Question(s):

What is (defined as) a mandatory esg cost? If an owner risks being non-compliant with FuelEU if improvements for fuel efficiency are not undertaken - is it a "mandatory" repair?

Answer:

“Mandatory” ESG cost should generally mean ESG-related work or costs required by applicable law, regulation, class requirements or other binding requirements. Such work would normally not be treated as voluntary ESG-related work under Clause 12-14.

Clause 12-14 is aimed at voluntary ESG-related improvements carried out during casualty repairs. The work must go beyond statutory or classification requirements in force at the start of the repair period, and must not be reasonably expected to become mandatory within the next twelve months.

For FuelEU Maritime or similar requirements, the answer will depend on the specific facts, including whether the measure is legally required at the relevant time, whether there are alternative ways to comply, and whether it is expected to become compulsory within twelve months.

The provision is not intended to shift ordinary compliance costs to insurers, but to remove a disincentive to voluntary ESG improvements while preserving the basic risk allocation.