

# **IOPAI**

## **LIBERTY AND DEVIATION CLAUSE for Contracts of Carriage**

Hague Visby rules Article IV (4) provides for vessel deviation provided it is “reasonable”. For e.g: A deviation to save or attempt to save life or property at sea is considered reasonable, whereas deviating for the purpose of crew change is not reasonable.

A deviation is a breach from the contract of carriage between the cargo owner and the carrier. It is an implied condition of contract of carriage that there will be no unjustifiable departure from the contractual voyage.

As far as this Association is concerned any unreasonable deviation of the vessel from the contract of carriage as evidenced by the Bills of Lading prejudices a member’s cover and any liability for loss or damage to the cargo that arises during the deviation will not be covered. Other liabilities or expenses which fall within the club rules will still be covered during the deviation.

When members are required to deviate their vessel from contract of carriage appropriate notice of the intended deviation need to be given to the club’s manager, the latter then determines whether they will carry the risk or whether specific additional insurance cover should be arranged for its member on this account.

Where the charterer's request the owner/member to deviate for charterer's purpose, it is important to observe that the members are not obliged to give their consent to such requests for deviation from the charterer's, however due to commercial reasons the members agree to the charterer's request to deviate, the charterer's are required to indemnify the member against any claims by cargo owners and/or bill of lading holders as a request of making the deviation. Members are reminded that the LOI replaces members cover for cargo damage during the period of deviation.

If the deviation is reasonable then it is fundamentally a P&I liability, therefore if it was not reasonable then as additional insurance needs to be taken out on the back of the P&I cover.

Members need to take above into consideration whilst negotiating a charter party and during vessels transits to ensure that the Liberty/Deviation clause agreed commercially are not in conflict with the English Law position.