



Nordic Offshore Wind Insurance Conditions

Version 0.1 – September 3, 2025

Based on the Nordic Marine Insurance Plan of 2013



Nordic Offshore Wind Insurance Conditions (NOWIC)

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Chapter 1

General rules relating to the scope of the insurance

Clause 1-1. Application of the Nordic Marine Insurance Plan and Commentaries

The rules in the Nordic Marine Insurance Plan of 2013, Version 2023 ('the Plan'), Part One, including the Commentary to the Plan, shall apply, except for the Clauses set out in Cl. 1-2 or where expressly amended as per Cl. 1-3 Commentaries to Clauses tailored for the NOWIC wording shall be considered an integrated part of the NOWIC wording.

Any reference in the Plan Part One to provisions in the Plan Part Two, Three or Four shall be replaced with the corresponding provisions in this NOWIC wording.

Any reference to vessel in the Plan Part One shall be replaced with object insured, except where it is a reference to a vessel being specific for the relevant project.

Any disputes arising out of or in connection with this agreement shall be finally settled by arbitration as per the Plan Cl. 1-4B.

Clause 1-2. Rules not to apply

The following rules in the Plan, Part One shall not apply:

- (a) *Right of the insurer to obtain particulars from the vessel's classification society, etc.* /Ref. the Plan Cl. 3-7: Cl. 3-7 shall not apply.
- (b) *Alteration of the risk*/Ref. the Plan Cl. 3-8: Cl. 3-8, sub-clause 2, shall not apply.
- (c) *Loss of the main class*/Ref. the Plan Cl. 3-14: Cl 3-14 shall not apply.
- (d) *Trading area*/Ref. the Plan Cl. 3-15: Cl. 3-15 shall not apply.
- (e) *Right of the insurer to demand a survey of the vessel*/The Plan Cl. 3-23: Cl. 3-23 shall not apply.
- (f) *Vessels laid up*/The Plan Cl. 3-26 shall not apply.
- (g) *Premium in the event of total loss*/The Plan Cl. 6-3: Cl. 6-3 shall not apply.
- (h) *Reduction of premium when the vessel is laid up or in similar situations*/The Plan Cl. 6-6 shall not apply.

Clause 1-3. Rules amended

The following rules in the Plan, Part One are amended as follows:

- (a) *The area of operation*/Ref. the Plan Cl. 3-15: The designated offshore location for the windfarm shall be set out in the insurance contract. The Plan Cl. 3-15 shall not apply.

(b) *Change of ownership*/The Plan Cl. 3-21 is amended to read: The insurance terminates 14 days from the ownership of the windfarm changes by sale or in any other manner. If a casualty occurs in these 14 days the new owners' interests will be covered for losses resulting from this casualty.

(c) *Safety regulations*/Ref. the Plan Cl. 3-22.

The Plan Cl. 3-22, sub-clause 1, is amended to read: A safety regulation is a rule concerning measures for the prevention of loss, issued by public authorities, stipulated in the insurance contract or prescribed by the insurer pursuant to the insurance contract.

The Plan Cl. 3-22, sub-clauses 2 and 3 are deleted.

(d) *Identification*

Cl. 3-36. Identification of the assured with its servants. Sub-clause 1 is deleted.

Clause 3-37. Identification of two or more assureds with each other

The insurer may not invoke against the assured faults or negligence committed by another assured, or anyone with whom they may be identified under Cl. 3-36, sub-clause 2, unless the relevant assured has overall decision-making authority for the construction or operation of the windfarm.

(e) *Chapter 9 Relations between the claims leader and co-insurers*

Definitions/Ref. the Plan Cl. 9-1: The terms "*claims leader*" in the Plan is amended to "Leading insurer" which means the insurer who, at the time the insurance contract is entered into, is defined as Leading insurer. The Leading insurer has the authority stipulated in this NOWIC Wording, the specific insurance contract and as set out in the Plan Chapter 9 with the following amendments:

The Plan, Cl. 9-3 is deleted.

Clause 1-4 The system of perils insured.

