

# German General Rules of Marine Insurance (ADS)

## Part One -General Principles

### Chapter I -Insurable Interest

#### 1. *Insurable Interest Defined*

(1) Any monetary interest of a person in the safe completion of a marine adventure by a ship or cargo is insurable.

(2) In particular, the following can be the subject-matter of an insurance:

the vessel,

the goods carried,

the profit dependent on the safe arrival at destination of cargo (expected profit), the commission dependent on the safe arrival of ship or cargo at destination,

freight,

charter hire,

passage money, loan on bottomry and respondentia,

disbursements,

other claims secured on the property at stake in a marine adventure, the risk for which an insurer has given cover (re-insurance).

No insurance of any of the above subject-matters, comprises an insurance of any other. In particular, no insurance is to be deemed a re-insurance unless it is expressly specified as such in the proposal.

(3) In the event of a wrong statement being made in regard to the interest in the insurance, the contract shall not be binding on Underwriters, but they cannot claim an exemption from liability if charter-hire is declared as freight contracted for a certain period of time, or if such freight is declared as charter-hire.

#### 2. *No-interest Insurance*

(1) In the absence of an insurable interest an insurance contract shall stand void. This applies particularly to gambling policies.

(2) The premium is nevertheless due unless Underwriters when giving cover were aware of the circumstances that made the insurance void.

#### 3. *Payment of Premium for No-interest Policies*

(1) In the event of para (1) of section 2 the Assured is not liable to pay the premium if at the time when the cover was given, he was unaware, and need not have been aware, of the circumstances that made the cover void. If the insurance is effected by an Agent it is not only the knowledge of the Agent or what he ought to have known but also of the Assured himself that is decisive.

(2) The Assured shall nevertheless pay the premium unless he has informed Under-writers of the circumstances that made the cover void immediately after that fact had come to his

knowledge. The same applies when 12 months have elapsed since the conclusion of the contract and the Assured has failed to inform Underwriters of the circumstances within these twelve months.

(3) If the Assured is exempt from the payment entitled to a forfeit.

#### *4. Non-attachment of Interest, Future Interest*

(1) Whenever an interest for which insurance beginning of the insurance, or if cover is given for a future interest, and such interest does not materialize, the Assured is not obliged to pay the premium. He remains, however, under that obligation unless, within a period of twelve months, he notifies the insurer of the non-attachment or the non-existence of his interest within that time limit. If the Assured is not liable to pay the premium, Underwriters are entitled to a forfeit.

(2) Once the interest has attached and is covered the Assured remains liable for the premium even if his interest later ceases to exist.

#### *5. Attachment of Risk before Contracting Insurance ("Lost or Not Lost")*

(1) An insurance can be contracted for a risk that has attached earlier. Underwriters are not entitled to a premium if, at the time of giving cover, they were aware that loss or damage to the subject-matter was no longer possible. Underwriters are free of liability for a claim if the Assured, at the time of receiving cover, knew, or ought to have known, that loss or damage to the subject-matter had already occurred. Underwriters are entitled to the premium provided they had no knowledge of such loss or damage.

(2) Whenever the insurance is effected by an Agent it is not only the knowledge of the Agent or what he ought to have known, but also that of the principal himself that is decisive.

## **Chapter II - Insurable Value, Underinsurance, Overinsurance, Double-insurance**

### *6. Insurable Value*

(1) The insurable value of the interest to be insured is deemed to be equal to its full value.

(2) If by agreement the value of the subject-matter is fixed in terms of a certain amount, such agreed value will take the place of the insurable value. However, Underwriters are entitled to demand a reduction of such agreed value, provided it exceeds the real value of the interest considerably. In the event of the insured sum being lower than the agreed value Underwriters are only liable for such proportion of the measure of indemnity as the amount insured bears to the agreed value, even if the value has been reduced.

(3) A value designated as "provisionally agreed" shall be deemed to be not agreed at all.

### *7. Separate Valuation*

(1) Whenever an insurance contract provides for only one insured amount for various kinds of property, but separate values are agreed for separate objects, such objects shall be deemed, for the benefit of the Assured, as separately insured. This applies particularly to a separately agreed valuation of a specified number of packages (series) within a uniform cargo.

(2) The provision in para (1) shall not apply if it is not possible to identify to which of the various series the goods belong.

(3) The provision in para (1) shall not apply either, even if the series are agreed to be governed

by the order in which the packages are brought ashore in a properly executed discharge operation, but the order of their landing is not ascertained by the use of landing numbers or by similar means during discharge or immediately after. It is only by special agreement that series are to be formed and governed by the order in which the individual units are discharged.

#### *8. Underinsurance*

If the sum insured is lower than the insurable value, the Assured is deemed to be self-insured for the difference. Underwriters are in such case only liable for such proportion of the loss or damage or expenses as the sum insured bears to the insurable value.

#### *9. Overinsurance*

(1) In the event of the sum insured exceeding the insurable value the insurance of the excess shall stand void. The provisions of para (2) of sections 2 and 3 concerning the payment of premium and of a forfeit shall apply.

(2) An insurance contracted fraudulently by the Assured for the purpose of drawing a profit from the overinsurance shall stand void as a whole. Underwriters are all the same entitled to the premium unless at the time of contracting they were aware of the circumstances that would make the contract void.

#### *10. Underwriters' Liability in Case of Double-insurance*

(1) In the event of an interest being covered against the same risk by more than one Underwriter, and the aggregate sums insured exceeding the insurable value, Underwriters shall be jointly liable for the amount insured, each for the amount for which he has given cover, but the Assured has no claim for a higher aggregate amount than the loss he has actually suffered.

(2) Between the Underwriters the indemnity to be paid shall be apportioned in the proportion of their commitment. If any of the insurance-contracts is governed by Foreign law, the respective Underwriter can make a claim on the other Underwriter only, if he, according to the law which governs his policy, would be liable to indemnify the other Underwriter in his turn.

(3) A double-insurance effected fraudulently by the Assured for the purpose of drawing a profit therefrom shall stand void. Underwriters are nevertheless entitled to the whole premium unless at the time of contracting they were aware of the circumstances that would make the contract void.

#### *11. Remedy of a Double-insurance*

(1) In the event of the Assured having effected the contract that constitutes a double-insurance without having been aware of the existence of the other cover, and the risk in question not having attached, he is entitled to demand both Underwriters to reduce the sum insured and, accordingly, the premium. The reduction shall be made in the proportion of the original commitments of either Underwriter. The Assured shall lose this right if he fails to assert his right immediately after the existence of the double-insurance has come to his knowledge.

(2) If the premium is reduced Underwriters are entitled to a forfeit for the difference.

#### *12. Notice of Double-insurances*

The Assured shall notify Underwriters of any existing double-insurance as soon as he becomes

aware thereof.

### **Chapter III Uberrima Fides**

#### *13. Uberrima Fides*

All parties concerned shall act in the utmost good faith.

### **Chapter IV - Policy, Premium, Forfeit**

#### *14. The Policy*

(1) Upon request of the Assured, Underwriters shall issue to him a policy, i. e. a duly signed document which embodies the insurance contract.

(2) Where a policy has been issued Underwriters are liable for payment only against surrender of that document. A payment made to the bearer shall discharge them.

(3) In case the policy has gone astray or has been destroyed Underwriters shall be liable for payment only after the policy has been invalidated by a Court of Law or after a security other than a guarantee has been tendered. The same applies to Underwriters obligation to issue a new document. The cost of the latter shall be met by the Assured.

#### *15. Contents of the Policy*

The terms of the policy shall be deemed as being approved by the Assured unless he has queried them immediately after the surrender of the document to him, but the legal right of the Assured to plead error or mistake shall not be prejudiced.

#### *16. Premium and Fees Falling Due, Securities Required*

(1) The Assured shall pay the premium and the fees forthwith after conclusion of the contract. In particular premium and fees fall due immediately even though, in accordance with the general custom of trade or within the usual procedure of settlement between Underwriters and the Assured, they are paid at a later date.

(2) No matter whether the insurance contract provides for a certain date of payment or for a respite, Underwriters shall be entitled to call for the payment immediately upon the termination of the insurance. However, in the event of the Assured having a claim on Underwriters under the same contract for which he owes the premium, he is allowed to make a set off with such claim, no matter whether or not his claim has fallen due.

