

## 1.0 MARINE HULL INSURANCE

Marine Hull Insurance offers protection to shipowners and other interested parties against loss of or damage to ships and related financial losses suffered including subsidiary interests, e.g., freight, disbursement, liabilities and other allied interests. Insurance relating to War Risks is also available. Insurance of On-shore & Off-shore Oil & Energy related risks are also written in Marine Hull Department.

### 1.0.1 BASIC PRINCIPLES

The following basic principles are applicable for Marine Hull Insurance Contracts (*Refer to section 1.0.1*) :

- Insurable Interest <sup>(1)</sup>
- Indemnity
- Utmost Good Faith
- Subrogation
- Proximate Cause
- Contribution

#### Did you know....

*Marine Hull is an Agreed Value policy and no under-insurance is applicable other than for GA, Salvage, Collision Liability and Sue & Labour*

### INSURABLE INTEREST

The principle of insurable interest is fundamental to hull policy and it would be worthwhile to briefly note the scope different interest groups :

#### **Shipowner's Interest**

- *Hull and Machinery (H&M)* includes body or hull, machinery, tackle, boats, ordinary fittings required for the trade and other equipment; stores and provisions for the officers and crew as well as bunker & engine stores owned by the Shipowner.

- *Subsidiary Interests* normally refer to Freight and Disbursement :

*Freight* refers to the profit that a shipowner may earn from the employment of his ship to carry his own goods or moveables as well as the Freight payable by Cargo Owners/Shippers.

- *Disbursements* refer to the expenses for fitting out a ship preparatory to a voyage including the cost of provisions and stores made available on the board the ship, port dues, expenses of loading and unloading at port of call. Even though these items are nebulous and indescribable

in character, the expenses incurred by the shipowners will a real loss in case the ship itself is lost.

- *Shipowner's Liabilities* may be either contractual or may arise out of tort. Removal of Wreck and Collision liability are the most important risks that fall in this category.

Did you know....  
*By an Express Condition in the Contract, the shipowner may pass on the insurance obligation to the ship's Manager and insurable interest in such case shall vest with the Manager*

### **Charterer's Interest**

Charterer's liability is normally under Demise or Bareboat charter where he takes over full control of the ship from the shipowner and all the liabilities that arise out of the employment of the ship would fall on the Charterer.

### **Ship Builder's Interest**

Until delivery of a newly built vessel to the buyer, the Shipbuilder is on risk for the value of the ship, which increases progressively during the course of construction. Shipbuilders' Risks Insurance protects the builder against any loss or damage to the ship under construction.

### **Ship Breaker's Interest**

Continuously diminishing value of a ship being broken down is at ship-breaker's risks who pays for the full value of the ship, including the period when the vessel is awaiting break-up within port including 'beaching' of the ship at the breaking yard.

### **Ship Repairer's Interest**

A Ship repairer can insure his legal liabilities to shipowner and others.

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[1] *In case of Marine Hull Policy, Insurable Interest must exist at the time of commencement of Policy and **continue without break** throughout the policy period.*

## **1.0.2 SUBJECT MATTER**

Marine Hull insurance encompasses both tangible and intangible subject matters. Any of the following will be the subject matter:

- Hull & Machinery of Ocean-going ships, Inland vessels, e.g. barges, tugs, Passenger launches; Dredgers; Sailing Vessels; Fishing Vessels & Trawlers, etc.
- Construction and Shipbuilding risks;
- Shipbreaking risks;
- Freight and Disbursement;
- Liabilities : Charterer's liability, Ship Repairer's liability;
- Oil Drilling Rigs, offshore platforms and Construction risks;
- War Risks

H&M, Freight, Disbursement and War policies are normally concurrent. Hull policies can be issued either on 'Time' or 'Voyage' basis.

### 1.0.3 PERILS COVERED

A marine hull policy covers perils associated with maritime adventure. In Indian market, coverage is provided as per the clauses devised by the Institute of London Underwriters (ILU). Various versions of Institute clauses are available but for the purpose of this study material, the analysis is kept restricted to the Institute Time Clauses (Hulls) dated 01.10.1983, being most commonly used. These clauses provide widest coverage (and hence often referred to as 'Wider' cover) and consists of 26 individual clauses, as under:

**Risks Covered** : Perils, Pollution Hazard, General Average and Salvage, New for Old, Bottom Treatment, Wages and Maintenance, Agency Commission.

