

## No. 6 2011/2012 - Japan - Update and Frequently Asked Questions

March 2011

Dear Sirs

### Japan – Update and Frequently Asked Questions

#### Introduction

The Club has been getting a number of enquiries from Members and their brokers about risks and insurance implications arising from the earthquake, the resulting tsunami and about nuclear incidents in Japan. The following FAQs are intended to give some guidance in response to those enquiries. They reflect the position at 22 March 2011 and update our Notice to Members No. 4 of 2011/12. They are not intended to be comprehensive.

More detailed enquiries about the matters covered by these FAQs and about the situation in Japan in general may be made to your usual contact at the Managers for handling by our Japan claims and advisory response team.

#### **Q1: Does the P&I insurance provide cover for liabilities, losses, costs and expenses caused by the earthquake and consequent tsunami?**

P&I cover is provided in respect of liabilities, losses, costs and expenses incurred by the Member as a result of the earthquake and consequent tsunami in the same way as in respect of any other naturally occurring event, subject to the Rules and terms of entry for the entered ship.

Under most and perhaps all legal systems the earthquake and tsunami would probably be regarded as “Act of God” or “force majeure”, which may provide a Member with a complete defence to most third party claims, although some contractual claims (for example those by seafarers) may, depending on the terms of the contract, not be subject to such exemptions from liability.

Members are advised to contact the Club immediately in respect of any incident arising from the earthquake and/or tsunami and their aftermath in order to review and assess the scope of cover available and how insured third party claims may be handled under the terms of their cover.

Different considerations apply in the case of cover for nuclear risks as set out in Notice to Members No. 4 of 2011/12. Liability arising from nuclear risks such as may arise from the incidents at the Fukushima power plant is excluded from Club cover by Rule 15 of the Club’s Class 1 Rules, although the Board retains discretion to provide such cover. This exclusion applies to the International Group Pooling agreement and is contained in the Rules of all International Group Clubs. Subject to certain conditions the exclusion does not apply where the Club has issued a guarantee or certificate of financial responsibility under the Civil Liability Conventions of 1969 and 1992 in respect of oil pollution from tankers, the Bunkers Convention of 2001, the STOPIA Agreement for small tankers and the Rules of the Federal Maritime Commission in relation to the carriage of passengers to the United States. The Managers can, as required, provide further details of the effect of these conventions and STOPIA on cover for nuclear risks.

**Q2: A vessel may be scheduled to call at one or more Japanese ports which have been damaged or made inoperable by the earthquake or tsunami or may be hazardous because of nuclear radiation. Will this affect Club cover?**

Members are advised to contact their local agents for updated port information and to stay up to date with media reports. The websites listed as sources of information in Notice to Members No. 4 of 2011/12 may also assist.

Additional guidance has since been published by the United States MARAD and by the United States Coast Guard.

Whether a deviation in the sense of calling at an alternative port to load or discharge cargo or a departure from the customary voyage route may be permissible under the contract of carriage will depend on the facts of each case and the terms of the contract and applicable law. Contract provisions or liberty clauses permitting loading or discharging cargo at another port or a geographical deviation will be particularly relevant.

If the change of port or change of voyage is determined to be a deviation in the sense described above, standard P&I cover may not be available for any resulting liability for loss of or damage to cargo to the extent that the deviation deprives the Member of defences to a cargo claim.

However, special cover can be arranged for cargo liabilities which arise as a result of the deviation and Members are advised to contact the Managers for guidance as to the effect on cover of a change of port or departure from the customary voyage route and whether special cover is required. The Managers should be contacted before the change of port or departure from the customary voyage route occurs, as required by Rule 2 Section 16 proviso (d).

**Q3: Can ports in Japan that have been affected by the earthquake and/or the tsunami, but which are operative be considered unsafe for the purpose of a charter party or contract of carriage?**

Members may wish to consider any charter party obligations in relation to trading a vessel between safe ports and places. Safety in this context would include the physical safety of the port in respect of the vessel's ability to proceed to and depart from it and would include consideration of nuclear radiation risks to the crew, the vessel and its cargo while doing so.

Members who have Class 2 cover may wish to seek advice from the Managers within the scope of that cover.

**Q4: How can the risk of nuclear radiation in Japan be assessed?**

As set out in Notice to Members No. 4 of 2011/12, in addition to information published by the media, the following websites may be of assistance in providing further information relevant to shipping operations:

The International Atomic Energy Agency

Nuclear and Industrial Safety Agency of Japan

Government of Japan Incident Website

Japan Meteorological Agency

Japan Coast Guard Navigation Warnings

Technical guidance in respect of exposure to radiation may be found at the following websites:

IAEA Safety Series No. 115, International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources

International Commission on Radiological Protection (ICRP) and

Japanese Ministry of Land, Infrastructure and Tourism (MLIT)

[radiation information in English from the MLIT can be found using the English version of the site and searching using the keyword “radiation”]

This guidance may be considered together with the MARAD and United States Coastguard advice referred to in Q2.

In relation to exposure to radiation of crews and other personnel it would also be advisable for Members to consult with the vessel’s flag state, as well as the authorities of the state(s) of the nationality of the crew, about obtaining specialist advice on risks to health and measures to prevent and deal with radiation exposure arising from the Fukushima accident or a similar event.

Exposure to radiation of the vessel’s hull is a matter Members may wish to discuss with their hull insurers.

The Club’s correspondents in Japan, Inchape Shipping Services, are continuing to provide general updates about the aftermath of the earthquake and tsunami through the News and Media section of their website.

#### **Q5 Will additional premium be payable for Japanese trade?**

No, but a premium may be payable for arranging any special cover for deviation as may be the case for deviation in regions worldwide.

Yours faithfully

For: **West of England Insurance Services (Luxembourg) S.A.**  
(As Managers)

**R J B Searle**  
Director