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The Nordic Marine Insurance Plan 2013

Version 2019, Cl. 2-8 and 2-9



Background



- The previous regulation unclear about
 - The exclusion for State intervention in 2-8:
 - Wording: «intervention by a State power»
 - Commentary: some interventions were covered
 - Several other confusing remarks in the Commentary
 - The cover for capture at sea/confiscation in 2-9
 - Political motive?
 - Expropriation:
 - as «other similar interventions» (covered)
 - or requisition (excluded)



Background

- Trend that vessels are captured/detained in foreign ports without clear legal basis
 - *B Atlantic* in Venezuela,
 - *Sira* in Nigeria,
 - *Poavosa Ace* in Algeria
- From a Nordic perspective:
 - Misuse of power/corruption
 - Need for extended cover
 - Within the framework of Cl. 3-16





The compromise

- Extend the marine insurance cover for State interventions
- Narrow and/or define war risk cover for politically motivated interventions
- No amendments in losses covered, i.e. war risk cover still better than marine risk cover
- But: Time limit to establish total loss according to 15-11 reduced from 12 to 6 months.

New text NP Cl. 2-8 (b)

An insurance against marine perils covers all perils to which the interest may be exposed, with the exception of:

....

- (b) capture at sea, confiscation, expropriation and other similar interventions by own State power provided any such intervention is made for the furtherance of an overriding national political objective. Own State power is understood to mean the State power in the vessel's State of registration or in the State where the major ownership interests are located. Own State power does not include individuals or organisations exercising supranational authority,**
- (c) requisition by State power,**
- (d) insolvency or lack of liquidity of the assured or the operation of ordinary legal process to enforce payment of any fine, penalty, debt or right to security unrelated to a claim or liability covered by the insurance,**

New text Cl. 2-9 sub-clause 1 (b)

capture at sea, confiscation, expropriation and other similar interventions by a foreign State power, provided any such intervention is made for the furtherance of an overriding national or supranational political objective. Foreign State power is understood to mean any State power other than own State power as defined in Cl. 2-8 (b), second sentence, as well as organisations and individuals exercising supranational authority or who unlawfully purport to exercise public or supranational authority,

New text Cl. 2-9 sub-clause 2 (a) / (c)

The insurance does not cover:

- (a) insolvency or lack of liquidity of the assured or the operation of ordinary legal process to enforce payment of any fine, penalty, debt or right to security unrelated to a claim or liability covered by the insurance,**
- (b)**
- (c) requisition by State power.**

New structure: 5 groups of interventions

1. Political risk/war risk – 2-8 (b)/2-9(1) (b)
2. Requisition – 2-8 (c)/2-9(2) (c)
3. State intervention in relation to illegal undertakings excluded by 3-16
4. State intervention in the operation of ordinary legal process to enforce fine etc., 2-8 (d)/2-9(2) (a)
5. All other state interventions: covered by 2-8

1. Political risk/war risk



- capture at sea, confiscation, **expropriation** and other similar interventions by ... State power, **provided any such intervention is made for the furtherance of an overriding ... political objective.**
- By **own State** excluded in Cl. 2-8 (b)
- By **foreign State and supranational power** covered in Cl. 2-9 (1) (b)



1. Political risk/war risk



- Expropriation added as new concept and distinguished from requisition
- for the furtherance of an overriding ... political objective
 - Cf. previous Commentary to “other similar interv”.
 - Cf. the Sira case based on previous arb cases
- Supranational power moved from 2-8 to 2-9
- «Capture at sea» clarified in Commentary

2. Requisition

- Excluded in 2-8 (c) and 2-9 (2) (c)
- Previous wording confusing
- Concept clarified in Commentary as typically
 - according to legislation in national interest
 - with formal procedures
 - by own state
 - for ownership or use
 - against compensation and cover for damages



3. State intervention in relation to illegal undertakings excluded by 3-16

- No new regulation
- According to 3-16 the insurer is not liable for
 - damage caused by illegal undertakings or
 - damage if vessel primarily used for illegal purposes
 - with the assureds knowledge
- State intervention in this regard not covered
- The assured in good faith = covered



4. Cl. 2-8 (d)/2-9 (2) (a)



- “the operation of ordinary legal process to enforce payment of any fine, penalty, debt or right to security unrelated to any claim or liability covered by the insurance”
- Limited scope
 - not proceedings related to public law matters (the enforcement of customs or trading regulations)
 - Process will not normally cause damage or loss