(3) If the insurance contract provides for a certain date of payment or for a respite Underwriters are entitled to demand security if and when the solvency of the Assured takes such turn as may prejudice Underwriters' demand for the premium.

#### *17. Overdue Premiums, Failure in Tendering Securities*

In case an overdue premium is not paid and no security is tendered upon Underwriters' reminder or call after the expiry of a reasonable time limit set in such reminder or call, the Underwriters shall be exempt from liability provided loss or damage occur before the premium thus called for has been paid or security tendered. Failing the payment of the premium and the tendering of the security Underwriters are also entitled to cancel the insurance without notice.

In such case they are entitled to the whole premium for a voyage policy and to a forfeit for a time policy.

#### *18. Forfeit*

Any forfeit to be paid to, or withheld by, Underwriters shall amount to half the premium or  $\frac{1}{3}$  per cent of the sum insured, whichever is lower.

### **Chapter V -Disclosure, Representation of Risks, Alteration of Risks**

#### *19. Disclosure*

(1) Before the conclusion of the insurance contract the Assured shall disclose to Underwriters every circumstance known to him and material for the decision to give cover, unless the circumstances are common knowledge. In particular, he shall pass on to Underwriters any information received which is material for the cover, no matter whether or not he holds them to be unfounded or unreliable.

(2) Such circumstances as may come to the knowledge of the Assured before the acceptance of his proposal by Underwriters must be imparted to him as speedily as is feasible in the ordinary course of business, but must at any rate be transmitted in the same or a similar way as was the proposal.

#### *20. Concealment, Misrepresentation*

(1) Unless otherwise provided a failure to disclose a material circumstance, or a misrepresentation of the same, in contravention of section 19 shall discharge Underwriters from liability. The same applies to a failure to disclose a material circumstance because the Assured was not aware of it and his ignorance was due to gross negligence.

(2) Underwriters remain liable if they were aware of the concealed circumstances or of the misrepresentation. The same applies if the disclosure was not made, but the Assured was not at fault.

(3) Where Underwriters remain liable within the meaning of the last sentence of para (2) of this section they are entitled to a higher premium rate (i. e. an additional premium) in accordance with the greater risk.

#### *21. Material Circumstances*

Circumstances are deemed to be material particularly if they were misrepresented by the Assured, and he had declared his statement to be correct; furthermore such circumstances as were wilfully concealed or wilfully misrepresented; finally, as a rule, circumstances expressly inquired into by Underwriters.

#### *22. Duty of an Agent to Disclose*

In case of an insurance being effected by an Agent of the Assured it is not the knowledge of the Agent, or what he ought to have known, that is decisive for the discharge of Underwriters from liability, but also that of the Principal.

#### *23. Alteration of Risk*

- (1) After the insurance is contracted the Assured must not alter or, in particular increase the risk without Underwriters' consent, nor must he suffer the risk to be altered by a third party.
- (2) Especially there is an alteration of risk
  1. where the beginning or the end of the insured voyage is considerably delayed;
  2. where a deviation is made from the declared or customary course of the voyage though a slight deviation shall be permissible;
  3. where the vessel calls on ports other than declared, or calls on them in an order different from what was originally declared or customary; a call for orders being however, permissible if in general usage for that purpose.
- (3) A change of destination from the one declared shall also be deemed to be alteration of risk.

#### *24. Legal Consequences of an Alteration of Risk*

- (1) In the event of a violation of the provisions of section 23, and of loss or damage occurring thereafter, Underwriters shall be discharged from liability. The same provision applies where the risk has attached before cover was given, and the Assured has altered the risk or suffered it to be altered by a third party subsequent to the attachment; without prejudice, however, to the duty of the Assured to disclosure.
- (2) Underwriters' liability remains if the alteration was made in the interest of Underwriters or if it was caused by a peril insured against, or if it was imperative for humanitarian reasons, or if the alteration of the risk could not have an influence upon the occurrence of loss or damage, or upon the measure of indemnity.

#### *25. Additional Premium for Alteration of Risks*

Provided Underwriters are not discharged from liability by an alteration of risk they are entitled to an additional premium unless the increase of risk was caused by a peril covered by them.

#### *26. Disclosure of Increased Risks*

Any increase of risk must be disclosed to Underwriters by the Assured as soon as the latter becomes aware of it, unless the insurer be discharged from liability by the increase.

#### *27. Nondisclosure of Alteration of Risk Relating to Part of the Subject-matter*

Where a nondisclosure, misrepresentation, or an alteration of risk concerns only part of the subject-matter and discharges Underwriters in so far from liability they can only avoid the insurance for the remaining part, if it must be assumed that in the then existing circumstances they would not have given cover for such part alone. If they can and do avoid the insurance the Assured is not liable for the respective premium but only for the forfeit Underwriters may claim.

### **Chapter VI- Insured Perils, Duration of Cover**

#### *28. Insured and Uninsured Perils*

Unless otherwise provided the insurance covers any peril to which the vessel or the cargo is exposed during the continuance of the cover. Underwriters are, in particular, liable for loss or damage caused by penetration of seawater, collision of ships, stranding, shipwreck, fire,

explosion, lightning, earthquake, ice, or caused by theft and pilferage, piracy, looting, or any other acts of violence, but Underwriters are only liable within the limits of these rules and in no way for a maritime lien, or for loss or damage caused by a delay of the voyage.

### *29. General Average*

(1) Underwriters are liable for any general average contributions to be made by the Assured as well as for any sacrifice of the matter insured in general average. The Assured may also call upon Underwriters to guarantee his contributions, but Underwriters are only liable in so far as the general average measure was taken in order to prevent a peril covered by them.

(2) Where only such cargo is shipped as belongs to the shipowner, the sacrifices which would be a general average act if the goods were owned by someone else, shall be deemed to be general average losses.

### *30. General Average Contributions*

(1) Underwriters' liability for contributions is governed by the statement of general average. In the case dealt with in para (2) of section 29 the above provision shall not apply, and the liability shall be determined by the York-Antwerp-Rules with the exception of section 18 thereof.

(2) The general average statement shall be drawn up by a person competent in accordance with the law or with local custom.

(3) The statement is to be drawn up at the place of destination or, if that place is not reached, at the place where the voyage ends. If at the latter place no person qualified in accordance with para (2) is available, a competent person available at the nearest place shall be called upon. This provision shall not override a previously made agreement of the parties to another place of adjustment.

(4) The general average statement shall be drawn up according to the rules which are applicable at the place where it is made, unless the parties have in advance agreed upon the rules of the port of registration of the vessel or upon the York-Antwerp-Rules. Expenses incurred by the fire insurance of cargo discharged at a port of refuge for account of all parties concerned in the general average shall go to the charge of Underwriters, no matter whether the general average rules at the place where the statement is made provide otherwise.

(5) The Assured shall safeguard the interest of Underwriters in the drawing up of the statement. In particular, the expenses of the Assured incurred in the settlement between the other parties to the general average shall only be met by Underwriters in so far as they were necessary.

(6) The statement is binding even if in the drawing up any provisions were wrongly applied or if the statement contains actual mistakes, unless the Assured can be called to account for such misapplication or mistakes.

(7) In so far as Underwriters have indemnified the Assured he is subrogated to the latter's claim on any party to the general average that may have resulted from a mistake in the statement. The provisions in sections 45 and 46 shall apply to the subrogation accordingly.

(8) In the event of the contributory value being higher than the insured value, Underwriters are only liable for the contribution proportionally.

### *31. Sacrifices*

(1) Underwriters are liable for a sacrifice of the insured subject-matter in accordance with the provisions concerning his liability in a case of particular average.

(2) Underwriters are subrogated to the Assured's claim to having his loss made good in general average as soon as such claim arises, but Underwriters shall surrender to the Assured any such

part of the indemnity received in general average as exceeds the claim he has paid to the Assured plus the expenses he has made for the collection. In all other respects the provisions of sections 45 and 46 shall apply analogously.

