can be terminated in accordance with applicable regulations and the field operator's consent and arrives at the nearest safe port in accordance with the insurer's instructions. Thus it is safeguarded that the assured is protected by the insurance until he safely can terminate the on-going operation and bring the MOU to a for the MOU safe port as instructed by the insurer. If the class can be restored while the MOU is on the field or off-shore, there should not normally be any need for the insurer to require the assured to bring the MOU into port. But if the insurer all the same should require surveying the MOU in port, the insurance will continue until the MOU has arrived at the port designated by the insurer.

*Cl. 18-1 (e). Safety regulations/Ref. Cl. 3-22 and Cl. 3-25*

**A new no. (3) was added to sub-clause 1 in 2016. This is relevant for construction risks insurance covered pursuant to Section 6. A corresponding relevant amendment to sub-clause 2 was made.**

*Sub-clause 1 no. (1)* provides that the well to which the MOU is connected shall be equipped with blow-out preventer(s) (BOP) or other well pressure control equipment which are wellhead safety devices used to prevent pressure build-up in the well from extending up to the MOU when the primary barriers in the well fail to contain the formation pressure under control and thus prevent surface blow-outs. As mentioned in the Commentary to Cl. 18-4, a blow-out may occur when the drilling reaches a subsurface formation which contains oil, gas or other fluid under higher pressure than the hydrostatic pressure of the drilling fluid in the well. The formation fluids will then flow into the well bore and mix with the drilling fluid and increase the pressure in the well and push up through the hole and via the MOU and into the environment, unless it is stopped by a blow-out preventer. A surface blowout will also involve the risk that the oil or gas may ignite with extensive fire and explosion damage as a result. Some types of loss resulting from such a blow-out will, according to their nature, fall outside the scope of cover under Chapter 18, *inter alia* liability for personal injury and liabilities in connection with oil spilled into the sea. The MOU itself may be damaged or become a total loss as a result of a surface blow-out. Losses of this nature are normally covered under Chapter 18, subject to the exceptions which follow from sub-clause (f), cf. also sub-clause (b). It is therefore of the utmost importance for the insurers that all reasonable measures are taken in order to prevent a blow-out. Most important of all in this connection is the use of blow-out preventers.

Offshore petroleum activities are subject to extensive safety regimes through public authorities regulations stipulate that drilling, well work-over and production operations shall be carried out in a safe manner.

The requirement is that the well, to which the MOU is connected, shall be equipped with pressure control device on the top of the well when this is actually feasible. The deciding factor as to when the wellhead safety device shall be installed must therefore be what follows from "standard practice". The same requirement applies to the procedures for the installation, the number and the testing of the

device. “Standard practice” means the practice that is common within the offshore industry for the type of well drilling, work-over or production operation and shall as a minimum be in accordance with the requirements of the relevant regulatory authority. As regards the reference to “standard issue” it means that the wellhead safety device shall be of the type which is common for the type of well and operation with the adequate pressure rating as the actual or expected well pressure will require.

*Sub-clause 1 no. (2)* contains safety regulations in respect of moves of MOUs. Prior to move, the assured must prepare a move plan, which shall be approved by the claims leader. If an operation manual exists which has been approved by the classification society or regulatory or flag state authorities, it may be used as a basis for the move plan. If no such manual exists, the insurer is entitled to demand that technical expertise be brought in to evaluate the move plan and physical arrangements associated with the move.

The move plan shall be adhered to during the move and serves as a special safety regulation under Cl. 3-25, sub-clause 2, cf. sub-clause (b), second sentence.

Sub-clause **1 no. 2 (a)** limits the requirement for a separate move plan to such MOUs that do not move by own propulsion but require assistance of other vessels, tugs, heavy-lift vessels and the like to move. The market practice has developed that for shorter moves within a confined area which are routinely carried out specific move plans do not have to be submitted to the claims leader for approval and in such cases an agreed distance of move is agreed as between insurers and the assured. A panel of approved marine warranty surveyors to review move plans and give recommendations are often written into the **insurance contracts**.

Sub-clause **1 no. 2 (b)** is new and in response to the development of new practice in the deep water drilling industry to move the MOU over shorter distances without pulling up the whole length of the riser string and the BOP before moving the MOU. Although the newer MOUs are specially equipped to move with riser and BOP hanging under the MOU, insurers consider the operation may represent an increased risk and require such moves to be specially reviewed and approved. Shorter moves between wells within the same offshore field, often within the industry referred to as “well-hopping” which are done routinely, do not require specific move plans to be prepared for each move provided, however, that the MOU is technically equipped to do such move with riser and BOP suspended. Insurers’ main concern about such operations, in addition to the MOU’s capability to move with the riser and BOP suspended, is the increased fatigue stresses that the riser string is exposed to during such moves. The move plan shall in particular contain due consideration of the remaining fatigue life in the riser system before the move, the stresses during the move and remaining fatigue life after the move. Another concern is the risk of grounding or striking seabed infrastructure of any kind, for which the sailing route shall be part of the move plan with minimum clearances to be defined and approved by claims leader, an appointed warranty surveyor or other technical expert approved by the claims leader.

If the move entails a change of the area of operation, both parties may demand an adjustment of the premium according to Cl. 18-1, sub-clause (h).

***Sub-clause 1 no. (3) is applicable for construction risks covered pursuant to Section 6. Under this provision the assured is obliged to appoint a surveyor, approved by the claims leader, to review the project plan and procedures for moves and lifts and, when applicable, offshore installation of components or modules. The surveyor shall draw up an initial risk assessment on the basis of his initial review. The claims leader is granted the authority to approve the surveyor on behalf of all participating co-insurers. On the basis of the surveyor's initial risk assessment, the claims leader is authorised to approve the further scope of survey that is deemed required from the insurers' point of view to identify the risks involved in the various phases of and operations during the project. If the project in the view of the claims leader does not require any such survey, the claims leader may, on behalf of all participating co-insurers, waive the right to demand such survey.***

**The claims leader may for certain operations, subject to the further scope of survey, demand that the surveyor shall issue a certificate of approval when he is satisfied with the preparations for the particular operation, e.g. a heavy lift involving risk for substantial damage if something goes wrong. If the assured commences the operation in question before the certificate of approval is issued, he will be in breach of the safety regulation.**

***Sub-clause 2 of Cl. 18-1, letter (e), provides that the regulations in sub-clause 1 no. (3) shall be regarded as safety regulations. With regard to no. (3), as opposed to nos. (1) and (2), it is expressly referred to Cl. 3-25, sub-clause 1. This is done to make it clear that for breach of the regulations in no. (3), the ordinary rules of identification under Cl. 3-36 to Cl. 3-38 shall apply and not the extended identification pursuant to Cl. 3-25, sub-clause 2, which is applicable for breach of the regulations in nos. (1) and (2).***

*Cl. 18-1 (f). Measures to avert a blow-out, etc./Ref. Cl. 4-7 to Cl. 4-12*

The provision limits the insurer's liability for costs incurred in controlling blow-outs and cratering, or fire in connection with a blow-out.

As regards the term "blow-out" reference is made to the Commentary on Cl. 18-1 (e) sub-clause (1). "Cratering" is an after-effect of a blow-out in that a submarine crater is formed in the subsoil around the well due to uncontrolled flow of oil, gas or fluid in the well. If oil or gas is suddenly released in large quantities, the pressure conditions in the subsoil may change to such an extent that the area around the oil well collapses so that an underwater crater is formed. For an MOU resting on the sea

bottom (a totally submersible or jack-up structure) such “cratering” may result in the foundation being pulled away with the result that the MOU loses its stability and topples.

Blow-out and cratering of a well, possibly accompanied by fire, will first and foremost be a great concern for the licensees and the exposure they face from such incident. There will be a risk of the loss of human life and economic assets, in addition to a major potential pollution liability. Extensive measures will be initiated to get the flow of oil, gas or other fluid under control and stopped. The licensees are the ones who bear the liability for any pollution emanating from the well fluids, etc., and they are the ones to suffer the loss of or damage to the well. Where an MOU is brought into the efforts to fight a blow-out, etc., the regard for the safety of the actual MOU will often merely be a collateral motive. If the Plan’s rules were to be applied in full in such cases, this would require a discretionary allocation of the overall loss in connection with the well control operation among the interests at stake for the owner and the licensees, cf. Cl. 4-12, sub-clause 2. Only the portion attributed to the owner would be recoverable from the hull insurer. However, it would not be easy to carry out such an apportionment, first and foremost because the values of the assets at stake for the licensees (including the potential oil pollution liability) are difficult to estimate. Given that Cl. 18-1 sub-clause (f) excludes this item from cover; the owner has a strong incentive to secure an agreement with the licensees (in practice the operator) to the effect that they shall cover the costs of averting or minimising the loss in connection with a blow-out, etc., in full. This is also in concordance with the allocation of risk normally used in offshore contracts.

Only measures aimed at gaining control of a blow-out, etc., are covered by the provision. If a fire has broken out on board the MOU as a result of a blow-out, the costs (possibly salvage award) incurred in connection with the fire fighting or the towing of the MOU away from the area of danger, will have to be covered by the insurer under the rules in clauses 4-7 *et seq.* of the Plan.

Sub-clause 2 states that loss or damage to the insured MOU is not excluded by virtue of this exclusion. Such loss or damage will be recoverable in accordance with the terms and conditions as otherwise applicable.

*Cl. 18-1 (g) The limit of liability of the insurer/Ref. Cl. 4-18*

Sub-clause (g) is repeating to a large extent verbatim what is provided in Cl. 4-18, but a cap of USD 500,000,000 is put on the cover for costs of preventive measures. Sub-clause (g) is spelling out that it is the cover under the hull insurance that is governed by the Clause. Cover under other types of insurances, namely Loss of Hire insurance (Section 4), and War Risks (Section 5) will be governed by Cl. 4-18 to the extent it is not deviated from in these Sections.

MOUs with sum insured under the hull insurance of USD 500,000,000 or less will still have available two times the sum insured. If costs of preventive measures exhaust the separate sum insured available

for such costs, they may as before be compensated under the sum insured under the hull insurance provided that this sum is not consumed by the damage to or loss of the MOU. For MOUs with a sum insured higher than the limit, costs of preventive measures will be limited to USD 500,000,000, but if this amount is consumed there may of course still be available an un-used part of the sum insured under the hull insurance. If this sum insured is e.g. USD 750,000,000 and the costs of repair only amounts to USD 500,000,000, there will be available to cover costs of preventive measures the remaining un-used USD 250,000,000 under the hull insurance. In this example there will be available altogether USD 750,000,000 to cover costs of preventive measures (USD 500,000,000 limit on costs of preventive measures + USD 250,000,000 from un-used portion of the hull insurance).

Sub-clause 2 provides for in the same way as Cl. 4-18 that a third separate sum insured shall be available to cover collision liability according to Cl. 18-36 to 18-38. According to Cl. 18-37 this sum insured corresponds to the sum insured under the hull insurance, but it is now also capped at USD 500,000,000 or for 50% of the sum insured whichever is the greater amount, see further the Commentary to Cl. 18-37.

Thus for MOUs with sum insured under the hull insurance of USD 500,000,000 or less, there will be as before available up to three times the sum insured under the hull insurance. But for MOUs with sum insured under the hull insurance of e.g. USD 1,000,000,000, there will now be two times the sum insured available.

The reason for introducing these capped/reduced limits is that for MOUs with high values it binds up too much capacity to insure/reinsure an exposure of three times the sum insured. Even if the risk of reaching the theoretical maximum exposure is remote, reinsurers charge premium for making such capacity available. Typically salvage costs are by law limited to 100% of the salvaged values, which are the values in damaged condition. In serious salvage cases the salvaged values are therefore normally significantly lower than the insured values as the MOU will have suffered serious damage in order to need salvage assistance. Besides, the salvage awards for values in the hundreds of millions of USD, will never reach 100% of the salvaged values. Even in complicated and long lasting salvage operations for high value vessels or MOUs, salvage awards will only in rare cases reach as high as 50 % of the salvaged values. For practical purposes it is inconceivable that anybody will use as much as USD 500,000,000 in costs of preventive measures.

The same reasoning goes for collision liability. Normally the assured will be entitled to limit liability to sums below USD 500,000,000, and it binds up capacity and costs unnecessary premium to reinsure liability of this magnitude. Besides, collision liability is also covered under the hull interest insurance, cf. Cl. 18-39 (b) with a separate sum insured equal to the sum insured under the hull interest insurance, see further the Commentary to Cl. 18-39.

If an assured should be required by contract to cover more than USD 500,000,000 for costs of preventive measures and collision liability, the assured must get such excess cover on individual basis.

*Cl. 18-1 (h) The area of operation/Ref. Cl. 3-15*

**This Clause was amended in 2016.**

***Sub-clause 1* provides that the area of operation is worldwide within the ordinary trading area as defined in Cl. 3-15, sub-clause 1, unless otherwise agreed in the insurance contract. If the assured wishes to operate the MOU in an excluded or conditional trading area, cf. the Appendix to Cl. 3-15, he must notify the insurer in accordance with Cl. 3-15. Any such operation will be subject to Cl. 3-15. However, the maximum  $\frac{1}{4}$  deduction pursuant to Cl. 3-15, sub-clause 3, first sentence, is increased to USD 1,000,000. If the insurer is entitled to any further deduction according to Cl. 3-15, sub-clause 3, last sentence, such deduction comes in addition to the  $\frac{1}{4}$  deduction maximised at USD 1,000,000.**

***Sub-clause 2* is edited to fit to the new sub-clause 1 so that if the area of operation shall not be worldwide within the ordinary trading area, but restricted to e.g. a smaller area or one or more specific fields, such area of operation must be set out in the insurance contract. The same goes, of course, if the area of operation shall be within any excluded or conditional trading area.**

The description may be relatively narrow, e.g. associated with a field, e.g. Ekofisk, or a larger area, e.g. the North Sea or the Gulf of Mexico. If the assured changes the area of operation **set out in the insurance contract**, this may, depending on the circumstances, represent an alteration of the risk according to Cl. 3-8. The change from one field in the North Sea to another, e.g. from Ekofisk to Statfjord, will normally not represent an alteration of the risk. If, however, the new area of operation is considerably further away, e.g. from the North Sea to the Gulf of Mexico, the consideration may be different, in particular if the move **shall** take place during a period with a high **weather** risk, or where it involves an MOU **that has to be towed (wet or dry) and the** towage is considered particularly risky. If the change of the area of operation represents an alteration of the risk the insurer is entitled to cancel the insurance, cf. Cl. 3-10. If the assured has failed to give notice of the change, and a casualty occurs, the insurer is also free from liability provided that he can prove that he would not have accepted the insurance if he had known about the change. If, however, the insurer would have accepted the insurance even if he had known of the change, but would have agreed different conditions, he will be liable **if** the casualty was not caused by the change, cf. Cl. 3-9.

If the **insurance contract** does not **set out** the area of operation, the MOU may operate all over the world within the trading area, cf. **sub-clause 1 and** Cl. 3-15. The move of the MOU from one area of operation to another will in that event not represent an alteration of the risk, as long as the MOU remains within the ordinary trading area. However, it follows from Cl. 18-1 sub-clause (e), (2) that

a move of the MOU **by other means than** by its own propulsion or with its riser and BOP suspended shall be made in accordance with a removal plan approved by the claims leader. This applies irrespective of whether or not the area of operation is stated in the **insurance contract**. In the event of a breach of **this** safety regulation, the insurer may be free from liability according to Cl. 3-25.

*Sub-clause 2, first sentence*, imposes a duty on the assured to notify the insurer if the MOU is to change its area of operation **set out in the insurance contract**. **If several areas of operation have been agreed, a move between these** areas of operation does not give rise to any duty to notify the insurer, but will still require approval according to sub-clause (e), see above. **Sub-clause 2, first sentence**, does not stipulate any sanctions if the assured fails to give notice of the move **of the MOU to an area of operation outside the area agreed with the insurer**. However, **if the insurer is entitled to charge an additional premium, he may do so retroactively once he** gets to know about the move.

**A change of the area of operation may decrease the risk for the insurer. Hence, the second sentence** entitles both parties to demand an adjustment of the premium in the event of a change of the area of operation, while the *third sentence* establishes that in the event of an increase in premium, the insurer must notify the person effecting the insurance not later than 14 days after the insurer has received notice of the changed area of operation.

*Cl. 18-1 (i) Co-insurance and waiver of subrogation of third parties*

An insurance effected on the basis of the Plan automatically also covers a mortgagee's interest, cf. Cl. 7-1. However, other third parties' interests are not covered, unless specifically agreed, cf. Cl. 8-1. In connection with the insurance of offshore MOUs there is, however, a need for a more extensive cover of third parties' interests than what follows from Chapters 7 and 8.

To the extent that a co-insured third party has ownership interests or other economic interests in the capital value of the insured MOU, a co-insurance will, in addition to protection against subrogation, also afford him insurance cover of the said economic interest. That the said persons have such ownership interests is in particular relevant in connection with various types of equipment covered under the insurance of the MOU. Where the relevant third parties do not have such economic interest, it is the protection against subrogation, and not full scope of the co-insurance cover, which will be the entire purpose of the co-insurance. The need for protection against subrogated claims is related to the fact that the party in question is in such a position that he risks causing damage to the MOU. At the same time the contract between the owner of the damaged object and the person causing the damage will normally contain mutual hold harmless and indemnity provisions, commonly referred to as "knock-for-knock" principle, which means that it is the owner, and not the person causing the damage, who shall cover the damage. The owner has in other words waived the right to hold the contractor, charterer, etc., liable for damage which they may cause to the MOU. The basis of the "knock-for-

knock” principle is, however, that the insurer is not entitled to be subrogated to the assured’s claim against the person causing the damage in recourse proceedings, cf. Section 4-3 of the Norwegian Compensatory Damages Act and Cl. 5-13 of the Plan. Protection against subrogation under the insurance therefore becomes an important part of the “knock-for-knock” regulation.

During the revision of the Plan it was found expedient to distinguish between those situations where there was merely a need for protection against subrogated claims, and those situations where there was a need for more extensive co-insurance status. This has been done by sub-clause 1 regulating the protection against subrogated claims, while sub-clause 2 regulates co-insurance.

According to *sub-clause 1*, the insurer waives the right of subrogation against any person causing damage who has contractually disclaimed liability for damage to the MOU and reserved the right to protection against recourse from the insurer. The protection against subrogated claims has in other words been given those persons causing damage who have, on a contractual basis, been given an undertaking that the insurer shall not be entitled to claim against them, and is not given to any specifically named groups of persons. In this way the insurance contract comes in as an extension of the “knock-for-knock” agreements entered into concerning the use of the structure or the equipment in offshore operations. Often the protection against recourse will benefit typically contractors, charterers, or licensees in the area of operation in question. However, the protection may also be extended to others, e.g. another contractor/supplier engaged by the licensees (the operator) to carry out certain services or work in connection with the MOU or other field operations, units or installations within the same field license.

The provision stipulates the condition that the relevant contractual regulation, where the person causing the damage disclaims liability and reserves the right to protection against recourse, “is regarded as customary in the activities in which the MOU is involved”. Implicit in this condition is first and foremost that protection against recourse shall only be reserved for those groups of persons who normally obtain such protection under the contractual system used in the petroleum industry. The question as to what is “customary” must be evaluated, both in relation to the type of activities in question, and in relation to the geographical area where the MOU is located. In many areas petroleum activities will normally be based on a “knock-for-knock” principle with extensive and relatively clear and unambiguous rules as to who shall be covered by the regulation. However, it is also conceivable that there are areas where such regulation is not customary, in which event this must be decisive. Reference is furthermore made to the Commentary on Cl. 4-15 concerning unusual or prohibited contractual conditions.

The provision does not state who must have entered into the contract with the person causing the damage. This has been done deliberately. The protection against subrogated claims may be set out in different contracts in the contractual pyramid frequently encountered in the petroleum industry, at the

same time as these contracts may have been entered into by different groups of persons. The crucial point is that the person causing the damage is, through such a contract, ensured protection against any subrogated claims from the insurer, and not who is his contracting partner under this contract. The protection for the insurer lies in the fact that the protection against subrogation of the person causing the damage shall be in accordance with customary contractual regulation in the industry, see above. If the insurer wants a more narrow protection against subrogation, he will have to stipulate this in the **insurance contract**.

The provision is worded as a traditional “waiver-of-subrogation” and may appear, on the plain reading of its wording, to be an absolute waiver of the insurer’s right of subrogation. However, such far-reaching exclusion of liability will not be valid. A person causing damage may not disclaim liability for his own intentional or grossly negligent acts under Nordic countries’ laws, cf. e.g. Section 36 of the Norwegian Contracts Act. In reality, it is therefore Cl. 3-33 of the Plan which will determine the limit of the insurer’s right of subrogation, ref. Commentary to *sub-clause 3 below*.

*Sub-clause 2* regulates the co-insurance question. However, also here it was decided to tie the insurer’s obligation directly to the persons who on a contractual basis have been given the right to co-insurance under the insurance of the MOU, and not to defined groups of persons. This ensures that the co-insurance satisfies contractual obligations, and at the same time prevents the status of a co-assured being given to groups of persons who in reality have no need for, nor any expectation of, such cover.

Where a co-insurance is tied to contractual obligations, it is no condition for co-insurance that the co-assured has an economic interest in the insured MOU. It is conceivable that a contract presupposes co-insurance protection also of groups of persons without such economic interests, e.g. a drilling contractor who has no ownership interest in the MOU or any part of the associated equipment. In that event, the full co-insurance protection under Cl. 18-1, sub-clause (i)(2), would not give the co-assured very much more than the limited protection against subrogation according to sub-clause 1. However, often the co-assureds will have such ownership interests, e.g. by owning the equipment they are going to use themselves. As mentioned in Cl. 18-2, sub-clause 1 (b), such equipment will be covered by the insurance, regardless of ownership. In that event, the co-assured has a direct insurance against damage to his own property.

The co-insurance may also be of significance in connection with the cover of collision liability. If an MOU is chartered on bare-boat conditions, a collision liability will lie with the charterer in his capacity as manager and operator, i.e. employer of the crew of the MOU. Provided that the owner of the MOU is required to co-insure the bare-boat charterer, such liability will be covered under a hull insurance effected by the owner.

The normal situation will be that the owner of the MOU will act as the person effecting the insurance when an MOU is insured. In that event, he also has status as assured. The provision in sub-clause 2 will in such cases first and foremost be significant for the charterer, including bare-boat charterers, contractors and sub-contractors engaged by the owner. The provision will also encompass the interests of the licensees, including the operator and their contractors who are contracted to perform services on-board in direct connection with the MOU operations, provided that they have in contracts with the owner or others in the chain of contracts with the owner have reserved the right to co-insurance under the insurance of the MOU. If, in exceptional cases, the insurance is effected by a charterer, contractor/sub-contractor or licensee/operator, the owner of the MOU will in the same way be co-insured, provided he has a contractual right to status as co-assured under the insurance.

As in sub-clause 1, sub-clause 2 stipulates a prerequisite that the contractual regulation of a co-insurance must be “customary in the activities in which the MOU is involved”. In relation to the co-insurance protection it is, however, not sufficient to have a liability regulation based on a “knock-for-knock” principle. The contracts must in addition normally contain a requirement for co-insurance protection of the relevant group of persons. This question will first and foremost be significant where the relevant co-assured has an economic interest in objects covered by the insurance. If no such interest exists, he will normally be sufficiently protected through the waiver of subrogation in sub-clause 1.

*Sub-clause 2, second sentence*, contains a subsidiarity regulation and establishes that the co-assured's cover under the insurance of the MOU is subsidiary to any insurance effected by the co-assured himself. One of the purposes of the co-insurance clauses in contracts is to avoid double-insurance. If the co-assured has nevertheless taken out a separate insurance against the same risks, there is no reason why the loss, damage or liabilities shall also be covered under the insurance of the MOU.