5. All other state interventions

- All state interventions not
 - covered by 2-9 (b) or
 - excluded by 2-8 (b)/(c)/(d), 2-9(2) (a)/(c) or 3-16
 - **are covered by the all risks principle**
- Includes
 - all interventions
 - for breach of any rules provided the assured is in good faith
 - misuse of power/corruption/extortion by any state



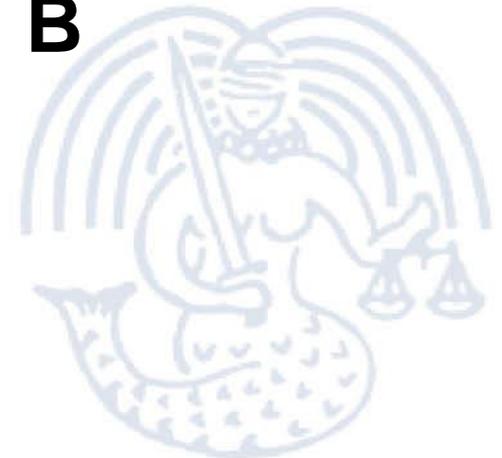


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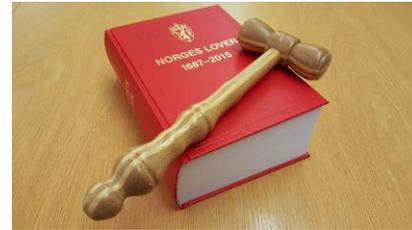
Version 2019, Cl. 1-4 A and B



Background



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- NP 1-4 Jurisdiction and choice of law
 - Refers to ordinary court proceedings
 - Regulates jurisdiction for Nordic claims leaders
 - But not jurisdiction for non-Nordic claims leaders
- No arbitration clause in previous NP
- But many cases solved by arbitration
- Agreed
 - that arbitration clause convenient
 - but only for non-Nordic claims leaders

Overview of the new regulation

- CI 1-4 continued in 1-4A for Nordic claims leaders
- For non-Nordic claims leaders it is agreed that 1-4B shall apply, cf. 1-4A (2)
- If Nordic claims leaders agree on arbitration, CI 1-4B applies
- CI 1-4B refers to Nordic Offshore and Maritime Arbitration Associations rules etc.

NP CI 1-4A (2); non-Nordic claims leaders

If insurance based on this Plan is effected with a Nordic claims leader, it is agreed that legal proceedings against the claims leader concerning any matter, dispute or disagreement of any kind which may arise during or in connection with or which in any way concerns the insurance contract, may only be instituted before the courts in the venue where the head office of the claims leader is located and on the basis of the law of the venue of the claims leader, and that law shall apply exclusively.

If insurance based on this Plan is effected with a non-Nordic claims leader, it is agreed that Clause 1-4B on arbitration applies.

The co-insurer(s) may be sued in the venue of the claims leader.

Any changes in the terms of the agreement set out in sub-clause 1 must be in writing.

CI 1-4B (1) and (2) The Arbitration Clause

If the parties have agreed in writing that disputes shall be referred to arbitration, the following applies instead of CI. 1-4A:

Any dispute arising out of or in connection with this insurance contract, including any disputes regarding the existence, breach, termination or validity hereof, shall be finally settled by arbitration under the rules of arbitration procedure adopted by the Nordic Offshore and Maritime Arbitration Association (Nordic Arbitration) and in force at the time when such arbitration proceedings are commenced. Nordic Arbitration's Best Practice Guidelines shall be taken into account.

1-4B (3); Nordic claims leader

- Place of arbitration = the place where the head office of the claims leader is located
- The law of this place shall be applied exclusively.
- Conforms to the regulation in CI 1-4A (1).



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1-4B (4); Non-nordic claims leader

If insurance based on this Plan is effected with a non-Nordic claims leader, the place of arbitration shall be Oslo if another place is not agreed.

Norwegian law shall be applied exclusively. If the parties have agreed to arbitration in another Nordic country, the law of the place of arbitration shall be applied exclusively. If the parties have agreed to arbitration in a non-Nordic country, Norwegian law shall be applied exclusively.

Non-nordic claims leader

- No agreement:
 - Place of arbitration = Oslo
 - Norwegian law
- Agreed arbitration in other Nordic country
 - The law of this place applies
- Agreed arbitration in non-Nordic country
 - Norwegian law applies