### *32. Sue and Labour Charges, Particular Charges*

(1) Underwriters are liable for :

1. such expenses incurred by the Assured at the time of the occurrence for the purpose of averting or minimizing loss or damage as he could deem imperative;
2. such expenses as the Assured made at the time of the occurrence upon the request of Underwriters;
3. the cost of ascertaining and assessing loss or damage for which Underwriters are liable, provided and in so far as these could be deemed imperative in the circumstances; Underwriters are not liable, however, for fees paid to experts and advisers or to other persons unless the employment of such persons was agreed in the insurance contract or requested by Underwriters.

(2) The expenses dealt with under numbers 1. and 2. of para (1) shall be met by Underwriters even if they have proved unsuccessful; if requested by the Assured, Underwriters shall advance the amount involved. Where part of the insurable value has remained uninsured or where there is disagreement as to whether or not the measures taken upon request of Underwriters to avert or minimise loss or damage appeared imperative, Underwriters shall advance the amount of the expenses also for such part as will go to the charge of the Assured, Underwriters being liable for all expenses made upon their request even if they do not deem the measures taken upon their request as imperative, and if they remained unsuccessful.

### *33. Faults of the Assured*

(1) Underwriters are discharged from liability if loss or damage is caused wilfully or negligently by the Assured, but must make good the loss or damage due to mistakes in navigation (nautical error) unless the Assured is to blame for a wilful act or gross negligence; the term "nautical error" does not comprise, however, mistakes made in the reception, stowage, safe-keeping, or surrender of cargo.

(2) In cargo insurance Underwriters are not liable either for loss or damage due to wilful or negligent acts committed by the shipper or the consignee.

(3) The Assured cannot be called to answer for acts or omissions committed by the vessel's crew.

### *34. Free of Average under Three Percent*

(1) Underwriters are not liable for loss or damage under three percent of the insurable value.

(2) Underwriters are liable for contributions in general average and for sacrifices even if they do not amount to three percent of the insurable value. They shall also meet the liability of the Assured to third parties in case of a collision between vessels and their expenses within the meaning of numbers 1. and 2. of para (1) of section 32 and of para (3) of section 95. Losses or expenses for which Underwriters are answerable without the limitation contained in para (1) and the expenses defined in number 3. of para (1) of section 32 shall not be added to the actual damage in the ascertainment as to whether or not the three percent limit is reached.

(3) In hull insurance the aggregate damage during any one voyage must have reached the three percent limit in order to be claimable. "One voyage" within the meaning of this provision is



defined as a voyage for which the vessel is re-equipped, or on which the vessel sails under a new charter or contract of affreightment, or after all her cargo has been discharged, as well as any preliminary passage in ballast to the port of loading. The period between two voyages shall be deemed to belong to the past voyage.

### *35. Free from War Risk\**

(1) Underwriters are not liable for war risks. They are, in particular, not liable for loss or damage caused by warlike measures taken by a belligerent power, no matter whether such power has been recognized as such or not, including, especially, for claims arising from the subject-matter insured being stopped, captured, taken, detained, requisitioned, put under restraint, or being destroyed or damaged by mines laid for belligerent purposes, or through other measures; a measure shall also be deemed as taken by a belligerent power if it has been the measure of a power who joins in the war within six months after the measure has been taken.

(2) In hull insurance Underwriters shall be discharged from liability if the vessel, due to the danger of war, does not sail or continue the voyage, or calls at a port, unless the Assured declares to Underwriters, as soon as an event of this kind comes to his knowledge, his intention to continue the insurance.

(3) In cargo insurance, Underwriters are discharged from liability if goods are unloaded due to the danger of war, unless the Assured, as soon as the unloading, impending or carried out, has been brought to his knowledge, declares to Underwriters forthwith his intention to continue the insurance. In the event of the delay lasting longer than two months Underwriters are liable for subsequent damage or leakage only in the case of stranding, notwithstanding their liability for other occurrences. The provisions of paras (1) and (3) of section 114 concerning Underwriters' liability in a case of stranding shall apply.

(4) In the event of an alteration of the risk which is covered, the alteration being due to dangers of war, Underwriters are entitled to an additional premium unless they are discharged from liability. This applies particularly where a vessel due to the danger of war does not sail or continue the voyage, or calls at a port.

\* In cargo insurance para (1) of section 35 is applicable in the wording of the War Risk Exclusion Clause (number 1.1.2.1 of the Special Conditions for Cargo [ADS Cargo 1973 - Edition 1984], vide page 59.

### *36. Loss Inflicted by Legal Procedure*

Underwriters are not liable for losses caused by legal decisions or by the enforcement thereof unless they are liable under the insurance terms for the claim against the Assured which was the object of the legal procedure.

### *37. Measure of Indemnity*

(1) Underwriters are liable for loss or damage suffered during the insured voyage only up to the amount insured. As far as hull insurance is concerned the provisions of para (3) of section 34 are applicable analogously.

(2) Expenses which are to be met by Underwriters in accordance with the provisions of section 32 shall be borne by them no matter whether such expenses added to the otherwise due indemnity proper would exceed the sum insured.

(3) In the event of expenses having arisen from the averting or minimizing, ascertaining or

assessment of a claim, or from the reconditioning or repairing of goods damaged in an event insured, as well as contributions in general average having been made, or in the event of the Assured having become liable to meet such expenses or contributions personally, Underwriters shall be liable also for a claim for subsequent loss or damage notwithstanding that expenses or contributions were or are to be made good by them.

(4) In so far as the indemnity and expenses or contributions exceed the amount insured because the Assured must meet the claim of a third party which is due to a collision, the provisions in paras (2) and (3) shall not apply.

### *38. Discharge from Liability by Payment of Amount Insured*

(1) Underwriters are entitled, once loss or damage has occurred, to free themselves of any further liability by paying the sum insured.

(2) In spite of having freed themselves by paying the sum insured, Underwriters remain liable to meet the expenses made by the Assured in averting or minimizing the claim or by the reconditioning or repair of the subject-matter insured before the Assured has received Underwriters' declaration that they intend to free themselves of liability by the payment. The above expenses include the cost for which the Assured is personally liable. The provisions of para (4) of section 37 shall apply.

(3) Underwriters forfeit their right to discharge themselves by paying the amount insured dealt with in the first sentence of para (2) if notice thereof is not served on the Assured within five working-days after Underwriters have become aware of the occurrence and its immediate consequences.

(4) The payment shall not entitle Underwriters to any claim on the subject-matter insured.

### *39. Time Insurance*

If the insurance is contracted for days, weeks, or months, or for a period of several months, the insurance shall commence and terminate at noon of the days agreed for the beginning and the end. Local time at the place or position of the vessel shall apply.

## **Chapter VII - Information of Underwriters, Averting Losses**

### *40. Information in case of Accident*

The Assured shall inform Underwriters without delay of any claimable loss or damage, as well as of any accident to ship or cargo, no matter whether or not such event may result in a claim, provided the accident affects Underwriters' risk materially.

### *41. Averting or Minimizing Loss or Damage*

(1) In case of an occurrence insured the Assured is bound to exert himself as far as feasible to avert or minimize loss or damage. He shall follow the instructions given by Underwriters and, circumstances permitting, call for such instructions. If more than one Underwriter is involved and if their instructions are contradictory the Assured shall act on his own judgment.

(2) The Assured shall follow Underwriters' instructions also in the case of only part of the insurable value being covered. This provision shall not apply if more than half of the insurable value remained uninsured, but in such case sentence 2 of para (2) of section 32 concerning the liability for expenses and advances shall not apply.

(3) Underwriters are not liable for a claim in so far as it is due to the non-compliance with the

provisions concerning the averting and minimizing loss or damage unless there was no fault or negligence on the part of the Assured.

## **Chapter VIII --Submission of Claims, Information, Claims Falling Due**

### *42. Submission of Claims*

(1) The Assured shall submit to Underwriters any rightful claim in a written notice not later than 15 months from the termination of the insurance or, in case of a missing vessel, not later than 15 months from the date on which an overdue vessel is presumed to be lost in accordance with para (1) of section 72. The notice shall be deemed to be served within the limit of prescription if it has been dispatched within that time limit.

(2) The claim of the Assured shall be time-barred if the notice is not served in due time in accordance with para (1) of this section.

(3) The above provisions shall not apply to a claim for general average contribution made or to be made by the Assured.