Co-insurance under sub-clause 2 follows the rules in Chapter 8.

*The new sub-clause 3* in the 2013 Plan regulates that the subrogation protection and co-insurance rights of third parties under this Clause shall under no circumstances be any broader than what has been agreed under the relevant contracts under which such rights and protections accrued. This means that the third-party who is protected by the waiver of subrogation or has status as co-assured, does not have wider protection or rights against the insurers than he has against the owner of the MOU under the contracts or at law.

## *Section 2*

### *Hull insurance*

#### Section 2–1

#### General rules relating to the scope of the H&M insurance

##### **Clause 18–2. Objects insured**

This Clause corresponds to Cl. 18-2 of the 1996 Plan but was edited in the 2013 Plan.

This provision is divided into two and patterned on Cl. 10-1 and Cl. 10-2. Cl. 18-2 regulates the objects of the insurance, while the cover of objects removed from the MOU is contained in Cl. 18-3.

*Sub-clause 1 (a)* provides that the insurance first and foremost covers the MOU stated in the **insurance contract**. The types of MOUs which are normally covered under this Chapter are described in further detail in the commentaries to Cl. 18-1.

Damage to or loss of the MOU will first and foremost affect the owner, and he is the primary assured. Any mortgagees are automatically co-assured under the rules in Chapter 7. However, a number of other persons will be co-assured under the **insurance contract**, see Cl. 18-1, sub-clause (i)(1), and Chapter 8 of the Plan. The owner will also normally be the person effecting the insurance. However, insurance under Chapter 18 can also be effected by others, e.g. a bare-boat charterer or manager. In those cases the owner will normally be co-assured.

As a rule, a separate insurance will be effected for each individual MOU, but several MOUs may also be insured collectively. If the same **insurance contract** is to cover several MOUs, an (**agreed**) insurable value will be stated for each MOU. A natural interpretation of such **agreement** is that each MOU shall be regarded as being insured separately. A corresponding interpretation is natural where separate insurable values are agreed for equipment, machinery, etc.

The fact that individual MOUs (possibly parts of an MOU) are insured separately will in the first place be of significance in the event of a total loss. It will be sufficient that the conditions for compensation for total loss (e.g. the condemnation conditions) are met for the individual insured object. The same applies to Cl. 6-3 on premium in the event of total loss. Furthermore, a deductible according to Cl. 18-34 shall be calculated separately for each insured object.

According to *sub-clause 1 (b)*, which has been amended from earlier versions of the 1996 Plan, the insurance also covers machinery, equipment, plant and spare parts for structure, machinery and

equipment. The term “spare parts” concurs with the conception in practice that equipment included spare parts.

Point (1) of sub-clause 1 (b) has been rewritten in the 2013 Plan in accordance with Cl. 10-1 and modified for MOUs. The provision establishes that only machinery, equipment, plant and spare parts which belong to the assured, or which have been borrowed, leased or purchased with a sales lien or similar encumbrance, are covered. The provision reflects the fact that equipment used in the petroleum industry often has different owners; it may belong to the owner of the MOU, the licensee for whom the MOU is carrying out contract work/operation, a charterer of the MOU or an independent contractor. Often certain parts of the equipment will belong to one party, while other parts of the equipment will belong to others.

The term “assured” automatically includes anyone who is co-assured under the insurance. In other words, all equipment on board which is either owned by or in the care, custody or control of the co-insured persons in their capacity of borrower, lessee or purchaser under a vendor’s lien, is covered by the insurance.

If the person operating the MOU leases the equipment and operates the equipment himself, the owner of the equipment will normally be co-assured. By contrast, a firm or a person who or which is subcontracted by the contractor and operates his or its own equipment, e.g. a divers’ firm with its own diving equipment, will normally not have the status of co-assured. If, as an exception, such a firm should have such status, the equipment will be covered under Cl. 18-2 (b). On the other hand, equipment which belongs to the crew or other personnel of contractors, license operator or third parties on-board the MOU will always fall outside the scope of cover.

Point (2) in sub-clause 1 (b) provide cover in general for all machinery and equipment etc. listed under (b) regardless of whether it is on board, above water or subsea or in the well.

Given that all equipment is covered, it goes without saying that this includes drilling equipment, even if this is not explicitly mentioned. The drill string and safety equipment against blow-outs located in the water are therefore also covered. However, the cover of the drill string is subject to important limitations, see Cl. 18-22.

The provision will not cover subsea equipment which are either left on the seabed when the MOU leaves the place of operation, or which are launched in advance of the MOU’s arrival on location unless such equipment is scheduled separately as per Cl. 18-1 (a), paragraphs 2 and 3. Anchors, anchor chains, etc. which are cast in advance are, however, covered under Cl. 18-3, sub-clause 1 (b), and for blow-out preventers an extended cover is given in Cl. 18-3 (c).

*Sub-clause (c)* is new, but concurs with Cl. 10-1, sub-clause 1 (c), according to which the hull insurance covers bunkers and lubricating oil on board.

*Sub-clause 2* contains certain limitations of the cover of accessories. Sub-clause 2 (a), in accordance with the principle in Cl. 10-1, sub-clause 2, excludes certain articles of consumption from the scope of cover. The assumption is that such articles will be covered under a special equipment insurance. *Sub-clause 2 (b)* excludes helicopters from the cover. Helicopters may be covered by the term “equipment ... on board” in sub-clause 1 (b), and in the absence of a specific exclusion, they could therefore come within the scope of cover, provided they were owned, etc. by one of the assured. However, the natural solution is for helicopters with equipment and spare parts to be covered under a separate aircraft hull insurance. The exclusion is general and also cover helicopters which land on the MOU due, for instance, to engine problems.

*Sub-clause (c)* excludes “blueprints, plans, specifications, logs, etc.” including “copies” cf. the term “etc.”. The exclusion covers various documents and records which may be of considerable value (in particular the logs kept of drilling operations may contain very valuable information about the geological structure of the seabed and accordingly concerning the probability of finding petroleum in the area. The reason why the documents are nevertheless excluded from cover is partly difficulties in **agreeing on** their value in terms of money, partly the possibility which the interested parties have of continuously transmitting important data to shore. Much of the logs and data which used to be paper documents are now kept as digitally stored data. The exclusion is equally applicable to such digitally stored data/information; however, the hardware on which such data/information is stored on, including the software, is nevertheless covered but only for the cost of replacement. Costs of recovering digital data/information will thus not be recoverable under the insurance.

*Sub-clause 2 (d)* excludes mini-submarines and remotely controlled underwater equipment (Remote Operated Vehicles) whilst in operation. This type of equipment is basically covered by sub-clause 1 (b) (2), cf. “under water”. However, the most expedient solution is for such equipment to be covered under a separate insurance, because practice as regards the use of the equipment varies. Submarines, etc. are therefore only covered under the MOU’s insurance up until the time where they may be said to be “in operation”. Normally, the object is deemed to be “in operation” when rigging, lifting, etc. starts. There is in other words no requirement that the object shall be removed from the MOU in order for it to be deemed to be “in operation”.

### **Clause 18–3. Objects temporarily removed or separated etc. from the *MOU***

This Clause corresponds to Cl. 18-3 of the 1996 Plan but was edited and amended in the 2013 Plan.

The provision supersedes the provision relating to “insurance of objects removed from the ship” in Cl. 10-2, which does not quite fit in with insurance of MOUs.

*Sub-clause (a)* corresponds to Cl. 10-2 for hull insurance of ships.

This part of the insurance covers in the first place machinery and equipment as well as spare parts for the structure, machinery or equipment, if the objects are on board a “vessel, structure or fixed installation” which is moored to or is in the vicinity of the insured MOU and has been used in connection with that structure, cf. point (1). On this point there has thus been a certain extension. However, as the insurance of objects removed from the structure is limited, in terms of function as well as location: the vessel/structure/installation in question must be used in conjunction with the operations carried out by the insured MOU, and must either be moored to the insured MOU or be in its vicinity.

Secondly, the insurance of objects removed from the MOU covers machinery, equipment, etc., which have been temporarily removed from the MOU for repairs, rebuilding, storage, etc., cf. point (2). The cover includes transport to and from the MOU in connection with work or storage as mentioned. However, only objects which have been on board, cf. “removed”, are covered. The scope of cover consequently does not comprise new equipment in storage at the base and in transit for the first time to the MOU. However, a certain cover of such objects is provided in point (3), cf. below. The insurance of objects removed from the MOU further does not cover - subject to the exceptions which follow from sub-clauses (b) and (c) - equipment which is left behind when the MOU has to leave the place of operation temporarily because of repairs of damage, etc.

The third element of the insurance of machinery, equipment, etc., removed from the MOU covers storage which falls outside the scope of point (2). This part of the insurance is new. The cover includes storage of the removed object, regardless of the purpose of the storage or its duration. Nor is there any requirement that the stored object must be removed from the MOU. New objects, which were purchased for the MOU, but which are kept in storage before being used on board, are therefore also included. A fundamental prerequisite for cover is, however, that the object concerned “belongs to” the insured MOU. If the object can be used on several MOUs, and it has not been clearly decided during the storage period that it is going to be used on the insured MOU, it must be covered under a separate storage insurance. If an object is purchased and stored as belonging to the insured MOU, but is later taken on board a different MOU than the one insured, the cover will cease under point (3) as soon as the decision has been made that the object is to be shipped to another MOU and will have to be insured in conjunction with that particular MOU.

The cover under point (3) is, however, subject to certain limitations. In the first place to a limitation in amount: the objects in question are covered up to 10% of the sum insured under the hull insurance.

This has to do with the fact that practice regarding storage varies considerably, and the insurers need to have control of this part of the cover. If the assured wants more comprehensive cover, a separate insurance must be effected. On the other hand, the insurer is fully liable for any damage up to the stated amount, cf. the fact that Cl. 2-4 relating to under-insurance does not apply.

Secondly, a separate deductible shall be calculated for this part of the cover. The fact that a deductible shall be calculated in the event of damage to stored objects goes without saying. However, the provision relating to a separate deductible becomes significant if one and the same incident should, in exceptional cases, occur to both the MOU and the objects stored. In that event, two deductibles must be calculated in the claims settlement (unless it is a case of total loss). If only one deductible has been agreed, a deduction of twice that amount shall thus be made. If the assured wants a lower deductible for objects covered under point (3) than for the MOU in general, this must be specifically agreed in the **insurance contract**.

Objects covered under point (3) shall be kept out of a total-loss settlement concerning the structure. The value of these objects must therefore be deducted from the insurable value in the event of a condemnation settlement. However, objects covered under point (2) shall be included in the total-loss settlement in the normal way.

*Sub-clause (b)* is new and extends the cover to “anchor, anchor chain, etc.”, which are used for the MOU at the operation site. In addition to the anchor(s), this cover includes buoyancy elements and buoys which are integral parts of the mooring system. Further, both anchor chain and other types of moorings, e.g. wires or synthetic ropes/lines, cf. “etc.”, are covered. The cover applies both when the anchor(s), etc., was cast before the arrival of the MOU, and when left behind after the MOU has departed, e.g. in connection with repairs. Cover is, however, subject to the condition that the mooring/anchor system forms part of the insured MOU’s equipment. If the mooring/anchor system is left behind in connection with a replacement of the insured MOU in order to be used by another MOU it will no longer belong to the insured MOU.

*Sub-clause (c)* entails cover of blow-out preventers (BOP) left on the well location due to casualty or measures to avert such casualty. The provision only covers “blow-out preventers”, and not any other type of device.

Normally a BOP left behind will be mounted on the wellhead, but the provision also covers the situation where the BOP is left next to the wellhead. That a BOP is “left behind” means that there was a decision made to leave it.

The cover only concerns the situation where the BOP is left behind due to a casualty or measures to avert or minimise such casualty. If the BOP is left behind as part of the normal operation of the MOU, it is not covered by the insurance.

When an MOU suffers damage for which it will need to move to a repair location to perfect the repairs, it will not be able to retrieve the BOP when it is mounted on the wellhead as the ultimate blow-out barrier for the well. In such circumstances, the MOU will return to the well location and reconnect to the BOP to resume the well operation it was engaged in when the casualty occurred.

If the MOU cannot reconnect to the BOP and continue the operation it is engaged in immediately prior to the casualty the expenses involved in lifting a BOP left behind are recoverable as costs of measures to avert or minimise loss. Such expenses are incurred for the purpose of averting a total loss of the said BOP.

*Sub-clause (d)* is new in the 2013 Nordic Plan, and provides cover for subsea equipment associated with an MOU which is disconnectable from the unit, and which is not insured with a separate sum insured as per Cl. 18-1 (a) paragraphs 2 and 3. Similar to mooring/anchoring systems under subparagraph (b) above, the cover applies to such equipment installed at the offshore location both prior to the MOU arrival and after its departure.

#### **Clause 18–4. Loss due to ordinary use**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 10-3. Reference is made to the Commentary to Cl. 10-3.

#### **Clause 18–5. Extension of the insurance**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 10-10. Reference is made to the Commentary to Cl. 10-10.

#### **Clause 18–6. Liability of the insurer of the MOU is salvaged by the assured**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 10-11. Reference is made to the Commentary to Cl. 10-11.

#### **Clause 18–7. Reduction of liability in consequence of an interest insurance**

This Clause was new in the 2013 Plan and is by and large verbatim the same as Cl. 10-12 apart from some editorial amendments. Reference is made to the Commentary to Cl. 10-12.

## Section 2–2 Total loss

### **Clause 18–8. Total loss**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 11-1. Reference is made to the Commentary to Cl. 11-1.

### **Clause 18–9. Salvage attempts**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 11-2. Reference is made to the Commentary to Cl. 11-2.

### **Clause 18–10. Condemnation**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 11-3. Reference is made to the Commentary to Cl. 11-3.

### **Clause 18–11. Condemnation in the event of a combination of perils**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 11-4. Reference is made to the Commentary to Cl. 11-4.

### **Clause 18–12. Request for condemnation**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 11-5. Reference is made to the Commentary to Cl. 11-5.

### **Clause 18–13. Removal of the MOU**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 11-6. Reference is made to the Commentary to Cl. 11-6.

### **Clause 18–14. Missing or abandoned MOU**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 11-7 apart from that the words “at the latest, expected to arrive in port” is replaced by the words “last heard of” as the starting point of the three months period. Reference is made to the Commentary to Cl. 11-7.

### **Clause 18–15. Extension of the insurance when the MOU is missing or abandoned**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 11-8. Reference is made to the Commentary to Cl. 11-8.

### **Clause 18–16. Liability of the insurer during the period of clarification**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 11-9. Reference is made to the Commentary to Cl. 11-9.

## **Section 2–3**

### **Damage**

#### **General**

This Section is a complete incorporation of the Clauses of Chapter 12 which are relevant for hull insurance of MOUs. The Clauses are amended as found necessary to suit repairs of MOUs which may be complex and involve significant costs and expenses and require different considerations than repairs of conventional ships' damages. An MOU will, in addition to its hull and machinery, also have special equipment and/or processing plant which represent high proportions of the MOU's total value. Remote areas of operation compared to possible suitable repair facilities may result in significant costs in moving the MOU to a repair facility. Equipment and processing facilities for floating production units will often be specially designed for that particular unit and damage repair options of such facilities may for various reasons be limited. The availability of replacement items for damaged parts which need to be replaced will often be limited and involve extensive delivery time; 6 to 12 months is not unusual.

### **Clause 18–17. Main rule concerning liability of the insurer**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 12-1. Reference is made to the Commentary to Cl. 12-1.

### **Clause 18–18. Compensation for unrepaired damage**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 12-2. Reference is made to the Commentary to Cl. 12-2.

### **Clause 18–19. Inadequate maintenance**

This Clause was new in the 2013 Plan w and is verbatim the same as Cl. 12-3. Reference is made to the Commentary to Cl. 12-3.

### **Clause 18–20. Error in design, etc.**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 12-4. Reference is made to the Commentary to Cl. 12-4.

## Clause 18–21. Losses that are not recoverable

The Clause corresponds to Cl. 18-12 of the 1996 Norwegian Plan, which made an amendment to Cl. 12-5 (a). In the 2013 Plan, Cl. 12-5 has been partly incorporated into Cl. 18-21 and has been partly re-written. **Cl. 18-21 (e) was deleted in 2016.**

Cl. 18-21 (a): Clause 12-5 (a) has been split into Cl. 18-21 (a) regulating the coverage of crew wages and maintenance costs and Cl. 18-21 (b) regulating the exclusion of ordinary expenses connected with the running of the MOU during the period of repair.

According to Cl. 12-5 (a) the insurer does not cover costs of wages and maintenance of the crew during the period of repairs. However, in connection with insurance of MOUs the insurer has in practice covered costs of wages and maintenance of the crew that has been engaged in repair work or otherwise necessary, e.g. marine, nautical, etc. crew, during repairs carried out at sea. The reason is that often it is less costly to carry out the repairs while the MOU is offshore or in sheltered waters nearby its offshore location rather than to bring it over a long distance to a shore repair facility/yard. Hence, what was previously provided in Cl. 18-12 of the 1996 Plan is in the 2013 Plan stated in sub-clause (a).

Cl. 18-21 (b): In connection with damage to an MOU, it is conceivable that the assured engages a supply vessel which is under contract with him or the licence operator and is therefore in the area, to be used during offshore repairs. If the assured incurs additional expenses in this connection, his expenses must be covered by the insurer as part of the costs of repairs. When repairs are carried out at sea, either at the offshore location or in sheltered waters, insurers will also be liable for the costs associated with catering, accommodation and safety services for the crew engaged or necessary for the repairs at sea.

Cl. 18-21 (c): This sub-clause was new in the 2013 Plan and is verbatim the same as Cl. 12-5 (b). Reference is made to the Commentary to Cl. 12-5 (b).

Cl. 18-21 (d): This sub-clause was new in the 2013 Plan and corresponds to Cl. 12-5 (c). Reference is made to the Commentary to Cl. 12-5 (c). However, as MOUs do not carry passengers under issued passenger tickets, but will accommodate third party personnel and occasional visitors which are not part of the MOU's regular crew, "passengers" are replaced by "third party personnel or visitors". Such personnel or visitors include the license operator's, the operator's contractors and sub-contractors personnel, as well as personnel of the MOU owner's contractors or sub-contractors, unless the MOU owner contractually has assumed the responsibility for such personnel. This does not apply to repairers personnel.

## Clause 18–22. Damage to the drill string

This Clause is the same as Cl. 18-11 of the 1996 Plan, but with some editorial amendments in the 2013 Plan.

The provision establishes certain limitations to the cover, which are additional to the limitations in Cl. 12-3 to Cl. 12-5.

The provision concerns “loss of or damage to the drill string ... whilst in the well or in the water”. Unless due to “external circumstances, for which the drilling contractor is liable under contractual conditions which are regarded as customary within the area concerned”.

“External circumstances” comprises typically fire, blow-out, cratering, lightning, explosions above the seabed, floods, tidal waves, ice, tornadoes, storms, cyclones, hurricanes, earthquakes or collisions. The underlying drilling contracts places the risk of such causes of damage with the owner of the MOU/the drilling contractor, while the licensees/operator cover other damage. Damage attributable to wear and tear, inadequate maintenance, etc, or to the fact that the drill string for other reasons cannot take the strain to which it is subjected during the performance of the work will in this context not be deemed as “external circumstances”. However, the term “external circumstances” also covers more ordinary heavy-weather damage than hurricanes, storms, etc., e.g. where high seas or difficult current conditions result in damage to or loss of the drill string. The term does not, however, cover the situation where the drill string is left in the well due to technical problems in retrieving it, or where the string gets jammed in connection with ordinary drilling. Nor do “external circumstances” comprise damage to the string as a result of negligence on the part of the drilling contractor, or someone for whom he is liable. However, if the direct cause of damage is fire, etc., and the fire is caused by negligence, the insurer will not be free from liability. Here the question of liability must be evaluated under the general rules in Chapter 3 relating to the duties of the assured.

The cover only extends to external circumstances for which the drilling contractor is liable according to customary contractual practice within the relevant area. If, for example, it is customary for the license operator to assume the risk in respect of damage caused by fire or explosion, this damage does not concern the insurer. In that event, it is irrelevant whether the drilling contractor under the relevant contract has accepted this risk if this is contrary to customary contractual practice.

The limitation applies to the drill string, as installed, including any of its component parts such as weights, stabilisers, thread connections etc.

*Sub-clause (b)* excludes from cover drill strings “left in the well for purposes other than drilling” if a decision is made to that effect by the persons who are responsible for the drilling operations.

The provision does not apply to cases where attempts to retrieve the string from the hole are abandoned due to technical difficulties which this entails. In such cases the string shall be considered lost, and the loss is, as mentioned, excluded from cover according to sub-clause (a). The purpose of leaving the string must be that it is intended to serve as tubing for gas or oil produced from the hole. This means that it is no longer part of the drilling equipment, and it should for that reason no longer be covered. Effectively, this also follows from the principle stated under Cl. 18-3 (b) (in respect of mooring/anchoring system which is left behind for other use than the insured MOU): the drill string left behind no longer constitutes part of the “equipment” of the MOU.

The limitations in Cl. 18-19 to Cl. 18-21 apply in addition to the limitations in Cl. 18-22.

### **Clause 18–23. Deferred repairs**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 12-6. Reference is made to the Commentary to Cl. 12-6.

### **Clause 18–24. Temporary repairs**

This Clause was new in the 2013 Plan and corresponds to Cl. 12-7. Reference is made to the Commentary to Cl. 12-7.

When the MOU with disconnectable equipment are insured with separate sums insured as per Cl. 18-1 (a), sub-clause 2, and the loss or damage occurs whilst disconnected as per Cl. 18-1 (a), sub-clause 3, the 20% p.a. shall be calculated of the sum insured for the part to which the loss or damaged occurred.

### **Clause 18–25. Costs incurred in expediting repairs**

This Clause was new in the 2013 Plan and corresponds to Cl. 12-8. Reference is made to the Commentary to Cl. 12-8.

When the MOU with disconnectable equipment are insured with separate sums insured as per Cl. 18-1 (a), sub-clause 2, and the loss or damage occurs whilst disconnected as per Cl. 18-1 (a), paragraph 3, the 20% p.a. shall be calculated of the sum insured for the part to which the loss or damaged occurred.

### **Clause 18–26. Repairs of an MOU that is condemnable**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 12-9. Reference is made to the Commentary to Cl. 12-9.

**Clause 18–27. Survey of damage**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 12-10. Reference is made to the Commentary to Cl. 12-10.

**Clause 18–28. Invitations to tender**

This Clause was new in the 2013 Plan and corresponds to Cl. 12-11. Reference is made to the Commentary to Cl. 12-11.

When the MOU with disconnectable equipment are insured with separate sums insured as per Cl. 18-1 (a), sub-clause 2, and the loss or damage occurs whilst disconnected as per Cl 18-1 (a), sub-clause 3, the 20% p.a. shall be calculated of the sum insured for the part to which the loss or damaged occurred.

**Clause 18–29. Choice of repairers**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 12-12. Reference is made to the Commentary to Cl. 12-12.

**Clause 18–30. Removal for repairs**

This Clause was new in the 2013 Plan and corresponds to Cl. 12-13. Reference is made to the Commentary to Cl. 12-13.