**Risks Excluded** : War Exclusion, Strikes Exclusion, Malicious Damage Exclusion, Nuclear Exclusion

**Amount Payable** : Deductible, Duty of Assured (Sue and Labour), Unrepaired Damage, Constructive Total Loss.

**Collision Liability**: ¾ Collision Liability, Sistership.

**Claims Procedure** : Notice of Claim and Tenders.

**Warranties** : Navigation, Breach of Warranty, Disbursements Warranty.

**Miscellaneous** : Continuation, Termination, assignment, Freight Waiver, Returns for lay up and cancellation.

Did you know....

*Time hull policy is a 'Named Peril' cover whereas Builder's Risk is an 'All Risk' policy*

As will be observed from above, ITC Hulls dated 01.10.1983 does not cover balance 1/4<sup>th</sup> collision liability and wreck removal liability.

ITC Hulls TLO clauses cover only Total / Constructive Total Loss of the ship and, so, partial losses are excluded. Obviously, cover afforded by these

clauses is restricted compared to wider cover. Inland vessels operating within Port areas can be insured under Institute Time Clauses Hulls Port Risks dated 20.07.1987 which affords cover in respect of balance 1/4th collision liability and wreck removal liability, **limited to sum insured**. Such risks are commonly referred to as 'P&I risks' [Refer to Para 1.0.10].

Builder's risk insurance, on the other hand, is an All Risk policy.

#### **1.0.4 SPECIAL PROVISIONS**

Following special provisions are the peculiarities of marine hull insurance as per the Institute clauses :

- *New For Old* : Claims are payable without deduction for depreciation;
- *Lay-up and Cancellation Returns* : If the ship is laid-up in a port, for each period of 30 consecutive days refund of premium is payable. Alternatively, only against policy cancellation refund is allowable; Insurance as per Port Risk clauses is not eligible for lay-up refund. The Insured is required to demonstrate with documentary evidence, called 'lay-up certificate' issued by Ports to claim such refund and now-a-days ships are hardly laid-up, it is a common practice to allow upfront discount in lieu of lay-up refund and the policies are issued on Cancellation Returns Only or CRO terms.
- *Termination* : Unless the insurer agrees in writing in advance, the policy automatically terminates in the event of change in the ship's ownership, Flag, Class, Management, etc. Any loss happening after such termination is not payable.
- *Collision Liability* : The coverage afforded is limited to 3/4<sup>th</sup> of the collision liability of the shipowner or 3/4<sup>th</sup> of the ship's hull & machinery sum insured, whichever is lower. In addition, 3/4<sup>th</sup> of the actual legal expenses incurred with insurer's prior written permission.
- *Unrepaired Damage* : If repairing the damaged ship is not convenient at that time, the shipowner can obtain insurer's agreement for the repairs to be deferred. In such case, the measure of indemnity for unrepaired damage shall be the reasonable depreciation in the market value of the vessel at the time of policy termination arising from such unrepaired damage, but not exceeding the reasonable cost of repairs. So, a surveyor shall be appointed immediately after the loss to ascertain the reasonable cost of repairs and kept as a record.

#### **1.0.5 POLICY PERIOD**

Normally, marine hull time policies 'Annual' Policies. However, short period covers are allowed in special circumstances. Voyage policies are issued for a

specific voyage only and are not common for insurance of ships. In practice, such policies are used for specific purposes, e.g., delivery voyage of a new ship, voyage to repairer's yard or dry dock for class survey or damage repairs, funeral voyage, etc. Builder's risk and Shipbreaking risks being essentially project policy in nature, the policy period covers the entire construction (or breaking-up) period as per respective contracts and, therefore, may even extend beyond 12 months.