### *43. Information*

After an accident Underwriters may require the Assured to give any information on the circumstances of the occurrence for the ascertainment of the measure of their liability. Documentary evidence may also be requested within reason. Underwrite may also call for a sea-protest provided they have a legitimate interest in it.

### *44. Claims Account, Settlement Falling Due*

(1) The Assured is entitled to a settlement of his claim not before one month has elapsed since he has produced a claims account and submitted the required documentary evidence. If he cannot be called to account for a delay in complying with his obligations within one month the Assured may call for an advance payment of three quarters of the minimum sum the claim is likely to amount to in the circumstances.

(2) The claims account must contain a fair statement of the amounts to be paid by Underwriters for each separate loss and expense. If requested by Underwriters a particular average claim must be submitted in form of a statement drawn up by a person entitled by law or by local custom at the place where the claim is payable.

## **Chapter IX - Subrogation and Minimizing Claims**

### *45. Subrogation*

(1) In the event of the Assured being entitled to claim damages from a third party such right shall pass to Underwriters in so far as they have indemnified the Assured for his loss. The Assured must furnish Underwriters with all information necessary for the prosecution of the claim and surrender all documentary evidence in his possession, as well as furnish Underwriters upon request and at their expense with a duly legalized document embodying evidence of the cession of the claim.

(2) If the Assured waives a claim he has on a third party or if he fails to make use of a title securing his rights and remedies, Underwriters are discharged from liability in so far as they

would have been able to make a recovery on the grounds of the rights and remedies ceded to him.

#### *46. Minimizing Claims after Subrogation*

The subrogation of Underwriters shall not relieve the Assured of his duty to minimize the claim, especially by withholding the freight. As soon as he gets any information that may be material with regard to the enforcement of a claim on a third party, he shall bring such information forthwith to Underwriters' knowledge and, if required to do so, he shall assist them in the prosecution of the claim and, in particular, take legal action in his own name. The expenses are to be borne by Underwriters and advanced upon request.

### **Chapter X - Insolvency of Underwriters**

#### *47. Insolvency of Underwriters.*

In the event of an Underwriter becoming insolvent the Assured is entitled to avoid the contract. He can insure his interest elsewhere at the expense of the insolvent Underwriter, but the Underwriter may avert this by tendering security.

### **Chapter XI - Prescription**

#### *48. Prescription.*

All claims under an insurance contract become timebarred after 5 years. The period of prescription begins at the end of the year in which the insurance expired or during which the loss of an overdue vessel is presumed in accordance with section 72.

### **Chapter XII Assignment of Interest, Mortgage of Claims**

#### *49. Assignment in General*

(1) Where the subject-matter insured is assigned, the assignee for the time of his ownership takes the place of the assignor with regard to all the Assured's rights and duties under the insurance contract, the assignor remaining liable for the premium conjointly with the assignee.

Where, however, a cargo policy is assigned the assignee does not become liable for the premium and fees; nor can Underwriters claim, in accordance with section 17, their discharge from liability on account of the premium not having been paid and no security tendered unless, however, the assignee was not in good faith.

(2) The assignment becomes binding on Underwriters with regard to their rights and duties under the insurance contract not before the assignment is brought to their knowledge. The provisions of Articles 406 to 408 of the German Civil Code\* shall apply accordingly. Where, however, a policy was issued for a cargo insurance the above provisions shall not apply for the benefit of Underwriters, unless the assignee was not in good faith.

(3) Underwriters are not liable for loss or damage which would not have occurred without the assignment of the subject-matter having been made, but this provision is not applicable to a sale of merchandise unless the sale was made in wartime and the buyer was a National of a belligerent power.

(4) The assignee is entitled to cancel the insurance without notice. The cancellation must be declared within one month after the assignment or, if the assignee was not aware of the

existence of the insurance, within one month after he became aware thereof. If he cancels the insurance he is not liable for the premium.

\* Article 406: The debtor may also set off against the assignee an existing claim which he has against the assignor, unless he had knowledge of the assignment at the time of the acquisition of the claim, or unless the claim did not become due until after he had acquired such knowledge and after the falling due of the assigned claim.

Article 407: An act of performance by the debtor in favour of the assignor after the assignment, or a juristic act entered into between the debtor and the assignor in respect of the claim after the assignment, is valid as against the assignee, unless the debtor knew of the assignment at the time of performance or of the entering into the juristic act.

If in action between the debtor and the assignor subsequent to the assignment, a non-appellable judgement relating to the claim has been delivered, the judgement is valid as against the assignee, unless the debtor knew of the assignment at the date when the action was first commenced. Article 408: If an assigned claim be re-assigned by the assignor to a third party, and if the debtor effects the performance in favour of such third party, or if a juristic act is entered into or an action is commenced between the debtor and such third party, the provisions in Article 407 shall apply "mutatis mutandis" in favour of the debtor as against the former assignee.

The same applies if the assigned claim is re-assigned to a third party by judicial order, or if the assignor makes acknowledgement to the third party that the assigned claims is transferred to the third party by operation of law.

(5) In case of a forced sale of the subject-matter the provisions in paras (1) to (3) shall likewise apply.

#### *50. Assignment of Ships and Shares in Ships*

(1) The provisions of section 49 shall apply analogously to an assignment or a transfer of a share in a ship.

(2) In case of a transfer of an insured vessel the insurance shall terminate; Under-writers are entitled only to one fifth of the pro rata premium for the period between the transfer and the originally agreed termination of the policy. If the vessel is transferred whilst on a voyage the insurance terminates not before the moment in which the insurance would terminate at the next port of destination as provided by sections 66 to 68.

#### *51. Mortgagee of Insurance Claims*

In so far as an insurance claim is mortgaged the second half of the second sentence in para (1) of section 49 shall apply in favour of the mortgagee.

### **Chapter XII - Insurance for Account of a Third Party**

#### *52. Insurance for the Proposer's Own Account, for Account of a Third Party, for Account of Whom it May Concern*

(1) Where it is not evident that the Proposer who effects the insurance has not the intention of contracting the insurance in his own name but for account of a third party (insurance for account of another) the insurance shall be deemed to be contracted for account of the Proposer (insurance for own account).

(2) Where the insurance is contracted for a third party and even if the other person or party is

expressly named, it is to be presumed that the Proposer does not act as an Agent but in his own name for another's account.

(3) Where the insurance is contracted for account of "whom it may concern", or if it is evident in another way from the contract that it shall be left open whether the interest of the Proposer or of a third party is to be insured, the provisions concerning insurance for account of a third party shall apply, if it becomes obvious that in fact the insurance covers the interest of a third party.

### *53. Legal Position of the Assured*

(1) The rights embodied in the contract of insurance are vested in the Assured for whose account the insurance was contracted. The policy, however, shall only be surrendered to the Proposer who effected the insurance.

(2) The Assured for whose account the insurance was contracted cannot make a claim under the insurance or enter into legal proceedings unless he is in possession of a policy or unless the Proposer agrees.

### *54. Legal Position of the Proposer*

(1) The Proposer who effected the insurance can in his own name exercise the Assured's rights embodied in the contract.

(2) Where a policy has been issued, the Proposer is only entitled to receive payments or to assign the rights of the Assured if he is in possession of the policy or if the Assured has given his approval.

(3) Underwriters are only liable to make payments to the Proposer if the latter produces evidence that the Assured has approved of the cover to be taken.

### *55. Legal Relations between the Proposer and the Assured*

The Proposer who effected the insurance is not bound to surrender the policy to the Assured or, in case of bankruptcy of the latter, to the receiver before he has been satisfied for claims he has on the Assured with regard to the subject-matter insured. He is entitled to satisfy himself for such claims out of the insurance claims against Under-writers or out of the collected indemnity. He enjoys priority over the Assured and his creditors.

### *56. Compensation*

Underwriters may set off any claim they have on the Proposer who effected the insurance against an insurance claim in so far as their claim results from the insurance taken by the Proposer for the Assured.

### *57. Parties Responsible for Disclosure and Representation*

(1) In the event of nondisclosure or misrepresentation of material facts the legal consequences shall depend on what was known or ought to have been known not only to the Proposer who effected the insurance but also to the Assured; the same applies to the exemption of the Proposer from his liability for the premium, where the interest has not attached.

The plea of no fault can only be made if the material fact to be disclosed was known or ought to have been known neither to the Proposer nor to the Assured.