There have been discussions whether the costs involved in getting an MOU back to the place of operation are covered in a case where the MOU has been brought to shore for repairs. It follows from the Commentary on Cl. 12-13 that the insurer's liability for "removal" covers the entire deviation to and from the repair yard, which must imply that basically the insurer is liable for such removal back to the place of operation. However, this presupposes that the damage occurs after the MOU has arrived at the place of operation. If the damage occurs prior to that point in time, e.g. during towage from land to the first place of operation, the insurer's liability is limited to the removal back to the place of damage, and not to the place of operation.

Liability during removal also covers wages and maintenance of the crew, provided that the crew is "necessary", cf. for further details Cl. 12-13 and the Commentary on that provision.

**Clause 18–31. Apportionment of common expenses**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 12-14. Reference is made to the Commentary to Cl. 12-14.

**Clause 18–32. Ice damage deductions**

The sub-clause 1 was new in the 2013 Plan and is verbatim the same as Cl. 12-15. Reference is made to the Commentary to Cl. 12-15.

The sub-clause 2 was new in the 2013 Plan and is verbatim the same as Cl. 12-17. Reference is made to the Commentary to Cl. 12-17.

Cl. 12-16 is not incorporated into Section 2 of Chapter 18, hence the incorporation of Cl. 12-15 and Cl. 12-17 is made into Cl. 18-32.

**Clause 18–33. Deductible**

This Clause corresponds to Cl. 18-13 of the 1996 Plan, but incorporates with amendments Cl. 12-18 in the 2013 Plan. Reference is made to the Commentary to Cl. 12-18.

Damage caused by bad weather arising as a result of the same atmospheric disturbance shall be regarded as one casualty. All loss or damage arising from the entire atmospheric disturbance shall be regarded collectively as one casualty. This provision supersedes the rule in Cl. 18-34, sub-clause 2. "Atmospheric disturbance" means a low atmospheric pressure which results in a severe storm pattern with strong winds combined with heavy seas, rain, snow, sleet, hail, ice, thunder and lightning, hurricane, typhoon, cyclone or tornadoes etc., as defined by a public weather bureau.

As in Chapter 12, the deductible must be calculated for each MOU. In the event of damage to several MOUs, an equivalent number of deductibles shall be calculated in the settlement.

It follows from the reference to Cl. 18-34 that no deductible shall be calculated in the event of a total loss of the insured MOU.

**Clause 18–34. Basis for calculation of deductions according to Clauses 18–32, 18–33 and Clause 3–15**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 12-19. Reference is made to the Commentary to Cl. 12-19.

**Section 2–4****Liability of the assured arising from collision or striking****Clause 18–35. Scope of liability of the insurer**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 13-1. Reference is made to the Commentary to Cl. 13-1.

Under Cl. 18-14 of the 1996 Plan, MOU owners' liability for damage to or loss of fixed installations on the continental shelf was excluded from the cover. This exclusion is now removed under the 2013 Plan, but in order to limit the exposure for the insurers a cap on the amount covered for MOUs with insured values in excess of USD 500 million has been introduced, cf. Cl 18-37.

#### **Clause 18–36. Limitation of liability based on tonnage or value of more than one MOU**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 13-2. Reference is made to the Commentary to Cl. 13-2.

#### **Clause 18–37. Maximum liability of the insurer in respect of any one casualty**

This Clause was new in the 2013 Plan and corresponds to Cl. 13-3. Reference is made to the Commentary to Cl. 13-3.

As the exclusion of liability for damage to or loss of fixed installations that was contained in Cl. 18-14 of the 1996 Plan was removed is considered to represent a significant extension of coverage due to the very high values that fixed installations represent, lower limits of cover for such collision/striking liabilities are imposed for MOUs with values in excess of USD 500 million. For an MOU with sum insured of USD 500,000,000 or less the additional limit available to cover collision liabilities equal the sum insured as per Cl. 13-3. Thus if e.g. the sum insured under the H&M insurance is USD 400,000,000, the additional sum insured available for collision/striking liability is also limited to USD 400,000,000.

For an MOU with sum insured higher than USD 500,000,000 the additional limit available for such liabilities is USD 500,000,000 or 50% of the sum insured, whichever is the higher amount. That means that for an MOU with sum insured between USD 500,000,000 and USD 1,000,000,000 the collision liabilities will be covered under the insurance up to USD 500,000,000. If the sum insured is higher than USD 1,000,000,000 the sum available for such liabilities will be 50% of the sum insured. Thus if the sum insured is USD 1,500,000,000, the additional amount available for collision/striking liability will be USD 750,000,000.

#### **Clause 18–38. Deductible**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 13-4. Reference is made to the Commentary to Cl. 13-4.

## Section 3

### Separate insurances against total loss

#### **Clause 18–39. Insurance against total loss and excess collision liability (hull interest insurance)**

This Clause corresponds to Cl. 18-15 of the 1996 Plan, but is in the 2013 Plan verbatim the same as Cl. 14-1. Similarly to Cl. 18-37 it introduces a cap on the collision/striking liability. Reference is made to the Commentary to Cl. 14-1.

Cl. 18-39 (b) provides that the hull interest insurer, as opposed to the freight interest insurer, cover collision/striking liability in accordance with Cl. 18-35 – 18-37 with a separate sum insured equal to the sum insured under the hull interest insurance.

#### **Clause 18–40. Insurance against loss of long-term freight income (freight interest insurance)**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 14-2. Reference is made to the Commentary to Cl. 14-2.

#### **Clause 18–41. Common rules for separate insurances against total loss**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 14-3. Reference is made to the Commentary to Cl. 14-3.

#### **Clause 18–42. Limitations on the right to insure separately against total loss**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 14-4. Reference is made to the Commentary to Cl. 14-4.

## Section 4

### Loss of hire insurance

#### **Clause 18–43. Main rules regarding the liability of the insurer**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 16-1. Reference is made to the Commentary to Cl. 16-1.

#### **Clause 18–44. Total loss**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 16-2. Reference is made to the Commentary to Cl. 16-2.

### Clause 18–45. Main rule for calculating compensation

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 16-3. Reference is made to the Commentary to Cl. 16-3.

### Clause 18–46. Calculation of the loss of time

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 16-4. Reference is made to the Commentary to Cl. 16-4.

### Clause 18–47. The daily amount

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 16-5 apart from the words “area of operation” which are added to sub-clause 2. Reference is made to the Commentary to Cl. 16-5.

This Clause lays down rules for calculating the daily amount under open **insurance contracts**, i.e. **insurance contracts** that do not specify any **agreed** value for the daily amount. As mentioned in the Commentary on Cl. 18-45, cf. Cl. 16-3, the “daily amount” is the insurable value of the assured’s loss of income per day. In practice, the daily amount is usually **agreed**. The provision in Cl. 18-47 is therefore primarily applicable in cases where the **agreement** “is opened” in accordance with Cl. 18-56, sub-clause 2.

*Sub-clause 1* states that the daily amount shall be fixed at the equivalent of the calculated gross hire per day less the costs saved per day due to the MOU’s not being in regular operation. The hire per day poses no difficulty when the MOU is under a time charter. In the case of a lump sum contract of the MOU, the agreed hire must be divided by the number of days that would normally be required for the contract works and any necessary mobilisation or subsequent mobilisation periods. In both cases, the hire according to the contract of offshore work/operation in force when the loss of time occurs is decisive.

*Sub-clause 2* prescribes the daily amount in cases where the MOU is not employed under a contract when the period of interrupted operations begins. This rule provides for an objective calculation of loss for practical legal purposes: It can be very difficult to decide how the MOU would have been employed if it had not been out of operation.

To avoid the difficulties of deciding which course of action the assured would have chosen, the daily amount in such cases is fixed at “the average hire for MOUs of the type and size and area of operation concerned” for the period during which the MOU is deprived of income. The term “average rates of hire” means a “weighted average”; account must be taken of how long each rate has been in effect. In practice, this can be achieved by dividing the period of interrupted operation into shorter periods during which rates of hire were relatively constant and calculating the compensation for each

individual period. If rates for long-term charters and spot charters differ, compensation must be based on an average in these cases, too.

The reference to “area of operation concerned” means that only the charter rates in the area where the MOU is or otherwise would have taken up work during the time when the interruption for repairs took place, e.g. Norwegian sector of the North Sea or U.S. Gulf of Mexico. If charter rates in a “new” area are to be considered account needs to be taken to the MOU’s state of readiness to take up work in another area within which regulations would require the MOU to undergo significant works or even modifications to be allowed to enter and operate in the “new” area. If such preparation works will require such works that will constitute “simultaneous works” as per Cl. 18-54, the charter rate in the area that the MOU is leaving shall be used for the period of time that will be equivalent to the preparation works, and the period beyond such preparation works the charter rate within the “new” area when calculating the “weighted average”. The reference to the MOU being “unchartered” does not cover the situation where a contract of work lapses due to a casualty covered by the insurance. This situation must be evaluated in accordance with sub-clause 1.

#### **Clause 18-48. *Agreed* daily amount**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 16-6. Reference is made to the Commentary to Cl. 16-6.

This Clause regulates the **agreed** daily amount. As mentioned under Cl. 18-47, the daily amount is usually **agreed**; the reason for doing so is to avoid difficulties in calculating the daily amount under an open loss-of-hire **insurance**. Under Cl. 2-2, **an agreement** of the daily amount means that the insurable value is fixed “by agreement between the parties ... at a certain amount”. If it is clearly stated in the text of the **insurance contract** that the daily amount is **agreed**, the matter is straight forward.

In practice, however, **insurance contracts** often merely state the amount the insurer is to pay for each day of time lost. This may be an **agreed** daily amount, but it is also conceivable that only the sum insured per day is stated. In this connection, Cl. 18-48 lays down an important rule of presumption: if the **insurance contract** states “that the loss of income shall be compensated for by a fixed amount per day, this amount shall be regarded as an **agreed** daily amount unless the circumstances clearly indicate otherwise”. In such case, the amount will also be the sum insured per day; in other words, the **agreed** value is fully insured.

Both the assured and the insurer may invoke the **agreement**. For the insurer, this is primarily relevant in the case of under-**insurance**, i.e. when the **agreed** daily amount is lower than the real loss of income per day. In such case, the **agreement** will limit the assured’s claim for compensation.

However, the **agreement** may also be relevant when the rules of Cl. 18-53 are applied. Under Cl. 18-53 the **agreed** daily amount will be decisive when calculating the savings the insurer makes as a result of the extraordinary measures taken to expedite repairs. As far as recourse against a third party is concerned, it must be proven to the insurer that the **agreed** daily amount represents the full loss, and that it therefore is not appropriate to apply the rule of apportionment laid down in Cl. 5-13, sub-clause 2.

If the amount is so much lower than the real loss per day that there can be no question of any rounding-off or rough calculation of the loss, the **insurance contract** should be treated as an open **insurance contract**. The provision has been worded with this in mind. If, for instance, the gross hire per day is USD 50,000, and the assured has effected a loss of hire **insurance** for USD 20,000 per day, one can safely say that “the circumstances clearly indicate” that the amount is a sum insured per day, not an **agreed** daily amount: thus there is an open **insurance contract** with under-insurance.

Naturally, there is nothing to preclude combining under-insurance with **agreement**. In our example, for instance, it may be agreed that the **insurance contract** is to cover USD 20,000 of an **agreed** daily amount of USD 30,000. In terms of settlement, it would be an advantage if the apportionment ratio pursuant to Cl. 5-13, sub-clause 2, first *sentence*, is fixed at the ratio between the insured daily amount and the **agreed** daily amount. It would therefore be expedient to have separate spaces on the first page of the **insurance contract** for “sum insured per day” and “**agreed** daily amount”.

In the offshore sector there may be instances when the insured daily amount is fixed at a certain amount and the MOU only earns a part of that amount when the operation is interrupted. Certain MOUs may have contracts where the charter hire payable is tied to defined levels of output from the operation, e.g. feet of well drilled per day or quantum of production throughput. Particularly in contracts for FPSOs there may be scaled rates of hire payable dependent on the volumes of throughput, particularly in the early phase of production when the volume gradually increases as new wells are tied in for production. In such circumstances there will be over-insurance and the **insurance contract** will operate as an open **insurance contract**.

The system of **agreed** insurable values is well established in hull insurance. MOU values change constantly, and it can often be difficult to establish what an MOU is really worth at a particular point in time - there is clearly a need to fix the value in advance. In loss of hire insurance, the situation appears to be slightly different; in this case the exact amount of hire of which the assured is deprived will often be known, and an **agreement** that exceeds the hire amount is likely to be perceived as excessive compensation for the assured’s actual loss. Nevertheless, the system of **agreed insurable values** has been maintained without exception. If it is evident that a loss of time has occurred, cf. Cl. 18-45, and the daily amount has been **agreed**, the assured must be paid the amount **agreed** for

the number of (full) days during which the MOU is out of operation. The only exception from this rule is where the assured has given misleading information about matters that are relevant for the **agreement**, cf. Cl. 2-3, sub-clause 1. The insurer must therefore ensure that the assured provides enough information concerning the MOU's potential earnings to give the insurer a basis for evaluating whether the **agreement** is correct when the insurance contract is effected. This also applies to the question of the duration of the charter party or contract of works; so that account can be taken when fixing the **agreed** daily amount of the possibility of the contract of work lapsing.

It follows from Cl. 18-56, sub-clause 2, that the **agreed** daily amount shall not apply to time lost during repairs that are carried out after the insurance period expires, if the actual loss of income per day calculated pursuant to Cl. 18-47 is less during this period. This provision is sometimes set aside in individual insurance contracts. As a rule, this is only done by adding the words "fixed and agreed" or, if relevant, "chartered or unchartered". If the parties to the insurance contract have a common understanding that the purpose of this addition is to nullify Cl. 18-56, sub-clause 2, it is of course binding on both parties. However, not all insurers take this view of the provision, in which case it is highly uncertain whether such an addition is sufficient to set aside Cl. 18-56, sub-clause 2. If this is the intention, the setting aside should be formulated more clearly.

If the insured MOU is chartered under a contract for consecutive works, the **agreement** must be based on the average gross hire per day that the MOU would have earned if all the works had been completed in the normal way. It may then be relevant to deduct from the gross hire an amount for costs that will be saved if the MOU must dock for repairs. There are numerous uncertain factors in this calculation. The uncertainty is even greater for MOUs operating under spot charters. In general, it can be said that the greater the degree of uncertainty in the calculations, the more important it is that the daily amount be **agreed** in advance.

It is conceivable that, after the expiry of the contracts of work on which the **agreement** was based, the MOU is chartered on even more advantageous conditions. In such case, the **agreement** still has significance, since it always constitutes the maximum limit for the insurer's liability.

### **Clause 18-49. Deductible period**

This Clause was new in the 2013 Plan and corresponds to Cl. 16-7. Reference is made to the Commentary to Cl. 16-7. Sub-clause 1 is verbatim the same as Cl. 16-7, sub-clause 1. In sub-clause 2 the words "or location" is added as MOUs seldom enters ports but rather more often moves between locations. Sub-clause 3 is included to suit the normal modus of operation of MOUs, which is to operate stationary on a field. Damage caused by heavy weather occurring as a result of the same atmospheric disturbance whilst the MOU is stationary at one location shall be regarded as one single

casualty and only one deductible period shall be drawn for the resulting loss of hire, cf. sub-clause 2 of Cl. 18-33.

Sub-clause 3 of Cl. 16-7 is not included in Cl. 18-49 as separate deductible period for machinery damage is not common in loss of hire insurance for MOUs. Cl. 12-16 on machinery deduction is not included in Section 2 either, cf. Commentary to Cl. 18-32.

*Sub-clause 1, first sentence* provides that a deductible period, stated in the **insurance contract**, shall be established for each casualty. The provision provides a number of rules for calculating the deductible period. The number of days must therefore be fixed in the **insurance contract**. This is linked to the fact that the number of deductible days is a key factor when fixing the premium and therefore an important element of the negotiations between the assured and the insurer. Thus the deductible period is agreed in each individual case.

The term “casualty” here means an event that gives rise to the right to claim under loss of hire insurance in accordance with Cl. 18-43, i.e. also events which are mentioned in Cl. 18-43, sub-clause 2, but which do not result in damage to the MOU.

A separate deductible period is applied for each casualty; this is in accordance with the other deductible provisions in the Plan, cf. Cl. 18-33 and Cl. 18-38. However, if one and the same casualty leads to a number of separate delays, e.g. delay at the place where the casualty occurred, delay in connection with temporary repairs and delay during permanent repairs, then only one deductible period shall be applied for the aggregate of all the delays. As far as the wording “each casualty” is concerned, reference is made to the Commentary on Cl. 18-33, cf. Cl. 12-18 and Cl. 4-18. In loss of hire insurance, the question of whether there has been one or more casualties will probably seldom be acute, because the deductible periods for several more or less contemporaneous casualties will coincide unless parts of the deductible periods have been consumed prior to the joint repair period commences. For example, one of the casualties may have involved salvage operation and temporary repairs which may have consumed part of the deductible period applicable to that casualty.

According to *sub-clause 1, second sentence*, the deductible period runs “from the commencement of the loss of time”. If, for instance, the MOU should touch a protrusion on the sea bed but continue its voyage immediately at normal speed, there is no loss of time nor does any deductible period run. However, if inspection reveals that bottom damage occurred and that they necessitate a lengthy stay in a repair yard, on the other hand, a loss of time occurs. In this case, the deductible period begins to run in parallel with the loss of time.

The rule that the deductible period begins to run at the commencement of the loss of time also means that the deductible period is to be placed at the beginning of the period of lost time. This also applies where the loss of time runs during several separate periods. The deductible period is therefore not to be apportioned pro rata between the various periods. On this point, the rule in loss of hire insurance differs from the rule applied in H&M insurance where the deductible is apportioned pro rata between the expenses to be covered by the insurer.

The placement in time of the deductible period can have the following consequences for the settlement:

Firstly, it is significant in relation to the rule of apportionment in Cl. 18-54 regarding simultaneous repairs. It will be a distinct advantage for the assured to have owner's work (i.e. works that are not covered by insurance) carried out during the deductible period; the assured does not receive any loss of hire compensation for this period in any event. On the other hand, if owner's work is carried out during a period of time that is covered by the loss of hire insurer, the result is that the assured may only claim 50 % of the compensation that he would have received if only repairs covered by the insurance had been carried out, see Cl. 18-54, sub-clause 1.

Secondly, the placement in time of the deductible period may become significant where the daily amount pursuant to Cl. 18-47, sub-clause 2, or Cl. 18-56, sub-clause 2, is lower for the last repair period than for the first. In this case, the assured may not demand that the deductible period be placed during the last period so as to enable him to receive compensation for correspondingly more days at the highest daily amount.

Thirdly, the placement in time of the deductible period may become significant when apportioning costs of measures to avert or minimise loss and extra costs incurred to save time, cf. Cl. 4-12, sub-clause 2, and Cl. 18-53, sub-clause 3. Insofar as such costs are incurred in saving time during the deductible period, they must be covered by the assured, cf. further information in the Commentary on Cl. 18-53, sub-clause 3.

Finally, the placement in time of the deductible period may become significant when apportioning claims for reimbursement pursuant to Cl. 5-13 and Cl. 18-58.

The second sentence also states that the deductible period is to be calculated in accordance with the rule in Cl. 18-46, sub-clause 1, second sentence. This corresponds with the 1996 Plan. If the MOU is only partly deprived of income, the deductible period lasts until the loss of time, converted into a period of total loss of income, has reached the agreed number of days. This means that if an equipment or plant casualty causes an MOU to operate at half capacity for 100 days and the deductible period has been fixed at 45 days, the deductible period lasts for 90 days, reckoned from the time of the casualty.

The same applies where the loss of time resulting from a casualty is spread over several periods, separated by periods in which the MOU is in full operation. In such cases, only the days with (full) loss of time are counted. The deductible period does not expire until the fixed number of days is reached. This, however, only applies when the MOU is capable to continue its normal operations at reduced capacity following a casualty. If the owners negotiate that the MOU is utilized for other operation during the deductible period, such work shall not be taken into consideration in this context.

*Sub-clause 1, third sentence*, states that loss of time during the deductible period is not covered by the insurer. This is in accordance with the 1996 Plan.

*Sub-clause 2* states that damage which is due to heavy weather or the MOU's sailing through ice, and which occurred during the period of time between the MOU's departure from one port or location and its arrival at the next, is to be regarded as one casualty. The provision is identical to Cl. 12-18, sub-clause 2.

The reason for the rule is the technical difficulties that might easily arise in connection with settlement if an attempt was made to categorise heavy weather damage, damage caused by ice, etc. sustained during one and the same voyage as separate casualties. However, the rule is of far less importance in loss of hire insurance than in hull insurance. As mentioned in the Commentary on *sub-clause 1*, instances of damage that occur during one and the same voyage will normally all be repaired at the same time. Even if the various instances of damage are ascribed to several different casualties, both the deductible period and the delay will coincide for them all; for settlement purposes, therefore, the result is the same as if all the damage had been regarded as one casualty.

*Sub-clause 3* was new in the 2013 Plan and corresponds with Cl. 18-33, *sub-clause 2*, and provides that all loss or damage resulting from the same atmospheric disturbance whilst the MOU is stationary at one location shall be regarded as one casualty subject to one deductible. What "atmospheric disturbance" means is explained in the commentaries to Cl. 18-33.

### **Clause 18–50. Survey of damage**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 16-8. Reference is made to the Commentary to Cl. 16-8.

### **Clause 18–51. Choice of repairer**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 16-9. Reference is made to the Commentary to Cl. 16-9.

**Clause 18–52. Move to the repair location, etc.**

This Clause was new in the 2013 Plan and is nearly verbatim the same as Cl. 16-10, but the words “class of works” has been replaced by “category of work”. Reference is made to the Commentary to Cl. 16-10.

**Clause 18–53. Extra costs incurred in order to save time**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 16-11. Reference is made to the Commentary to Cl. 16-11.

**Clause 18–54. Simultaneous works**

This Clause was new in the 2013 Plan and corresponds to Cl. 16-12. In addition to some editorial amendments substantive amendments were done in 2013 Plan compared to Cl. 16-12 by adding two new sentences to sub-clause 1. The Commentary to Cl. 16-12 is relevant also to Cl. 18-54 and is therefore referred to, but below the reason for and the effect of the substantive amendments is put into the right context and explained.

The provision regulates the liability of the loss-of-hire insurer in cases where repairs that are covered by the insurance and work that is not covered by it are carried out at the same time. The latter may be relevant to a loss-of-hire insurance for an earlier or later year, or it may be work that is not covered by any insurance, e.g. work relating to classification or modifications.

When repairs relating to one or more casualties (under one or more loss-of-hire **insurance contracts**) are carried out at the same time as work for the assured’s account (e.g. work in connection with periodic classification surveys), the loss of time during the stay at the repair yard will in actual fact be due to several concurrent causes of damage. In the absence of other provisions, the loss in such cases must be apportioned between the assured and the various insurers in accordance with the rule of apportionment in Cl. 2-13. However, this type of solution is unsatisfactory from a technical legal standpoint because it will entail numerous decisions that are made largely on a discretionary basis. In order to avoid these problems, therefore, more clear-cut rules of apportionment have traditionally been applied in the loss-of-hire conditions. The rules of apportionment in Cl. 18-54 are based as a starting point on such principles as applies to Cl. 16-12, with the result that the causation rules in Cl. 2-13 are set aside in two respects:

Firstly, by applying relatively simple criteria, Cl. 18-54 (and Cl. 16-12) prescribes when simultaneous repairs are to be regarded as concurrent causes of the loss of time, and when one of the repairs is to be regarded as the only cause. In this way, difficult and, to some extent, subtle questions of causation are avoided. Secondly, Cl. 18-54 (and Cl. 16-12) fixes the exact proportions to be used when apportioning

the time lost among the various repairs; it is therefore unnecessary to use the discretionary rule of apportionment in Cl. 2-13.