Unless otherwise agreed, the insurance cover based on Chapter 2 to 5 covers all perils to which the interest may be exposed, with the exception of:

- a. war perils in accordance with the Plan Cl. 2-9.
- b. any intervention by any state power, as well as organisations and individuals exercising supranational authority or who unlawfully purport to exercise public or supranational authority, regardless of the type or purpose of the intervention. Measures taken by a state power for the purpose of averting or limiting damage shall not be regarded as an intervention, provided that the risk of such damage is caused by a peril otherwise covered by this insurance.
- c. any malicious act of any person.
- 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.

- e. perils covered by the RACE II Clause:
1. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel,
 2. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof,
 3. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter,
 4. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes,
 5. any chemical, biological, bio-chemical, or electromagnetic weapon.

Clause 1-5. Combined single limit for the construction insurance

If the insurance contract states a combined single limit for the construction insurance this will be the aggregate sum insured for all interests insured under the construction insurance resulting from any one casualty, cf. Chapter 2 and Chapter 3.

Clause 1-6. Combined single limit for the operation insurance

If the insurance contract states a combined single limit for the operation insurance this will be the aggregate sum insured for all interests insured under the operation insurance resulting from any one casualty, cf. Chapter 4 and Chapter 5.

Chapter 2
Construction risk property insurance

Section 1
General rules relating to the scope of construction risks insurance

Clause 2-1. Outline of the covered activities

This Chapter 2 covers construction activities for an offshore windfarm – “the Construction Project”. In addition, it covers operation of Units until completion of the Construction Project.

Clause 2-2. Assured and co-insured

The insurance is effected for the benefit of the person effecting the insurance and others named as Principal Assured in the insurance contract covering these persons interests within the scope and overall limits of the insurance. The insurer does not have any right of subrogation against a Principal Assured.

The insurance is also effected for the benefit of third parties from the time such third party is awarded a contract related to the Construction Project, unless otherwise agreed in the applicable contract. The starting point is that insurance covers the co-insured third parties interest within the scope and overall limits of the insurance and that the insurer does not have any right of subrogation against such co-insured third party. The co-insured third party shall, however, have no benefit under the insurance or protection against subrogation to the extent that the co-insured third party has undertaken an express contractual obligation towards an assured to remain liable for losses covered by the insurance. If the co-insured third party’s claim is covered by an insurance effected by the third party, cover under this sub-clause is subsidiary to that insurance.

Objects manufactured or procured for the Construction Project attaches to the insurance from the time the object is clearly identified for the Construction Project and the risk is transferred to an assured (or any Principal Assureds) as per sub-clause 1 or a co-insured third party as per sub-clause 2.

A claim for compensation or return premium under this insurance may only be exercised through the person effecting the insurance and shall only be payable to other assureds by order of the person effecting the insurance, except for mortgagees being co-insured based on the Plan Chapter 7.

Clause 2-3. Objects insured and insurable value

The insurance covers the following Units:

- a. the wind turbine, its foundation or floater, mooring and anchoring systems, and temporary installations related thereto being a part of the construction work;

- b. offshore sub-stations, including their mooring and anchoring systems, and temporary installations related thereto being a part of the construction work;
- c. onshore sub-stations and temporary installations related thereto being a part of the construction work;
- d. other components, equipment, spare parts and materials manufactured or procured for the Construction Project.

The Units set out above in letter a) shall be considered to include a pro rata share of the inter array cables, while the Units set out in letters b) and c) shall be considered to include a pro rata share of the export cables. The construction risks insurance also covers damages to such cables where there is no damage to the Units set out in letters a), b) and c), and then the said pro rata shares apply accordingly.

The insurance does not cover Contractor's vessel, plant and equipment, which do not form a permanent part of any Units.

The number of Units shall be listed in the insurance contract with their agreed values at completion of construction.

For a total loss prior to completion of a Unit, the insurable value constitutes the value under sub-clause 3 with deductions for un-incurred or revocable costs of works, components, equipment and materials to the Unit, cf. Section 2b.

Clause 2-4. The limit of the liability of the insurer

The sum insured for loss or damage caused by any one casualty to a Unit of the Construction Project is limited to the agreed value of the Unit scheduled as per Cl. 2-3, sub-clause 4.