(2) Where a cover is given on a "lost or not lost" basis, Underwriters are discharged from liability if the Proposer or the Assured at the time the cover was given knew or ought to have

known that loss or damage had already occurred.

(3) Where the insurance was effected without the knowledge of the Assured, it shall be of no avail whether or not he knew or ought to have known of the occurrence. The same applies if a notification of the Proposer was not feasible in due time. Such notification shall be deemed not to have been made in due time if it was not made as speedily as was feasible in the ordinary course of business and if it was not made at least in the same or a similar way in which the order to conclude the contract was given.

(4) The Proposer cannot plead that the contract was effected without the knowledge of the Assured unless at the time of contracting he had disclosed that fact to Underwriters.

## **Part Two - Special Rules on the Insurance of Special Subject-Matters**

### **Chapter I- Hull Insurance\***

#### *58. Seaworthiness*

(1) Underwriters are not liable for loss or damage resulting from the vessel having put to sea in a state of unseaworthiness or from her not having been properly equipped, manned, or loaded, or without the certificates necessary for the vessel, the crew, or her cargo. If loss or damage occurs prior to the sailing Underwriters are not liable if the occurrence was due to the vessel being unfit for service in port.

(2) In the event of the vessel being lost or damaged without there being any external event and there being doubt about the causes, the occurrence shall be deemed to have been caused by the circumstances explained in para (1).

\* See also DTV Hull Clauses 1978 (as amended in April 1984), printed on pages 45ff.

#### *59. Wear and Tear, Age*

Underwriters are not liable for loss or damage caused solely by wear and tear of the vessel within her normal service, or by her age, by rot, rust, or worms. The following shall be deemed to be loss and damage due to wear and tear in the ordinary service: loss or tearing of sails, or other damage to same, even if caused by carrying press; damage to anchors, ropes, chains, or to the rigging; the cutting away of ropes or sails on account of such damage; the cutting away or slipping of anchors, anchor chains, or cables.

The following shall not be deemed to be loss or damage due to wear and tear: damage to sails due to the catching of heavy seas; breakage of spars, and any damage to lashed sails in an accident.

#### *60. Dangerous Cargo*

(1) Underwriters shall not be liable for loss or damage resulting from the carriage of such explosives or goods susceptible to spontaneous combustion as, by the Rules of the German States bordering the Sea concerning the Carriage of Dangerous Goods by Merchant Vessels, are precluded from the carriage; nor shall they be liable for loss or damage caused by such goods as are admitted to carriage on merchant vessels under certain precautions, and the rules governing such precautions were violated; in case of a shipment from a Foreign port where there are local rules for the carriage of dangerous goods by merchant vessels these rules shall be applicable. Underwriters remain liable, however, if the Assured did not know or need not have known of

either the shipment, or the infringement of the said rules. If Underwriters remain liable they are entitled to an additional premium.

(2) Underwriters are not liable for loss or damage resulting from the vessel being loaded on the insured voyage for more than one-third of her loading capacity with bone-ash, chalk, charcoal, clay, waste of clay, cement, coal, earth, fertiliser, bay, grain and other agricultural produce shipped in bulk, as well as bulk cargo in general, iron and steel (including rails and girders), lime, minerals (including marble, slate, stones, or tiles), ore, and salt. The provisions of sentences 2 and 3 of para (1) apply.

#### *61. Forcing Standing Ice*

Underwriters are not liable for loss or damage caused by an attempt to force the vessel through standing ice unless such attempt was imperative in order to avert or minimize loss or damage if covered by them.

#### *62. Jettison of Deck Cargo*

Underwriters are not liable for general average contributions in so far as they were occasioned by jettison of deck cargo.

#### *63. Sacrifices whilst Sailing in Ballast*

Whilst a vessel sails or is to sail in ballast, Underwriters are not liable for sacrifices which would be considered as general average sacrifices if the vessel had sailed or were to sail with cargo. Underwriters cannot claim discharge from liability if they were notified of the proposed ballast journey when the insurance was proposed.

#### *64. Assistance given by the Vessel to Third Parties*

Underwriters are not liable for loss or damage suffered by the insured vessel whilst being used as lighter or whilst towing other vessels or rendering assistance in so far as the consideration received for such assistance was meant to cover such loss or damage.

#### *65. Damage to Cabins or Machinery*

Underwriters are not liable for damage to cabin equipment and effects unless the vessel be stranded. The same applies to Underwriters' liability for damage to machinery. This includes particularly the main engine (with the auxiliary machinery and installations necessary for the operation of the engine, as well as the boilers and their installation with the funnel, shaft, propeller and wheel), the machinery on deck, steering gear with the steering engine and chains as far as the quadrant, pumps for the vessel's use, electric light installation, the wireless equipment, and the refrigerating plant. The provisions of para (1) and (2) of section 114 below shall apply.

#### *66. Duration of Cover*

(1) In a voyage policy the cover commences at the beginning of the loading operation of cargo or ballast or, if neither cargo nor ballast is taken, at the time when the vessel sails. The cover terminates as soon as the discharge operation of cargo or ballast at destination has come to an end or, if neither cargo nor ballast is discharged, as soon as the vessel has dropped anchor or



has been moored at her proper place. In case the discharge of the vessel is unduly delayed by the Assured the cover shall terminate at the time when the discharge operation would have been completed without such delay.

(2) If prior to the completion of the discharge cargo or ballast is taken for a new voyage, the cover terminates as soon as the new loading begins.

(3) if after the commencement of the cover the insured voyage is abandoned, the cover terminates at the place where the voyage is abandoned, and the rules set for the termination at destination shall apply accordingly.

#### *67. Continuation of Cover under a Voyage Policy*

(1) In the event of the vessel arriving at destination in a damaged condition, and Underwriters being liable for the damage, the cover shall remain in force until the completion of the repair. If repair is unduly delayed by the Assured the cover shall terminate at the time when the repair would have been completed without such delay. The Assured can renounce the continuation by notifying Underwriters of his renunciation, immediately after having become aware of the damage. If the cover is continued Underwriters are entitled to an additional premium in consideration of the longer duration of the cover.

(2) The provisions of para (1) shall not apply if repair is only possible at a place other than the destination, and if it has not been ascertained in accordance with section 74 that the vessel is fit to proceed to the place of repair.

#### *68. Continuation of Cover under a Time Policy*

Where under a time policy the vessel on the stipulated expiry of the insurance is at sea the cover shall continue until the time when the cover would end, in accordance with sections 66 and 67, at the next port of destination. The Assured can renounce the continuation by notifying Underwriters of his renunciation before the vessel has sailed. If the cover is continued Underwriters are entitled to an additional premium in consideration of the longer duration of the voyage; if the vessel is missing, they are entitled to the premium until the vessel is presumed lost according to section 72 below.

#### *69. Insurance of Successive Voyages*

If insurance is taken for a number of successive voyages the cover includes the time between the voyages.

#### *70. Insurable Value*

(1) The insurable value is deemed to be equal to the value of the vessel at the time of the commencement of the insurance. Such value shall not include the cost of equipment, wages and pay for the crew, and insurance charges.

(2) This value shall also be deemed to be the insurable value at the time when loss or damage occurs.

#### *71. Total Loss*

(1) A total loss entitles the Assured to the amount insured. The value of any salvage and recovery as well as any indemnification received from third parties shall be deducted before settlement. The value of salvage shall be determined by public auction if requested by

Underwriters.

(2) The vessel shall also be deemed to be a total loss if the Assured is irretrievably deprived of it, in particular if the vessel be sunk and no salvage possible, or if the vessel be so damaged as to cease to be a thing of the kind insured.

(3) By the settlement of the claim Underwriters are subrogated to all rights and remedies of the Assured in respect of the vessel. The Assured must furnish Underwriters with any information necessary for the prosecution of the claim and surrender all documentary evidence in his possession as well as furnish Underwriters upon request and at their expense with a legalized document containing evidence of the cession of his rights and remedies.

(4) The subrogation of Underwriters shall not free the Assured from his duty to minimize the claim in so far as Underwriters are unable to do so themselves. As soon as he gets any information that may be material for a prosecution of a claim on a third party, he shall bring such information forthwith to Underwriters' knowledge and, if requested to do so, assist them in the recovery and realization of any salvage of the vessel. The costs are to be met and, upon request, advanced by Underwriters.

