

## ANNEX

### OIL POLLUTION INDEMNITY CLAUSE FOR PENALTIES AND FINES

- (a) Subject to the terms of this Charterparty, as between Owners and Charterers, in the event of an oil pollution incident involving any discharge or threat of discharge of oil, oily mixture, or oily residue from the Vessel (the "Pollution Incident"), Owners shall have sole responsibility for responding to the Pollution Incident as may be required of the vessel interests by applicable law or regulation.
- (b) Without prejudice to the above, as between the parties it is hereby agreed that:
- i. Owners shall indemnify, defend and hold Charterers harmless in respect of any liability for criminal fine or civil penalty arising out of or in connection with a Pollution Incident, to the extent that such Pollution Incident results from a negligent act or omission, or breach of this Charterparty by Owners, their servants or agents,
  - ii. Charterers shall indemnify, defend and hold Owners harmless in respect of any liability for criminal fine or civil penalty arising out of or in connection with a Pollution Incident, to the extent that such Pollution Incident results from a negligent act or omission, or breach of this Charterparty by Charterers, their servants or agents,
- provided always that if such fine or penalty has been imposed by reason wholly or partly of any fault of the party seeking the indemnity, the amount of the indemnity shall be limited accordingly and further provided that the law governing the Charterparty does not prohibit recovery of such fines.
- iii. The rights of Owners and Charterers under this clause shall extend to and include an indemnity in respect of any reasonable legal costs and/or other expenses incurred by or awarded against them in respect of any proceedings instituted against them for the imposition of any fine or other penalty in circumstances set out in paragraph (b), irrespective of whether any fine or other penalty is actually imposed.
- (c) Nothing in this Clause shall prejudice any right of recourse of either party, or any defences or right to limit liability under any applicable law.
- (d) Charterers shall procure that this Clause be incorporated into all sub-charters and contracts of carriage issued pursuant to this Charterparty.

## EXPLANATORY NOTES

It is understood that, under the revised Australian law, charterers can be strictly liable for penalties and fines imposed on them as a result of a pollution or threat of pollution caused by the act or negligence of the owner (e.g. navigational error). Conversely, owners can be strictly liable for penalties and fines imposed on them as a result of a pollution or threat of pollution caused by the act or negligence of the charterer (e.g. unsafe berth). As this involves circumstances beyond owners' and charterers' control, a charterparty clause is recommended to achieve the effect that whoever causes the Pollution Incident should bear the criminal fines or penalties through indemnification.

Under the clause, owners have overall responsibility for responding to a discharge or threat of discharge of oil, oily mixture or oily residue (subparagraph (a)). This is in line with the Australian legislation and with the international compensation regime.

The indemnity in subparagraphs (b) i. and ii. is designed to protect owners and charterers by incorporating an equal indemnity by the party whose negligent act or omission, or breach of charterparty, causes pollution or threat of pollution.

The proviso to subparagraphs (b) (i) and (ii) ensures that club cover is not prejudiced on the grounds that liability has been contractually assumed by virtue of the clause in circumstances where there may not be an underlying legal liability. The proviso restricts the amount of recovery where there is contributory fault. The recovery of fines under the clause is also subject to such recovery not being prohibited under the law governing the charterparty.

The indemnity in this clause extends to the recovery of any reasonable legal costs and/or other expenses incurred by or awarded against either party in respect of any proceedings instituted against them for the imposition of any fine or other penalty in circumstances set out in subparagraph (b,) irrespective of whether any fine or other penalty is actually imposed.

The indemnity in this clause will not respond to the situation where the pollution or threat of pollution is entirely caused by a third party's act, without involving any act of the owner or of the charterer, but where the owner or charterer still incurs the penalty or fine under the new Australian law.

The clause only addresses the specific situation of criminal fines and civil penalties, not civil liability which is within the sphere of the Conventions.

Any right of recourse of either party, defence or right to limit is preserved under subparagraph (c).

Subparagraph (d) is designed to ensure that the same recovery and indemnity provisions apply where there is a charterparty chain.