The insurer is also liable up to the agreed value of the Unit for the costs of measures taken to avert or minimise loss arising in connection with the casualty as per the Plan Chapter 4, Section 2.

If the insurance contract states a Property Single Limit, this shall be the aggregate sum insured for all loss on all interests insured under the construction risk property insurance as per Chapter 2 resulting from any one casualty. The Plan Cl. 4-18 shall not apply.

Clause 2-5. Escalation

If the value of a completed Unit at any point of time during the Construction Project exceeds the agreed values listed as per Cl. 2-3, sub-clause 3, the agreed value of the respective Unit shall be automatically increased to its actual value, with a corresponding adjustment of the sum insured as per Cl. 2-4, sub-clause 1. The person effecting the insurance shall declare the new values to the insurer without undue delay and latest prior to expiry of the insurance period for the construction risks insurance. The

incremental premium payable due to the escalation shall be based on agreed contract rates and shall be calculated pro rata on the value increase.

Under no circumstances shall the final completed value of a Unit exceed 125 % of the original agreed values unless the insurers have given prior approval of the increase and agreement on the conditions for such an increase has been reached.

Clause 2-6 Serial Defect Limitation

If several Units or parts thereof have been lost or damaged as a result of the same error in design, faulty material or faulty workmanship, the insurer’s liability is limited according to the scale set out below and agreed in the insurance contract.

Units	Percentage
First [X] damaged Units	100% of the indemnifiable claim
Next [X] damaged Units	75% of the indemnifiable claim
Next [X] damaged Units	50% of the indemnifiable claim
Thereafter	0% of the indemnifiable claim

For the purpose of this clause each part of the cable shall be considered as a separate Unit. If the number of damaged parts exceed the number of Units having a pro rata share of the cable as per Cl. 2-3, the total indemnifiable claims shall be divided on these Units for the purpose of applying the schedule.

The limitation applies before application of the deductible(s).

Damage to Units shall be indemnified in the chronological order that follows from the application of the Plan Cl. 2-11.

Clause 2-7. Insurance period

The insurance period commences at the date stipulated in the insurance contract. The Plan Cl. 1-5, sub-clause 1 and 2 applies accordingly.

The insurance remains in effect until the date stipulated in the insurance contract as the completion of the Construction Project. If actual completion is delayed, the insurance will automatically be extended until the actual date of completion, subject to an additional premium calculated pro rata of the premium agreed for the initial insurance period. The automatic extension will not exceed 6 months.

If it has been agreed that the insurance shall attach for a period longer than one year, the insurance period shall nevertheless be deemed to be one year in relation to the Plan Cl. 2-2, Cl. 2-11, Cl. 5-3, last sub-clause, Cl. 5-4, sub-clause 3, Cl. 6-3, sub-clause 1.

The insurer shall not be liable for any loss where notice of the casualty is not given within 2 years after expiry of the insurance period.

Clause 2-8. Place of insurance

The insurance is in effect anywhere in the world, subject requirements set out in sub-clause 2.

All locations of main yards, workshops and/or work sites for construction and assembling of the Unit's main components shall be agreed with the Leading insurer. Any change of such location shall be notified to and agreed by the Leading insurer.

Clause 2-9. Safety regulation

Prior to commencement of Construction Project activities, a marine warranty surveyor approved by the Leading insurer shall be appointed, and the Principal Assured and the Leading insurer shall agree on the scope of work of the marine warranty surveyor. The marine warranty surveyor's recommendations, requirements or restrictions shall be regarded as special safety regulations in relation to the Plan Cl. 3-25, sub-clause 2.

If insured objects are to be transported and the agreed scope of work as per sub-clause 1 does not apply, the assured shall ensure that the means of transport is suitable and that the objects are packed and protected to withstand ordinary foreseeable stresses during transport. This is a special safety regulation in relation to the Plan Cl. 3-25, sub-clause 2.

Section 2a
Loss of or damage to the object insured

Clause 2-10. Damage

If a Unit or parts thereof have been lost or damaged and the rules concerning total loss in Cl. 2-23 are not applicable, the insurer is liable for the costs of repairing the loss or damage in such a manner that the Unit is restored to the condition it was prior to the occurrence of the damage.