#### *72. Missing Vessel*

(1) The Assured is also entitled to call for the payment of the sum insured if the vessel is missing and must be considered lost. The vessel is lost if she has not reached the next port of call or destination within a certain lapse of time and no news of her has been received. The time lapse for the presumption of an actual loss shall be thrice the time the vessel would require in normal circumstances to cover the distance from the position from where the last news was received, to the next port of call or destination, but at least two months if the vessel is power driven or three months if she is a sailing vessel. In war-time when the receipt of news may be delayed, the time limit shall be six months in either case.

(2) The call for settlement cannot be made conditionally or subject to a time limit. (3) By the call for settlement Underwriters are subrogated to the rights and remedies of the Assured in respect of the vessel (abandonment). The provisions of the second sentence in para (3) and of para (4) of section 71 relating to the assistance to be given to Underwriters shall apply.

(4) The Assured is debarred from exercising the right conceded to him in the first sentence in para (1) if news is received from the vessel before he made the call for payment.

#### *73. Seizure and Detention by Authorities, Piracy*

The provisions contained in section 72 shall also apply accordingly where a vessel has been seized or detained by Authorities or captured by pirates, with the exception of the provisions for the time limits set therein. In either of the above events the time limit shall be two months.

#### *74. Partial Loss*

(1) Any partial loss shall be ascertained by experts.

(2) Both Underwriters and the Assured or, in his place, the shipmaster shall immediately appoint an expert each.

(3) In the event of the experts disagreeing they shall appoint an umpire. The latter may also be appointed prior to the survey. If the experts disagree on the umpire to be called upon, they must both nominate an umpire, and lots shall be drawn. If the vessel is in a Foreign port, and agreement cannot be reached, the Assured or the master shall request the consul of the country where the vessel is registered, to appoint the umpire. In a port where there is no consul of the vessel's nationality, or if the consul is unwilling to meet the request, another consul shall be

called, and if he is unwilling, too, a public servant of the country where the vessel lies, who is competent for such appointments, shall be referred to.

(4) In the event of Underwriters failing to nominate their expert although requested to do so, the Assured or the master shall refer the appointment of an expert to the Local Chamber of Commerce. If the vessel lies in a Foreign port the Assured may proceed according to sentences 4 and 5 of para (3) of this section.

(5) The experts shall survey and ascertain the damage and issue a survey report. The interested parties should be present at the inspection if feasible. The report must contain :

1. the names of the experts and other persons who took part in the survey,
  2. the names of the parties or individuals who appointed the experts,
  3. the place and time of the survey,
  4. each single item lost or damaged including, as far as possible, a statement of the cause and, especially, whether loss or damage is attributable to an accident at sea on the vessel's last voyage, or to any other circumstances,
  5. an estimate of the expenses necessary for the repair of the damage suffered on the last voyage; the amounts must be specified for each and every accident occurred.
- (6) The findings in the survey report are decided by majority of votes. If there be more than two opinions on certain amounts or values, and none is accepted by a majority, then the vote for the highest amount shall be added to the vote in favour of the next highest.

(7) The survey report is to be signed by the experts and, if present, by Underwriters' survey agent as evidence of his presence.

(8) The experts' findings shall not be binding if they are obviously and gravely inconsistent with the real facts. In such case the damage must be ascertained by legal proceedings. In case the experts declare themselves unable or unwilling to make the ascertainment, or if the survey is unduly delayed by them, the parties shall proceed to the appointment of other experts according to parts (2) to (4).

(9) Underwriters may refuse payment until the claim has been ascertained in accordance with the above provisions.

In the event of the ascertainment not having duly been made for reasons beyond the control of the Assured, Underwriters may refuse payment until the damage has been ascertained in some other appropriate way.

(10) The claims agent appointed by Underwriters for the respective district is considered as authorized to accept statements of the Assured made in connection with the ascertainment of the claim, and to make legal or other transactions of such kind for and on behalf of Underwriters.

## *75. Repair*

(1) Once a particular average is ascertained the vessel shall immediately undergo repair. In regard to the repair the Assured shall also safeguard the interest of Underwriters. Before the conclusion of the contract of repair Underwriters must be consulted if possible, and a draft contract produced.

(2) Underwriters are entitled to supervise repairs and, if requested to do so, the Assured shall keep them informed of the progress made. After completion the Assured shall produce documentary evidence of the expenses. He shall also disclose the agreed rebates on, and deductions from, the figures shown in the invoices.

(3) The liability of Underwriters is governed by the expenses incurred by the repair. If the aggregate expenses exceed the amount estimated by the experts the latter amount shall govern the measure of indemnity. From these amounts the following is to be deducted : -

1. the deductions "new for old" in accordance with section 76 below,

2. the amount of the value of the salvage, i. e. the value of the old parts replaced by new ones. Upon Underwriters' request such value must be ascertained by public auction.

(4) Underwriters are also liable for such expenses as are incurred by bringing the vessel to the place of repair and, if necessary, to bring her back. The same applies to the expenses incurred by the Assured in making the required cash available.

(5) If the Assured has a legitimate interest, and if there are important reasons for which he cannot be called to account, he may declare immediately after his claim has been ascertained that he will not have his vessel repaired. He must disclose his reasons. The sale of the vessel before the beginning of the repair is to be deemed an important reason unless the insurance contract has been assigned to the buyer. The liability of Underwriters in such case is governed by the ascertained amount of damage. From such amount the deduction "new for old" and "salvage" shall be made (vide para (3)).

(6) Any difference of opinion as to whether the Assured can plead "important reasons" under para (5) shall be settled by arbitration, an arbitrator being appointed by either party. If the arbitrators cannot come to terms they shall appoint an umpire. If they cannot agree on the umpire the appointment shall be referred to the body that represents the local commerce at the place where the Underwriter or his Agent who concluded the contract have legal domicile.

#### 76. Deductions "new for old"

(1) To the deductions "new for old" the provisions contained in paras (2) to (7) below shall apply.

(2) Unless otherwise provided the deductions shall be one-third.

(3) Iron vessels: -

parts of iron steel or cement,

loss or damage having occurred within the first ten years of the original registration: - full allowance

loss or damage having occurred within the following five years: - deduction one-sixth,

loss or damage having occurred later: - deduction one-third,

if damaged parts can be buttstrapped or straightened, this must be done unless a replacement is imperative to obtain the former classification: - full allowance for the buttstrapping and straightening,

bottom scraped and/or painted,

loss or damage having occurred within six months after last scraping or painting: - deduction one-third,

damage having occurred later: - no allowance,

wooden parts: the provisions for wood vessels shall apply (vide below).

(4) Wooden or composite vessels: -

metal sheathing and caulking: -

loss or damage having occurred within one year after the last sheathing or caulking: - full allowance,

loss or damage having occurred during the second year: - deduction one-third, loss or damage

having occurred during the third year: - deduction two-thirds, loss or damage having occurred later: - no allowance for resheathing and/or recaulking.

Hull and masts: -

loss or damage having occurred within the first year after the vessel was launched: - full allowance,

if lost or damaged parts of the hull, the masts, and equipment were new at the beginning of the voyage on which loss or damage occurred: - full allowance.

(5) Machinery: -

if loss or damage occurred during the first three years since the lost or damaged part was new: - full allowance,

if loss or damage occurred during the three following years: - deduction one sixth,

if loss or damage occurred later: - deduction one-third.

(6) Boilers: -

loss or damage having occurred within one year after the boilers were new: - full allowance, each further year will reduce the allowance by ten percent; if the boiler was more than ten years old: - no allowance.

(7) Anchors: - full allowance

Anchor-chains: -

loss or damage having occurred within one year after the chain was new: - full allowance,

if the chain was older than one year: - deduction one-sixth.

(8) Painting and repair or replacement of glass: - no allowance unless otherwise provided.