*Indian Law permits Quarterly Instalment facility to marine hull policies @25% of annual premium for time policies of minimum 12 month validity. Similarly, Builder's risk policies are also eligible for instalment facility, but **only** when the period of construction is 12 months or over and subject to the provisions of Premium Payment Regulations which, inter-alia, stipulates that the First instalment should be 5% more than the rest.*

### 1.0.6 SUM INSURED

Marine Hull time and voyage policies are issued on Agreed Value basis. As per Marine Insurance Act, 1963, the sum insured fixed by the policy is conclusive and cannot be reopened in the absence of fraud. For Builder's risks insurance, the contract value is the provisional sum insured and the same is subject to adjustment based full contract value or full completed value, whichever is greater.

There is no reinstatement condition in hull policy and the agreed sum insured holds good throughout the policy period. However, if the Insured elects to claim as per unrepaired damage clause of ITC Hull dated 01.10.1983, for the balance period of the policy, the sum insured shall stand reduced to the extent of unrepaired damage.

### 1.0.7 RATING

A number of factors influence the rating of ships. The marine hull insurance business in India is detariffed and, hence, market-driven. The main factors that are taken into consideration in the underwriting and rating of hull risks are:

- *Type and Physical Parameters of Vessels*
  - Tanker, Dry cargo Vessel, Fishing Vessel, Dredger, etc.
  - Construction such as steel built, wooden construction, etc.
  - Age
  - Tonnage (GRT & DWT)<sup>(2)</sup> / Engine power (BHP)<sup>(3)</sup>
  - Method of Propulsion – single engine, double engine, dumb, etc.
  - Single bottom, double bottom, etc.

□ *Trade of the Vessel*

- Operation carried on – Fishing, Towing, Dredging, etc.
- Nature of cargo carried – Dry/bulk, crude, acid, etc.
- Trading Routes and Navigational Limits, weather condition, etc.

*Trading Warranty* is introduced in the policy for insurance of ships clearly defining the geographical area in which the ship is permitted to navigate. In the absence of such warranty, the ship is at liberty to navigate anywhere worldwide increasing the risk exposure and degree of hazard. The Institute Warranty (IWL) dated 20.7.87 is normally used for all ocean-going ships. IWL breaches can be covered at additional premium paid in advance.

□ *Ownership*

- Fleet Characteristics, Size and Management
- Fleet Claims Experience

□ *Classification* : Seaworthiness, quality of maintenance, etc.

*Flag and Registry of the Vessel* : Flag of Convenience (FOC) or not.

□ *Condition of Insurance* : TLO or wider cover, P&I cover, etc.

□ *Sum Insured vis-à-vis Valuation of the Vessel.*

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[2] *GRT or Gross Registered Tonnage of a ship refers to the cubic capacity of all enclosed spaces. NRT or Net Registered Tonnage is the tonnage is obtained by deducting from the gross tonnage spaces for crew, ballast tank, chain space, workshop, etc. This parameter is used for rating cargo carrying ships.*

[3] *BHP or Brake Horse Power refers to the power of the propulsion machinery and is used rating tugs.*

## **1.0.8 EXCLUSIONS**

ITC Hulls dated 01.10.1983 is subject to 4 Paramount Exclusions, viz.,

- War Exclusion<sup>(4)</sup>
- Strikes Exclusion
- Malicious Acts Exclusion
- Nuclear Exclusion

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[4] *Separate policy covering War risks can be purchased by the shipowner covering War and Strikes, etc. risks.*

## **1.0.9 SOME IMPORTANT GENERAL REGULATIONS**

- i. Use of Agreed Bank Clause or any similar Clause is not permitted

- ii. No clause to be incorporated in the policy whereby, inter-alia, seaworthiness of the vessel is admitted

### **1.0.10 PROTECTION AND INDEMNITY CLUB**

A Protection & Indemnity (or P&I) Club is an institute constituted by shipowners who have entered their ships into the club and who have agreed to pool their resources for payment of claims. Conceptually, the Club functions as a 'Mutual' body. The initial premium (known as 'first call') is estimated depending upon the total claim that the Club is likely face and supplementary calls are made from time to time to meet all the claims that are made to the Club till the close of 'Club year'.