If repairs are carried out by a party who is awarded a contract related to the Construction Project, recoverable costs will be limited to the lowest of the pre-agreed contract rates or the costs of repairs tendered by another repairer.

If the repairs have resulted in special advantages for the assured because the Unit has been strengthened or the equipment improved, a deduction from the compensation shall be made limited to the additional costs caused by the strengthening or the improvement.

Liability arises as and when the repair costs are incurred.

Clause 2-11. Unrepaired damage

If repairs have not been carried out, the assured may claim compensation calculated based on the estimated cost of repairing the damage. Such compensation shall also include common expenses, except that only 50% of estimated removal, quay hire and installation costs are recoverable.

The insurer is not liable for unrepaired damage if the assured is entitled to compensation for total loss under Cl. 2-23.

Clause 2-12. Wear and tear, etc.

The insurer is not liable for costs incurred in renewing or repairing a part that is in a damaged condition as a result of ordinary wear and tear, ordinary corrosion, or inadequate maintenance.

Clause 2-13A. Option I – Limitation of cover for error in design, faulty material or faulty workmanship

Subject to explicit agreement, the insurer is not liable for costs incurred in renewing or repairing a damaged part which were not in a proper condition as a result of error in design, faulty material or faulty workmanship.

Clause 2-13B. Option II – Exclusion of cover for error in design, faulty material or faulty workmanship

Subject to explicit agreement, the insurer is not liable for loss or damage as a result of error in design, faulty material or faulty workmanship.

Clause 2-14. Losses that are not recoverable

This Section 2a shall not cover:

- a. general financial loss or losses resulting from delays, or
- b. ordinary expenses connected with the running of completed Units during the period of repair, or
- c. loss of electronically stored data.

Clause 2-15. Deferred repairs

If the repairs have not been carried out within five years after the damage was discovered, the insurer is not liable for any increase in the cost of the work that is incurred later.

Clause 2-16. Temporary repairs

The insurer is liable for the costs of necessary temporary repairs when permanent repairs cannot be carried out at the place where the Unit is located.

If temporary repairs of the damaged object are carried out in other cases, the insurer is liable for costs up to the amount it saves through the postponement of the permanent repairs.

Clause 2-17. Survey of damage

Before any damage is repaired, it shall be surveyed by a representative of the assured and a representative of the insurer.

The representatives shall submit survey reports, in which they describe the damage and state their opinions as regards the probable cause of each individual item of damage, the time of its occurrence and the costs of repair.

If one of the parties so requires, the representatives shall, before the damage is repaired, submit preliminary reports in which they give an approximate estimate of the costs of repairs.

If there is disagreement between the representative of the assured and the representative of the insurer, the parties may appoint an umpire who shall give a reasoned opinion of the questions submitted to him. If the parties cannot agree on the choice of an umpire within 30 days from the time an umpire was first requested by one of the parties, the Nordic Offshore and Maritime Arbitration Association's Board of Directors shall appoint the umpire.

Neither the assured nor the insurer may petition for a judicial valuation of the damage, unless this is required by the laws of the relevant country.

If the assured, without compelling reasons, has the Unit repaired without any survey being held or without notifying the insurer of such survey, it has, in addition to the burden of proof under Cl. 2-12, the burden of proving that the damage is not attributable to causes not covered by the insurance.

Clause 2-18. Invitations to tender

The Leading Insurer may request that tenders be obtained from repairers of his choice. If the assured does not obtain such tenders, the insurer may do so.

Clause 2-19. Choice of repairers

The tenders received shall, for the purpose of comparison, be adjusted by the costs of removal being added to the tender amount.

The assured decides which repairers shall be used, but the insurer's liability for the costs of repairs and removal is limited to an amount corresponding to the amount that would have been recoverable if the lowest adjusted tender had been accepted.

If the assured, because of special circumstances, has justifiable reason to object to the repairs being carried out by one of the repairers that have submitted tenders, he may demand that the tender from that repairer is disregarded.

Clause 2-20. Removal for repairs

Subject to the limitation that follows from Cl. 2-19, the insurer is liable for the costs of moving the Unit to the repair location and back to the relevant location.

The insurer may disclaim any liability during the removal in accordance with the Plan Cl. 3-20.