These two departures from the main rule considerably simplify the issue. The fact that the provisions may occasionally give one of the parties an unwarranted advantage is of little significance compared to the substantial advantages achieved for the settlement process.

Pursuant to sub-clause 1 (a) to (c), an apportionment is to be made between the assured and the insurer when specified owner's work is carried out at the same time as casualty work. Owner's maintenance work which is not falling within the categories of work defined in letters (a) to (c) shall never be subject to any apportionment pursuant to Cl. 18-54.

In accordance with sub-clause 1, *first sentence*, the apportionment is to be made on the basis of an equal shares principle: the insurer shall pay compensation for half of the common repair time in excess of the deductible period. The said principle presupposes that the common work time is utilized equally effectively by both parties, and that it is therefore equitable to share the loss of time during this period equally; furthermore, this type of 50/50 rule is very easy to apply in practice.

This reasoning is generally relevant also to MOUs, but compared to vessels carrying goods and/or passengers, MOUs will to a much larger extent carry out not only ordinary maintenance work, but also letters (a) to (c) work while they are offshore and still earn hire wholly or in part.

Hence, a new second sentence was added to sub-clause 1 providing that works under letters a) to c) which would not have deprived the MOU from income if it had been carried out separately shall not be taken into account for apportionment pursuant to the first sentence of sub-clause 1. This means that the assured may carry out e.g. classification work simultaneously with casualty work without any apportionment of the common time if the classification work could have been carried out separately without loss of income. It will be a question of fact whether the classification work was of such nature that it could have been carried out without loss of income. If not, the 50/50 apportionment shall be applied on the common time. If the owner's work delays the casualty work, sub-clause 4 of Cl. 18-54 applies also on how the delay shall be apportioned between the casualty- and owner's work.

It was considered whether the principle adopted in the new second sentence of sub-clause 1 should be applied in the insurers favour in those cases where the casualty work is deferred to a period when the MOU is out of service due to owner's work. It was, however, agreed that it is in both the insurers as well as the assured's long term interests to encourage the owner to defer the casualty work to a convenient time rather than risk to impose on the insurer an unnecessary loss by repairing casualty work at once. The obligation to mitigate loss according to Cl. 3-30 cf. Cl. 3-31 would of course limit

the owner's possibilities to impose an unnecessary loss on the insurer. But all the same it was felt prudent to supplement the potential contentious Cl. 3-30 with an economic incentive for the owner to defer casualty work whenever prudent to a convenient time and still get compensated half the common time according to the first sentence of sub-clause 1.

However, the new third sentence of sub-clause 1 provides that if casualty damage are discovered or occurs during a period when the MOU would have been deprived of income if works under letters a) to c) had been carried out separately, time for repairs carried out simultaneously with scheduled works under letters a) to c) shall not be compensated. The third sentence of sub-clause 1 only applies if casualty work is repaired simultaneously with the same scheduled works under letter a) to c) during which the casualty work was discovered or occurred. If the casualty work so discovered or occurred are deferred to a subsequent period when other scheduled works under letters a) – c) are carried out, then what is written above on deferred casualty work shall apply, cf. also in this regard Cl. 3-30.

### **Clause 18–55. Loss of time after completion of repairs**

This Clause was new in the 2013 Plan and is corresponding to Cl. 16-13, but letters (b) and (d) are not deemed relevant to MOUs and are therefore not included in Cl. 18-55. Reference is made to the Commentary to Cl. 16-13, letter (a) of Cl. 18-55 is for the purpose of cover unamended even though the language is adapted to suit the modus of operation of MOUs. Letter (b) is amended as compared to Cl. 16-13 letter (c).

This provision limits the insurer's liability for loss of time that occurs after repairs have been completed. According to the main rule for calculating loss of time set out in Cl. 18-46, the insurer would have been fully liable for time lost after completion of repairs to the extent that this loss of time was a result of the casualty.

The insurer therefore had to pay compensation for loss of time until the MOU was again gainfully employed, as well as any loss of time resulting from the termination of the contract of work. Thus Cl. 18-55 involves a limitation on the liability that follows from Cl. 18-46 in respect of time lost after completion of repairs. In accordance with *sub-clause 1, first sentence*, the insurer is only liable for such loss of time in the cases that are specifically mentioned in letters (a) and (b); in all other cases the liability of the loss-of-hire insurer ceases when the repairs have been completed.

*Letter (a)* deals with the situation where the MOU, after completion of repairs, is to continue to operate under the contract of works that was in effect at the time of the casualty; in such case, the insurer is liable for time lost until the MOU has resumed its former employment. The provision applies irrespective of the type of contract of works concerned. Contractual obligations that are not set out in an actual contract of works must be regarded as equivalent to such a contract in this connection.

If, on the other hand, the contract of works is cancelled due to the MOU's stay at a repair location, the insurer is only liable for the time lost up to the completion of repairs unless cover is provided under letter (b).

*Letter (b)* regulates loss of time for MOUs that do not return to the location at which the casualty occurred but moves to another location, either to commence new operations that it was scheduled to move to after the completion of the operations it was engaged in at the time of the casualty irrespective of whether the MOU actually completed those operations, or to take up work under a new contract of works that was concluded prior to "the commencement of the move to the repair location". These words are new as compared to Cl. 16-13 letter (c) which only compensates loss of time after completion of repairs if the contract was entered into prior to the occurrence of the casualty. A contract may be legally binding and therefore concluded even if the contract is not formalized in a written agreement duly executed and signed by the parties. A mere letter of intent, however, will not satisfy the requirement of a binding contract pursuant to letter (b).

The next location may be in a different direction from the repair location than the location at which the casualty occurred, but the insurer's liability will be limited to the time to move in the new direction for a distance equal to the distance return to the casualty location would have represented.

Loss of time after completion of repairs covers both the situation where the MOU remains in the repair yard for a while after repairs have been completed and while the MOU moves to a location to resume its normal activity. However, loss of time due to the fact that the MOU is unable to find employment immediately after repairs have been completed is not covered. Such loss of time may in certain cases be said to be a consequence of the repairs and hence also a consequence of the damage that was repaired. However, the dominant cause of the loss of time will be the market conditions, or possibly decisions made by the assured, and it is therefore natural that the loss should not be covered.

The reference in *sub-clause 2* to Cl. 18-52 is made in respect of its sub-clause 2, second sentence, which establishes that removal time occurring during the deductible period is not to be apportioned, cf. the Commentary on Cl. 18-52.

#### **Clause 18–56. Repairs carried out after expiry of the insurance period**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 16-14. Reference is made to the Commentary to Cl. 16-14.

#### **Clause 18–57. Liability of the insurer when the MOU is transferred to a new owner**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 16-15. Reference is made to the Commentary to Cl. 16-15.

**Clause 18–58. Relationship to other insurances and general average**

This Clause was new in the 2013 Plan and is verbatim the same as Cl. 16-16. Reference is made to the Commentary to Cl. 16-16.

**Section 5****War risks insurance***Section 5–1**General rules relating to the scope of war risks insurance***Clause 18–59. *Perils covered***

This Clause was new in 2016 and is verbatim the same as Cl. 15-1. Reference is made to the Commentary to Cl. 15-1.

**Section 5 will only apply if it has been agreed that the insurance of the MOU also covers war perils. If the insurance contract is silent on whether it covers marine or war perils, the presumption according to Cl. 2-10 is that the insurance only covers marine perils. Therefore, it must be expressly agreed if the insurance of the MOU shall cover war risks. War risks insurance may be covered separately or in combination with marine perils cover.**

**Clause 18–60. *Interests insured***

This Clause was new in 2016 and is verbatim the same as Cl. 15-2 apart from the cross references to the relevant sections in Chapter 18. Reference is made to the Commentary to Cl. 15-2.

**Clause 18–61. *Sum insured***

This Clause was new in 2016 and is verbatim the same as Cl. 15-3 apart from the cross references to the relevant sections and clauses in Chapter 18. Reference is made to the Commentary to Cl. 15-3. It is in Cl. 18-61, sub-clause 2, letter (b), expressly made clear that the limitation of cover of collision liability contained in Cl. 18-37 shall apply also for any war risk collision liability. This also follows from the reference to Section 2-4 in Cl. 18-60 (b) that i.a. Cl. 18-37 shall apply also to the war risk collision liability cover.

**Clause 18–62. *Safety regulations***

This Clause was new in 2016 and is by and large verbatim the same as Cl. 15-4 apart from some editorial amendments. Reference is made to the Commentary to Cl. 15-4.

In particular to letter (a), the words “complete a move or operation in progress” means that the assured must be allowed to comply with applicable regulations issued by relevant authorities and/or his contract requirements to complete an operation in a safe manner so that e.g. the well is properly secured against blow-out before leaving it.

## *Section 5-2*

### *Termination of the insurance*

#### *Clause 18-63. War between the major powers*

This Clause was new in 2016 and is verbatim the same as Cl. 15-5. Reference is made to the Commentary to Cl. 15-5.

#### *Clause 18-64. Use of nuclear arms for war purposes*

This Clause was new in 2016 and is verbatim the same as Cl. 15-6. Reference is made to the Commentary to Cl. 15-6.

#### *Clause 18-65. Bareboat chartering*

This Clause was new in 2016 and is largely verbatim the same as Cl. 15-7 apart from an editorial amendment. Reference is made to the Commentary to Cl. 15-7.

Bareboat chartering is rather common in the offshore industry, and very often the bareboat charterer is co-insured either expressly or by virtue of Cl. 18-1, letter (i). If so, the war risks insurance will not terminate automatically according to Cl. 18-65. Such termination will only occur if the MOU is bareboat chartered without the consent of the war risks insurer to a third party outside the agreed group of assureds or co-assureds.

#### *Clause 18-66. Cancellation*

This Clause was new in 2016 and is verbatim the same as Cl. 15-8. Reference is made to the Commentary to Cl. 15-8.

## *Section 5-3*

### *Areas of operation*

#### *Clause 18-67. Excluded and conditional areas*

This Clause was new in 2016 and is largely verbatim the same as Cl. 15-9 apart from some editorial amendments. Reference is made to the Commentary to Cl. 15-9.

*Section 5-4*  
*Total loss*

***Clause 18-68. Relationship to Section 2-2 above***

This Clause was new in 2016 and is verbatim the same as Cl. 15-10 apart from the cross reference to Section 2-2 of Chapter 18. Reference is made to the Commentary to Cl. 15-10.

***Clause 18-69. Intervention by a foreign State power, piracy***

This Clause was new in 2016 and is verbatim the same as Cl. 15-11 apart from some editorial amendments and correcting the cross references to the relevant clauses in Chapter 18. Reference is made to the Commentary to Cl. 15-11.

***Clause 18-70. Blocking and trapping***

This Clause was new in 2016 and is verbatim the same as Cl. 15-12 apart from some editorial amendments and correcting the cross reference to the relevant Clause in Chapter 18. Reference is made to the Commentary to Cl. 15-12.

***Clause 18-71. Restrictions imposed by the insurer***

This Clause was new in 2016 and is verbatim the same as Cl. 15-13 apart from some editorial amendments and correcting the cross reference to the relevant Clause in Chapter 18. Reference is made to the Commentary to Cl. 15-13.

*Section 5-5*  
*Damage*

***Clause 18-72. Relationship to Section 2-3 above.***

This Clause was new in 2016 and is largely verbatim the same as Cl. 15-14 apart from some editorial amendments and correcting the cross references to the relevant Section and clauses in Chapter 18. Reference is made to the Commentary to Cl. 15-14.

***Clause 18-73. Deductible***

This Clause was new in 2016 and is verbatim the same as Cl. 15-15 apart from some editing and correcting the cross reference to the relevant Clause in Chapter 18. Reference is made to the Commentary to Cl. 15-15.

*Section 5–6*  
*Loss of hire*

***Clause 18–74. Relationship to Section 4 above***

This Clause was new in 2016 and is largely verbatim the same as Cl. 15-16 apart from some editorial amendments and correcting the cross references to the relevant Section and clauses in Chapter 18. Reference is made to the Commentary to Cl. 15-16.

***Clause 18–75. Loss in connection with a call at a visitation port, a temporary stay, etc.***

This Clause was new in 2016 and is largely verbatim the same as Cl. 15-17 apart from some editorial amendments and correcting the cross references to the relevant clauses in Chapter 18. Reference is made to the Commentary to Cl. 15-17.

***Clause 18–76. Loss caused by orders issued by the insurer***

This Clause was new in 2016 and is verbatim the same as Cl. 15-18 apart from some editorial amendments and correcting the cross references to the relevant clauses in Chapter 18. Reference is made to the Commentary to Cl. 15-18.

***Clause 18–77. Choice of repairer***

This Clause was new in 2016 and is verbatim the same as Cl. 15-19 apart from correcting the cross reference to the relevant Clause in Chapter 18. Reference is made to the Commentary to Cl. 15-19.

*Section 5–7*  
*Owner's liability, etc. (P&I)*

***Clause 18–78. Scope of cover***

The Clause was new in 2016 and corresponds to Cl. 15-20 although somewhat simplified as P&I insurance for MOUs is not poolable within the International Group (IG) of P&I Clubs' Pooling Agreement and thus not reinsured through the IG's reinsurance arrangements.

*Sub-clause 1* establishes that the scope of the war risks insurer's P&I cover corresponds to the P&I cover of the MOU in the sense that the insurance covers the same liability and expenses, i.e. the same range of losses.

Sub-clause 1 entails that the war risks insurer also assumes the war peril as defined in the Pooling Agreement of the International Group of P&I Clubs. The rationale for this provision is that the P&I clubs do not define a war peril in the same way as Cl. 2-9 of the Plan. This difference could result in the assured being without P&I insurance if the scope of the war peril exclusion in the P&I insurance was wider than the range of war perils defined in Cl. 2-9.

An example:

Under the rules of the P&I clubs, use of weapons of war is a war peril regardless of motive, while under Cl. 2-9 civilian use of weapons of war will only be a war peril if there is a political, social or religious motive for the use of such weapons. This distinction is illustrated by the case of Peter Wessel (ND 1990.140). An anonymous bomb threat (which proved to be false) was considered to be a marine peril because there was no reason to assume that there was any political, social or religious motive behind the threat. Under the P&I insurance, a threat of use or use of a weapon of war, including a bomb, is regarded as a war peril.

If the wording of the definition of the war peril applied by the P&I club in question is not identical to that of the Pooling Agreement of the IG (the Pooling Agreement), the definition of a war peril in the Pooling Agreement will be decisive. The Pooling Agreement provides that all use of “mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war” constitutes a war peril. There has been discussion within the International Group as to whether pirates’ use of automatic weapons entails that the attack is no longer a marine peril, but a war peril. In relation to Cl. 18-78, this issue is of no consequence because the war risks insurer assumes all war risks as defined in Cl. 2-9. Use of weapons of war by other criminals will not be covered by Cl. 2-9, but is covered by Cl. 18-78 provided such use of weapons is excluded in the Pooling Agreement. When applying Cl. 18-78, the P&I clubs’ own definition of weapons of war shall be decisive. This is currently commented on as follows on the International Group’s web site:

“What does ‘similar weapons of war’ mean? There is no definition in the Pooling Agreement or in club rules but the wording used ‘or other similar weapons of war’ indicates that such other weapons should be of a similar nature to those previously identified. The specifically identified weapons of war are mines, torpedoes, bombs, rockets, shells and explosives and show an intention that something more than guns/rifles/conventional ammunition would be needed to trigger the operation of the exclusion.”

Generally speaking, it takes a great deal for a shipowner to be held liable for damage and losses that are a result of war perils. Even the strict oil spill liability under the CLC Convention does not apply if the oil spill is attributable to acts of war or damage caused by a third party with the intent to cause damage.

For the war risks insurer, assuming the range of war perils defined in the P&I conditions entails an increased risk because he is leaving it up to another insurer to define this range of perils. This is quite different from applying the range of losses covered by the P&I insurance because, by expanding the range of losses the P&I clubs will also be exposing themselves in their day-to-day activities as a marine peril P&I insurer. It will be simpler for a P&I club to reduce its range of perils by expanding the war peril exclusion when it knows that the entire risk is transferred to the war risks insurer. Instead of leaving it up to the individual P&I club to define a war peril, reference has therefore been made to the definition in the Pooling Agreement. The war risks insurer is thus protected against whatever an individual club might decide. A 3/4 majority is required to change the Pooling Agreement, and there will normally be some forewarning of what is to come.

Under the last part of sub-clause 1, reference is made to the Pooling Agreement as it read at the time the agreement was entered into as decisive for the P&I liability of the war risks insurer. This means that any changes in the Pooling Agreement during the insurance period will not have any consequence for the war risks insurer. Under this approach, the war risks insurer will have time to change his conditions the next time they are renewed if he sees that the P&I system excludes from its range of marine perils any perils that the war risks insurer does not wish to cover.

In *sub-clause 2*, it is presumed that the MOU had effected its ordinary P&I insurance with Gard if such insurance is lacking.

#### ***Clause 18–79. Limitations to the cover***

*Sub-clause 1* establishes that as a basic rule the war risks insurer's cover under the war risks section is subsidiary in relation to any other insurance the assured may have effected.

The effects for the assured and the insurer of the insurance being made subsidiary are set out in Cl. 2-6 and Cl. 2-7, and may vary depending on whether or not the other insurance has also been made subsidiary. The provision has been included to ensure that, in the event of double insurance, the war risks insurer will not be left with full liability in respect of other insurers who often use clauses that make the insurance subsidiary to all other insurances.

The provision does not apply in relation to excess covers. Such excess insurance cover will be a genuine supplement to any cover the assured might otherwise have under his insurances.

Furthermore, the war risks insurance is not subsidiary in relation to the piracy risk. It is appropriate that the war risks insurance is the main insurance in this context. This is in line

with practice in piracy cases, where the war risks insurer has normally acted as the main insurer.

Some P&I clubs offer excess war risks cover. Insofar as this is activated, the provision will not apply as the insurance cover will come in addition to the cover the assured otherwise might have under its insurances. However, for clauses relating to the ordinary P&I clubs' usual cover that make the insurance subsidiary to all other insurances, the provision has full force and effect.

### *Section 5–8*

#### *Occupational injury insurance, etc.*

#### *Clause. 18–80. Scope of cover*

This Clause was new in 2016 and is verbatim the same as Cl. 15-23 apart from one editorial amendment. Reference is made to the Commentary to Cl. 15-23.

### *Section 6*

#### *Construction Risks Insurance*

Section 6 was new in 2016.

#### *Section 6–1*

##### *General rules relating to the scope of construction risks insurance*

#### *Clause 18–81. Scope of application*

Section 6 is drawn up first and foremost with the interests of the owner in mind when he e.g. converts a tanker into an FPSO and enters into various contracts with a yard and/or other contractors and/or suppliers for different parts of the total project. Such projects may be tailor-made for a specific field where the owner has entered into a contract with the field operator for the provision of and/or operation of the FPSO. Very often the charter hire for the FPSO will not commence until the FPSO is ready to start its operations at the field. This means that it is for the FPSO owner, who then normally will be the assured, to ensure that the insurance includes cover in respect of offshore installation, hook-up and commissioning works.

The rules in Section 6 of Chapter 18 are intended to apply to both newbuildings, conversion work and major upgrade of MOUs. A yard building e.g. an FPSO from scratch as a turnkey project on account of an owner for delivery at the yard's quayside may choose between covering the insurance on the basis of this Section 6 or Chapter 19. Chapter 19 will probably be the most appropriate alternative for the yard as this Chapter is drawn up for insurance of projects where

the yard is taking out the insurance to protect its interests. It is for the parties to evaluate and agree the terms of the insurance contract, including the choice between Chapter 19 and Section 6 of Chapter 18. The parties must see to it that the terms of the individual insurance contract make it clear whether the insurance is effected on the basis of Chapter 19 or Section 6 of Chapter 18.

Section 6 also applies to offshore installation, hook-up and commissioning works if the project comprises also these stages of the construction work. Thus “the Project”, which is the word used in Cl. 18-81 to describe the scope of application of Section 6, may vary considerably from case to case. It is therefore of utmost importance to specify in the insurance contract exactly the scope of application of the insurance.

*Clause 18-82. Insurance period/Ref. Clause 1-5*

The Clause corresponds to Cl. 19-2, but as opposed to Cl. 19-2 is focusing also on attachment of the insurance. Sub-clause 1, first sentence, presupposes that the attachment date of the insurance is expressly set out in the insurance contract. If not, the default position of Cl. 1-5, sub-clause 1, will apply so that the insurance attaches immediately when the parties have agreed on the terms. If only the date of attachment is agreed and not the exact hour, Cl. 1-5, sub-clause 2, will apply so that the insurance attaches at 00:00 UTC on that date.

Depending on the individual project insured, it may not be anything of substance to insure at the agreed attachment date. That will be the case if the project is to build a new MOU and the insurance attaches before any construction work has begun or any procurement has been made. If the assured has purchased a tanker or other vessel or unit for conversion, he should insure such unit under the construction risks insurance from the moment the risk is transferred from the seller to the assured. He can achieve this by agreeing an appropriate attachment date for the insurance comprising such procurement. For each component, equipment and materials manufactured or procured for the project the insurance will attach from the time the risk is transferred to the assured. This may be at different times depending on the terms of the contracts entered into between the assured and the sellers, suppliers, contractors of each component etc. Often the risk will be transferred only when the contractor or supplier has completed its obligations under the contract, e.g. when the component, part or equipment is completed and delivered to the assured. However, the risk may be transferred at an earlier stage during construction, or the assured may have agreed to carry the risk throughout the construction period. If the assured has entered into several contracts with different contractors or suppliers, each contract must be treated individually in this respect as various components, parts or equipment may attach under the insurance at different times.

MOUs in operation prior to the commencement of the Project will normally be covered under ordinary insurances for MOUs in operation. If the assured owns and operates the MOU, there may not be any transfer of risk if the assured maintains the ownership and the risk of the MOU also during the construction period. Unless the operation insurance shall cover the MOU during the construction period, the assured must agree with his insurers the date when the operation insurance shall be terminated and the MOU shall be covered under the construction risks insurance. The same applies if the assured owns and operates a vessel which will be converted to an MOU. It is recommended that the assured ensures that the latter insurance attaches when the operating insurance contract is cancelled or expires to avoid any double insurance or gap between the operating insurance and the construction risks insurance. In case of double insurance, whether intended or not, Cl. 2-6 and Cl. 2-7 applies.

*Sub-clause 2* set aside Cl. 1-5, sub-clause 3. The first sentence states that the insurance remains in effect until the date stipulated as the completion of the project. The parties must agree which date shall be set as completion date. Normally this would be the delivery date agreed in the contract between the assured and his contractor, or in the contract between the assured and the field operator, whichever is the latter, ref. Cl. 18-81 above. If the project is delayed, the *second sentence* entails that the insurance automatically remains in effect until the actual completion date, provided the Project is not delayed more than nine months. The assured must pay an additional premium for the extension period calculated pro rata of the premium agreed for the initial insurance period, unless the parties have agreed in advance the premium for the extension period. If delivery takes place before the stipulated delivery date, the assured may be entitled to a return of premium, cf. Cl. 6-5.

It is conceivable that the operation insurance intended to apply after completion comes into force before the construction risks insurance terminates when the construction risks insurance is extended. In that event, the rules relating to double insurance shall apply, cf. Cl. 2-6 and Cl. 2-7.

If the completion is delayed beyond the nine months' extension period, the parties must negotiate new terms for continuation of the insurance.

### *Clause 18–83. Place of insurance – project location*

*Sub-clause 1* provides that the insurance is in effect anywhere in the world, subject to the requirements under sub-clause 2, see further below. Thus the assured is free to place orders with suppliers and constructors wherever they may be located. At what time the insurance will attach for the various components, parts or equipment must be decided according to Cl. 18-82, see the Commentary to this Clause.