It has been noted earlier in Para 1.0.3 (Perils Covered) that certain valid insurable interests are not insured by hull Insurer. The P&I Club protects the shipowner from loss in respect of such interests and covers the following :

1. 1/4th collision liability not borne by hull insurers.
2. Loss of life and personal injury.
3. Damage to harbours, wharves and other objects.
4. Removal of wreck.
5. Infringement of rights.
6. Quarantine expenses.
7. Shipwreck indemnity to crew members.
8. Liability to cargo.
9. Other interests not covered by hull-underwriters.

However, Insurers do underwrite P&I interests in respect of fishing vessels, barges/feeder vessels operating within port water under Port Risks and under construction.

### **1.0.11 CLASSIFICATION OF SHIPS**

A Classification Society is a non-governmental organization that establishes and maintains technical standards for the construction and operation of ships and offshore structures. The society also validates that construction is according to these standards and carry out regular surveys in service to ensure compliance with the standards.

Although, to avoid liability, they explicitly take no responsibility for the safety, fitness for purpose, or seaworthiness of the ship, Hull Insurers rely upon the Classification Society to grade a ship on inspection of her maintenance standard and that of her construction, machinery and equipment.

It was experienced that Flags of Convenience (FOC) have lower standards for vessel, equipment, and crew than traditional maritime countries. International association of Classification Societies (IACS) was founded to maintain a healthy practice in class certification and at present has 13 member countries, including India, as stated below :

ABS	American Bureau of Shipping
BV	Bureau Veritas
CCS	China Classification society
CRS	Croatian Register of Shipping
DNV	Det Norske Veritas
GL	Germanischer Lloyd
IRS	Indian Register of Shipping
KR	Korea Register of Shipping
LR	Lloyd's Register
NK	Nippon Kaiji Kyokai
PRS	Polish Register of Shipping
RINA	Registro Italiano Navale
RS	Russian Maritime Register of Shipping

Did you know....

*A hull time policy is subject Class maintenance condition and any change, suspension, discontinuity, withdrawal or expiry of ship's Class shall automatically terminate the policy, unless agreed otherwise in writing*



**Caution** : Often classes are referred to in an abbreviated form, like IRS. However, there exists a class, also referred to as 'IRS', but stands for International Register of Shipping. This class is not included in the above list.

It is important that all ships are classed with IACS members and the class maintained throughout the currency of the policy period. This requirement is generally insisted and any deviation shall be treated as a breach that may entitle the insurer to avoid liability under the policy. Any suspension, change of class etc. will also terminate the cover. Shipowners must bestow more care to adhere to all the requirements of their classification authorities and maintain ship upto date as per class requirements.

### 1.0.12 WAR RISK

The War and SRCC (including Terrorism) risks are not included in the Institute Time or Voyage clauses, being "Paramount Exclusion". Therefore, risk of loss of or damage to a ship due to war peril needs to be separately insured.

Prior to 2005, all Indian shipowners were to take war and SRCC risks by entering into the Hull War Risks Insurance Scheme of Government of India, 1976. The said scheme was replaced by the presently available GIC Re's scheme, which is essentially the same as the earlier Government scheme and is a reinsurance cover.

This War cover is applicable to (a) all ships registered under Merchant Shipping Act, 1958, (b) ships having mechanical propulsion, (c) ships owned by an Indian, etc.

For war cover, a separate policy is issued under this scheme as per premium rate fixed by GIC Re <sup>(5)</sup>. No stamp duty is payable for this insurance. The hull and war cover run concurrently; stand-alone war cover is not permitted. The sum insured for war cover must be equal to H&M value and Increased Value of the ship. The cover is having restrictions of trading areas.



The War cover provided by GIC Re includes:

A. Loss of or damage to ship's Hull & Machinery caused by :

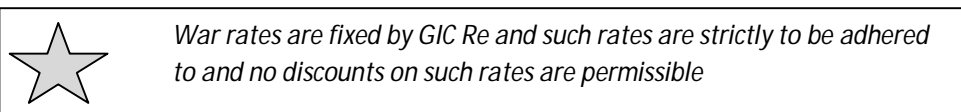
- War or war-like operations
- Weapons of war including atomic weapons
- Capture, Seizure, Arrests, Restraint or detentions
- SRCC and Malicious Act

B. Liabilities and expenses incurred arising from above stated perils, e.g.,

- Protection and Indemnity Risk – Loss of Life & Personal injury
- Protection and Indemnity Risk – Wreck Removal
- Detention and diversion expenses
- Liability to Cargo under contract of Carriage
- Sue & Labour

In the event of a claim, the same is processed by the Insurer and referred to the GIC Re for approval.