#### *77. Constructive Total Loss*

(1) The Assured is entitled to have the vessel sold on public auction provided she has been damaged in an insured accident to such an extent as has made her unfit for repair. The unfitness must be ascertained in the manner described in section 74 above. The Assured can then claim payment of the sum insured less the net proceeds of the sale. The vessel shall be considered unfit for repair if repair is altogether impossible at the place where the vessel is, and if she cannot be towed to a place where repair is possible. Any recovery or indemnification received from third parties and the value of what was lost or damaged due to a peril not covered under the insurance shall be deducted in the settlement. The cover terminates not before the sale on auction is made; Underwriters are entitled to an additional premium for the longer duration of the cover.

(2) The provisions in para (1) above shall likewise apply if the vessel is so heavily damaged in an insured accident that she is no longer worthy of repair. The unworthiness must be ascertained in the manner described in section 74 above. The vessel is considered unworthy of repair if the cost of repair estimated as per section 74 above - leaving apart the deduction "new for old" - should exceed the insurable value.

(3) Likewise shall the above provisions apply in the event of the unfitness for, or unworthiness of, repair becoming apparent later, particularly during repair. The new circumstances must be ascertained in accordance with section 74 without delay. In such case Underwriters shall meet the cost of repair in so far as the proceeds of the sale have increased owing to the repair having been made. The provisions in the last sentence of para (1) above shall not apply.

(4) The Assured shall be debarred from his rights contained in paras (1) to (3) if he fails to exercise them immediately after the facts on which they are based have come to his knowledge.

#### *78. Collision Liability*

(1) Underwriters are also liable of claims made by third parties on the Assured for loss or damage suffered in a collision with the insured vessel provided the Assured must indemnify that third party.

(2) Underwriters shall meet these claims in such proportion as the value of the vessel bears to the aggregate value of vessel and freight.

## 79. Insurance of other Hull Interests

Unless otherwise provided this Chapter I shall apply analogously to the insurance covering ancillary interests in the vessel.

## **Chapter II - Cargo Insurance**

Sections 88 to 99:

These sections have been replaced by the "Special Conditions for Cargo Insurance (ADS Cargo 1973 - Edition 1984)" printed below (pages 58 ff.) and the "Special Conditions for Open Policies" printed below (pages 67 ff.).

## **Chapter III - Insurance of Expected Profit and of Commission**

### *100. Valuation*

(1) Where an insurance is taken for a certain amount of expected profit and such profit has not been valued by agreement, the amount insured shall be considered as being a value agreed upon.

(2) Underwriters are entitled to demand a reduction of the valuation if it exceeds the profit that could possibly be expected by the Assured in a commercial calculation at the time when the insurance was placed.

### *101. Combined Valuation of Cargo and Profit*

Where goods and profit have been insured in one amount the tenth part of the aggregate amount insured is to be considered as the insurable value of the profit. Where an aggregate valuation has been agreed by the parties for goods and profit, it is likewise the tenth part of the valuation which is considered to be the agreed value of the profit.

### *102. Open Policies*

Where the insurance contract is concluded in form of an open policy the Assured is entitled to declare an expected profit other than provided for in the open policy. Underwriters are, however, discharged from liability in respect of the excess amount, if the Assured at the time when he made the declaration knew, or ought to have known, that the voyage was prejudiced. If the declaration was made by the Assured's Agent for account of whom it may concern sections 22 and 57 shall apply accordingly.

### *103. Loss of Goods, Measure of Indemnity for Expected Profit, Damage to Goods*

(1) Even in the absence of a total loss goods shall be considered lost if they fail to reach their destination for other reasons.

(2) Where goods have been sold in the course of the voyage, and the proceeds exceed then-insurance value, the excess shall be deducted from the sum insured. The same shall apply where the Assured has been indemnified by a third party in accordance with articles 611 and

612 of the German Commercial Code\* and the indemnification is higher than the insured value of the goods proper.

\* Article 611: If a loss or damage has arisen, for which the owner is responsible, the cargo-owner is entitled, in case of total or partial loss, to claim a sum equal to the trading value, or if there is no trading value, a sum equal to the ordinary value which goods of the same kind and quality possess at the port of destination when discharge was begun; if no discharge took place, the value shall be fixed upon the time of the arrival of the ship; deduction shall be made of all savings effected through the loss, as customs, freight and other expenses.

If the ship does not reach the port of destination, the place shall be taken in substitution thereof at which the voyage comes to an end, or in case the ship be lost, the place to which the cargo has been brought into safety.

Article 612: For goods disposed of in the course of the voyage for account of the shipowner (Art. 541 Commercial Code), the cargo-owner may claim the same amount as for goods lost; if the goods were sold for a greater amount, he may claim the latter.

(3) Where goods have been damaged the Assured is entitled to claim such part of the amount insured as the difference between the sound value at destination and the value of the goods in damaged condition bears to the sound value (vide 7.3.1 of "ADS cargo 1973 - Edition 1984", below page 63).

#### *104. Commission*

The provisions of this Chapter III shall also apply to the insurance of the commission that becomes due upon arrival of the goods. In the cases dealt with in section 101 two percent shall be considered as the amount insured for commission.

### **Chapter IV - Insurance of Freight, Ship's Hire, and Passage Money**

#### *105. Measure of Indemnity under a Freight Policy*

(1) Unless otherwise provided in this Chapter the measure of indemnity under a freight policy is governed by the provisions for hull insurance as contained in Chapter I of Part Two as well as in sections 1.3.1 and 1.4.1.2 to 5 of "ADS Cargo 1973 - Edition 1984" (printed below) of these sections concerning deck cargo, damage due to the nature of the goods, or similar circumstances.

(2) An accident to the vessel shall give rise to a claim under a freight policy only in so far as at the time of the accident the contract of affreightment had been concluded or goods to be shipped for account of the shipowner had been on board.

(3) Where goods are loaded which are susceptible to melting in water the measure of indemnity for freight shall be deemed to be governed by the measure, weight, or quantity delivered.

(4) Where freight is covered in a time policy, Underwriters are not liable for perils to which the freight is exposed on a preliminary voyage of the vessel.

(5) Where time freight is covered Underwriters are not liable for loss of freight due to delay either in the sailing or in the arrival of the vessel.

#### *106. Duration of the Freight Insurance*

With regard to the perils to which the vessel is exposed the freight insurance attaches and ends as provided in Chapter 1 of this Part Two for hull insurance. With regard to the perils to which the cargo is exposed the insurance attaches when the goods are loaded; the insurance ends as provided in the rules concerning cargo insurance.

#### *107. Insurable Value of Freight*

(1) The insurable value of freight shall be equal to the amount of freight agreed in the contract of affreightment. Failing stipulation of freight or in so far as goods are shipped for shipowner's account, the insurable value of the freight shall be the freight customary at the place and at the time of shipment.

(2) In case of net-freight insurance the insurable value of the net-freight shall amount to two-thirds of the gross-freight.

(3) An agreed value shall only be deemed to be the amount insured.

#### *108. Ship's Hire*

(1) Where ship's hire is covered Underwriters are not liable for loss of hire due to delay either in the sailing or in the arrival of the vessel.

(2) The insurable value of ship's hire shall be equal to the amount of hire agreed in the charterparty and, failing a stipulation of hire, the insurable value shall be the customary hire.

(3) An agreed value shall only be deemed to be the amount insured.

#### *109. Passage Money*

(1) Sections 105 to 107 shall apply analogously to the insurance of passage money unless otherwise provided in paras (2) and (3).

(2) The insurance attaches and ends according to the provisions in Chapter 1 concerning hull insurance.

(3) Underwriters are also liable for such loss as results from the necessity to disembark passengers, after an insured accident, in a port of call and, in accordance with legal or contractual provisions, from granting them board and lodging there, further-more from providing transport other than stipulated in the contract of passage, or from indemnifying passengers for lost or damaged baggage.

### **Chapter V - Insurance of Disbursements**

#### *110. Insurable Value, Measure of Indemnity, Subrogation*

(1) The insurable value of claims secured by property exposed to perils of the sea shall be equal to the amount of the claim plus agreed or legal interest and, if the insurance included bottomry or respondentia, also plus the insurance premium for these. If at the time the insurance attaches the value of the property at stake is less than the aggregate claims, then the insurable value shall be equal to the actual value of the property at stake.

(2) Underwriters shall pay the amount insured only in so far as the property serving as a security for the claims should prove insufficient to cover such claims, because it was lost or damaged by an insured peril.