**Sub-clause 1** implies that once the component, part or equipment is attached to the construction risks insurance, subsequent transport for incorporation into the project at another port or place where assembly takes place is comprised by the insurance as long as this takes place within the insurance period, cf. Cl. 18-82, sub-clause 2.

*Sub-clause 2* requires that all locations of yards, workshops and/or work sites for construction and assembling of main components shall be agreed with the insurer. This may probably most conveniently be done in connection with the review of the project and initial risk assessment required pursuant to Cl. 18-1, letter (e), no. 3. What is a main component must at the same time be agreed in order to avoid any subsequent dispute on whether such agreement should have been reached. Any change of location shall be notified to and agreed by the insurer. Failure to notify must be treated as an alteration of the risk, cf. Section 2 of Chapter 3.

*Sub-clause 3* provides that sea trials are covered within the area allowed by the MOU's certificate. Such certificate will be issued by the flag state. Temporary certificates may be issued prior to completion, which will suffice for this purpose. If sea trials should be carried out outside the area of operation according to Cl. 18-1, letter (h), Cl. 3-15 will apply unless otherwise agreed.

*Sub-clause 4* requires that when it is agreed that the insurance also covers offshore installations, hook-up and commissioning, the offshore location shall be set out in the insurance contract. If for one reason or another the offshore location is not set out in the insurance contract, it may imply that the insurance does not comprise any work offshore. But it may also imply that such location is not important to the insurer. The latter seems to be the reasonable conclusion if the insurer has agreed that the insurance should comprise offshore installations, hook-up and commissioning, but not secured agreement on the offshore location. Any change of the offshore location must be treated as an alteration of the risk, cf. Section 2 of Chapter 3.

#### ***Clause 18–84. Escalation***

This Clause is verbatim the same as Cl. 19-7. Reference is made to the Commentary to Cl. 19-7.

#### ***Clause 18–85. Deductible***

This Clause is verbatim the same as Cl. 19-8 apart from correcting the cross references as appropriate. Reference is made to the Commentary to Cl. 19-8.

#### ***Clause 18–86. Premium in the event of total loss.***

The combined effect of Cl. 6-3, cf. Cl. 1-5, sub-clause 4, is that for insurance contracts attaching for more than one year, the insurer would be entitled to only one year premium in case he pays

the sum insured as a result of total loss, constructive total loss or payment pursuant to Cl. 4-21. This solution is workable for MOUs in operation. For MOUs under construction, conversion and/or major upgrade, Cl. 18-83 set Cl. 6-3 aside and provides that the insurer is entitled to the entire agreed premium if the insurer compensates for total loss pursuant to Cl. 18-88, sub-clause 1. If so, the project is completed and pursuant to Cl. 18-89 the assured is entitled to payment of the whole sum insured limited to the insurable value calculated according to Cl. 18-88, sub-clause 1, if the latter is the lesser amount. Cl. 1-5, sub-clause 4, is not applicable as neither Cl. 18-88 nor Cl. 18-89 is listed therein. Therefore, the entire agreed premium is the whole premium for the total period of the project even if this period is longer than one year.

*Sub-clause 2* provides that the insurer is only entitled to a proportion of the entire agreed premium if the insurer compensates for total loss pursuant to Cl. 18-88, sub-clause 2. If so, the project is not completed and pursuant to Cl. 18-89 the assured is only entitled to compensation for the insurable value calculated according to Cl. 18-88, sub-clause 2. In short, this is the value of the project as far as it has been completed at the time when it is deemed a total loss, see further the Commentary to Cl. 18-88 and Cl. 18-89. This compensation will be lower than the sum insured, which normally will be agreed to the same amount as the total costs of the completed project. The proportion of the entire agreed premium payable under sub-clause 2 is the proportion corresponding to the ratio between the compensation paid and the sum insured. If the project is deemed a total loss after it is 50% completed and the compensation paid is e.g. 50% of the sum insured, then the insurer is entitled to 50% of the entire agreed premium.

## *Section 6-2*

### *Loss of or damage to the MOU*

#### *Clause 18-87. Objects insured/Ref. Clause 18-2*

This Clause is nearly verbatim the same as Cl. 19-9 apart from letter (b), which is not incorporated into Cl. 18-87 as there is no need to distinguish between yard and owner's supplies in the construction risks insurance when the risk is assumed by the assured.

*Letter (a)* comprises all components, parts and equipment constructed, manufactured or procured for the Project, subject to the limitations pursuant to Cl. 18-83.

*Letter (b)* includes the assured's costs in connection with design, drawings and other planning of the Project. Here the object insured is not the specific drawings, models, etc.; these can normally be reconstructed at low cost if they are destroyed, but the general costs incurred by the assured in his own planning department and/or to hiring consultants. If the Project is not completed due

to damage or other incidents covered by the insurance, these costs will normally be lost and should be compensated by the insurer.

If the existing plans etc. may be used in connection with other Projects of the assured, a reasonable deduction of the costs corresponding to the residual value of the plans etc. may be appropriate. However, the burden of proving any such residual value must rest with the insurer.

*Letter (c)* provides that the insurance also comprises bunkers and lubrication oil on board, cf. Cl. 18-2 (c).

### ***Clause 18–88. Insurable value***

This Clause is nearly verbatim the same as Cl. 19-10 but edited as appropriate to fit construction and rebuilding of MOUs. A new letter (d) is added to sub-clause 1.

The Clause defines the insurable value in construction risks insurance.

*Sub-clause 1* defines the insurable value when the Project is completed. The basis for the insurable value is the contract price originally agreed less subsequently agreed deductions. The wording “subsequently agreed deductions” concerns changes that result in a reduction in the contract price. Normally, the insurer will be notified of such deductions for the purpose of obtaining a reduction in premium. In that event, the deductions will also be stated in the insurance contract. However, to avoid that the insurable value exceeds the assured’s real loss, it is necessary to take such deductions into account in the calculation of the insurable value regardless of whether or not the insurer has been notified.

The wording “subsequently agreed additional amounts” in sub-clause 1, letter (b), refers to variation work in relation to the original contract that results in an increase in the price. The consequence of such variation work/additions not having been reported to and agreed by the insurer is that this increase in the costs of the construction contract will not be covered by the construction risks insurance. It follows from *sub-clause 1, letter (c)*, that the value of the owner’s deliveries is also included in the insurable value. As opposed to Cl. 19-10, sub-clause 1, letter (c), there is no requirement that such owner’s deliveries are covered by the insurance. This means that owner’s deliveries will be part of the insurable value even if they are not declared to the insurer, see further the Commentary to Cl. 18-89. The same goes for an existing vessel or MOU that shall be converted or upgraded as part of the Project.

*Sub-clause 2* defines the insurable value before the Project is completed. The provision is based on the fact that the insurable value under the construction risks insurance increases as the

**Project progresses. Deductions shall be made in the insurable value calculated according to sub-clause 1 for work that has not been carried out, and components and materials that have not been procured or manufactured for the Project, cf. *letters (a) and (b)*. Components and materials that have been procured shall be included, provided that they are within the place of insurance, cf. Cl. 18-84.**

***Clause 18–89. Compensation in the event of total loss/Ref. Clause 4–1***

**This Clause corresponds to Cl. 19-13 but is simplified in accordance with the general rule in Cl. 4-1.**

**In the event of total loss, cf. Cl. 18-90, the insurer covers the sum insured, but not in excess of the insurable value, cf. Cl. 18-88.**

**According to Cl. 18-88, the insurable value is defined as the original contract price with any deductions or additions and the value of the owner’s deliveries including existing vessel or MOU. If the assured wishes to insure all of the elements mentioned, they must be declared to the insurer and included in the agreed sum insured. If a sum insured has been agreed at the inception of the insurance and notice of additional work is later given to the insurer, the assured must also ensure that the sum insured is increased correspondingly. The same goes for owner’s supply. If not declared, the sum insured may be lower than the insurable value at the time of loss. This will according to Cl. 2-4 constitute under-insurance. However, the wording of Cl. 18-89 does suggest that in case of total loss the full sum insured shall be paid if the sum insured is lower than the insurable value. This means that the proportion rule in Cl. 2-4 shall not apply.**

**Likewise, the assured must ensure that the sum insured is reduced in the event of deductions resulting from parts of the work not being carried out. If this is not done, the sum insured will be higher than the insurable value, and the compensation will be limited to the insurable value. This rule corresponds with the rule on over-insurance in Cl. 2-5. In that event, the assured will have paid premium on a larger sum insured than he can recover under the insurance.**

**In the event of a total loss before the Project is completed, the sum insured will normally be higher than the insurable value and the compensation will be limited to the insurable value calculated according to Cl. 18-88, sub-clause 2. The calculation of the insurable value if this is the case is commented on in more detail under Cl. 18-88, sub-clause 2.**

**If the insurer pays total loss compensation pursuant to Cl. 18-89, he has a right to take over the title to the Project including any undamaged components or materials, cf. Cl. 5-19, sub-clause 1.**

The insurer can therefore utilize the residual value that the Project or the components or materials may have after the damage triggering the total loss compensation. If the assured should find it expedient to complete the Project after having received the total loss compensation, he cannot utilise any residual values or undamaged components or materials unless the insurer agrees. Normally, it would be in the insurer's interest to come to agreement with the assured on an appropriate reduction in the compensation payable in consideration for leaving the title to any residual values or undamaged components or material with the assured.

***Clause 18-90. Total loss/Ref. Section 2-2***

Cl. 18-90 corresponds to Cl. 19-11. However, in line with Cl. 18-10 the insurable value is the relevant figure to put into the condemnation formula as opposed to the sum insured in Cl. 19-11 if these two amounts are different, see further the Commentary to Cl. 18-88 and Cl. 18-89.

Cl. 18-90 expressly provides that the rules on total loss in Section 2-2 of Chapter 18 shall apply also to the construction insurance pursuant to Section 6, but with an important amendment of Cl. 18-10. The assured may claim compensation for total loss if casualty damage to the Project is so extensive that the costs of repairs amount to more than 100% of the insurable value calculated as provided in Cl. 18-88. In Cl. 18-10, the limit is 80%. According to Cl. 18-10 the market value should be put into the condemnation formula if this value is higher than the insurable value. This alternative is not included in the wording of Cl. 18-90 and will therefore not apply to construction risks pursuant to Section 6. If the Project is extensively damaged, the only relevant criteria to determine whether the Project is condemnable is to compare the estimated costs of repair calculated in accordance with Cl. 18-10, sub-clause 4, last sentence, with the insurable value calculated in accordance with Cl. 18-88. This goes also for damage to the Project occurring before completion. If the estimated costs of repair exceed the insurable value as calculated pursuant to Cl. 18-88, sub-clause 2, the assured is entitled to claim total loss compensation, limited to the insurable value if this is lower than the sum insured.

***Clause 18-91. Damage/Ref. Section 2-3***

Cl. 18-91 expressly provides that Section 2-3 shall apply to the construction risks insurance, but as amended by Cl. 18-92 and Cl. 18-93. If the Project (or components and materials for the Project) are damaged without constituting a total loss pursuant to Cl. 18-90, the insurer shall indemnify the costs of repairing the damage or re-acquiring lost objects.

It is conceivable that a damage can be repaired but the assured nevertheless demands new equipment rather than repairs; e.g. water damage to a generator may be repaired but the assured fears that the generator may be subject to future damage due to undiscovered defects caused by the water damage. Here the insurer's liability must be tied to the contractor's

obligation vis-à-vis the assured according to the construction contract. If under the contract it is sufficient for the contractor to carry out repairs, possibly combined with a warranty against future damage, the insurer's liability is limited correspondingly. If the assured, out of consideration for its customers or for other reasons, chooses to buy a new object rather than repair the damaged, any amount incurred in excess of the costs of repair will be for the assured's account and is not recoverable under the construction insurance.

*Clause 18-92. Error in design, etc.*

*Sub-clause 1* is verbatim the same as Cl. 19-15. Reference is made to the Commentary to Cl. 19-15.

*Sub-clause 2* provides that for parts or components that are completed, Cl. 18-20 shall apply. This entails that for such parts or components there will be the same cover for error in design etc. under the construction insurance as under an MOU hull insurance. *Sub-clause 2* will give somewhat wider cover than the cover under *sub-clause 1* because *sub-clause 2* also covers the defective part(s) if the part(s) have been approved by the classification society. Reference is made to the Commentary to Cl. 18-20, which again refers to the Commentary to Cl. 12-4 as Cl. 18-20 is verbatim the same as Cl. 12-4.

*Clause 18-93. Costs incurred in order to save time/Ref. Clauses 18-24, 18-28 and 18-29*

Cl. 18-93 corresponds to Cl. 19-17 and exclude from the construction risks insurance the so called 20% p.a. rule. This limitation of the cover as compared with the cover for MOUs in operation only applies when damage to the Project occurs and is discovered whilst at a yard or any other onshore project location. For any damage occurring or discovered offshore, the cover for costs incurred in order to save time will be the same as for the hull insurance including the 20% p.a. rule, provided the insurance also comprises any offshore part of the Project, cf. Cl. 18-81.

Reference is made to the Commentary to Cl. 19-17 and to the Commentary to Clauses 18-24, 18-28 and 18-29, cf. also the Commentary to the respective corresponding Clauses 12-7, 12-11 and 12-12.

*Section 6-3  
Supplementary covers*

*Clause 18-94. Applicable rules*

*Sub-clause 1* expressly provides that Sections 6-1 and 6-2 shall apply also to any supplementary covers agreed according to Cl. 18-95 to Cl. 18-99 unless otherwise provided in Section 6-3.

As explained in the introductory overview of the Commentary to Chapter 18, Section 1 applies to all sections of Chapter 18 including Section 6. Thus Part One of the Plan also applies to Section 6-3 unless deviated from in Section 1.

*Sub-clause 2* states what ought to be obvious, namely that none of the supplementary covers apply unless the parties have agreed a separate sum insured, deductible and premium for each supplementary cover.

***Clause 18–95. Additional costs arising from unsuccessful launching***

This Clause corresponds to Cl. 19-18, and reference is made to the Commentary to Cl. 19-18. However, the wording of Cl. 18-95 states that “the insurer will indemnify *the assured’s liability* for any additional costs incurred to complete launching”. The cover is therefore limited to additional costs of repair etc. necessary to complete the launching, and does not comprise any and all costs in connection with the damage to the dock, slip way, cranes and/or other property caused by the unsuccessful launching.

The assured who carries the risk for successful launching is under his contract normally liable to complete the launching. If it is sufficient to carry out minor or temporary repairs to the dock or other facilities used for launching in order to complete the launching, the cover under this Clause is limited to such cost. Any costs in excess of this in order to repair such facilities are not covered by the construction risks insurance, but may be covered under the assured’s or co-insured facility owner’s property insurance. Alternatively, it will be for their own retention in the absence of such insurance cover.

***Clause 18–96. Costs of removal of wreck and debris***

This Clause was new in 2016. It provides cover for the assured’s legal or contractual liability for the costs of removal of wreckage or debris of property insured under this Section which is lost as a result of a casualty. Compared with the cover under Cl. 19-19, which covers “necessary removal of wrecks”, Cl. 18-96 covers “the assured’s liability for costs of removal of wreck and debris”. The cover under Cl. 18-96 is both narrower and wider than the cover under Cl. 19-19.

It is narrower in the sense that it does not cover removal costs that is only necessary in order to clear the assured’s own property, but for which the assured has no liability towards any third party. In the same way as presupposed in Cl. 18-95, the assured may have a liability towards his contracting party to complete the Project. If removal of wreck and debris is necessary in order to comply with contract obligations to complete the Project, then there is a liability covered under Cl. 18-96. The same will apply if the assured is obliged to remove wreck and debris in order to complete other projects or contracts entered into. But if the wreck or debris removal is

only necessary to be able to enter into new contracts, there will be no legal liability involved but certainly a commercial need to incur the costs in order to continue the business. The latter would have been covered under Cl. 19-19 as expressly explained in the Commentary to this Clause.

Cl. 18-96 is on the other hand wider than the cover under Cl. 19-19 in the sense that liability towards third parties to remove the wreck and debris will be comprised by Cl. 18-96.

The Commentary to Cl. 19-19 mention as an example a situation where the wreck and debris causes obstruction to traffic. Any liability to remove the wreck and debris will be covered under Cl. 18-96, while such third party wreck removal liability falls outside the scope of cover under Cl. 19-19. Such liability is expressly covered if imposed by authorities under Cl. 19-20, but is not comprised by Cl. 18-98.

*Clause 18–97. Liability of the assured arising from collision and striking*

This Clause makes it expressly clear that Section 2-4 shall apply correspondingly and reference is made to the Commentary to Clauses 18-35 to 18-38.

*Clause 18–98. Liability insurance*

Clause 18-98 is verbatim identical with Cl. 19-20 and Cl. 19-21 as they were amended in 2016. The limitations of the liability insurance pursuant to Cl. 19-21 are included in Cl. 18-98 as sub-clauses 5 and 6. Reference is made to the Commentary to Cl. 19-20 and Cl. 19-21.

However, wreck removal liability is not comprised by Cl. 18-98, as opposed to Cl. 19-20, but covered under Cl. 18-96, cf. Cl. 18-98, sub-clause 5, letter (c).

The same goes for liability towards third parties for collision and striking, which is covered by Cl. 18-97. The “sister ship” collision and striking cover pursuant to Cl. 18-98, sub-clause 2, is maintained under the general liability cover in Cl. 18-98, cf. Cl. 19-20, sub-clause 2, and the Commentary thereto.

*Clause 18–99. Delay in delivery*

Section 4 shall apply correspondingly to delay in delivery of the Project caused by damage recoverable under Section 6-2. As provided in Cl. 18-94, a separate sum insured must be agreed as well as deductible and premium. For delay in delivery this means that the daily amount must be agreed, cf. Cl. 18-47 or Cl. 18-48, and the number of days of indemnity per casualty and in all, cf. Cl. 18-46, sub-clause 2. The sum insured is the amount arrived at by multiplying the daily amount with the number of days insured in all for the insurance period. Deductible must be given as a period, i.e. a number of days, cf. Cl. 18-49.

**If one casualty results in a delay recoverable under Cl. 18-99 and a second casualty occurs which does not extend the period of delay, meaning that repairs are carried out simultaneously, Cl. 18-54 on simultaneous works applies correspondingly. Reference is made to the Commentary to Clauses 18-43 to 18-58.**

## Chapter 19

### Builders' risks insurance

#### General

Chapter 19 previously aimed primarily at covering newbuildings, but practice in recent years has shown that the Chapter is increasingly also applied in connection with the rebuilding of ships and building of other units, where the parties and the insurer deem it most appropriate to apply Chapter 19. As a result, “newbuilding” has been replaced in the provisions by “subject-matter insured”. The scope of Chapter 19 has thus in fact been widened. The insurance is generally taken out by the yard, but there is nothing to prevent it being taken out by the owner or buyer.

A new Clause has been introduced in Cl. 19-7 that deals with the escalation of the sum insured by up to 10% without the insurer's prior approval. There are corresponding provisions in the English Clauses, ICBR 01.06.1988 and MARCAR 01.09.2007, respectively.

A new provision has been added to Section 4 – Liability Insurance, which deals with the assured's liability for environmental damage. This provision has been included in Cl. 19-20 as a new sub-clause 4, and is based on a 2004 EU Directive which has subsequently been incorporated into the legislation of the individual countries.

The provisions concerning towage and removal of the subject-matter insured have now been placed under Section 5 – Supplementary covers, under a new Cl. 19-27. As a result, Cl. 19-6 – Removal plan has been deleted in its entirety. Towage of the subject-matter insured or components thereof is a key focus of the Clause, since towage is the form of removal that is most commonly used in the context of building risk. This is due to the change in production method that has taken place in the 2000s. More and more hulls/modules and Sections are being built at yards other than the outfitting yard (the assured), including yards outside the Nordic region (foreign yards). Until now, towage risk has often been covered separately under builders' risks insurance, whereas it will now be covered under a supplementary cover as part of the ordinary builders' risks insurance.

The Clause also covers transport of the subject-matter insured or components thereof on board a ship, during transport on land or by air.

In addition to the provisions of Chapter 19, builders' risks insurance is also subject to the provisions of Chapters 1 to 9 of the general part of the Plan and the provisions of Chapters 10 to 12, insofar as this is evident from Chapter 19, Section 2.

## Section 1 Common provisions

### **Clause 19–1. Perils covered/Ref. Clause 2–8, cf. Clause 2–10**

This Commentary was amended in the 2013 Plan.

Cl. 19-1 applies to marine perils, cf. Cl. 2-8, and to strikes and lockouts. If the assured wishes to take out cover against riots, sabotage, piracy and mutiny, it must be done under Section 6 – Supplementary cover for war perils. This cover applies from the time the subject-matter insured has been launched.

The cover against strikes and lockouts must be seen in conjunction with the fact that the builders' risks insurance is a hull insurance, or where relevant, a liability insurance for the yard. The insurer will therefore only become liable if a strike or lockout results in damage to the subject-matter insured or components thereof, materials etc., or in the event the yard becomes liable for damage inflicted on a third party. The fact that a strike or lockout results in a delay is not sufficient to trigger the right to indemnification under the builders' risks insurance.

### **Clause 19–2. Insurance period/Ref. Clause 1–5**

The provision and the commentaries were amended in the 2013 Plan. The term “newbuilding” is replaced with “subject-matter insured” because practice in recent years has shown that the Chapter is increasingly also applied in connection with the rebuilding of ships and building of other units. Further, the wording is made more accurate by replacing the term “takeover” with “delivery”, and “taken over” with “taken delivery”.

*Sub-clause 1, first sentence*, states that the insurance is terminated as from the delivery date stated in the building contract. However, the first sentence seen in conjunction with the *second sentence* entails that the insurance remains in effect until the buyer has in actual fact taken delivery of the subject-matter insured, provided this takes place before expiry of the time-limit of nine months under sub-clause 3. The primary significance of the point of departure in the first sentence is therefore that, in the event of an extension beyond the date of delivery stipulated in the building contract, the insurer is entitled to an additional premium as established in the **insurance contract**. If delivery takes place before the stipulated delivery date, the assured will, on the other hand, be entitled to a return of premium, cf. Cl. 6-5.

To ensure continuous insurance cover, therefore, the basic principle has been adopted that the insurance remains in effect until delivery, regardless of whether the subject-matter insured is ready and regardless of whether the delivery date under the building contract has been met. If the parties agree to postpone the originally agreed date of delivery because of additional work, or because the yard is delayed, the builders' risks cover therefore remains in effect until the delivery actually takes place, provided this happens within nine months, cf. sub-clause 3. However, as mentioned, the insurer is entitled to an additional premium.

Normally, the building contract will contain a specification of the date of delivery. If no such agreement has been entered into, the delivery date will depend on the parties' actions, assessed against the background of general principles of contract law and the provisions of the building contract in general.

It is conceivable that the hull insurance under the agreed conditions may come into force before the builders' risks insurance terminates, for example in the event of late delivery. In that event, the rules relating to double insurance shall be applied, cf. Cl. 2-6 and Cl. 2-7.

*Sub-clause 2* states that the insurance is extended automatically subject to an additional premium as agreed in the **insurance contract** if the buyer has not taken delivery of the subject-matter insured. The extension lasts until another buyer has in actual fact taken delivery of the subject-matter insured.

Here too, however, a time-limit of nine months under sub-clause 3 shall apply.

If the original buyer takes delivery of the subject-matter insured after first having refused to take delivery, sub-clause 1 regulates the termination of the insurance.

