



**IGP&I**

ANNUAL REVIEW  
2015/2016

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# KEY FACTS

01	Total entered tonnage in the Group Clubs now exceeds 1.08 billion GT.	05	The global order book has fallen 12% by vessel numbers and 8% by GT since the beginning of 2016.
02	The UK Insurance Act 2015 will enter into force on 12 August 2016.	06	29 States, representing just under 60% of the world fleet, are now signatories to the Nairobi International Convention on the Removal of Wrecks.
03	Piracy incidents and successful vessel captures continue to decline year-on-year.	07	The STOPIA and TOPIA voluntary oil pollution compensation agreements have been in force for a decade.
04	Annual world fleet growth has remained steady at 4% over the last three years.	08	Claims pooling arrangements between mutual P&I Clubs date back to 1899.



# CHAIRMAN'S STATEMENT

HUGO WYNN-WILLIAMS

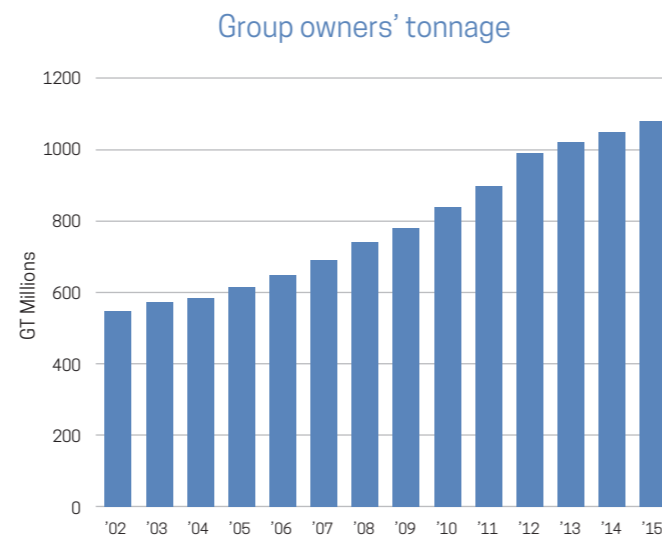
Chairman



The shipowners' liability cover provided by the Group Clubs, and through the Group's claims pooling and reinsurance arrangements, is a key factor in enabling world seaborne trade, the protection of the marine environment and of the interests of both public and private victims of maritime accidents. Furthermore, the spread of risk across Club's mutual tonnages, and the cost efficiency of the collective reinsurance purchases, delivers significant benefits to the shipowner members of the Group Clubs.

## TONNAGE CONTINUES TO GROW

2015 saw further growth in total Group entered tonnage, which increased from 1,047 billion GT as at August 2014 to 1,088 billion GT as at August 2015.

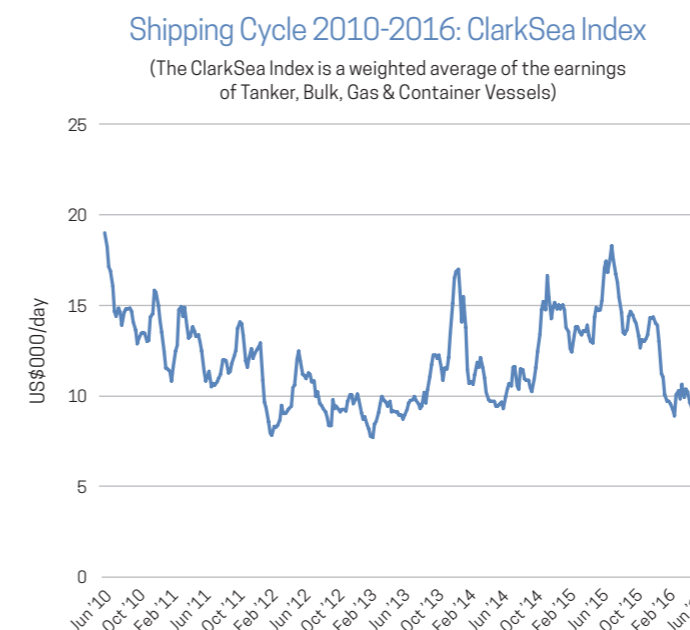


World fleet growth over the past year has remained broadly static and, according to Clarksons in 2015, it was just under 4%, down from the highs of between 7% and 9% annual growth in the 2000s. In addition, new building deliveries over the past year show a marked reduction in all vessel sectors. After a significant decline in demolition activity in the second half of 2015, scrapping has now resumed to around same levels as it was a year ago.

World seaborne trade is projected to continue to expand by around 2% during 2016, roughly half the year-on-year expansion in the period 2011-2014.

## FREIGHT MARKETS CONTINUE TO CHALLENGE

Testing times continue for shipowners in the global freight markets, particularly in the dry bulk and container sectors. The ClarkSea Index, which peaked at over US\$18,000 per day in May 2015, has fallen to just over US\$9,000 per day in May 2016.



<sup>1</sup> Source: Clarksons

In the first quarter of 2016, overall bulk carrier earnings reached their lowest quarterly level on record, at just over US\$4,200 a day. With very few exceptions, all vessel type rates have declined during the past 12 months.<sup>1</sup>

## DELIVERING FOR SHIPOWNERS

The strengths of the Group system, in delivering for shipowners needs, was again demonstrated during 2015/16. In particular, in the work being undertaken to provide a workable solution for shipowners' financial security obligations under the Maritime Labour Convention, when the new requirements for financial security for back wages enter into force at the beginning of 2017.

In addition, the development of the Group fall-back reinsurance programme has facilitated some resumption of Iran trade. This is designed to address the potential reinsurance collection shortfalls on claims involving Iranian liabilities as a result of the continuing application of US primary sanctions. However, there is further work to be done in achieving a permanent and effective solution to the risk of reinsurance shortfalls arising from continuing sanctions measures.

## FROM STRENGTH TO STRENGTH

Individually, all Group Clubs are reporting the strengthening of their financial position, reflected in increased free reserves, and most are also experiencing favourable claims trends within their retention during the past year. Underwriting results are generally improved, and have helped to offset continuing under-performance in the global investment markets.

## CHAIRMAN'S STATEMENT CONTINUED

### SECURING A PORT IN A STORM

During 2015/16, the Group worked closely with the European Commission Directorate General for Mobility and Transport, Member States and other industry representatives, in the successful development of the EU Operational Guidelines in relation to the granting of places of refuge to vessels in distress. Following a series of high-profile cases, involving refusal or delay by maritime authorities to grant a place of refuge, including the CASTOR, the PRESTIGE, and more recently the MSC FLAMINIA, the EU initiative was welcomed by EU Member States and industry alike.