For non-Indian flag ships, with specific prior approval, war risks may be insured as per London market terms by 'Institute War and Strikes Clauses'.



### 1.0.13 MARINE HULL CLAIMS

A claim under marine hull policy arise when, by the operation of insured peril any of the following occurs :

#### **Total Loss**

**Actual Total Loss** –As per Marine Insurance act, ATL arises when (a) the ship is destroyed or (b) is so seriously damaged as to cease to be a ship or (c) when the shipowner is irretrievably deprived of her or (d) when the ship has been posted as 'missing'.

**Constructive Total Loss** – As per Marine Insurance act, CTL arises when (a) the ship's actual total loss appears to be unavoidable or (b) when the shipowner is deprived of his ship and her recovery is unlikely or (c) when the estimated cost of recovery is more than the recovered value or (d) when estimated repairing cost is more than the repaired value or (e) when the estimated cost of recovery and repairs of the damage would exceed the ship's insured value.

A 'Notice of Abandonment' must be tendered by the shipowner to the Insurer as soon as it is apparent that the ship is likely to become a CTL. Otherwise, no CTL claim can be allowed. However, such notice should not be accepted but a letter is required to be issued to the shipowner 'as if a writ has been served' on the date.

### **Partial Loss**

- (a) **Particular Average** – PA includes damage due to collision, contract, stranding, grounding, heavy weather, fire, crew negligence etc.
- (b) **General Average** – This includes GA sacrifice, GA expenditure and GA contribution.
- (c) **Salvage Charges** – This comprise the sums paid to salvors.
- (d) **Sue &Labour Charges** – This refers to the charges incurred by the shipowner or his agents in order to avert or minimize a loss that is payable under the policy. The surveyor must confirm that the salvage charges and Sue &Labour charges are fair and reasonable.
- (e) 3/4th **collision liability** claim.

### **Role of Surveyor and Average Adjuster**

Following report of a loss, Insurers appoint surveyor, without admission of liability or "Without Prejudice". In case of GA situation, Collision claim or complicated PA claims, services of Average Adjusters are hired. Internationally, Lloyd's Agents or Salvage Association are often utilized for survey. For losses within Indian waters, local IRDA accredited surveyors with experience in the specific nature of ship or loss are appointed. Normally, the appointment of Average Adjusters is the prerogative of the shipowner, but keeping in view the mutual interests and cost involved, such decisions are generally taken on consultation.

### **Insurer's Checklist for Marine Hull Claims**

- Insurable Interest
- Subject-matter of Insurance – whether risk covered
- Validity of Policy
- Trading Warranty
- Whether peril insured – cause of loss
- Fortuity
- Excluded perils
- Breach of Condition Warranty

- Conduct of Assured – Due Diligence
- Nature of Claim
- Number of Incidents
- Adequacy of Sum Insured
- Other insurance/contribution
- Recourse of recovery under subrogation
- Residual Value
- Costs of expediting/betterment
- Deductible
- Classification
- ISM Code Certification

### 1.0.14 CLAUSES

There are various standard Institute clauses available for marine hull Policy. The relevant clauses are required to be attached to the Policy schedule for complete documentation. A list of commonly used Institute Clauses is given below (for more details, reference may be made to 'Reference Book of Marine Insurance Clauses' published by Witherby:

- Institute Time Clauses Hulls dated 1.10.83
- Institute Time Clauses Hulls (Total Loss, General Average and 3/4ths Collision Liability (including Salvage, Salvage charges and Sue & Labour) dated 1.10.83
- Institute Time Clauses – Hulls Total Loss only (including Salvage, Salvage charges and Sue & Labour) dated 1.10.83
- Institute Voyage Clauses dated 1.10.83
- Institute Voyage Clauses – Hulls Total Loss, General Average and 3/4th Collision Liability (including Salvage, Salvage Charges and Sue & Labour) dated 1.10.83
- Institute Time Clauses – Freight dated 1.10.83
- Institute Voyage Clauses - Freight dated 1.10.83
- Institute Time Clauses- Hulls Disbursements and Increased Value (Total Loss only, including Excess Liabilities) dated 1.10.83
- Institute Time Clauses – Hull Port Risk dated 20.7.87
- Institute Fishing Vessels Clauses dated 20.7.87
- Institute Clauses for Builders Risks dated 1.6.88