Clause 2-21. Apportionment of common expenses

Expenses incurred which are common to repair work for which the insurer is liable and other work which is not covered by the insurance, shall be apportioned on the basis of the cost of each category of work. However, common expenses which depend on the length of the period of repairs shall be apportioned on the basis of the time that the recoverable and the non-recoverable work would have required if each category of work had been carried out separately.

Clause 2-22. Deductible

For each casualty the amount stated in the insurance contract shall be deducted.

Damage or loss to each insured Unit shall be considered to be a separate casualty.

Damage caused by the same atmospheric or geological disturbance, up to a limited period of 72 consecutive hours, shall be regarded as a single casualty.

Damage or loss to multiple Units caused by a continuous event involving the same vessels, floating equipment or other floating objects, shall be regarded as a single casualty.

Costs in connection with the claims settlement, cf. the Plan Cl. 4-5 and loss arising from measures to avert or minimise the loss, see the Plan Cl. 4-7 to the Plan Cl. 4-12, are recoverable without any deductible.

Section 2b
Total loss

Clause 2-23. Total loss

In the event of a Unit being a total loss, the assured may claim payment of the sum insured of the Unit, but not in excess of the Unit's insurable value as per Cl. 2-3, sub-clause 4.

A Unit is considered a total loss if:

- a. it is lost without there being any prospect of it being recovered, or
- b. it is damaged and cannot be repaired, or
- c. the estimated cost of repairs amount to more than 100% of the insurable value of the Unit as per Cl. 2-3, sub-clause 4, or 80% of the sum insured of the Unit, whichever is the lower value.

No deductions shall be made for unrepaired damage sustained in connection with an earlier casualty, as long as it has not already been claimed and compensated by the insurance.

Clause 2-24. Total loss in the event of a combination of perils

If the casualty which gives rise to total loss is also caused by perils not covered by the insurance, the compensation shall be reduced correspondingly, cf. the Plan Cl. 2-13, Cl. 2-14 and Cl. 2-16.

If the casualty is caused by such combination of marine and war perils as referred to in the Plan Cl. 2-14, second sentence, cf. the Plan Cl. 2-16, the decision whether the conditions for a condemnation are met shall be based on the valuation applicable to the insurance against marine perils.

Clause 2-25. Request for total loss

If the assured wishes to claim total loss of a Unit as per Cl. 2-23, sub-clause 2 letter c, the assured must submit a request to the insurer after it has had an opportunity to survey and assess the damage. This request may be withdrawn as long as it has not been accepted by the insurer.

Whether the assured or the insurer salvages or fails to salvage the Unit shall not imply an approval or waiver respectively of the right to condemnation.

Clause 2-26. Liability of the insurer during the period of clarification

If the assured is entitled to claim for a total loss in accordance with Cl. 2-23, sub-clause 2, letter c, an insurer who is not liable for the total loss shall not be liable for new casualties occurring after the casualty that resulted in a total loss.

Clause 2-27. (open)

Clause 2-28. (open)

Clause 2-29. (open)

Section 3

Supplementary insurance covers

Clause 2-30. Applicable rules

Supplementary cover is conditional upon the parties having agreed a separate sum insured for each supplementary cover. The agreed sums insured under Chapter 2 Section 3 is subject to the Property Single Limit, cf. Cl. 2-4, sub-clause 3.

If the insurance contract states a deductible for a specific supplementary cover, Cl. 2-22 shall apply correspondingly.

For each supplementary cover the rules in Chapter 1 and Chapter 2, shall apply unless otherwise provided in Section 3.

Clause 2-31. Insurance for additional costs of repositioning

If an insured object is wrongly positioned as a consequence of a peril recoverable by Cl. 1-4 causing loss of, or damage to a contractor's vessel, plant or equipment, this insurance will indemnify the assured's additional costs of repositioning the insured object.

Clause 2-32. Insurance for increased repair costs caused by weather conditions

If weather conditions increase the repair costs by way of extended hire of vessel, plant, equipment and labor, exceeding the sum insured for the respective Unit, this insurance will indemnify the assured for these increased costs of extended hire.