The Operational Guidelines were formally launched in Brussels in January 2016 and, quite literally, as this launch was taking place a car carrier, the MODERN EXPRESS, was heavily listing in heavy weather in the Bay of Biscay and in urgent need of a place of refuge. The prompt action of the Spanish authorities in permitting the vessel to proceed under tow to Bilbao, where she was safely secured, prevented what might have been a major maritime incident impacting on European shores. The challenge, of course, will be to ensure that European Member States implement and apply the new guidelines, but hopefully these will assist in avoiding repetition of past and, very costly, maritime disasters.

### THE PRESTIGE – 13 YEARS ON

More than 13 years after the sinking of the PRESTIGE in November 2002, the judgment of the Spanish Supreme Criminal Court rendered in January 2016 came as a considerable disappointment to shipowners and insurers alike.

The first trial court in the criminal proceedings, the Audiencia Provincial in La Coruña, held a nine-month oral hearing between November 2012 and July 2013. The evidence received by that court consisted of the testimony of many witnesses, including numerous experts called by various parties, together with a volume of documents said to be the greatest number ever submitted to a court in Spain.

The Supreme Criminal Court decision substantially overturned the judgement of the Audiencia Provincial and followed a hearing which lasted less than one day, at which none of the defendants or other witnesses were heard and only brief oral submissions were permitted. The Supreme Court's decision is being appealed, with the objective of reinstating the lower court judgement. This is a process which will inevitably take a number of years to complete.

### REACHING OUT

One of the core objects and functions of the Group is the co-ordination and external representation of the views of Clubs' shipowner members on matters of concern to the shipping industry with States, inter-governmental organisations, national and regional authorities and marine insurance and shipping industry associations. The Group Clubs, co-ordinated through the activities of the numerous Group subcommittees and the Group Secretariat, are very active in outreach engagements and continue to explore new opportunities and to welcome and encourage dialogue and co-operation with interested States, and public and private stakeholders on issues of mutual concern and interest.

### THE WAY AHEAD

2016/17 will undoubtedly present new challenges for Clubs in meeting shipowners' liability insurance needs. The Group Clubs, individually and collectively, are however, robust, financially sound and well-equipped to meet these new challenges, and will continue to work and innovate to develop new solutions for shipowners' liability insurance requirements.

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## EXECUTIVE OFFICER'S STATEMENT

ANDREW BARDOT  
Executive Officer



During 2015/16 the arrangements for the internal administration and external representation of the Group kept the Secretariat very busy on a diverse range of issues impacting shipowners' liabilities and insurance coverage arrangements.

### CHANGE OF HELM

2015 saw the completion of the three-year term of office of Grantley Berkeley as Group Chairman. During his tenure, Grantley oversaw the resolution of a number of important internal and external Group issues and his significant contributions to the Group were greatly appreciated by Clubs and shipowners alike. In November 2015, Grantley was succeeded as Group Chairman by Hugo Wynn Williams, Chief Executive and Chairman of Thomas Miller, managers of the UK Club.

### IRANIAN TRADE

For shipowners and marine insurers alike, during 2015/16 one of the dominant issues has been, and remains, the impact of the international efforts aimed at relaxing sanctions measures targeted at Iranian trade.

In July 2015, the Joint Comprehensive Plan of Action (JCPOA) was agreed between the P5+1 countries and Iran. The JCPOA envisaged the lifting of the majority of European sanctions and US secondary sanctions targeted at Iranian interests and trade, imposed since 2010. On 16 January 2016, the sanctions relief envisaged under the JCPOA came into effect, with the result that the majority of the sanctions measures previously impacting on shipowners and insurers were lifted.

Whilst the relief measures were welcomed by shipowners and insurers alike, the continuing application of US primary sanctions measures impacting on US domiciled insurers and reinsurers, together with the continuing restrictions on the use of the US dollar and the US financial system, have created a number of practical difficulties. In particular, in relation to the resumption of full insurance cover for a range of owners and vessels trading to and from Iran, which are described in more detail later in this Review.

### CYBER RISKS FOCUS GATHERS PACE

As foreshadowed in the 2014/15 Review, the issue of cyber risks and insurers' exposure to these risks continues to command the attention of the industry and regulators alike. In January 2016, BIMCO, together with other leading shipping organisations, published a set of cyber guidelines for shipowners, highlighting potential cyber vulnerabilities for ships and their implications. It was aimed at assisting shipowners to take measures to protect against attacks, and to deal with the eventuality of cyber incidents. Whilst war or terrorism-related cyber liabilities will not engage Club cover, the Group is continuing to monitor developments in relation to both the operational and insurance cover ramifications of cyber risk exposure.

### STEADY AS SHE GOES – POOL CLAIMS TREND REMAINS BENIGN

The 2015/16 policy year was the fourth consecutive year of reduced frequency of claims impacting on the Group pool and General Excess Loss (GXL) reinsurance programme, although the severity of the claims currently notified exceeds the 2014/15 notifications at the same time last year.

### YORK-ANTWERP RULES 2016

The York-Antwerp Rules 2016 were adopted by the CMI Assembly in New York in May 2016, following four years of work by a CMI International Working Group on which the Group participated. The new rules have satisfactorily addressed the concerns of shipowners with the changes adopted in 2004, which were not supported and which resulted in the 2004 rules being rarely, if ever, used. In addition to the development of the new rules, the International Working Group also developed guidelines on general average, which will be kept under periodic review and updated as necessary. The texts of the new rules and guidelines can be accessed via the Group website.

### P&I QUALIFICATION PROGRAMME GATHERS MOMENTUM

Support within Club staff for the P&I qualification programme continues to grow. A total of 236 candidates sat the November 2014/June 2015 examination session, and this number increased to 272 candidates for the October 2015/May 2016 exams. The range of examination centres has been extended and now includes London, Newcastle, New York, Piraeus, Singapore and Hong Kong.

### NEVER A DULL DAY

Thanks to the broad range of combined experience of the current Secretariat staff, and the network of contacts that they have developed and maintain within industry and regulatory bodies around the world, the team is well placed to assist and guide Clubs on the myriad of issues that arise day to day. The team is looking forward to addressing further challenges, both current and new, during 2016/17.