(3) In so far as Underwriters meet a claim they shall be subrogated to all rights and remedies of the Assured. Sections 45 and 46 shall apply accordingly.



### *111. Measure of Indemnity*

Loans on bottomry shall be assumed to be secured by the vessel, the freight, and the cargo; other disbursements by the vessel and the freight.

### *112. Duration of the Insurance*

The cover of bottomry and disbursements attaches at the moment when the Assured has declared himself liable for the money involved. If the Assured himself has paid the disbursements the risk shall attach at the time when such payment was made.

## **Part Three Special Agreements (Clauses)**

### *113. "Free from particular Average"*

Underwriters are not liable for damage; nor are they liable in cargo insurance if goods are damaged to such extent that they must be considered as lost or destroyed in their original nature. Underwriters are, however, liable for damage that may be due to a sacrifice.

### *114. "Free from Particular Average unless the Vessel be Stranded"*

(1) Underwriters are not liable for damage unless the vessel be stranded. Where it is doubtful whether or not damage is due to stranding it shall be deemed to be caused thereby. Section 113 shall apply accordingly.

(2) There is a case of stranding where a vessel has run aground and can only be brought afloat by extraordinary measures; such extraordinary measures are, among others, the cutting away of masts, the discharge or jettison of cargo, or the waiting for an unusally high tide. The following measures are not to be deemed as extraordinary: the pulling off the vessel with her anchors and the backing of her sails or her screw. There is also a case of stranding if the vessel capsizes, sinks, founders, collides with other vessels or craft, or is fired at, also if fire breaks out or an explosion occurs on board the vessel.

(3) In a cargo policy it is to be deemed a case of stranding where the vessel strikes ground or runs aground or collides with other objects, or if she is damaged by ice; likewise if an event occurs as described in the last sentence of para (2) above. Underwriters are, however, liable only if the hull of the vessel has suffered so heavy damage in the accident that the damage of the cargo may reasonably be attributed to the same event. Failing agreement as to whether fire has been caused by spontaneous combustion, the burden of proof lies with the Assured.

### *115. "Free from Breakage"*

Underwriters are not liable for damage due to breakage. The provisions of section 113 apply accordingly.

### *116. "Free from Breakage Unless the Vessel be Stranded"*

Underwriters are not liable for damage due to breakage unless the vessel be stranded. The provisions of section 114 apply accordingly.

117. *"Free from Particular Average under a Certain Percentage"*

The provisions of section 34 concerning Underwriters' liability for particular average under three percent of the insured value apply accordingly.

118. *"Free from Certain Deductible Percentages"*

Underwriters are liable for particular average only in excess of such percentage of the amount insured as has been stipulated in the policy.

119. *"Free from Frustration or Interference by War or Warlike Operations"*

Underwriters are discharged from liability where the danger of war begins to interfere with the voyage, particularly if men-of-war, the risk of capture, mines or blockade, endanger the sailing of the vessel, or the continuation of the voyage, or the vessel deviates from her course, or the master is deprived of his freedom of command.

120. *"On Safe Arrival", "On Safe Voyage"*

(1) The cover ends at the moment when the vessel in her port of destination has cast anchor or has been safely moored at her proper place.

(2) In hull insurance Underwriters are only liable if the vessel, before the time fixed in para (1), has been totally lost or abandoned within the meaning of the provisions in sections 72 or 73, or sold on auction according to section 77.

(3) In cargo insurance Underwriters are only liable if the goods insured fail to reach their destination.

(4) Underwriters are liable neither for general average contributions or sacrifices nor for expenses and costs according to section 32 or to section 1.5.1.2 "ADS Cargo 1973 - Edition 1984" (printed below).

121. *"War Risk Only"*

(1) Underwriters are only liable for war risk. They are, in particular, liable for loss or damage caused by warlike measures of a belligerent Power, no matter whether such Power be recognized as such or not, including especially for claims arising from the subject-matter insured having been stopped, captured, taken, detained, requisitioned, put under restraint, damaged or destroyed by mines layed for belligerent purposes, or through other measures; a measure shall also be deemed as taken by a belligerent Power if it has been the measure of a Power who joins in the war within six months after the measure has been taken.

(2) The provisions of an insurance which excludes war risk shall apply analogously (vide section 35), but within the terms of paras (3) to (7) of this section as below.

(3) Underwriters are not liable for general average or other expenses incurred because, due to the dangers of war, the vessel does not sail, does not continue the voyage, calls at a port of refuge, or if cargo is discharged, warehoused, or sent on by other conveyances.

(4) Underwriters are not discharged from liability in the cases dealt with in paras (2) and (3) of section 35 above, subject, however, to the limitation of liability provided for in the second sentence of para (3) of section 35 above.

(5) In hull insurance Underwriters are not liable for loss or damage due to the presence of contraband on board the vessel. Underwriters remain liable, however, if the Assured was not or need not be aware of the presence of such cargo. If Underwriters remain liable they are entitled

to an additional premium.

(6) The vessel shall be considered a total loss in accordance with para (2) of section 71 above, where a vessel has been condemned a legal prize. The provisions in section 72 above concerning missing vessels shall apply in accordance with section 73 above, especially in the event of a belligerent or other like Power within the meaning of the second sentence of para (1) of this section having stopped, captured, detained, requisitioned, or put the vessel under restraint; the time limit set in the second sentence of section 73 above shall, however, be replaced by a lapse of six months.

(7) In cargo insurance, goods that at the time of the conclusion of the insurance were contraband shall not be deemed as covered by the contract. This applies particularly to open policies. Underwriters remain liable, however, provided the Assured neither knew, or ought to have known, that the goods were contraband. If Underwriters remain liable they are entitled to an additional premium.

#### 122. *"Including War Risk"*

(1) Underwriters are also liable for war risk.

(2) In the event of Underwriters being discharged from liability for reasons of nondisclosure, misrepresentation, or an alteration of risks, and the above reasons concerning only the war-risk, then they remain liable for the conventional risks (vide section 35); if the above reasons concern only the conventional risks Underwriters remain liable for war-risk (vide section 121 above), unless it can be reasonably assumed that they would not have given cover for these risks separately.

(3) The provisions in section 121 above apply analogously, but without prejudice to para (4) of section 35 concerning an additional premium for an alteration of the risk if due to dangers of war.

#### 123. *"Total Loss Only"*

Underwriters are only liable where the subject-matter insured is totally lost or has been missing and must be considered as totally lost within the meaning of section 72, also where it has been seized by authorities or captured by pirates. In hull insurance Underwriters are also liable if the vessel is unfit for, or unworthy of, repair. Underwriters are neither liable for general average contributions and sacrifices, nor for expenses and cost within the terms of section 32 and section 1.5.1.2 of "ADS Cargo

1973 - Edition 1984". In cargo insurance Underwriters are not liable either for goods being lost owing to damage, or, in particular, for their being destroyed in their original nature.

#### 124. *"From Warehouse to Warehouse"*

(1) The risk attaches at the time when the goods are removed from the place of their last storage at the place of shipment for conveyance on the insured voyage.

(2) The risk terminates when the goods are delivered at destination to the place determined for storage by the consignees; the cover for loss or damage due to fire, explosion, lightning, or earthquake terminates not later than at midnight of the tenth day after the day of discharge; the same applies to loss or damage caused by other perils, unless the goods were brought to their final destination without delay after their discharge.

(3) These Rules shall apply analogously in so far as goods are conveyed overland or on inland waterways.

## **Part Four - Combined Voyages; Law Applicable; Jurisdiction 125. Combined Sea and Inland Voyages**

### *125. Combined Sea and Inland Voyages*

Where an insurance covers a voyage that is undertaken both by sea and overland or on inland waters these Rules shall apply to the whole combined voyage accordingly.

### *126. German Law Applicable*

German Law shall apply to the relations between the parties, but Statute Law shall apply to marine insurance only in so far as the statutes are binding and unalterable.

### *127. Jurisdiction*

Difference between the parties to an insurance contract shall be settled exclusively before the Court of Underwriters' legal domicile. If, however, the insurance contract was concluded by an Agent at Underwriters' or the Agent's branch office, and such office is domiciled outside the jurisdiction of the court of Underwriters' main domicile, then the contract shall also come under the jurisdiction of the Court of the branch office.