This insurance does not cover any costs if the assured claims payment of unrepaired damage as per Cl. 2-11 or the sum insured as per Chapter 2b.

Clause 2-33. Insurance for cancellation and re-contracting costs for the Construction Project

If contracts for vessels, plant, equipment or labor hired to the Construction Project is cancelled as a consequence of:

- a. a recoverable loss of, or damage to an insured object, or
- b. a peril that would have been recoverable by Cl. 1-4 causing loss of or damage to a contractor's vessel, plant or equipment nominated for the Construction Project, or to a contractor's vessel, plant or equipment mobilized for the Construction Project,

this insurance covers the named Principal Assured's costs for cancellation and extra costs for re-contracting similar vessel, plant, equipment and labor, to complete the Construction Project.

Alternatively, this insurance will indemnify costs of measures taken in order to avert or minimise such cancellation and re-contracting costs limited to the amount the insurer would have had to pay if the measures had not been taken.

This insurance shall not cover cancellation and re-contracting costs caused or increased by:

- a. public authority's interventions or restrictions, or
- b. the assured's decision to stop the construction of undamaged objects.

Clause 2-34. Insurance for costs of removal of wreck, debris and residual property

If an insured object is lost or damaged this insurance covers the assured's costs of safeguarding and removing the wreck, debris or residual property where this:

- a. follows from mandatory law and the assured is ordered by the relevant authorities to do so, or
- b. follows from the assured's contractual liability, or
- c. interferes with the assured's normal operations.

Clause 2-35. Insurance for evacuation expenses

If a recoverable loss of or damage to an insured object make it necessary to evacuate personnel from an object insured, this insurance covers the assured's costs of evacuation and costs for accommodation and maintenance of the personnel.

Clause 2-36. Insurance for costs of measures to avert or minimise loss of time

If the assured incurs extra costs in connection with temporary repairs or in connection with extraordinary measures taken in order to avert or minimise loss of time arising as a result of a recoverable loss of or damage to an insured object, this insurance covers the assured in respect of such costs, insofar as such extra costs are not recoverable under Chapter 3.

Clause 2-37. Insurance for forwarding expenses

If an insured object is in transit and the transit is terminated at a port or place other than the intended destination as a result of a casualty, this insurance covers the assured for any necessary extra charges incurred in unloading, storing and forwarding the property insured to the intended destination.

Clause 2-38. Insurance for cable cutting costs

If a cable has to be cut due to an imminent threat to the safety of property or people involved in the cable laying operation, this insurance covers the assured's costs of such cutting and costs of reinstating the cable operation to the same position that existed prior to the event.

If the cable sustained any damage, cost of repairing the cable shall be covered in accordance with Cl. 2-10.

Chapter 3

Construction risk delay in start-up and initial business interruption

Chapter 4
OPERATION - Property insurance

Section 1

General rules relating to the scope of the property insurance

Clause 4-1. Outline of covered activities

This Chapter 4 covers operation activities for an offshore windfarm – “the Windfarm”, including work of ordinary maintenance and repair of damage.

In addition, provided that the existing structural integrity of the insured objects is upheld, Chapter 4 covers residual work from the construction phase, extraordinary maintenance work and modifications. Objects manufactured or procured for such work attaches to the insurance from the time the risk is transferred to the assured. An increase in value as a result of such work is covered as per Cl. 2-5. If, however, such work include heavy lifting with vessels or other equipment, moves, subsea operations, or the total contract value exceed the amount stated in the insurance contract, cover is subject to prior written consent from the Leading insurer.

Clause 4-2. Assured and co-insured

The insurance is effected for the benefit of the person effecting the insurance and others named as Principal Assured in the insurance contract covering these persons interests within the scope and overall limits of the insurance. The insurer does not have any right of subrogation against a Principal Assured.

The insurance is also effected for the benefit of third parties from the time such third party is awarded a contract related to the Windfarm, unless otherwise agreed in the applicable contract. The starting point is that insurance covers the co-insured third parties interest within the scope and overall limits of the insurance and that the insurer does not have any right of subrogation against such co-insured third party. The co-insured third party shall, however, have no benefit under the insurance or protection against subrogation to the extent that the co-insured third party has undertaken an express contractual obligation towards an assured to remain liable for losses covered by the insurance. If the co-insured third party’s claim is covered by an insurance effected by the third party, cover under this sub-clause is subsidiary to that insurance.