2016 has also seen the culmination of the project to modernise and update the Group website ([www.igpandi.org](http://www.igpandi.org)), which is now up and running.

### SUNSET ON THE MERSEY

The formalities for the completion of the transfer of the run-off business of the Liverpool & London Club to R&Q Insurance were completed and approved by the English Companies Court on 31 December 2015. The outstanding run-off liabilities of the Club, which ceased underwriting and was put into solvent run-off in 1999, have been transferred to R&Q.

# POOLING AND REINSURANCE



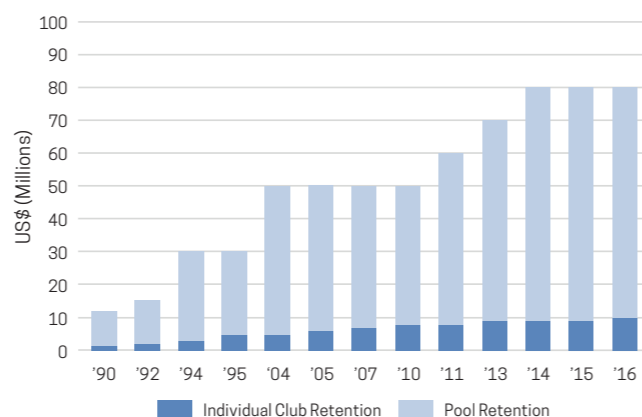
PAUL JENNINGS

Chairman, Reinsurance subcommittee

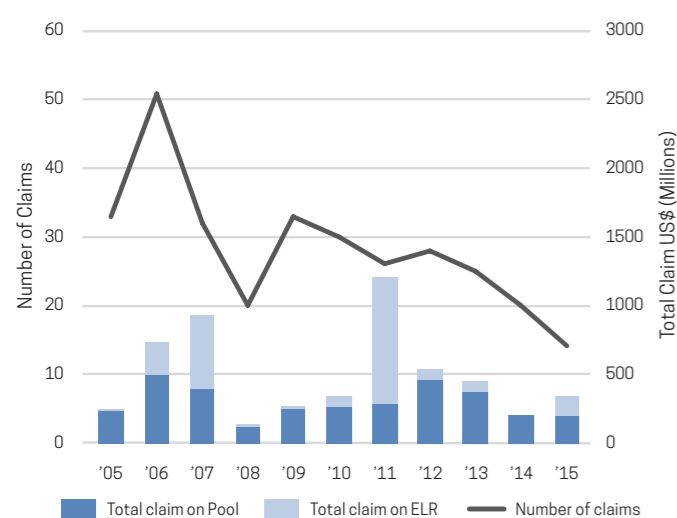
## ANOTHER BENIGN YEAR FOR THE POOL

To date, the total number of pool claims notified for the 2015/16 policy year is 15. This is a reduction from the 20 claims notified in respect of the 2014/15 policy year and the five-year average of 23 claims per policy year. However, the current estimated value of claims on the pool reported to date is US\$204.4 million, which closely matches the reported total for the 2014/15 policy year. Although there will be further claims development on the year, claims frequency and severity are likely to be well below the peak years of 2006 and 2011.

## Club and pool retention development

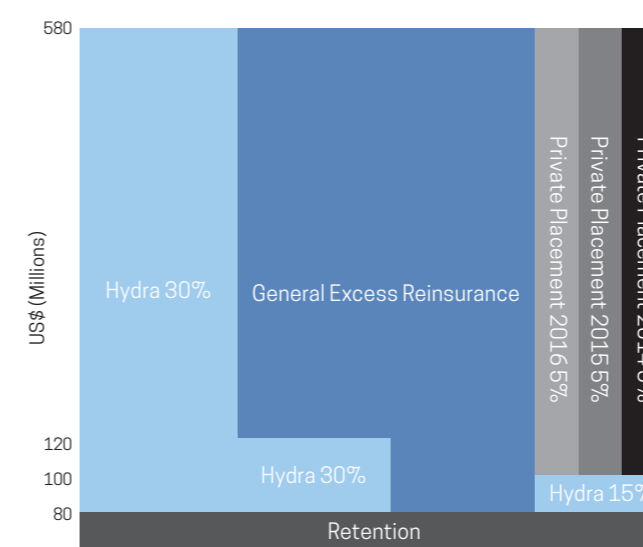


## Pool claims by policy year



The loss experience of the reinsurance programme on the policy years from 2012/13 to 2015/16 (year to date) remains generally favourable to reinsurers. As a result, the Group was able to achieve advantageous reinsurance renewal terms, with reductions across all layers of the programme and on the excess war P&I cover, resulting in reinsurance rate reductions across all vessel categories for 2016/17. Additional positive factors included, the continuing financial development of Hydra, facilitating additional Hydra risk retention, and the use of a third multi-year fixed placement of 5% of US\$1 billion xs US\$100 million utilising additional market capacity, which incepted with effect from 20 February 2016.

## Group GXL layer 1 structure 2016/17



claims data to support separate treatment of container vessels from dry cargo vessels for reinsurance cost rating purposes.

In the passenger category, there were significant increases in reinsurance costs allocated in the 2013/14 and 2014/15 policy years, principally reflecting the very substantial continuing adverse development during the 2011/12 policy year on claims arising from the COSTA CONCORDIA incident. There is unlikely to be any further significant development on these claims and, in the absence of any further major passenger vessel incidents, the sector should continue to move towards claims/premium equilibrium over the medium term.

## A SIMPLER POOL STRUCTURE

For 2016/17 a new simplified two layer pool structure was introduced, with a lower pool layer from US\$10 million to US\$45 million. The previous upper and upper-upper pool layers were replaced by a single upper pool layer from US\$45 million to US\$80 million, with a claiming Club retention rate of 7.5% across the combined layer.

## REDUCTIONS ALL ROUND

The result of the renewal negotiations and programme restructuring was a reduction in reinsurance cost of approximately 10.2% for clean and dirty tankers, and approximately 7.2% for dry cargo vessels and passenger vessels. Chartered rates were reduced by approximately 5.6% for chartered tankers, and 5.3% for chartered dry cargo.

## HYDRA PARTICIPATION UNCHANGED

Hydra reinsurance of the Group pool remained unchanged at US\$50 million xs US\$30 million. Hydra's co-insurance share in the first layer of the GXL programme (US\$500 million xs US\$80 million) was increased slightly for 2016/17 to include a further 5% share of the layer US\$80 million to US\$100 million (which sits below the third multi-year 5% fixed placement).