If the yard builds the subject-matter insured for its own account, the insurance must be adjusted accordingly. The parties must in that event conclude a special agreement about the insurance period.

*Sub-clause 3* stipulates a maximum period for how long the supplementary cover will remain in effect without a separate agreement, viz. up to nine months after the takeover date in the building contract.

***Clause 19–2A. Premium in the event of total loss***

**This Clause was added in 2016 and corresponds to Cl. 18-83.**

**The combined effect of Cl. 6-3, cf. Cl. 1-5, sub-clause 4, is that for insurance contracts attaching for more than one year, the insurer would be entitled to only one year premium in case he pays**

the sum insured as a result of total loss, constructive total loss or payment pursuant to Cl. 4-21. For subject-matters insured pursuant to Chapter 19, Cl. 19-2A sets Cl. 6-3 aside and provides that the insurer is entitled to the entire agreed premium if the insurer compensates for total loss pursuant to Cl. 19-13, sub-clause 1. If so, the project is completed and pursuant to Cl. 19-13 the assured is entitled to payment of the whole sum insured limited to the insurable value calculated according to Cl. 19-10, sub-clause 1, if the latter is the lesser amount. Cl. 1-5, sub-clause 4, is not applicable as none of the clauses in Chapter 19 is listed therein. Therefore, the entire agreed premium is the whole premium for the total insurance period even if this period is longer than one year.

*Sub-clause 2* provides that the insurer is only entitled to a proportion of the entire agreed premium if the insurer compensates for total loss pursuant to Cl. 19-13, sub-clause 2. If so, the project is not completed and pursuant to Cl. 19-13, sub-clause 2, the assured is only entitled to be compensated the insurable value calculated according to Cl. 19-10, sub-clause 2. This is in short the value of the subject-matter insured as far as it has been completed at the time when it is deemed to be a total loss, see further the Commentary to Cl. 19-13 and Cl. 19-10. This compensation will be lower than the sum insured, which normally will be agreed to the same amount as the total costs of the completed project. The proportion of the entire agreed premium payable under sub-clause 2 is the proportion corresponding to the ratio between the compensation paid and the sum insured. If the subject-matter insured is deemed a total loss after it is 50% completed and the compensation paid is e.g. 50% of the sum insured, then the insurer is entitled to 50% of the entire agreed premium.

### **Clause 19–3. Co–insurance/Ref. Clause 8–1**

The Commentary was amended in the 2013 Plan.

The subject-matter insured will normally be built according to a building contract entered into between the yard and the buyer. In order to safeguard the interests of both parties in the subject-matter insured and components/parts to be incorporated in the subject-matter insured, it is therefore necessary for the insurance to be for the benefit of both the yard and the buyer. Normally, it will also follow from the shipbuilding contract that one of the parties, usually the yard, is required to take out insurance. This obligation to take out insurance normally also comprises the buyer's deliveries in the form of paid instalments and deliveries of equipment. This means that the buyer will also have a direct claim against the insurer in the event of a total loss as far as instalments and the value of delivered equipment are concerned. In relation to this type of contractual regulation as well, the builders' risks conditions must therefore cover the interests of both parties.

The conditions are based on a normal situation where the yard is the person effecting the insurance and the buyer is given the status of co-insured according to Cl. 8-1, cf. *first sentence*. This means that both the yard and the buyer will have the status of assured and be entitled to compensation for their economic interest in the subject-matter insured to the extent that this follows from the conditions.

Only the yard takes out the insurance that is secured under Chapter 19. In principle, the insurance does not comprise the subcontractors, cf. the fact that the co-insurance provision in Cl. 19-3 applies only to the buyer. If it is desirable for the insurance also to comprise the subcontractors' interests, it is therefore necessary to take out a separate co-insurance according to Chapter 8. In that event it is also necessary to ensure that the place of insurance as agreed under Cl. 19-5, sub-clause 2, includes the subcontractor's premises.

The insurance is effected for the benefit of the yard as the person effecting the insurance to the extent that the yard bears the risk for the subject-matter insured and components thereof, etc., when a casualty occurs. Normally, the risk transfers to the buyer upon delivery of the subject-matter insured. Until delivery has taken place, the yard bears the risk for the subject-matter insured. If the subject-matter insured is totally destroyed with the effect that the yard's duty to deliver is terminated, the yard must therefore refund to the buyer the instalments on the contract price which the latter has paid during the period of construction. The "total-loss risk" for the yard therefore consists in the investments that it has made in the subject-matter insured being lost without the contract price, or a proportion thereof, being recoverable from the buyer. In addition the yard bears the risk of partial damage, which consists in the yard having to repair, at its own expense, any damage which the subject-matter insured sustains in connection with less extensive accidents before the risk has passed to the buyer.

The co-insurance of the buyer covers the buyer's economic interest as defined through the building contract. If the buyer is required, for his own account, to procure certain components, equipment or materials to be incorporated in the subject-matter insured, the buyer's status as co-insured entails that these are included in the builders' risks insurance, provided that this is set out in the **insurance contract** or is otherwise indicated by the conditions. However, the buyer's deliveries (often referred to as "OFE" – Owner Furnished Equipment) are only covered by the insurance from the time they arrive in the builder's yard in the port where the yard is located, cf. Cl. 19-5. If the buyer's deliveries are delivered directly on board the subject-matter insured and the latter is outside the place of insurance, the buyer's deliveries are covered from the time they arrive on board the subject-matter insured. However, this is subject to the condition that the buyer's deliveries are covered by the insurance, cf. Cl. 19-9 (b).

In addition to the risk for the buyer's own deliveries, the co-insurance comprises the buyer's interest in a refund of instalments paid on the contract price in the event of a total loss. Prior to delivery, risk

relating to the subject-matter insured will normally be borne by the yard. This means that the yard must refund instalments paid in the event of a total loss. However, in exceptional cases it is conceivable that the buyer bears the risk for loss of the object of the contract prior to delivery, in which case this interest will be covered. This is also the case if the insurance period is extended beyond the date of delivery so that the risk for the subject-matter insured has passed to the buyer. However, the buyer's position as co-insured must also give him a direct claim against the insurer in the event of a total loss, even if this is the yard's risk. This is of significance if the yard is insolvent so that the insurance compensation would in its entirety have gone to the bankruptcy estate, while the buyer would have had to be content with a dividend claim. The co-insurance will therefore ensure that the yard, or its bankrupt estate, does not receive any total-loss compensation without the buyer at the same time being refunded his advance payments.

Co-insurance of the buyer for the instalments paid on the contract price is, on the other hand, only valid if he has made the payments himself, or if they were paid by others on his behalf. Other intervening payers will not receive a corresponding automatic status as co-insured.

The fact that the buyer is co-insured "under Cl. 8-1" means that his ranking right against the insurer will be no better than that of the yard. This tallies with Cl. 19-3, sub-clause 2, of the conditions. If the buyer wants a better cover in the form of an independent co-insurance, he must take out co-insurance under Cl. 8-4.

As mentioned above, Cl. 19-3 is based on the normal situation where the yard is the person effecting the insurance. However, it is conceivable that the buyer might want to take out the insurance himself, e.g. because he has the title to the subject-matter insured. Such procedure is normal in offshore insurance. In that event, a separate agreement must be concluded if the yard is to be co-insured.

The cover of mortgagees is effected in accordance with the general rules of the Plan: see Chapter 7.

The *second sentence* states that the co-insurance does not apply to the expense coverage according to Section 3. The buyer himself must also arrange for separate insurance cover for any additional expenses incurred in connection with an unsuccessful launching or the removal of the subject-matter insured.

Under sub-clause 2, the co-insurance also applies to liability under Section 4, i.e. liability which the buyer may incur as a result of employees or management's wrongful acts in respect of a third party in connection with the implementation of the building project.

Liability cover under the builders' risks insurance is subsidiary to any other liability insurances taken out by the buyer.

### **Clause 19–4. Transfer of the building contract/Ref. Clause 3–21**

It has been made some editorial amendments in the Commentary of the 2013 Plan.

This Clause states that the insurance will terminate if the building contract is transferred to a new yard. In the Plan, a distinction is made between a transfer to a new buyer and a transfer to a new yard. If the building contract is transferred to a new yard, the insurance will terminate. If the yard is the person effecting the insurance and the owner, the solution follows from Cl. 3-21. But the rule must apply also if the buyer is the person effecting the insurance and the owner of the subject-matter insured, and the yard is co-insured. Such transfer must be regarded as a change of ownership according to Cl. 3-21. Furthermore, the termination of the insurance will normally follow from Cl. 19-5 concerning place of insurance, because on transfer of the building contract to a new yard, the subject-matter insured will have to be moved to the new yard and will thereby move outside the place of insurance.

The insurance continues to be in effect if the building contract is transferred to a new buyer. There is no requirement that the insurer must be notified of the transfer, but the insurer will normally be notified as a co-insured party will be changed.

The rule that the insurance shall remain in effect even if the buyer transfers the building contract is subject to the condition that it is the yard, and not the buyer, who is the owner of the subject-matter insured. If it is the buyer who is the owner, it is stated in Cl. 3-21 that the insurance will terminate if the buyer transfers the building contract. This applies both in relation to the new buyer and in relation to the yard. In such cases, if the new buyer and possibly the yard, want the insurance to continue, this will have to be agreed with the insurer before the transfer, possibly against a payment of additional premium.

### **Clause 19–5. Place of insurance**

Cl. 19-5 sub-clause 1 (b) was amended in the 2013 Plan.

This provision defines the geographical scope of the insurance. *Sub-clause 1 (a)* delimits the insurance to the builder's yard or other premises in the port where the yard is situated and transport between these areas. A shipyard will often have its activities spread over a number of different places, partly in the form of warehouses and factories close to the building berths, partly in the sense that its building berths are located at different places within the same port. It is therefore practical that those parts and materials that are intended for the subject-matter insured are covered by the insurance, regardless of where they are located within the yard's premises or areas, provided that it is in the same port. If parts of the subject-matter insured are to be built in a different port, however, this will fall outside the scope of the insurance, cf. the wording the builder's yard or other premises "in the port where the yard is

situated”. In that event, the yard will either have to extend the cover by a separate agreement under sub-clause 2, or take out a separate insurance.

“Local” transport within the areas of the builder’s yard situated in the same port is in principle also covered by the insurance. If the parts or the materials are made or stored relatively close to the building berth, it would be unpractical if a separate insurance had to be taken out for each individual transport to the building site. If the parts have to be sent to a department of the yard situated in another port, the transport risk should, however, be evaluated separately, cf. sub-clause 2, or be covered by a separate insurance.

On the other hand, the insurance does not cover transport of parts from subcontractors to the yard. This applies regardless of whether it is the yard that has ordered the parts, or they are delivered by the buyer. Parts delivered to the yard are included in the insurance once they are in the builder’s yard, cf. sub-clause (a). Where the yard has ordered the main engine or other parts for the ship from a subcontractor, the risk will pass to the yard when the part is “delivered” according to the law pertaining to the sale of goods. The time and place will depend on the terms of delivery that have been agreed.

*Sub-clause (b)* was amended in the 2013 Plan. Previous versions only stated that the insurance was in effect during trial runs. It now states that the insurance comprises trial runs carried out within the area specified by the certificate, including the trading area. If the subject-matter insured proceeds beyond the specified trading limits, the insurance cover is suspended. However, the insurance will take effect again when the subject-matter insured comes within the relevant area.

For subject-matters insured that are registered under Norwegian flag, such provisional certificates are issued by the Norwegian Maritime Directorate. In the past, the Maritime Directorate also issued provisional certificates for foreign newbuildings that were built in Norway, but that arrangement was terminated, cf. Circular 12/97. Today it is therefore the flag state of the subject-matter insured that must draw up such certificates. Different rules may apply for other countries. It was therefore discussed whether the certificate requirement would lead to problems, and whether it would be better to have an absolute limit of 250 nautical miles. The reason why it was nevertheless decided to base the trading limits on the provisional certificates is partly that the certificate requirement is absolutely fundamental in relation to the operation of the ship, and partly that the buyer and the yard must therefore be expected to ensure that these papers are in order. Additionally, a limit of 250 nautical miles may cause considerable problems in relation to a provisional certificate that prescribes a narrower trading area, because it will then be unclear whether the insurance is suspended whenever the subject-matter insured proceeds beyond the limits stated in the certificate, but stays within 250 nautical miles.

The provision in sub-clause (b) must be seen in conjunction with Cl. 3-15 relating to trading areas. If the trading area indicated in the subject-matter insured's provisional certificates comprises areas which entail an additional premium according to Cl. 3-15, sub-clause 2, this provision must apply to the builders' risks insurance. In such case, the insurer must be notified if the ship has proceeded beyond the ordinary trading areas, and is entitled to demand an additional premium or other conditions. If the assured fails to notify the insurer, Cl. 3-15, sub-clause 2, second and third sentences, concerning an additional deductible shall apply in the event of a casualty.

*Sub-clause 2* states that the insurance will also apply elsewhere than in the building port, provided this is specifically agreed and set out in the **insurance contract**. Normally the insurer will consent to such extension of the cover for the building of sections at the assured's own yards other than the main yard, but not for components manufactured and purchased by subcontractors. As long as the component is the subcontractor's risk, the yard will not have any need for such additional insurance. However, it is conceivable that the yard would be interested in postponing the collection of the relevant component from the subcontractor until the work on the subject-matter insured has progressed so far as to allow the fitting of the component. In such case, it is not unusual that the yard will have to bear the risk for the component while it is stored by the supplier. The yard will then need supplementary cover in the same way as for transport of the object from the supplier's factory, cf. above.

If it is necessary to move the subject-matter insured outside the areas specified in Cl. 19-5, Cl. 19-27 regarding towage and removal shall apply.

The buyer is co-insured according to Cl. 19-3, and the buyer's deliveries will be covered by the insurance to the extent that they are stated in the **insurance contract**, or it is evident in some other way that the deliveries are included, cf. Cl. 19-9. However, the question as to where the deliveries must be located in order to be included must, like the other objects covered by the insurance, be resolved through the provision in Cl. 19-5 and the **insurance contract's** specification, if any, of the geographical scope of application of the insurance.

#### **Clause 19-6. The sum insured as the limit of the liability of the insurer/ Ref. Clause 4-18 and Clause 4-19**

This provision entails that the insurer may become liable for up to three sums insured: one sum insured for loss of or damage to the subject-matter insured according to Section 2, one sum insured for loss in connection with measures to prevent or minimise a casualty covered under Section 2, and one sum insured for additional costs in connection with an unsuccessful launching and costs of wreck removal (Section 3), including any liability covered under Section 4. According to Cl. 4-18, sub-clause 1, third sentence, any unused sum insured to cover loss of or damage to the subject-matter insured may furthermore be "transferred" to cover measures to avert or minimise such loss.

### Clause 19–7. Escalation of the sum insured

This Clause was new in the 2013 Plan.

The rationale for this Clause is that the assured must be able to be certain that he is covered even if the contract price increases during the building process by, for instance, 5%. At present, insurers are only bound to a maximum of the sum insured fixed in the insurance certificate; in principle, any increase must be approved by the insurers. This is usually solved in practice by agreeing on a certain amount of “leeway”, either in the form of framework agreements or in the individual insurance certificate. It has been decided to introduce this flexibility into this Chapter, as has been done in ICBR 01.06.1988 and MARCAR 01.09.2007.

Given the current situation, a 10% automatic increase is sufficient. Imposing a higher fixed limit could result in the insurer’s cover tying up substantial capacity that remains “unused” throughout the project period. If a need arises for an increase of more than 10%, this issue should be resolved on a case-by-case basis.

### Clause 19–8. Deductible

*Sub-clause 1* of the Clause states that the deductible must be specified in the **insurance contract**, and that if the one and the same casualty entitles the assured to compensation under Sections 2, 3 and 4, only one deductible applies.

*Sub-clause 2* emphasizes that no deductible shall apply to total loss, costs in connection with the claims settlement or costs to avert or minimise a loss. This is in accordance with the General Plan system.

## Section 2

### Loss of or damage to the subject–matter insured

#### Clause 19–9. Objects insured/Ref. Clause 10–1

The provision covers the financial effort made by the yard and the buyer at any given time in order to complete the subject-matter insured. Sub-clause 1 (a) and (c) and the commentaries were amended in the 2013 Plan.

*Sub-clause (a)*. The term “subject-matter insured” means whatever at any time is being built, and components, equipment and materials manufactured or procured for the subject-matter insured.

This sentence refers to the yard’s operations.

If the subject-matter insured consists of several sections/modules that are being built at several different yards, the insurance basically only covers the part of the subject-matter insured that is built in the yard of the person effecting the insurance, cf. Cl. 19-5, sub-clause 1 (a). If the parties want insurance cover which also comprises sections/modules built elsewhere, a separate agreement must be made for an extension of the place of insurance according to Cl. 19-5, sub-clause 2. In that event, it may also be relevant to give the subcontractor status as co-insured, cf. the comments on Cl. 19-3.

*Sub-clause (b)*, refers to the buyer, and specifies that the buyer's delivery of components, equipment and materials is only covered by the insurance if this is stated in the **insurance contract** or if it transpires from conditions in general.

If the sum insured is insufficient to cover the interests of both the yard and the buyer, it will, however, be difficult to decide whether this is due to the fact that the sum insured has been calculated too low in relation to the overall values, or to the fact that the buyer's interest in materials and components delivered shall not be comprised. A clearer procedure is therefore for the **insurance contract** to state to what extent the buyer's components and materials shall be covered. On the other hand, such a rule may become too rigid and lead to unreasonable results if the yard were to forget to state the buyer's deliveries in the **insurance contract** despite the intention for them to be included. If the yard is in such cases obliged under the building contract to insure the buyer's deliveries, and the insurer invokes the fact that the **insurance contract** does not contain any information to this effect, the yard will incur liability for the omission vis-à-vis the buyer. In order to avoid such an outcome, sub-clause (b) states that the deliveries are included, also if this "transpires from circumstances in general". This may for example be the case if the buyer's deliveries are included in the contract price and the contract price is identical to the sum insured. On the other hand, it may have been understood between the parties that the buyer shall take out his own insurance, for example where it is a question of comprehensive seismic equipment of great value. In such cases the buyer's deliveries will not be included.

Where the buyer's deliveries are included in the insurance in this way, it is important that the yard ensures that the sum insured is sufficient to cover both the yard's and the buyer's deliveries. If the sum insured is too low, the result will be that the yard is underinsured for its own deliveries and furthermore incurs a liability to the buyer for the latter's deliveries to the extent that the yard is obliged to keep these insured.

*Sub-clause (c)* includes the yard's costs in connection with the drawing and other planning of the subject-matter insured in the cover. Here the object insured is not the specific drawings, models, etc. - these can normally be reconstructed at low cost if they are destroyed - but the general costs incurred by the yard in its own planning department and to hire consultants in connection with the planning of the subject-matter insured. If the building contract is terminated, these costs will normally be wasted.

If the subject-matter insured is part of a series which the yard is going to build, the costs can be distributed over all the subject-matters insured in the series. If it is quite clear that the existing plans will be used in connection with the building of subsequent subject-matters insured, it will be possible to say that “the yard’s costs in connection with the drawing and other planning of the subject-matter insured” only comprise the proportion of the costs which come under the builder’s risk insurance in question. However, if this is not perfectly clear, no deduction shall be made from the compensation on account of the potential value which the plans may have for the execution of subsequent contracts.

*Sub-clause (d).* Under the conditions, deck and engine accessories were covered in addition to bunkers and lubricating oil. This cover now follows from the use of the term “equipment” in sub-clause (b). This means that it is sufficient that the equipment has been “procured for the subject-matter insured”; it need not be on board. The conditions also stipulated that the said objects, etc., must belong to the yard. However, bunkers and lubricating oil belonging to the buyer should also be covered.

The rules in sub-clause 1 must be compared with Cl. 1-5, first sentence, regarding when the insurance period starts. The yard’s investments in materials etc. will only be covered from that point in time. However, there is obviously nothing to prevent an agreement that the investments shall be insured from an earlier point in time.

### Clause 19–10. Insurable value

The Clause defines the insurable value in builders’ risks insurance. Some editorial amendments were made in the Commentary of the 2013 Plan.

*Sub-clause 1* defines the insurable value when the subject-matter insured is ready for delivery. The basis for the insurable value is the contract price originally agreed less subsequently agreed deductions. The wording “subsequently agreed deductions” concerns changes which result in a reduction in the contract price. Normally the insurer will be notified of such deductions for the purpose of obtaining a reduction in premium. In that event, they will also be stated in the **insurance contract**. To avoid that the insurable value exceeds the assured’s real loss, however, it is necessary to take such deductions into account in the calculation of the insurable value, regardless of whether or not the insurer has been notified.

The wording “later agreed additional amounts” in sub-clause (b) refers to variation work in relation to the original contract which results in an increase in the price. The consequence of such variation work/additions not having been reported is that this increase in the building contract will not be covered by the builder’s risk insurance. It follows from *sub-clause (c)*, that the value of the buyer’s deliveries is also included in the insurable value. Under Cl. 19-9 (b), such deliveries are included in the insurance if this is set out in the **insurance contract** or transpires from conditions in general.

In such case, it is logical that the value of these deliveries is also stated in the **insurance contract** and included in the insurable value.

If the insurable value is based on the contract price with agreed additions, the yard's profit will be included. On the other hand, such a definition of the insurable value does not comprise the buyer's profit on the building contract arising from the difference between the contract price with additions, etc., and the market value of the subject-matter insured. *Sub-clause 2* defines the insurable value before the subject-matter insured is ready for delivery. The provision is based on the fact that the insurable value under the builders' risks insurance increases as the project progresses. Deductions shall be made in the insurable value calculated according to sub-clause 1 for work that has not been carried out and components and materials which have not been procured or manufactured for the subject-matter insured, cf. *sub-clauses (a) and (b)*. Components and materials which have been procured shall, however, be included, provided that they are within the place of insurance, cf. Cl. 19-5.

However, the definition of the insurable value under sub-clause 2 does not afford cover for the yard's profit on the investments which have not yet been made. In order to obtain the full profit, the contract must therefore be executed by rebuilding the subject-matter insured. However, this is conditional on the profit being specified as a separate item of the sum insured, which it is currently not customary to do.

### **Clause 19–11. Total loss in the event of condemnation**

The definition of total loss and the determination of compensation in the event of total loss are combined in a joint Clause, Cl. 1-4. In Chapter 19 the rules are split into three clauses. Cl. 19-11 and Cl. 19-12 define total loss and thus correspond to Cl. 11-1, Cl. 11-3 and Cl. 11-7 of the Plan. Compensation in the event of total loss is regulated in Cl. 19-13, which corresponds to Cl. 4-1 of the Plan, but is more complicated.

This Clause determines a rule regarding condemnation and is additional to the total-loss rule in Cl. 19-12 relating to the situation where the yard's obligation to deliver is terminated. The purpose is to obtain a simpler total-loss rule under which it is not necessary to decide whether extensive damage to the subject-matter insured results in the termination of the obligation to deliver because of failed contractual assumptions. In the event of extensive damage to the subject-matter insured, the condemnation rule is now directly applicable.

The assured is entitled to compensation for total loss if the subject-matter insured has such extensive damage that the costs of repairs will constitute more than 100% of the sum insured. This condemnation limit differs from the corresponding rule in the hull conditions, where the condemnation limit is set at 80% of the insurable value or the value of the subject-matter insured in repaired

condition. The reason is that Cl. 19-11 does not contain any corrective in the event of the market value being higher than the sum insured, making a higher limit necessary.