## **HULL ISM (INTERNATIONAL SAFETY MANAGEMENT) ENDORSEMENT**

All hull & machinery policies are required to have the following Endorsement:

“In no case shall this insurance cover any loss, damage, expenses and/or liabilities when the vessel insured hereunder is not certified in accordance with the ISM Code and/or the Shipowners or operators do not hold a current ISM Code Document of Compliance in respect of the insured vessel, as required under the SOLAS Convention 1974, as amended, provided that such a loss, damage, expense and/or liability are traceable to non-compliance of the provisions of the Code”.

### **1.0.15 OIL AND ENERGY INSURANCE**

#### **INTRODUCTION**

The insurance of entire spectrum covering oil and gas exploration, drilling, production and allied construction activities both onshore and offshore is the subject matter Oil and Energy portfolio.

#### **SCOPE OF COVER**

The insurance coverage offered encompasses **Physical** loss of or damage to offshore/onshore platforms, pipelines different types of drilling rigs as well as construction of offshore drilling and process platforms. In addition **Third Party Liability** cover for the asset owner and / or field operator for a defined limit of indemnity is also extended. Since the oil exploration and production activity involves huge financial outlay, the borrowings to fund such projects entail large financial cost. This gives rise to the requirements of **Loss of Hire** insurance which provides coverage in respect of Loss of Earnings, hire and / or fixed charges on account of loss of or damage to property due to any peril insured. **Operator’s Extra Expenses** to control a well which has suffered a blow-out and / or gone out of control also needs to be insured.

**Offshore Construction** risks are insured to cover the entire project activity under a single umbrella policy, called a WELCAR Package Policy. This policy covers risks during :

- (a) Procurement, transit and land fabrication,
- (b) Transportation and load out,
- (c) Loading, installation, hook-up and
- (d) Maintenance (for 12 months period),
- (e) Third Party Liability.

**LAST BUT NOT  
THE LEAST**

- In a named peril policy, the onus is on the shipowner to demonstrate and establish that the loss has been proximately caused by the operation of an insured peril. On the contrary, for All risk policy, the onus is on the insurer to establish that an excluded peril had resulted the loss;
- The shipowner may claim partial loss upto the sum insured, subject to deductible, and retain the ship;
- If the Class surveyors so allow, it is the prerogative of the shipowner to decide the time of repairing, providing escalation in cost of repairs is not payable;
- Marine hull insurance is a practice of international nature. All Institute clauses are subject to English Law and practice and hull policies issued in Indian market follow the same practice;

**1.0.16 TEST YOURSELF**

**1. Ownership of a shipowner can be recognized from the following document :**

- (a) Class Certificate
- (b) Registration certificate
- (c) Load line Certificate
- (d) ISM Certificate

**2. When a vessel is not entered in a P & I Club, following normally excluded liabilities may be insured by hull insurer :**

- (a) Wreck removal
- (b) 3/4th collision liability
- (c) War P&I
- (d) Liability to Cargo.

**3. War risk cover is not permitted in following type of hull insurances :**

- (a) H&M Time policy

- (b) Builder's Risk policy
- (c) H&M Voyage policy
- (d) None of the above

4. **GIC Re's War cover is definitely not applicable to ship with :**

- (a) Foreign Ownership
- (b) Foreign Classification Society
- (c) Foreign Flag
- (d) Foreign Financer

5. **The risk 'Piracy' is covered by :**

- (a) Institute Time Policy
- (b) Institute War policy
- (c) Both the above
- (d) None of the above

### **1.0.17 TEST YOURSELF ANSWERS**

1. Correct answer is (b)
2. Correct answer is (a)
3. Correct answer is (b)
4. Correct answer is (c)
5. Correct answer is (a)

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