## SPREADING THE COST

In approaching the reinsurance cost allocation exercise for the 2016/17 policy year, and in accordance with the Group's general allocation objective, principally that of moving towards a claims versus premium balance for each vessel type over the medium to longer term, the Group's Reinsurance Strategy working group and Reinsurance subcommittee reviewed the updated historical loss versus premium records of the current four vessel type categories.

## BROKER EVALUATION REVIEW

During 2015/16, a working group was constituted within the Reinsurance subcommittee and tasked to carry out a performance and evaluation review of the Group's brokers handling the GXL placement (Miller Insurance Services LLP), and the Hydra retrocession (Aon Benfield). The review was carried out with external assistance from Moore Stephens, and included a detailed evaluation of the strengths, capabilities and fee charging structures of the respective brokers. The takeout from the 2015/16 review was positive and, consistent with the principles of good governance, and the performance of the Group's brokers, together with other external service providers, will be kept under periodical review.

## GROUP GXL AND COLLECTIVE OVERSPILL RENEWAL 2016/17

The annual renewal of the International Group reinsurance contract ("GXL"), and Hydra (the Group captive) reinsurance programmes for 2016/17, were successfully completed in February 2016.

The individual Club retention, which had remained at US\$9 million for three years, was increased with effect from 20 February 2016 to US\$10 million. The attachment point on the GXL contract remained unchanged, at US\$80 million, for the 2016/17 policy year.

## NUCLEAR COVER EXTENSION

In addition, the scope of the reinsurance cover was extended from 20 February 2016 to include nuclear risk liabilities arising under approved certificates, guarantees or undertakings, up to a limit of US\$1 billion.

The diagram on page 11 illustrates the revised participation structure of the first layer of the Group GXL programme for 2016/17.

In the tanker category, the 2015 ALPINE ETERNITY incident brought to an end a five year run of reducing claims, although tanker claims still only account for just over 10% of overall claims.

In the dry cargo category claims and premium continued to move closer to equilibrium during 2015/16. The absence of any significant container claims arising, during the 2015/16 policy year, means that there presently remains insufficient historical

## THE YEAR AHEAD

The work programme for 2016/17 includes the ongoing review of Hydra capital requirements and excess Hydra capital release mechanisms. During the run-up to the 2017/18 renewal, the structure of the Group's reinsurance programme will be reviewed, as customary, by the Reinsurance Strategy working group and Reinsurance subcommittee, and optional structures for possible adoption for 2017/18 will also be considered.



# SANCTIONS

MIKE SALTHOUSE  
Chairman, Sanctions working group



In July 2015, the Joint Comprehensive Plan of Action (JCPOA) was agreed between the P 5+1 countries and Iran. On 16 January 2016 (Implementation Day) the majority of the US and EU trade sanctions impacting on trade with Iran were lifted.

Prior to the JCPOA and Implementation Day, the ground rules on what was permissible in the way of trade with Iran or Iranian interests, and the circumstances in which insurance cover could attach, were relatively clear. Following Implementation Day the position has in practice become more confused. Whilst the majority of the EU Iran sanctions and the US-imposed secondary Iran sanctions measures have been lifted, sanctions continue where particular companies or individuals remain designated, or in relation to specific prohibited trading activity. Furthermore, US prohibitions continue to apply to US domiciled insurers and reinsurers and linked to the use of the US dollar and the US financial system for transactions involving Iran. These matters have been more specifically commented on in Club circulars issued during 2016.

Broadly speaking the Group welcomes the freeing up of trade with Iran, but the continuing application of US primary sanctions undermines the effectiveness of the Group GXL reinsurance programme, together with the reinsurance arrangements of the Group captive Hydra. It also consequently impacts upon the integrity of the insurance cover provided by Clubs to their shipowner members.

The Group has engaged extensively with the US administration (the State Department and the US Treasury Office of Foreign Assets Control (OFAC), and has had a number of meetings with representatives of both departments during the course of 2016 in its continuing efforts to address the reinsurance default risk posed by the continuing application of US primary sanctions.

Following this engagement, and with the support and approval of the US administration, the Group implemented as an interim solution a fall-back reinsurance programme designed to make good the inability of US domiciled reinsurers on the Group and Hydra reinsurance programmes to contribute to claims involving Iranian liabilities. It is subscribed to by non-US domiciled reinsurers and is subject to annual and per-event limits and limited reinstatements. This has provided a degree of comfort to a number of shipowners who are taking the opportunities afforded by the lifting of sanctions against Iran. However, a significant number of shipowners and major shipping groups remain concerned about the potential limitations on the available reinsurance cover, and other aspects of the JCPOA, and are not prepared to resume trade with Iran until these issues have been satisfactorily, and permanently, resolved.

The creation of the fall-back cover in such a short space of time following Implementation Day represents a considerable achievement on the part of the Group, but in its dealings with the US administration, the Group has always made it clear that the fall-back solution would only be an interim measure, and that a long-term permanent solution is needed. The Group is continuing its engagement with the US administration with a view to achieving an effective resolution to the difficulties arising from the continuing application of US primary sanctions measures. What is clear is that sanctions issues will continue to dominate the attention of shipowners and Clubs during 2016/17.

## THE BROADER SANCTIONS PICTURE

EU and US sanctions impacting on trade and on the provision of insurance cover continue to apply in a number of other jurisdictions including Syria and North Korea and, notwithstanding the recent partial relaxation of US sanctions, Cuba. US domiciled insurers and reinsurers remain prohibited from providing insurance cover to Cuban interests, or from responding to Cuban liabilities. However, US insurers can respond to Cuban liabilities arising out of insurance on certain authorised activities. For example, travel to Cuba is now authorised by a general license in twelve separate categories. Insurers are permitted to provide insurance incidental to that authorised travel, and to pay resulting claims.

The Sanctions subcommittee continues to monitor developments on worldwide sanctions measures impacting on the provision of cover by the Group Clubs, and in relation to shipowners' trading activities.



## MARITIME LABOUR CONVENTION

The 2014/15 Review reported on the Maritime Labour Convention (MLC), 2006. Under article XIII of the MLC, the Convention is to be kept under continuous review by a Special Tripartite Committee comprised of representatives of shipowners, seafarers and governments.