If the subject-matter insured is damaged without this constituting a total loss, settlement shall be effected according to the rules relating to damage contained in Cl. 19-14 *et seq.*

### **Clause 19–12. Total loss where the yard’s obligation to deliver no longer applies**

This Clause ties total loss under the builders’ risks insurance to the termination of the yard’s obligation to deliver under the building contract due to damage to the subject-matters insured or the yard. However, due to the fact that a condemnation rule has now also been introduced, cf. Cl. 19-11, the total-loss rule in Cl. 19-12 has become less relevant.

The Clause specifies that it is only the termination of “the yard’s” obligation to deliver which triggers the right to the total-loss compensation. It is not sufficient that the parties, in connection with an incident of damage, agree that the contract shall not be executed, or that the buyer has stipulated in the building contract a unilateral cancellation right in case of delay due to damage.

The question as to when the building contract is terminated must be decided on the basis of the building contract, cf. e.g. Cl. 2, sub-clauses 2 and 3, of the 1981 Contract relating to cases of force majeure, supplemented by general non-statutory rules on force majeure and failed contractual assumptions. A total loss will only exist if the damage to the subject-matter insured or the yard is so extensive that the yard may demand to be released from the obligation to fulfil the contract on the basis of these rules. The force-majeure concept in the 1981 Contract presupposes that the damage to the subject-matter insured or the yard has made it impossible, or practically impossible, to fulfil the contract. This question is discussed in further detail in Knudtzon: “*Den nye kontrakt for bygging av skip ved norske verksteder, Nordisk Skipsrederforenings medlemsblad 1984 A*”, pp. 19 *et seq.* (“The new contract for the building of ships at Norwegian shipyards, the Northern Shipowners’ Defence Club’s bulletin 1984 A”).

A total loss is contingent on “the obligation to deliver” being terminated “as a result of” the said circumstances. The insurer is not liable if the obligation to deliver is terminated for other reasons, e.g. where the yard has the right to cancel without any loss or damage as mentioned having occurred. Nor will the termination of the obligation to deliver due to the yard’s failure to meet its obligations trigger the right to total-loss compensation. This is a strictly commercial risk which cannot be covered by insurance, cf. also the exclusion for insolvency in Cl. 2-8 (c).

The Clause specifies three reasons for the termination of the yard’s obligation to deliver: damage to the subject-matter insured itself, damage to components of the subject-matter insured, or damage to

the yard, cf. *sub-clauses (a) and (b)*. The decisive factor is that the actual subject-matter insured is so extensively damaged that the yard cannot be expected to rebuild it, or that the yard itself suffers such extensive damage that it must be released from its obligations, cf. above.

According to *sub-clause (c)*, a total loss furthermore occurs when the obligation to deliver is terminated due to similar circumstances for a subcontractor, provided that manufacturing at the premises of the relevant subcontractor is covered according to Cl.19-5, sub-clause 2.

### **Clause 19–13. Compensation in the event of a total loss/Ref. Clause 4–1**

*Sub-clause 1* regulates the insurer's liability for damages in the event of total loss when the subject-matter insured is ready for delivery. The basis for the total-loss settlement may in such cases be either the condemnation rule in Cl. 19-11, or the rule in Cl. 19-12 concerning the termination of the obligation to deliver. In that event, the insurer covers the sum insured, but not in excess of the insurable value, cf. Cl. 19-10.

In addition to the sum insured, the insurer shall in the event of total loss cover costs and other losses as set out in Cl. 4-19.

According to Cl. 19-10, the insurable value is defined as the original contractual price with any deductions or additions and the value of the buyer's deliveries. All of the elements mentioned must therefore be included in the agreed sum insured. If a fixed sum insured has been agreed at the inception of the insurance and notice of additional work is later given to the insurer, the assured must therefore ensure that the sum insured is increased correspondingly. If not, the sum insured will be lower than the insurable value at the time of loss and this will result in under-insurance, cf. Cl. 2-4.

In the same way the assured must ensure that the sum insured is reduced in the event of deductions resulting from parts of the work not being carried out. If this is not done, the sum insured will be higher than the insurable value, and the compensation will be limited to the insurable value. In that event, the assured will have paid premium on a larger amount than what he can recover under the insurance.

*Sub-clause 2* defines the insurer's liability for damages in the event of a total loss before the subject-matter insured is ready for delivery. The insurer's liability for damages in this case constitutes the proportion of the sum insured which corresponds to the insurable value calculated according to Cl. 19-10, sub-clause 2. The calculation of the insurable value in this case is commented on in more detail under Cl. 19-10, sub-clause 2. If the total loss here only affects part of the subject-matter insured, the insurer's liability must be adjusted accordingly. If the sum insured is equivalent to the insurable value, the entire insurable value under Cl. 19-10, sub-clause 2, will be payable. However, if

the sum insured is less, the assured shall only receive the proportionate share which corresponds to the ratio between the sum insured and the insurable value.

The rule that a total loss has occurred when the yard's obligation to deliver is terminated because of damage to the yard or the premises of a subcontractor may result in the insurer having to cover the value of the subject-matter insured and components or materials procured for the same, even if both the subject-matter insured and the components are relatively, or even totally, undamaged. This may be the situation if the yard or a subcontractor sustains damage, e.g. in a fire or natural disaster, which does not affect the subject-matter insured, components or materials, and the damage is so extensive that it would be unreasonable to expect the yard to complete the building project. In that event, under sub-clause 2 in conjunction with the definition of the insurable value in Cl. 19-10, sub-clause 2, the assured will also recover compensation for the part of the subject-matter insured and materials or components which are undamaged, cf. the fact that deductions shall only be made from the insurable value for investments which have not been made. The reason is that where the obligation to deliver is terminated due to damage to the subject-matter insured or damage to the yard/the subcontractor's yard, it is clear that all the investments made are in principle lost for the assured. He should therefore receive compensation for these investments, even if the subject-matter insured and any components/materials are wholly or partly undamaged. However, this is conditional on the components, equipment and materials being within the place of insurance, cf. Cl. 19-5.

On the other hand, in connection with the total loss settlement the insurer will take over the title to the subject-matter insured and any undamaged components or materials, cf. Cl. 5-19, sub-clause 1.

The insurer can therefore utilize the market value which the subject-matter insured or the components may represent after the damage. If the buyer and the yard find it expedient to rebuild the subject-matter insured after payment of the total-loss claim, this is therefore conditional on the insurer agreeing with such a decision.

Under-insurance in the event of total loss before delivery now follows from Cl. 19-13, sub-clause 2, in that the insurer's liability is limited to the proportion of the sum insured which corresponds to the insurable value calculated according to Cl. 19-10, sub-clause 2. As regards total loss on delivery, however, the under-insurance principle, follows from Cl. 2-4 on under-insurance.

In practice, the buyer will normally have paid one or several instalments of the contract price, and these must be reimbursed when the yard's obligation to deliver is terminated due to a total loss. According to Cl. 19-3, the buyer shall be regarded as co-insured as far as the instalments paid are concerned and will in the event of a total loss acquire a direct claim against the insurer.

## Clause 19–14. Damage/Ref. Chapter 12

**This Clause was edited in 2016 in order to bring the text in line with the Commentary.**

This provision refers to Chapter 12, which entails that if the subject-matter insured (or components and materials for the subject-matter insured) are damaged without this constituting a total loss, the insurer shall indemnify the costs by repairing the damage or re-acquiring lost objects. The costs of repairing the damage also comprise ordinary profit for the yard from such work. The repair work must in other words be calculated in the same way as if the yard had undertaken work paid by the hour for someone else, and the insurer shall indemnify the full amount. However, Cl. 12-1, sub-clause 2, to the effect that liability arises as and when the repair costs are incurred protects the buyer against a major compensation for damage being paid to the yard without the corresponding repair work being carried out.

It is conceivable that the damage can be repaired, but that the owner nevertheless demands new equipment rather than repairs, e.g. out of fear of delayed damage in connection with water damage to a generator. Here the insurer's liability must be tied to the yard's obligation vis-à-vis the buyer according to the building contract. If under the contract it is sufficient for the yard to carry out repairs, possibly combined with a warranty against **future** damage, the insurer's liability must be limited in the same way. If the yard, out of consideration for its customers or for other reasons, chooses to buy a new object rather than repair it, this must accordingly be of no concern to the insurer.

Cl. 12-3 regarding adequate maintenance, etc. shall be applied correspondingly in connection with the rebuilding/conversion of ships or other entities where the conditions set out in Chapter 19 are applied.

**This is now expressly stated in the text itself by limiting this exception to newbuildings only.**

## Clause 19–15. Limitation of the insurer's liability/Ref. Clause 12–1

The Commentary has been rewritten in the 2013 Plan. It is patterned on the definitions in Cl. 12-4, and much of the content must be seen in conjunction with the Commentary on this Clause. Cl. 12-4 deals with the terms "error in design" and "faulty material", and the terms in Cl. 19-15 must therefore have the same meaning, but account must be taken of the fact that Cl. 19-15 relates specifically to newbuildings or rebuilding/conversion projects at the building yard. Furthermore, Cl. 19-15 makes specific mention of "faulty workmanship".

### Error in design

The term "design" refers to the entire process from the drawing of the component concerned, specification of types of material and dimensions, how the individual components of the subject-matter insured are produced/manufactured, structure/shape, the quality of the materials and the construction/composition of the components that eventually will constitute the subject-matter insured.

An error in design means that the subject-matter insured has deficiencies or defects because it has been wrongly designed or built. Such errors apply in particular in cases where a part or parts of the subject-matter insured have been given the following characteristics or the following errors have been made:

1. An unsatisfactory shape, arrangement or function
2. A degree of strength that proves to be inadequate
3. An error in drawings of the individual parts
4. An error in the specification of types of material, dimensioning and strength
5. An error in the specification of the manufacturing procedure/the method used to manufacture the component and the choice of procedure/method.
6. An error in the execution of the process of manufacturing the part. If an incorrect specification of the manufacturing process has been given, the resulting defects must be regarded as errors in design. On the other hand, defects attributable to the fact that a performing link in the production process has failed to comply with the specifications given cannot be classified as errors in design. However, the definition of the term is by no means clear-cut.

An error in design can be subjective or objective

A subjective error in design means that the design is such that, in the light of current knowledge and standards, it is unsuitable and that this should have been evident. This thus constitutes a reproach to the assured for the choices that were made. In order for an error in design to be regarded as subjective, however, steps must have been taken to remedy the error before the subject-matter insured was delivered if the error had been discovered. An objective error in design means that the design is such that it appeared to be reasonable when it was chosen, but subsequently proved to be inadequate or sub-standard. This can, for instance, apply to new and untested materials.

Faulty material

The term “faulty material” implies that the material in a part of the subject-matter insured is of a quality inferior to the presupposed standard. These faults in material consist particularly of cases where the material in a part or parts of the subject-matter insured:

1. is of a quality inferior to materials that would otherwise have been chosen in accordance with good shipbuilding practice
2. is defective in the sense that the material used does not correspond to the specifications
3. is defective in terms of the structure and/or strength of the material. The material may be suitable, but has deteriorated, is inappropriate or unfit for its intended use.

Faulty material will normally be concealed in the sense that it is not detectable by a superficial examination. Detection will normally require more complex methods, such as material analyses, load tests, etc.

Consequently, the yard, too, will be unaware of the fault in material until it materialises in the form of damage. Faulty material thus refers to the inherent or original fault in the material, and not to a fault that is discovered at a later date. The faulty material must therefore have been present during the entire lifetime of the part. It is not, for instance, a question of faulty material when material used in the subject-matter insured has been weakened as a result of an earlier casualty. The quality deficiency may be due to a defect in casting or some other fault in the structure of the material which occurred during processing, or to the supplier of the material having delivered a quality which is not in accordance with the quoted specifications (e.g. the steel supplied is too brittle).

However, faulty material can also be caused by an external influence, such as when the part falls during processing in the workshop and sustains a flaw.

#### Faulty workmanship

Faulty workmanship will as a rule be related to work that is carried out on the subject-matter insured. This type of fault applies in particular when work on a part or parts of the subject-matter insured relates to the following:

1. an error in workmanship has occurred, such as when the material chosen, the dimensioning or the actual execution of the work is contrary to regulations, recognised norms and good ship-building practice;
2. an inferior quality of work/poor workmanship has been done by the building yard due to deficient quality, knowledge and technical execution.

The limitation with respect to faulty workmanship is due to fundamental doubts about covering the building yard's costs of rectifying a fault due simply to poor workmanship. Faulty "workmanship" has occurred, for instance, when the welding is not in compliance with the designer's regulations or generally recognized building standards.

Damage due simply to accidents during work, e.g. fire damage resulting from negligence during welding, or hull damage that occurs when the subject-matter insured is topples over due to inadequate support in the building dock, is not, however, to be regarded as "faulty workmanship".

It is also conceivable that faulty workmanship may be carried out which does not cause any direct physical damage to the subject-matter insured or its components, but which nevertheless gives rise to a loss for the insured. e.g. that the wrong type of propeller is installed and must later be replaced. Such

losses also fall within the scope of the term “faulty workmanship” and are thus included in the exclusion.

The incorrect choice of material is also included in the term “faulty workmanship”. This could, for instance, comprise the choice of the wrong steel quality or overly thin steel during the building process.

The limitations apply only to “costs of renewing or repairing the part or parts” which were not in proper condition due to the stated perils. This means that the exclusion applies only to the costs of repairing the part that is defective, i.e. the primary damage. In such case, the assured must cover the costs of renewing or repairing the part that was not in proper condition, while the insurer is liable for the consequential damage. If the subject-matter insured runs aground during the trial run due to faulty design or faulty workmanship as regards the steering gear, the grounding damage will thus be recoverable, but not the costs of repairing or replacing the steering gear.

#### **Clause 19–16. Compensation for unrepaired damage/Ref. Clause 12–2**

Sub-clause 1 deals with the parties’ right to claim compensation for the damage upon expiry of the insurance period even if repairs have not been carried out. Whether the yard and/or the buyer has this right will depend on who owns the damaged interests.

*Sub-clause 2* states that the compensation shall be calculated on the basis of a discretionary estimate of the cost of repairs upon termination of the insurance, limited to the reduction in price resulting from the damage. The provision concurs with Cl. 12-2, sub-clause 2.

#### **Clause 19–17. Costs incurred in order to save time/Ref. Clause 12–7, Clause 12–11 and Clause 12–12**

**This Clause was edited in 2016 so that loss of time appears as a new separate letter (c) in order to bring the lay-out in line with Cl. 18-93.**

This clause deals with the cover of the yard’s costs applied in order to expedite repairs. Such a rule is expedient **also in builders’ risks insurance** because damage may have negative consequences both for the yard’s possibility of timely performance of the building contract and for its overall **building program**. The cover of such costs follows from the reference in Cl. 19-14 to the rules in Chapter 12. **Cl. 19-17 limits this cover as compared with what follows from Clauses 12-7, 12-11 and 12-12 by excluding from cover the 20% p.a. of the insurable value of the subject-matter insured.**

If the yard has, in addition to the ordinary hull insurance under Section 2, also taken out insurance against the yard’s loss of interest and daily penalties in the event of late delivery, this supplementary

cover will only apply where the yard's loss exceeds the insurer's liability under Cl. 12-8. The yard's liability for loss of interest and daily penalties must thus be set off against the cover for extraordinary costs before the supplementary cover is triggered.

### Section 3

## Indemnification of additional costs incurred in an unsuccessful launching and costs of wreck removal

### **Clause 19–18. Additional costs incurred in an unsuccessful launching**

This Commentary was rewritten in the 2013 Plan.

This Clause deals with the indemnification of additional costs in connection with unsuccessful launching. This means that the costs that are covered are additional to what is covered under the other conditions of the builders' risks insurance. An example might be damage to the building berth and/or slipway cranes in connection with a launch. The insurer covers the costs of repairing the berth and/or the cranes so that another launch can be made. If the slipway cranes are not used in connection with the launch, the damage is not covered by the builders' risks insurance. In that case, the damage must be covered by the yard's other insurances. The damage to the berth is covered insofar as the repairs are necessary for a new launch, but full repairs are not covered. This also applies to other parts of the yard's property/assets which need to be repaired in order to carry out a new launch.

### **Clause 19–19. Costs of wreck removal**

This Commentary was rewritten in the 2013 Plan.

This Clause deals with the insurer's indemnification of costs incurred by the assured for the "necessary removal of wrecks". In this connection, "wreck" means the wreck of the subject-matter insured or its components. Removal is necessary when it is impossible for the yard to continue to operate without removing the wreck. Only costs related to the removal of the wreck from sites owned or used by the yard are recoverable, and only the expenses that exceed the value of what is removed, on condition that such costs are reasonable.

If the subject-matter insured/wreck causes an obstruction to traffic in areas belonging to or used by others, such as in a port area owned by the public authorities, removal costs must be covered as wreck removal liability under Cl.19-20.

## Section 4

### Liability insurance

#### Clause 19–20. Scope of the liability insurance

The provision was amended in the 2013 Plan. In sub-clause 1 the term “imposed” has been replaced by “required” and sub-clause 4 regarding the assured’s liability for damage to the environment if the damage occurred in direct connection with the performance of the building contract is new.

The liability cover comprises the yard’s liability to third parties. Additionally, the buyer is co-insured under this provision in order to ensure that he is covered if he has not taken out a separate liability insurance that covers liability in connection with the building project. If the yard has taken out the insurance, it therefore follows from Cl. 19-3 that the term “assured” in Cl. 19-20 comprises both the yard as the person effecting the insurance and the assured and the buyer as co-insured. If, however, the insurance is taken out by the buyer, the yard will not be co-insured according to Cl. 19-3 and will thus not be comprised by the liability part of the builders’ risks insurance either. In such cases the yard must take out its own insurance or arrange to be co-insured under the buyer’s cover.

The first *sentence* establishes that liability comprises personal injury and loss of life. The basis for liability is irrelevant; it may be liability based on fault for the yard’s management, employer’s liability or non-statutory strict liability. On the other hand, there is an important limitation to the requirement that the injury must have arisen in direct connection with the performance of the building contract, cf. below.

The issue of whether trial trips/delivery voyages are comprised by the insurance depends on whether they are carried out within the area specified by the certificate, including the trading area, cf. Cl. 19-5, sub-clause 1 (b). If this is the case, damage caused by the yard during such runs must be regarded as damage that has arisen “in direct connection with the execution of the building contract.” Whether there are invited guests or others who are injured is irrelevant in this connection: see, however, the exclusion in Cl. 19-21, sub-clause 1 (a), in respect of the yard’s own employees, cf. below. The same must be the case for injuries during transport to or from the subject-matter insured with another vessel to the extent that the yard becomes liable for such damage. Here the yard may incur transport liability if he owns or leases the vessel. If, however, the transport is handled by another carrier it will normally be that carrier, and not the assured, who will be liable.

The terms “personal injury” and “loss of life” are referred to in further detail in Cl. 17-34. Reference is therefore made to the comments on that provision.

The *second point* establishes the insurer's liability for property damage caused to a third party. That the object must belong to a "third party" means that damage to or loss of the yard's own objects is not covered. The term "third party" must be read as a "third party" here in relation to the yard or buyer as tort-feasor. If the yard causes damage to the buyer's property, this will in principle be comprised by the liability insurance. The same applies if the buyer causes damage to the yard's property. To the extent that such damage is covered by the hull conditions in Chapter 19, Sections 1, 2 or 5, the damage will, however, fall outside the scope of the liability insurance, cf. Cl. 19-21 (c). Reference is furthermore made to the comments on Cl. 17-35, sub-clause 1.

The *third point* concerns liability for removal of wrecks that is required by the authorities. In the 2013 Plan the word "imposed" was replaced with "required". The wreck-removal liability concords with the international liability according to IMO rules and comprises the assured's liability in connection with the raising, removal, destruction, marking or illumination of the subject-matter insured or parts thereof. Only liability imposed by the authorities, and thus not contractual liability, is covered. This also follows from Cl. 19-21, sub-clause 1 (e). Reference is furthermore made to Cl. 17-39 of the Commentary on coastal and fishing vessels.

Only the assured's legal liability for damages is covered. The yard must therefore be liable according to general rules of liability law determining the basis for liability, causation and loss in order to trigger payment of the insurance. If the yard out of consideration for its customers or for other reasons chooses to cover damage for which it does not have liability, this is irrelevant to the insurance.

A further condition is that the liability has arisen "in direct connection with the performance of the building contract". Like shipowner's liability insurance, liability insurance under a builders' risks cover is therefore tied directly to a specific subject-matter insured - i.e. in this connection a building contract. Liability for damages in connection with other building projects must be allocated to the builders' risks cover of these projects.

That liability arises "in direct connection with the performance of the building contract" means that liability is connected with the actual construction work or the handling of parts or materials intended for the relevant subject-matter insured. Liability in connection with the handling of materials or parts before it has been decided that these parts, etc., shall be used for the said subject-matter insured, accordingly falls outside the scope of cover and will have to be covered under a more general liability insurance for the yard or the buyer. The same must be the case for liability connected with the assured's general operations.

On the other hand, it is not a condition that liability arises in connection with the actual construction work. Liability arising during storage or transport of parts for the relevant subject-matter insured must also be covered, provided that this takes place within the place of insurance according to the

**insurance contract.** Similarly, liability arising during a trial run or a delivery run within the place insured must be covered.

The provision in Cl. 19-20 must be seen in conjunction with the general rule regarding perils in Cl. 19-1. The insurance therefore applies to any marine peril and to the war perils strikes and lockouts. However, it does not cover the yard's liability for damages resulting from other war perils, unless a war-risk insurance has been effected under Section 6.

*Sub-clause 2* deals with the insurer's cover of damage to objects belonging to the yard resulting from collision or striking after the subject-matter insured has been launched. This provision must be seen in conjunction with the general sister-ships rule in Cl. 4-16 about the insurer's liability in the event of damage to objects belonging to the assured. If the subject-matter insured causes damage to objects belonging to the assured during or after launching, and this is attributable to circumstances for which the assured would have been liable if the damaged objects belonged to a third party, the insurer is liable to the assured according to Cl. 4-16 to the same extent as he would have had to cover the assured's liability to third parties. This now follows from the reference to Cl. 4-16 as regards damage from collision or striking following launching. The provision is worded such that the sister-ships rule shall not apply to any damage to the assured's own property other than what is specifically mentioned.

The fact that the liability cover in Section 4 has been extended to include buyer's liability if it is the yard that is effecting the insurance, cf. Cl. 19-3, entails that Cl. 4-16 shall also apply if the subject-matter insured causes damage to the buyer's property. However, this is hardly a very practical situation.

Cl. 4-16 does not cover the situation where the subject-matter insured causes damage to the buyer's property without the assured's conduct having given rise to liability. However, such damage should be covered by an ordinary property insurance taken out by the assured, and not under the builders' risks insurance, which concerns either damage to or loss of the subject-matter insured and components thereof, etc., or the assured's liability for damages.

*Sub-clause 3* establishes that the insurer covers the assured's liability for bunker oil pollution damage in accordance with the provisions laid down in national legislation that are based on the provisions of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention). Through this provision, cover under the Plan is expanded to include all liability under the Bunkers Convention. This approach tallies with practice, where it has been customary for the parties to agree on a corresponding expansion of cover by incorporating a special clause in the **insurance contract.** The provision corresponds to Cl. 17-41.

*Sub-clause 4* was new in the 2013 Plan.