A claim for compensation or return premium under this insurance may only be exercised through the person effecting the insurance and shall only be payable to other assureds by order of the person effecting the insurance, except for mortgagees being co-insured based on the Plan Chapter 7.

Clause 4-3. Objects insured and insurable value

The insurance covers the following Units:

- a. the wind turbine, its foundation or floater, mooring and anchoring systems;
- b. offshore sub-stations, including their mooring and anchoring systems;
- c. onshore sub-stations;
- d. objects in storage manufactured or procured for the Windfarm;

The Units set out above in letter a) shall be considered to include a pro rata share of the inter array cables, while the Units set out in letters b) and c) shall be considered to include a pro rata share of the export cables. The operation risk insurance also covers damages to such cables where there is no damage to the Units set out in letters a), b) and c), and then the said pro rata shares apply accordingly.

The number of Units shall be listed in the insurance contract with their Agreed Values.

Clause 4-4. The limit of the liability of the insurer

The sum insured for loss or damage caused by any one casualty to a Unit of the windfarm is limited to the agreed value of the Unit scheduled as per Cl 4-3, sub-clause 3.

The insurer is also liable up to the agreed value of the Unit for the costs of measures taken to avert or minimise loss arising in connection with the casualty as per the Plan Chapter 4, Section 2.

If the insurance contract states a Property Single Limit this shall be the aggregate sum insured for all loss on all interests insured under the construction risk property insurance as per Chapter 4 resulting from any one casualty. The Plan Cl. 4-18 shall not apply.

Clause 4-5 Serial Defect Limitation

If several Units have been damaged as a result of the same error in design, faulty material or faulty workmanship then the insurer’s liability is calculated according to the scale set out below and agreed in the insurance contract.

Units	Percentage
First [X] damaged Units	100% of the indemnifiable claim
Next [X] damaged Units	75% of the indemnifiable claim
Next [X] damaged Units	50% of the indemnifiable claim
Thereafter	0% of the indemnifiable claim

For the purpose of this clause each part of the cable shall be considered as a separate Unit. If the number of damaged parts exceed the number of Units having a pro rata share of the cable as per Cl. 2-3, the total indemnifiable claims shall be divided on these Units for the purpose of applying the schedule.

The limitation applies before application of the deductible(s).

Applying the scale, damage to Units shall be indemnified in the chronological order that follows from the application of the Plan Cl. 2-11 *[also]* / *[not]* taking into account damage to Units allocated to a previous insurance period *[last X months]*.

Clause 4-6. Insurance period

The insurance period commences and terminates at the dates stipulated in the insurance contract. The Plan Cl. 1-5, sub-clause 2 shall apply.

If this insurance is subsequent to a construction insurance that is extended as per Cl. 2-7, sub-clause 2, the commencement date of this operation insurance is postponed until agreed completion of the Construction Project whereof this insurance commences at the time of termination of the construction insurance.

If it has been agreed that the insurance shall attach for a period longer than one year, the insurance period shall nevertheless be deemed to be one year in relation to the Plan Cl. 2-2, Cl. 2-11, Cl. 5-3, last sub-clause, Cl. 5-4, sub-clause 3, Cl. 6-3, sub-clause 1.

Clause 4-7. Place of insurance

The insurance covers objects mentioned in Cl. 4-3, which:

- (1) has been installed at the area of operation, or
- (2) have been temporarily removed from the place of operation, according to Cl. 4-1,
- (3) are in storage, or in transit to/from places of storage without being covered by point (2). The sum insured for such objects in transit constitutes 10 % of the Agreed Value of the Unit as per Cl. 4-3, sub-clause 1, letter c. The Plan Cl. 2-4 does not apply. A separate deductible shall be applied.

Clause 4-8. Safety regulations

The assured shall develop, implement and maintain a risk based technical integrity monitoring and maintenance program in accordance with sound industry practice.