The International Labour Organisation Special Tripartite Committee (STC) held its second meeting from 8 to 10 February 2016 when Group representatives attended as part of the shipowners' delegation. The Group also participated in the first STC meeting in April 2014 when a number of amendments to the MLC were agreed. When it is in force the amended MLC will require ships that are subject to the MLC to carry on board a certificate issued by an insurer or other financial security provider. The certificate will confirm that a shipowner has insurance or other financial security for liabilities for the costs and expenses of crew repatriation, as well as up to 4 months outstanding contractually entitled wages and entitlements following abandonment (Regulation 2.5).

### FINANCIAL SECURITY

The new heads of risk for outstanding wages and entitlements and commensurate financial security requirement will have legal effect in all MLC States Parties from 18 January 2017. Club boards have already instructed Club managers to work on an insurance solution that ensures cover arrangements are available, and that such arrangements do not disturb current pooling and reinsurance arrangements. The Group Compulsory Insurance subcommittee has made progress over the past twelve months towards delivering a financial security product for Members.

Despite the challenge presented by insuring a liability arising from an assured's financial default, the Group continues to consider options that will result in a workable, and sustainable, insurance and reinsurance solution. A particularly challenging task to overcome before reinsurance cover can be placed is establishing the potential liability resulting from the insolvency of a large fleet, employing significant numbers of crew, especially where a fleet is spread across several Clubs. The Group continues to work in close collaboration with States Parties to the MLC who are keen to improve their understanding of the Group's cover arrangements. The aim is to ensure the smooth entry into force of the amendments. In this regard the subcommittee Chairman and Secretariat delivered a presentation to the ILO and its Member States at the STC meeting in February this year. In general terms, ILO Member States, ICS and ITF appreciate and support the efforts that the Group has made to date.

Financial security must also be provided for shipowners' liability for contractual payments for death or long-term disability due to an occupational injury, illness or hazard set out in the employment agreement or collective agreement (Regulation 4.2). Contractual compensation must be paid in full, and without delay. There are also provisions relating to interim payments, where the extent of an illness or disability is not clear. These liabilities largely fall within the scope of existing P&I cover, and represent less of a challenge than the repatriation and unpaid wages requirements.

JONATHAN HARE

Chairman, Compulsory Insurance subcommittee



### DIRECT ACTION EXPOSURE

The amendments to the convention confer on seafarers a right of direct action against the security provider, similar to the direct action rights which arise under 'blue cards' issued by Clubs under the IMO conventions. The financial security provider will remain liable under the security unless this liability has been terminated by a minimum 30 days' notice to the relevant Flag State.

### WORK IN PROGRESS

The financial certification requirements are a mandatory and integral part of the MLC, as amended. Shipowners will be required to comply with the new requirements from January 2017, and the option of Club security is universally supported by shipowners, the ILO, and States. The Group will continue to work on the detail of the security arrangements ensuring that when the amendments enter into force shipowners will have the requisite certification in place, and seafarers and States will have the comfort afforded by a Group-backed scheme.





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Thanks to the broad range of combined expertise and practical experience of the current Secretariat staff, and the network of contacts that they have developed and maintain within industry and regulatory bodies around the world, the team is well placed to assist and guide Clubs on a very wide range of issues. The team is looking forward to addressing further challenges, both current and new, during 2016/2017.

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# PLACES OF REFUGE – EU OPERATIONAL GUIDELINES

TIM FULLER

Chairman, Salvage subcommittee



New Places of Refuge guidelines agreed by the European Parliament, Commission and Council should result in a more effective response to ships in need of assistance throughout the EU. The Group has been at the forefront of industry's participation in the development of these guidelines, which are fully supported by shipowner and marine insurance associations.

While the number of ships seeking assistance or a place of refuge appears to have reduced over the past twelve months, the issues around places of refuge continue to be of fundamental importance for coastal States, shipowners and their insurers. It was reported in the 2014/15 Review that the Group has participated constructively in discussions on this issue at the IMO, in the EU and with individual State Maritime Administrations.

## PROGRESS AT EU LEVEL

The Group's collaborative programme of engagement with EU Member States and the European Commission continued throughout 2015, leading to the publication on 27 January 2016 of the EU operational guidelines on places of refuge. These guidelines were launched at an event sponsored by the European Parliament, supported by Transport Commissioner Bulc, EU Member States and attended by industry stakeholders, including the Group. The guidelines are the product of a desire on the part of the Council and Commission to avoid further maritime legislation and instead promote the proper application of the relevant existing EU directives.

## WILL THE GUIDELINES CHANGE ATTITUDES?

The principal objective of the operational guidelines is to promote transparency and better co-operation and co-ordination between EU Member States, and between an affected coastal State and industry stakeholders, particularly in relation to decisions to approve or reject a shipowner's or salvor's request to take a ship to a place of refuge. The Commission and Member States have sought

to overcome some of the unavoidable and inherent tensions that exist between a coastal State's obligation to protect the marine environment and its coastal interests by preventing pollution, and granting ships access to a safe haven whether that is a port or a sheltered area. History suggests that such tensions have often resulted in States, for whatever reason, assuming that the risk of making a place of refuge available to such ships was too great. History has also shown only too clearly how delays or refusals to accommodate a ship in need of assistance in a safe place of refuge can have catastrophic human, economic and environmental consequences.

## LEGAL BASIS

The guidelines provide an operational response to a Member State's legal obligations under EU Directive 2002/59/EC on community vessel traffic monitoring and information systems (as amended by Directive 2009/17/EC). This directive requires Member States to "...ensure that ships are admitted to a place of refuge if they consider such an accommodation the best course of action for the purposes of the protection of human life and the environment." In order to be able to take the necessary decisions as to whether to offer places of refuge each Member State is required to:

- Designate a competent authority with the expertise and power to make decisions concerning the accommodation of ships in need of assistance;
- Draw up plans for the accommodation of ships in need of assistance;
- Decide on the acceptance of ships by making an assessment in accordance with their plans.

The Directive was widely considered by European policy makers as not having been properly applied by all Member States. The guidelines overcome this by encouraging a coastal State to perform a proper technical and environmental analysis of the risk associated with approving

or rejecting a ship requesting a safe haven in its waters. The guidelines stipulate that there should be "no rejection without inspection." The UK model of the Secretary of State's Representative (SOSREP) has been lauded by EU policy makers, largely because SOSREP has the authority to make place of refuge decisions on purely technical and environmental grounds, without intervention from politicians, and the influence and input of Hugh Shaw, the UK SOSREP, played a major role in the development of the guidelines.

The guidelines also anticipate the potential problems caused when more than one coastal State and or State authority is involved in the decision-making process. The guidelines provide a framework for co-operation and co-ordination as between EU Member States.