*Sub-clause 4* establishes that the insurer covers the assured's liability for damage to the environment. Vessels trading in the waters of the states in the European Economic Area are liable for damage to the environment pursuant to the rules of the EU Directive 2004/35CE of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. The purpose of the Directive is to establish a framework of environmental liability based on the 'polluter-pays' principle, to prevent and remedy environmental damage. The Directive applies where environmental damage and damage to protected species and natural habitats are concerned, to occupational activities which present a risk for human health or the environment. The Nordic countries have incorporated the rules of the Directive into their national legislation. In Denmark, the relevant acts are Act of 17 June 2008 No 466 relating to environmental damage (Lov om undersøgelse, forebyggelse og afhjælpning af miljøskader - Miljøskadeloven) and Act of 22 December 2006 No 1757 relating to environmental protection (lov om miljøbeskyttelse); in Finland, Act of 29 May 2009 No 383 relating to remedying certain environmental damage (Lag om avhjälpande av vissa miljöskador); in Norway, Act of 19 June 2009 No. 100 Relating to the Management of Biological, Geological and Landscape Diversity (Nature Diversity Act) – (Lov om forvaltning av naturens mangfold - naturmangfoldloven); and in Sweden, the Environmental Code of 11 June 1998 (Miljöbalken).

Examples of environmental damage that can give rise to a claim for environmental compensation include:

- A vessel, tow, etc. sails into waters that are too shallow and the keel damages a coral reef.
- A vessel, tow, etc. drifts into a wetlands area and runs aground. The vessel/hull and the rescue vessels that must enter the area destroy nesting sites and disturb the birds' food supply, with the result that the area is partly abandoned.

Environmental damage in the form of the discharge of bunkers is regulated in sub-clause 3 above.

## **Clause 19–21. Limitations on the liability insurance**

**Clause 19-21 was amended in 2016 to be verbatim the same as Cl. 18-98, sub-clauses 5 and 6. Apart from mere editorial amendments, the only amendment of substance is that the words “contractor or sub-contractor” were added in sub-clause 1, letters (a), (b) and (d).**

*Sub-clause 1 (a)* excludes liability for **personal injuries or loss of life of the yard's own employees.**

**This exclusion is also extended to the employees of the yard's contractors or sub-contractors.**

For Norwegian yards this liability will normally be covered by the occupational injury insurance.

In that event, it follows from sub-clause 2 that this liability falls outside the scope of liability insurance under the builders' risks insurance. It is nevertheless necessary to have a separate rule to cover foreign yards that do not have the type of insurance or social benefit schemes for their employees as

mentioned in sub-clause 2. A person is “employed” by the assured if the yard, in addition to wages or salary, covers the employer’s social security contributions for the person in question. **The same applies to employees of the yard’s contractors or sub-contractors.** A consultant with a consultant’s fee and without any contract of employment is, by contrast, not employed.

*Sub-clause 1 (b)* excludes objects that belong to the yard’s employees from the cover. **This exclusion is also extended to belongings of employees of the yard’s contractors or sub-contractors.**

The exclusion is in accordance with the exclusion in sub-clause (a), and also with the provision in Cl. 17-35, sub-clause 2.

*Sub-clause 1 (c)* is patterned on Cl. 17-47, sub-clause 1 (a), but applies only to damage which is recoverable under Chapter 19, Sections 1, 2 and 5. This has to do with the fact that the liability insurance under the builders’ risks insurance terminates concurrently with the termination of the hull insurance under Section 2 or Section 5, which means that there is no question of tying this liability cover to the ordinary hull insurance or other insurances on Plan conditions.

In accordance with the provisions in Chapter 17, this insurance is complementary in relation to other covers. It is therefore irrelevant whether the said insurance has in actual fact been effected; whether or not the loss could have been covered under the relevant insurance is the decisive factor.

Only losses which, according to their nature, could have been covered under the said insurances fall outside the liability cover under the builders’ risks insurance. If the buyer suffers a loss which falls outside the scope of the said insurances, e.g. consequential loss, this must be covered under the liability conditions, provided that the requirements as regards adequate causation are satisfied.

*Sub-clause 1 (d)* contains a delimitation in relation to other liability insurances which the yard has taken out. If the liability is e.g. covered by an ordinary liability insurance taken out by the yard, this will prevail over the liability cover under the builders’ risks insurance. However, this applies only if such liability insurance has been effected; on this point the cover is thus subsidiary, not complementary. **The liability cover pursuant to Cl. 19-20 is also subsidiary to any liability insurance effected by the yard’s contractors or sub-contractors.**

According to *sub-clause 1 (e)*, furthermore, the insurer does not cover liability which is based exclusively on a contract. This exclusion concords with normal non-marine liability insurances which do not cover contract liability. However, the rule differs from ordinary shipowners’ liability insurance, which does not have such an exclusion.

Examples of such contracts include:

- Liability which exceeds what follows from general rules of liability law, but which the assured nevertheless has committed himself to bear by a promise, a contract, an agreement or a guarantee (e.g. guarantee commitments in a building contract);
- Liability which the assured must ultimately bear because he has waived his right of recourse;
- Liability for expenses/costs/losses related to the performance of the assured's contract (i.e. agreed performance, delivery, contract work, etc.)
- Liability in connection with unusual or prohibited contractual conditions (cf. Cl 4-15 and associated Commentary)

*Sub-clause 2* deals with cases of liability for personal injury which the insurer does not cover. It is evident from the provision that arrangements other than insurance have been included, cf. *sub-clause 2 (a)*, and to some extent the cover has been made complementary to insurance benefits which are imposed by collective agreement and financed by the liable employer (cf. *sub-clause 2 (c)*). The solution is almost identical to Cl. 17-47, sub-clause 2, but the relationship to the occupational injury insurance has been adjusted to the fact that the insurance shall also be applicable to building projects at foreign yards. Reference is therefore made to Cl. 17-47, sub-clause 2.

## Section 5 Supplementary covers

### Clause 19–22. Applicable rules

The Commentary was rewritten in the 2013 Plan.

This Clause maintains the principle that it is possible to expand the builders' risks insurance by taking out supplementary covers. A factor common to all such supplementary covers is that the Clauses of Chapter 19, Sections 1 to 4, as a rule are applicable. The same applies to Section 5, but only insofar as the content of the Clauses does not deviate from the main rule.

The 2013 Plan introduces one entirely new standardised supplementary cover which may be agreed upon, i.e. Cl. 19-27 covering towage of the subject-matter insured in the water or on a barge.

Furthermore, the former Cl. 19-25 has now been divided into two parts. In the 2013 Plan, it was decided to split up the supplementary cover for the yard's loss of interest and its daily penalties in the event of late delivery into two different clauses. This was done because it has not always been logical for the yard to buy both insurances. Cl. 19-25 now concerns only the yard's loss of interest in the event of late delivery, while supplementary insurance of the yard's daily penalties must from now on be covered under the new Cl. 19-26.

All such supplementary covers must be agreed on in advance and must be explicitly included in the insurance certificate for the builders' risks insurance.

### **Clause 19–23. Insurance of additional costs in connection with rebuilding and/or building of a new subject-matter insured**

The heading and the Commentary were amended in the 2013 Plan.

This Clause concerns insurance of additional costs in connection with the rebuilding/building of a new subject-matter insured. It therefore only applies in the event of a total loss necessitating rebuilding and does not apply to repairs of damage covered under Cl. 19-14 *et seq.* In the event of total loss that does not result in a rebuilding, such costs are not incurred.

The insurer's liability is defined as the difference between what is recoverable under the builders' risks insurance and the costs of rebuilding. The difference will normally consist of the ordinary increase in the price of materials, components and equipment, and any wage increases during the rebuilding period, e.g. if the building project should be delayed by 12 months.

Compensation for additional costs will not be payable until the sum insured under the ordinary builders' risk insurance has been used up.

It follows from Cl. 19-22 and the reference in Cl. 19-14 to Chapter 12, cf. Cl. 12-1, sub-clause 2, that the insurer's liability arises as and when costs are incurred.

Normally, the additional costs according to the building contract will be the yard's risk which means that it is the yard that is entitled to the compensation.

The sum insured shall always be stated in the **insurance contract**. The same applies to the insurable value, cf. Cl. 2-2 and Cl. 2-3. If only one amount is stated in the **insurance contract**, it must be presumed that the insurance has been effected with an open insurable value.

The sum insured for additional costs is normally set at 10% of the contract price.

This provision must not be confused with the new escalation Clause in Cl. 19-7, which also provides for an increase of up to 10% of the sum insured. The escalation cover is now part of the ordinary builders' risks insurance, and is not defined as a supplementary cover in Chapter 5. Nor, unlike the present provision, is it applicable in the case of rebuilding after a total loss.

### **Clause 19–24. Insurance of the yard’s liability for the buyer’s interest claim for instalments paid**

The Commentary was amended in the 2013 Plan.

It is specified in the Clause heading that this supplementary cover applies to the yard’s liability for the buyer’s claim for interest on instalments paid. This is done in order to make it clear that it is a question of a liability insurance taken out by the yard.

The insurance is effected by the yard and relates to the yard’s contractual obligations in relation to the buyer. In contrast to the ordinary liability cover under the builders’ risks insurance in Section 4, Cl. 19-24 therefore concerns contract liability associated with the building contract.

The yard’s liability for the buyer’s interest claims in the event of a total loss refers to the instalments that have been paid by the buyer to the yard during the building period. The liability is limited to the sum insured.

The supplementary cover only comprises the interest claim if “the duty to deliver is terminated due to loss or damage which is recoverable under Cl. 19-12”. If the buyer cancels the building contract due to a breach of contract and in this connection is entitled to a refund of the instalments, the buyer’s interest claim is not covered under an insurance according to Cl. 19-24. It is also based on the assumption that the loss or damage does not result in a rebuilding, cf. the references to Cl. 19-12. In the event of rebuilding the instalments shall not be repaid. The reference to Cl. 19-12 must be seen in conjunction with the requirement that the duty to deliver is terminated; if an incident of damage is settled under the condemnation rule in Cl. 19-11 without the duty to deliver being terminated, there will be no interest cover.

According to the *second sentence*, interest shall be calculated from the date of payment of the individual instalment until the time of the total loss. It follows from general rules of liability law that the buyer has the burden of proving his loss in relation to the yard, and from Cl. 2-12 that the yard has a corresponding burden of proof vis-à-vis the insurer.

### **Clause 19–25. Insurance of the yard’s loss of interest in the event of late delivery**

The Clause was amended in the 2013 Plan. In previous versions of the Norwegian Marine Insurance Plan the insurance covered both the yard’s loss of interest and its daily penalties, but the daily penalties was removed from the cover in the 2013 Plan. Further, there was made some amendments in sub-clause 4.

The provision is comparable to a loss of hire insurance or an insurance against late delivery of a newbuilding which is taken out by the buyer. However, the provision in Cl. 19-25 only covers the yard's loss. The supplementary cover is expensive in relation to the ordinary builder's risks insurance, but is in practice used to some extent,

*Sub-clause 1* states that the insurance covers the yard's interest loss resulting from late delivery due to damage which is recoverable under the builders' risks insurance according to Sections 1 and 2.

According to Cl. 2-12 the yard has the burden of proving the loss suffered.

*Sub-clause 2* contains rules regarding deductible. In the same way as for an ordinary loss-of-hire insurance, deductible is agreed in the form of a deductible period. Today a deductible period of 14 days is customary. The deductible period shall apply to any one casualty that results in delays and subsequent loss of interest under the builders' risks insurance.

*Sub-clause 3* states the insurer's maximum liability for any one casualty. The insurer's liability for the yard's loss of interest in the event of late delivery is limited to a certain number of days. The loss of interest must be specified in whole days.

*Sub-clause 4* was editorially amended in the 2013 Plan. The terms "takeover date" and "taken over" in the 1996 Plan was replaced with "delivery date" and "taken delivery". The Clause lays down rules regarding the length of the insurance period. If the assured and the buyer agree to postpone the delivery date due to circumstances which do not provide grounds for compensation under this supplementary cover, the insurance will automatically be extended subject to an additional premium. As in the event of an extension of the principal cover, cf. Cl. 19-2, the additional premium shall be determined in the **insurance contract**. Extensions are limited to nine months, cf. the reference to Cl. 19-2, sub-clause 3.

When determining whether there has been "late delivery", the basis for the calculation is the delivery date agreed between the assured and the buyer. *Sub-clause 5* lays down a specific rule on loss due to a combination of causes and concurs in that respect with the principle in Cl. 2-13. If the delay is the result partly of damage entitling the assured to compensation under the builders' risks insurance, partly of uncovered circumstances, the insurer covers a proportional part of loss of interest calculated on the basis of the loss which the two groups of causes of delay would have entailed beyond the deductible period if they had arisen separately.

*Sub-clause 6* states that if the assured takes measures to avert or minimise the delay covered by the insurance, the insurer shall not be liable for more than the amount he should have paid if no such measures had been taken. This solution is in accordance with Cl. 16-11, sub-clauses 2 and 3. In many

ways, cover under Cl. 19-25 is built up in the same way as loss-of-hire insurance, with a deductible period, etc., and it is therefore logical to include a corresponding rule here.

### **Clause 19–26. Insurance of the yard’s daily penalties in the event of late delivery**

As stated in the Commentary on Cl. 19-22, in the 2013 Plan it was decided to split up the supplementary cover for the yard’s loss of interest and daily penalties in the event of late delivery into two different clauses. This has been done in order to make it easier for the yard in the event it wishes to purchase just one of the products, i.e. cover for either loss of interest or for daily penalties. It has been seen in practice that it is expedient to distinguish between the two categories because supplementary cover for loss of interest and such cover for daily penalties are almost always agreed separately and independently of one another. This Clause therefore deals only with the yard’s daily penalties in the event of late delivery. No change in the substance of the content of the former Cl. 19-25 was intended.

For the same reason, the Commentary on Cl. 19-26 is virtually identical to the Commentary on Cl. 19-25.

With regard to daily penalties in the event of late delivery, the Clause is comparable to a loss-of-hire insurance or an insurance for late delivery of a newbuilding that is contracted by the buyer.

*Sub-clause 1* states that the insurance covers the yard’s daily penalties resulting from late delivery due to damage which is recoverable under the builders’ risks insurance under Sections 1 and 2. Under Cl. 2-12, the yard has the burden of proving the loss that has been suffered.

*Sub-clause 2* contains rules regarding deductibles. As is the case for an ordinary loss-of-hire insurance, the deductible is agreed in the form of a deductible period. The deductible period applies to any one casualty that results in a delay and subsequent daily penalties under the builders’ risks insurance.

*Sub-clause 3* states the insurer’s maximum liability for any one casualty. As under loss-of-hire insurance, the insurer’s liability is defined in the form of an agreed daily amount and a certain number of days.

*Sub-clause 4* sets out rules regarding the length of the insurance period. If the assured and the buyer agree to postpone the delivery date due to circumstances that do not constitute grounds for compensation under this supplementary cover, the insurance will automatically be extended subject to an additional premium. As in the case of an extension of the principal cover, cf. Cl. 19-2, the additional premium shall be determined in the **insurance contract**. The extension is limited to nine months, cf. the reference to Cl. 19-2, sub-clause 3.

When determining whether there has been “late delivery”, the basis for the calculation is the delivery date agreed between the assured and the buyer. *Sub-clause 5* lays down a specific rule on loss due to a combination of causes and in that respect tallies with the principle in Cl. 2-13. If the delay is the result partly of damage entitling the assured to compensation under the builders’ risks insurance, and partly of uncovered circumstances, the insurer covers a proportional part of the daily penalties calculated on the basis of the loss which the two groups of delay causes would have entailed beyond the deductible period if they had arisen separately.

*Sub-clause 6* states that if the assured takes measures to avert or minimise the delay covered by the insurance, the insurer shall not be liable for more than the amount that he would have had to pay if no such measures had been taken. This solution concords with Cl. 16-11, sub-clauses 2 and 3. In many ways, cover under Cl. 19-26 is built up in the same way as loss- of-hire insurance, with a pre-agreed deductible period, and it is therefore logical to include a corresponding rule here.

The problem can be illustrated by an example:

Just before a fishing vessel is delivered, the sonar’s bottom equipment is damaged and the damage is recoverable under the builders’ risks **insurance**. The ordering, delivery and installation of new parts will delay delivery by 10 days. To avoid late delivery, alternative bottom equipment is leased and installed, and the replacement of this equipment with “correct” new equipment is postponed to a later date when it can be done without extra loss of hire.

In this way, ten days of delay are avoided by paying for the lease of alternative equipment and extra installation/dismantling costs. However, covering this amount in full without regard for the fact that the assured would not have received any compensation at all if a 14-day deductible was applied is not reasonable and contrary to the solution under Cl. 16-11. In relation to Cl. 19-25, it is therefore more logical to follow the same principles as under the loss-of-hire insurance.

### **Clause 19–27. Towage and removal of the subject-matter insured**

This Clause is new in the 2013 Plan. The Clause has been placed in Chapter 19, Section 5, which means that it is a “supplementary cover” that may be agreed on and included in the ordinary builders’ risks **insurance contract**.

The rationale for incorporating a clause regarding towage under the builders’ risks insurance is that more and more hulls/sections and modules are being built at yards other than the outfitting yard, including foreign yards, while outfitting and commissioning largely take place at the yard that has taken out the builders’ risks insurance. Up until now, the towage risk has often been covered

separately under the builders' risks **insurance**, while this risk can now be covered through such supplementary cover as part of the ordinary builders' risks insurance. However, this is conditional on the supplementary cover having been agreed in advance with the company and on this being stated in the insurance certificate. It will also be logical to include in the insurance certificate particulars regarding the agreed sum insured, the locations from and to which the tow is to be carried out, and the time period for the tow.

The provision regarding the range of perils covered in Cl. 19-1 will also apply when the subject-matter insured is under tow. The provisions of Chapter 19 otherwise apply. This means, for instance, that the condemnation limit applicable to towage is determined by the provision in Cl. 19-11, which means that the condemnation limit is set at 100% (and not 80% as stated in Chapter 11 of the Plan). Correspondingly, some of the clauses in Chapter 12 of the Plan (damage) will be excluded in accordance with the content of Cl. 19-14. If there should be a desire to expand or limit the scope of cover during towage in this connection, it will be logical to do so by using one of the alternative covers in Chapter 10 of the Plan, cf. Cl. 10-4 to Cl. 10-8, for instance Cl. 10-5, *Insurance "against total loss only"*.

With regard to liability arising during towage, it follows from Cl. 19-7 that the insurance covers liability up to the sum insured per casualty. Any payment made under the liability insurance will be additional to compensation paid for damage/total loss and salvage costs. If a special insurance for towage under Cl. 19-27 has been taken out, the sum insured agreed for the tow will be the limitation amount, as opposed to the total sum insured for the entire builders' risks cover.

The tow can be carried out as an ordinary "wet tow", where the subject-matter insured is towed floating in the water. But the insurance also covers "dry tows", where the subject-matter insured is placed on a barge. In such event, the range of perils is the same as for tows in the sea. The insurance also covers the transport of the subject-matter insured or components thereof on board a vessel during land or air transport.

*Sub-clause 2* deals with the special risk related to loading and discharge operations, which has been treated slightly differently. When the tow has arrived at the destination – which will as a rule be the outfitting yard - the builders' risks insurance will continue to apply until the work is completed and the subject-matter insured is delivered. In other words, if additional cover has been taken out for the tow, the discharge from a barge will take place during the actual insurance period. For the same reason, it is specified in sub-clause 2 that the discharge of the subject-matter insured, is covered by the supplementary cover for the tow.

On the other hand, loading on board a barge will not automatically be covered. Whether such loading is for the account and risk of the hull yard or the outfitting yard is determined by the delivery

conditions set out in the agreement between the two. If the outfitting yard takes over the sections/modules before they are loaded on board the barge, the yard in question will usually include this operation in its insurance. In such case, this must be specified in the builders' risks **insurance contract** in connection with the inception of the insurance cover, which will thus be prior to the commencement of the tow.

*Sub-clause 3* sets out the safety regulations for towage. Tows must always be surveyed and approved by a surveyor that is approved in advance by the insurer. Admittedly, there are no formal requirements or standard templates for the survey report on the towage risk. Large, reputable surveyors will normally use their own approved "Certificates of Approval". These documents generally contain provisions regarding the securing of the tow for the voyage, stability requirements, permitted towing speed, "weather windows" (i.e. maximum wind speeds and wave height) and sometimes also provisions specifying when and where the tug must put into a port of refuge. This certificate is routinely signed by the tugmaster, i.e. the captain of the tug that is to be used for the voyage/another representative of the owner, after which it is sent to the yard and its leading insurer. If the assured has ensured that the safety regulations in Cl. 19-27, sub-clause 3 (a)-(d), are complied with prior to the commencement of the tow, any loss that may be incurred as a result of the tug not following the orders issued by the assured will not be attributed to him.

The requirement that the tow must be surveyed does not apply to internal berth shifts and removals of the subject-matter insured on the yard's own site, cf. the last sub-clause of the Clause. Such removals could, for instance, be a transfer from the building site to the yard's own outfitting dock. It makes no difference whether the subject-matter insured is moved by means of winches, is towed or proceeds under its own power. The decisive factor is that it must at all times remain within the yard's own area in order not to trigger the survey obligation.

If the insurer wishes to make the towage risk subject to special safety regulations, this must also be specified in the insurance certificate.

*Sub-clause 4* establishes that if the subject-matter insured is moved in other ways, the safety regulations in sub-clause 3 apply correspondingly. When the subject-matter insured or components thereof are transported by ship, over land or by air, this operation will also have to be surveyed and approved.

## Section 6

### Supplementary cover for war risks

The supplementary cover for war risk under the builders' risks **insurance contract** has been tied to Chapter 15 of the Plan. The war risks cover is set out in three Clauses: Cl. 19- specifies the perils insured, Cl. 19-30 prescribes rules regarding the insurance period, and Cl. 19-31 states which rules from Chapters 15 and 19 apply correspondingly to the war risk insurance.

#### **Clause 19–28. Perils insured**

The range of perils insured under the builders' risks **insurance contract** has been reduced as regards war perils, cf. Cl. 19-1. The main rule is that only marine perils are covered by the insurance. Cl. 19-1 refers to Cl. 2-8, which means that the distinction between marine perils and war perils applied in builders' risks insurance basically also concords with the provisions of the Plan. An exception is damage arising from strikes and lockouts. Under the builders' risks insurance, these two elements have been moved from the range of war perils insured to civil perils. As a consequence, it is not necessary to include strikes and lockouts in the supplementary cover for war perils under the present Clause.

#### **Clause 19–29. Insurance period**

*Sub-clause 1* states that the insurance does not attach until the subject-matter insured has been launched. While the subject-matter insured is on land it thus has no war risk cover. The limitation has to do with the fact that it is not until after the subject-matter insured has been launched that it can be moved out of the war zone. However, the ordinary builders' risks insurance against marine perils also covers strikes and lockouts so that the subject-matter insured is protected against these perils whilst in dry-dock, cf. above under Cl. 19-1.

The Committee considered extending the war risk insurance to cover the entire building period, thereby achieving a distinction between marine perils and war perils which concords with Cl. 2-8 and Cl. 2-9 of the Plan. However, it is difficult to implement such a solution because the reinsurance market has so far not been willing to reinsure such cover. Moreover, the condition that the subject-matter insured must be launched concords with international builders' risks conditions.

*Sub-clause 2* differs from sub-clause 1, and states that machinery, parts and materials are not covered by the war risks insurance until the parts, etc., are on board the subject-matter insured.

### **Clause 19–30. Other applicable provisions**

*Sub-clause 1* states that the provisions in Sections 1 to 4 shall apply to the war risks insurance.

The war risks insurance thus partly covers hull insurance, partly damage and costs recoverable under Section 3, and partly liability insurance for the yard under Section 4.

*Sub-clause 2* refers to Cl. 15-5 concerning the outbreak of war between the major powers, which entails the immediate termination of the insurance in the event of a war or war-like conditions between the powers specified in Cl. 15-5.