



Nordic Marine Insurance Plan – allocation between marine and war perils

During the latest revision of the Nordic Marine Insurance Plan, it was agreed to restrict the war risk cover to politically motivated interventions, with state interventions falling outside the war risk cover included in the marine insurance cover.

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The Nordic Marine Insurance Plan (NMIP) is a document agreed between Nordic insurers and Nordic shipowners through the mechanism of a Standing Revision Committee. The roots of the current Plan go back to the first Norwegian Plan of 1867.

The current Plan, the Nordic Marine Insurance Plan 2013, provides cover for all traditional marine insurances other than P&I. The NMIP, and its Commentary, are subject to regular revision in 3-year cycles. Recently, the 2019 revision of the NMIP was approved by all parties and the document officially published for use by insurance practitioners. The amendments in the 2019 version range from small clarifications in clauses to more substantial re-writing of individual clauses. A full overview can be found on the official webpage of the NMIP, www.nordicplan.org.

The most substantial clarification was made in relation to clauses 2-8 and 2-9 which deal with the division between marine and war perils. The NMIP is an all-risk insurance contract where the perils covered by the war-risk insurance are specified, while the range of perils covered by the insurance against marine perils is negatively defined covering any other form of perils to which the interest is exposed. The revisions aimed at clarifying the cover under cl. 2-8 (b) which provided that “*intervention by State power*” was excluded from the marine cover. Unfortunately, this clause was complemented by uncertain language in related clauses, in particular cl. 2-9, as well as in the commentary to the NMIP and had caused a high degree of discussion in several cases. Over the last years insurers also noted a rising trend of vessels being captured or detained in ports without it being obvious whether the motivation was law enforcement or whether there were other political motives. A number of disputed cases around these topics have been reported including vessels B ATLANTIC in Venezuela, SIRAIN in Nigeria, and POAVSA ACE in Algeria.

In pursuit of a clearer and more practical solution, the insurers agreed that state interventions that fell outside the war risk cover should be included in the marine insurance cover. While the war risk cover would continue to be restricted to politically motivated interventions.

The new structure can be broken down into three types of interventions:

Political risks

There are several actions which a state power can take against a vessel for national political reasons. In the NMIP a specific reference is made to capture at sea, confiscation, expropriation and similar interventions. To the extent that such actions are taken by the vessel's own state neither marine nor war risk insurers will provide cover. The expectation is that own state administration will voluntarily compensate the owners for the use of the vessel. However, if the same actions are taken by a foreign state power war risk insurance will provide cover for any resulting losses. The important clarification made is that for war insurance to respond it will always be a requirement that the actions against the ship were motivated by the furthering of an overriding national or supranational political objective.

Requisition

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A new specific exclusion of requisition by state power was inserted into the marine cover and the war cover. The Commentary to the NMIP notes that neither Nordic nor English law has a clear definition of requisitions. However, it is made clear that there is an understanding that requisition is something else than expropriation. For cases of requisition there is an expectation that formal legal procedure will be followed prior to the vessel being requisited. If the vessel is registered in one of the Nordic countries it must be expected that the State will pay compensation if they take over the vessel for ownership or use regardless of the motive for the requisition, and it is therefore not natural to cover this under the insurance.

General law enforcement

There may also be situations where a vessel is detained or captured without a supranational political objective. This would typically occur because of a breach, or investigations into breaches, of regulations concerning customs, pollution, safety of navigation or similar state legislations. A vessel may be retained for unjustifiably long periods of time during such investigations. In such situations, there is not a specific exclusion and therefore claims from such interventions will be covered by the general all-risk principle of the NMIP. There are, however, two specific clauses which should be borne in mind. Cl. 3-16 makes it clear that losses resulting from the use of a vessel for illegal purposes are not recoverable from the insurers. This is a general limitation of cover with a clear public policy rationale behind it and does not apply to breaches where the shipowner acted in good faith. In addition, Cl. 2-8 (d) excludes cover for any losses resulting from state interventions consequential on the assured's insolvency or lack of liquidity.

The Committee reviewing the NMIP also looked at other clauses which are applicable in to interventions by a state power. An important change was made to the time that the vessel owner will be required to wait from the date of an intervention by a foreign state until being able to claim a total loss of a vessel under the war insurance cover. This time has been reduced from 12 to 6 months. A shorter time limit is an apparent advantage for an owner who has found himself in an unfortunate and difficult situation.

In summary, it is hoped that these changes will clarify the scope of cover war cover while providing broader cover under the marine conditions. It should nevertheless be stated that clauses 2-8 and 2-9 are designed as a co-ordinated system and owners wishing to purchase marine or war cover on a different set of rules should carefully investigate the exact scope of the cover they are buying.

We thank Nic Wilmot for valuable input to the above article.

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