The guidelines do of course build on the IMO guidelines which state that following a maritime casualty: "the best way of preventing damage or pollution from its progressive deterioration would be to lighten its cargo and bunkers; and to repair the damage. Such an operation is best carried out in a place of refuge as it is rarely possible to deal satisfactorily and effectively with a marine casualty in open sea conditions."

While the EU guidelines are non-mandatory, and have to be read in the context of applicable EU law, they do provide a framework that should result in greater transparency, better co-ordination and more effective co-operation between all parties involved in a place of refuge situation.

## AN EARLY TEST

Quite literally as the new guidelines were being launched in Brussels, a Group Club entered car carrier, the MODERN EXPRESS, developed a severe list in adverse weather conditions in the Bay of Biscay and had urgent need of a place of refuge, the options being France or Spain. In the event, the Spanish authorities carried out a prompt assessment of the situation and afforded a place of refuge for the vessel at the port of Bilbao. The negotiations were not without difficulties, particularly in relation to

requirements for financial security, but the paramount objective of securing a safe place of refuge for the ship was promptly achieved. What might have happened to the ship, her cargo and bunkers, had a place of refuge not been granted, is a matter of conjecture, but experience shows that the likely outcome would have been more serious and potentially damaging to the environment and property involved. An encouraging response from an EU Member State, but the difficult issues of financial security demands in such situations continue to be problematic.

The EU and IMO guidelines are to be welcomed. They highlight the need for responsible decision making, and emphasise the advantage of better and more transparent co-ordination between States and industry in circumstances where a maritime casualty may impact upon one or more States.

Finally, the Nairobi Convention on the Removal of Wrecks entered into force in April 2015 and the LLMC 1996 limits increase became effective on 8 June 2015. States that have ratified the Nairobi Convention, CLC and the Bunker Convention are financially well protected in place of refuge situations by the respective convention liability and compensation provisions. Insurance cover does not extinguish when a ship seeks a place of refuge, and those States that have ratified these conventions can take comfort from the fact that insurers will respond to the liabilities arising under these conventions, even where such liability occurs as a result of States granting refuge to a ship in need of assistance.

The density of shipping in certain sea and coastal areas, the unpredictability and harshness of the marine environment and weather conditions, and the ever-present human factor mean that it is inevitable that there will be a continuing requirement in the future for safe accommodation of vessels in need of assistance. It is hoped that the efforts of the IMO and the EU guidelines may lead to early, decisive risk management and effective action on the part of affected States involved in decisions to grant places of refuge, so that the potential damage and cost of such casualties can be avoided, or at least mitigated, in the future.



ANDREW CUTLER  
Chairman, Insurance Act subcommittee

# UK INSURANCE ACT 2015

## THE UK INSURANCE ACT 2015 (THE 2015 ACT) WILL COME INTO FORCE ON 12 AUGUST 2016.

The 2015 Act seeks to provide further protection to both consumer and non-consumer buyers of insurance. As such it will change English insurance contract law currently codified in the Marine Insurance Act 1906 (MIA 1906). When being drafted it was recognised that the 2015 Act might not be required in sophisticated markets, with the marine insurance sector named as one such market. Rather, it was anticipated that some insurers would contract out of (i.e. not apply) many of the 2015 Act's provisions.

P&I is a sophisticated insurance market, with well-established practices that benefit both Members (the insured) and the P&I Club (the insurer). Eight of the Clubs in the Group are affected by the 2015 Act because their rules are subject to English law, including the MIA 1906. A Group subcommittee was established to consider and take legal advice on the ramifications for Clubs of the provisions of the 2015 Act and the consensus amongst the eight affected Clubs was to contract out of certain aspects of the 2015 Act. Nevertheless, those eight Clubs recognised that some provisions of the 2015 Act should be adopted, as they clarify certain aspects of the law which are presently uncertain.

## IMPLEMENTATION DATE

The 2015 Act will apply to contracts of insurance entered into or varied after 12 August 2016. In anticipation, the eight affected Clubs made changes to their rules with effect from 20 February 2016. Those Clubs have also to revise their internal quotation procedures in respect of (a) new Members or tonnage entered with the Club from 12 August 2016 onwards and, (b) all renewing Members from that date. The rule changes and revisions to internal procedures reflect the following changes in statutory and/or contractual rights and duties addressed under the 2015 Act.

## DUTY OF FAIR PRESENTATION

The obligation of disclosure, set out in the MIA 1906, will be replaced by a duty to make a fair presentation of the risk. The new duty shares many of the features of the current duty of disclosure. However, greater emphasis is given to the insurers' role in the process of disclosure, with a Member potentially fulfilling its duty of fair presentation by disclosing sufficient information to put the Club on notice that it needs to make further enquiries. The view and recommendation of the subcommittee was that a fair presentation and a professional assessment of the risk are of mutual benefit to Members and to Clubs and that, consequently, the new duty of fair presentation should, and will, be adopted by the affected Clubs.

## REMEDIES FOR BREACH OF THE DUTY OF FAIR PRESENTATION

Under the 2015 Act, an insurer will remain entitled to avoid the policy if an insured deliberately or recklessly fails to make a fair presentation. The insurer will also be entitled to avoid the policy where an insured's failure to make a fair presentation was innocent or negligent, and if that insurer would not have entered into the policy had a fair presentation been made. It is only in circumstances where an insurer would have entered into the policy notwithstanding the relevant information, that the policy will continue and the remedy will depend on the terms on which the risk would have been written or the premium the insurer would have charged to write the risk. The remedy of avoidance may therefore remain the usual remedy under the 2015 Act, where an insured fails to make a fair presentation of risk.

However, in a P&I context, and recognising the importance in a mutual Club of proper disclosure, the eight affected Clubs elected to contract out of the 2015 Act's provisions on remedies for breach of the duty of

making a fair presentation. The eight Clubs will retain the MIA 1906 remedy of avoidance in respect of any breach of the duty to make a fair presentation of the risk.

## WARRANTIES AND OTHER TERMS

Compliance with certain warranties, e.g. maintaining a vessel's class, is a condition precedent to cover by a Club, irrespective of the type of loss suffered. Current practice and law may give Clubs a wider right to reject claims than would be possible under the 2015 Act's remedies for breach of warranty and/or other conditions: at present a Members' breach of a warranty will discharge the Club's liability under the insurance from the date of the breach, unless and to, the extent the relevant Club's board determines otherwise.

When considering the 2015 Act, importance was given to the mutual nature of the risk, the discretion of the relevant Club's board or managers in appropriate cases and also uncertainty on how the 2015 Act's provisions on warranties and other terms may be applied. Accordingly, it was felt best to preserve the current position. The affected Clubs will, insofar as permitted, therefore maintain existing practices by contracting out of the 2015 Act's provisions on warranties.

## BASIS CLAUSES

The 2015 Act prohibits any term in an insurance contract by which the insured warrants the truth of all pre-contractual representations. This prohibition would negate the effect of the current Club rules which declare such information to be the "basis" of the contract of insurance. This provision is mandatory and, consequently, basis of contract wordings has been removed from the rules of the eight affected Clubs. Any inaccuracies in material representations will instead be treated as relevant to the question of whether or not there has been a fair presentation of risk.

## FRAUDULENT CLAIMS

The 2015 Act's provisions on fraud provide clarity on this area of the law. Therefore, the affected Clubs will adopt the new statutory provisions as to the treatment of fraudulent claims.

However, the affected Clubs will exclude the operation of the 2015 Act's provisions on the continuing validity of policies following a fraudulent claim made by a beneficiary who is not specifically named in the terms of entry, such as an entity associated with, or affiliated to, a Member against whom a covered claim is enforced. Where a fraudulent claim is made in this context, for consistency, the Group takes the view that the fraud should have the same impact on the Member as if it had made the fraudulent claim. The affected Clubs will therefore contract out of these aspects of the 2015 Act.

## PAYMENT OF CLAIMS

The Enterprise Act 2016 (which received Royal Assent in May 2016 and will enter into force on 4 May 2017) includes one amendment to the Insurance Act by implying to all contracts of insurance a term requiring the reimbursement of claims within a reasonable time. The Enterprise Act's amendment introduces certain remedies for breach of that implied term, including the possibility for the insured to claim damages where the implied term is breached in addition to, and distinct from, any right to interest. Bearing in mind the mutual nature of the risks insured, and the manner in which claims are handled, in the Group and under the pooling agreement, these provisions did not appear to be appropriate for our Clubs. The eight affected Clubs therefore intend to contract out of this provision, which is consistent with the long-standing exclusion of the payment of interest on Members' claims. However, insurers will not be permitted to contract out of the implied term in circumstances if the insurer deliberately or recklessly fails to reimburse an insured's claim within a reasonable time. Members will therefore be protected to that extent.



# CARGO LIQUEFACTION – THE CHALLENGES CONTINUE



MICHAEL ASHERSON

Chairman, Claims Co-operation subcommittee

## RULES OF CARRIAGE UNDER THE INTERNATIONAL MARITIME SOLID BULK CARGOES (IMSBC) CODE

The schedules to the IMSBC Code on the carriage of bauxite and direct reduced iron (DRI) are currently undergoing review under the auspices of the IMO Maritime Safety Committee. The Group has continued to devote resource and expertise on these important cargo related matters which have a direct effect on the safety of seafarers and ships.

Working with government delegations in the IMO, representatives of shippers, mineral and ore producers and other industry bodies, the Group believes that the current programme of analysis and evaluation of the properties of these cargoes will lead to improvements in carriage requirements and mitigate the risks that are inherent in the transport of such cargoes.

The risks associated with the carriage of solid bulk cargoes that have a propensity to liquefy, or that have properties and characteristics that cause them to heat or produce combustible gases, highlight the need for more rigorous and prescriptive rules on cargo testing, stockpile management and loading. In addition to the future introduction of more stringent measures in the IMSBC Code Schedules, competent authorities must be more responsive in their oversight and enforcement. Compliance with the IMSBC Code is not discretionary, and a State Party to SOLAS is not at liberty to opt out of the duties and obligations imposed by the Convention. Rather, the role of the competent authority is crucial to the safe carriage of products that are covered in the schedules to the IMSBC Code. The contribution that rigorous enforcement of the IMSBC Code will have on seafarers' lives cannot be overestimated. For these reasons the Group is closely engaged in the development of new standards, which the IMO Maritime Safety Committee will consider in due course.

## BAUXITE

The IMSBC Code identifies bauxite as a cargo that may liquefy if its moisture content exceeds the stipulated transportable moisture limit and its particle size is below a prescribed minimum. After the loss of the bulk carrier BULK JUPITER following bauxite loading at Kuantan, Malaysia, the Group led an industry delegation to Kuantan in May 2015. The purpose of the meeting was to discuss in general terms the role and function of the fledgling Malaysian competent authority, and the role of the port in ensuring that cargo surveyors appointed by the ship be given unfettered access to a ship's cargo, stockpiles from which a cargo is loaded, and to see first-hand how shippers' laboratories assess and certificate the moisture content of bauxite before it is loaded on to ships.

An action prompted by that productive engagement resulted in the Malaysian authorities requesting an IMO workshop on the IMSBC Code and related issues, in which the Group was an invited speaker and participant. This ongoing engagement with the Malaysian authorities, shippers and local laboratories should result in improvements in the testing, certification and oversight of bauxite loaded at Kuantan. In parallel, the IMO has established a Correspondence Group that will report in due course on a wide-ranging science-based assessment of the properties and characteristics of bauxite mined across a number of geographical locations. The results of that work will be finalised in 2017. In the meantime, as an interim measure, the IMO has issued guidance on the carriage of bauxite, urging ships' masters not to accept bauxite for carriage unless:

- The moisture limit for the cargo to be loaded is certified as less than the indicative moisture limit of 10% and the particle size distribution is as detailed in the individual schedule for bauxite in the IMSBC Code; or

- The cargo is declared as Group A (cargoes that may liquefy) and the shipper declares the transportable moisture limit (TML) and moisture content; or
- The master is presented with an assessment that the cargo does not present Group A properties.

## DIRECT REDUCED IRON (DRI)

Since the loss of the ADAMANDAS in 2003 (carrying de-oxidised iron ore balls), and the loss of life arising from the subsequent incident involving the YTHAN in 2004 (transporting metallic hot briquetted iron (HBI) fines), the shipping industry has had concerns over the carriage of DRI. These cargoes were covered by the rules contained in the IMO Code of Safe Practice for Solid Bulk Cargoes (the BC Code) applicable at the time. The IMSBC Code then superseded the BC Code from 1 January 2011.

At its first session, the IMO subcommittee on Carriage of Cargoes and Containers (CCC), the Bolivarian Republic of Venezuela advised the subcommittee of its plans for an improved draft schedule to the IMSBC Code for DRI (by-product fines). The mantle has been taken up by the International Iron Metallurgy Association which is working with Venezuela and others in co-ordinating this work. It is envisaged that this will result in a new schedule setting out the conditions under which DRI (by-product fines) may be carried. The current focus of this work is on the assessment of appropriate levels of natural and mechanical ventilation to mitigate the risk of self-heating and the ingress of moisture, to reduce hydrogen gas levels that can build up in the ship's hold especially during periods where ventilation systems are shut down to avoid water ingress into the ship's hold.

The Group is leading the work with other industry associations to promote risk mitigation strategies in order to enhance the protection and safety of seafarers and vessels engaged in DRI carriage.

## CALCIUM HYPOCHLORITE

The all-too-common practice of mis-declaration of calcium hypochlorite compromises the safe and proper carriage of a highly volatile substance. The IMO changed the carriage conditions for calcium hypochlorite in 2001, mandating that it had to be stowed 'on deck' only, not in direct sunlight, away from sources of heat, and that stowage had to allow adequate air circulation throughout the cargo. These amendments were finally incorporated in the International Maritime Dangerous Goods Code (IMDG) and, as a result, in 2011 the Group issued frequently asked questions relating to safe carriage of calcium hypochlorite.

While the risks of carrying calcium hypochlorite have been mitigated by the introduction of these measures, safety continues to be compromised by misrepresenting or mis-describing calcium hypochlorite as another chemical that is not covered by the IMDG Code. Cargoes that are mis-declared in this way compromise the safety of seafarers, ships and other cargoes because such mis-declared cargo may be stowed below deck, exacerbating the risk. The Group has worked closely with the container liner operators, through the Cargo Incident Notification System (CINS), (a shipping line initiative, launched in September 2011, developed to increase safety in the supply chain, reduce the number of cargo incidents on-board ships and highlight the risks caused by certain cargoes and/or packing failures), of which the Group is a member. The result is that an updated guidance for owners on the safe carriage of calcium hypochlorite has been developed with a view to reducing the incidence of mis-declarations of calcium hypochlorite cargoes. The Group Clubs have subsequently issued Guidelines for the Carriage of Calcium Hypochlorite in Containers, which are available via Clubs' websites and the Group website.



## ON THE RADAR

### SHIP RECYCLING

The European Union Ship Recycling Regulation has been effective since 2013 and applies to all ships entering ports and terminals of EU Member States. While it is consistent with the broad objectives established in the International Maritime Organisation's Hong Kong Convention (the Hong Kong Convention) on the safe and environmentally sound recycling of ships, the Hong Kong Convention is not yet in force.

The Regulation makes provision for the EU to introduce a financial mechanism, which is intended to encourage the use of ship recycling facilities in the EU, or facilities outside the EU providing they have been EU approved. The process for approving facilities outside the EU is currently ongoing. In late 2015, consultants appointed by the European Commission proposed several options including an insurance-based solution that could be used to finance a fund which would be established to support EU recycling.

The proposals were complex and proved to be flawed. The Group engaged in correspondence and discussions with the appointed consultants, explaining that insurance-related options are unworkable and inappropriate in the context of end-of-life ship recycling. Subsequent to this engagement, the insurance-based proposals have been shelved. Instead, however, it appears that the EU may seek to apply a levy or fund at some later stage. Discussions are ongoing and the Group will continue to monitor and engage in the European process in the future.

### HAZARDOUS AND NOXIOUS SUBSTANCES (HNS)

The 2010 HNS Convention remains on the agenda of States and, although it is yet to enter into force, work is ongoing through the IMO Legal Committee to address a number of the obstacles that States are faced with in terms of implementation. The Group is playing an active role in this work and participated in a Canadian government hosted HNS Convention workshop in Montreal in March 2016 that considered a number of matters relating to implementation, and continues to play an active role in the IMO Correspondence Group on implementation that is co-ordinated by the Canadian government. However, there presently seems to be little appetite for the Convention among the IMO Member States, and its entry into force appears to be some way off. Consequently the insurance and financial security certification (blue card) requirements contained in the draft Convention will not apply in the foreseeable future.

### CMI ARCTIC/POLAR INITIATIVES

The Group is a member of the CMI's International Polar Regions Working Group (IWG) and, together with the International Chamber of Shipping, played a key role in the drafting of its report on civil liability for ship-sourced oil pollution damage in the Polar Regions. The Group also participated in the joint CMI/USMLA Polar Regions Symposium in New York in May 2016 and presented on civil liability for ship-sourced oil pollution damage in Antarctica. The Group remains an active member of the IWG, and it will continue to participate to ensure that the recommendations arising from the IWG's work reflects a balanced approach to ship-sourced oil pollution damage matters in polar waters.

### 2017 CLUB CORRESPONDENTS' CONFERENCE

Arrangements are continuing for the next Correspondents' Conference, which will be held at the Queen Elizabeth Conference Centre in London from 24-26 September 2017, with a buffet dinner at the nearby IMO. The conference is held every four years and is very popular with P&I correspondents, more than 600 of whom attended the previous conference in Amsterdam in 2013.

### STOPIA/TOPIA 2016 REVIEWS

The Group is currently in the process of collating data on 1992 CLC cases in the 2006-2016 period in order to meet the STOPIA & TOPIA ten year review clauses. The Group has already initiated discussions with the 1992 IOPC Funds and OCIMF, as prescribed in the agreements, with a view to presenting the conclusions from the review to the 1992 IOPC Fund assembly meeting in October 2016.

### EU ENVIRONMENTAL LIABILITY DIRECTIVE (ELD)

The European Commission published its report on implementation of the ELD in April 2016 and, as expected, it did not contain any legislative proposals with regard to the existing exclusion of the maritime exemptions. The report indicates that the European Commission will further explore whether the different remediation standards that are contained in the Directive can be addressed by non-legislative means, in particular by working towards a common understanding of concepts, for example through interpretation within the 'Claims Manual' of the IOPC Funds and/or within fora composed of the Parties to the Conventions. The Group will continue to monitor developments in this regard and liaise with the other shipowner industry bodies and the European Commission.

# MEMBERS

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Gard P.&I. (Bermuda) Ltd  
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Steamship Mutual Underwriting Association Limited  
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Swedish Club  
[www.swedishclub.com](http://www.swedishclub.com)

United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited  
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