Prior to commencement of moves of a Unit, lifting of components by external vessels/units and subsea operations, a marine warranty surveyor shall be appointed and the parties shall agree the scope of work of the marine warranty surveyor. The marine warranty surveyor's recommendations, requirements or restrictions shall be regarded as special safety regulations in relation to Cl. 3-25, sub-clause 2.

Prior to transportation of insured objects, the assured shall ensure that the means of transport is suitable and that the objects are packed and protected to withstand ordinary foreseeable stresses during transport. This is a special safety regulation in relation to the Plan Cl. 3-25, sub-clause 2.

Section 2a
Loss of or damage to the object insured

Clause 4-9. Damage

If a Unit or parts thereof have been lost or damaged without Cl. 4-22 (Total Loss) being applicable, the insurer is liable for the costs of repairing the loss or damage in such a manner that the Unit is restored to the condition it was in prior to the occurrence of the damage.

If the repairs have resulted in special advantages for the assured because the Unit has been strengthened or the equipment improved, a deduction from the compensation shall be made limited to the additional costs caused by the strengthening or the improvement.

Liability arises as and when the repair costs are incurred.

Clause 4-10. Compensation for unrepaired damage

If repairs have not been carried out, the assured may claim compensation calculated based on the estimated cost of repairing the damage. Such compensation shall also include common expenses, except that only 50% of estimated removal, quay hire and installation costs are recoverable.

The insurer is not liable for unrepaired damage if the assured is entitled to compensation for total loss under Cl. 4-22.

Clause 4-11. Wear and tear, etc.

The insurer is not liable for costs incurred in renewing or repairing a part that is in a damaged condition as a result of ordinary wear and tear, ordinary corrosion, or inadequate maintenance.

Clause 4-12A. Option I – Limitation of cover for error in design, faulty material or faulty workmanship

Subject to explicit agreement, the insurer is not liable for costs incurred in renewing or repairing a damaged part which were not in a proper condition as a result of error in design, faulty material or faulty workmanship.

Clause 4-12B. Option II - Option II – Exclusion of cover for error in design, faulty material or faulty workmanship

Subject to explicit agreement, the insurer is not liable for loss or damage as a result of error in design, faulty material or faulty workmanship.

Clause 4-13. Losses that are not recoverable

This Section 2a shall not cover:

- a. general financial loss or losses resulting from delays, or
- b. ordinary expenses connected with the running of completed Units during the period of repair, or
- c. loss of electronically stored data.

Clause 4-14. Deferred repairs

If the repairs have not been carried out within five years after the damage was discovered, the insurer is not liable for any increase in the cost of the work that is incurred later.

Clause 4-15. Temporary repairs

The insurer is liable for the costs of necessary temporary repairs when permanent repairs cannot be carried out at the place where the Unit is located.

If temporary repairs of the damaged object are carried out in other cases, the insurer is liable for costs up to the amount he saves through the postponement of the permanent repairs.

Clause 4-16. Survey of damage

Before any damage is repaired, it shall be surveyed by a representative of the assured and a representative of the insurer.

The representatives shall submit survey reports, in which they describe the damage and state their opinions as regards the probable cause of each individual item of damage, the time of its occurrence and the costs of repair.

If one of the parties so requires, the representatives shall, before the damage is repaired, submit preliminary reports in which they give an approximate estimate of the costs of repairs.

If there is disagreement between the representative of the assured and the representative of the insurer, the parties may appoint an umpire who shall give a reasoned opinion of the questions submitted to him. If the parties cannot agree on the choice of an umpire within 30 days from the time an umpire was first requested by one of the parties, the Nordic Offshore and Maritime Arbitration Association's Board of Directors shall appoint the umpire.

Neither the assured nor the insurer may petition for a judicial valuation of the damage, unless this is required by the laws of the relevant country.

If the assured, without compelling reasons, has the Unit repaired without any survey being held or without notifying the insurer of such survey, it has, in addition to the burden of proof under Cl. 2-12, the burden of proving that the damage is not attributable to causes not covered by the insurance.

Clause 4-17. Invitations to tender

The insurer may demand that tenders be obtained from repairers of his choice. If the assured does not obtain such tenders, the insurer may do so.

Clause 4-18. Choice of repairers

The tenders received shall, for the purpose of comparison, be adjusted by the costs of removal being added to the tender amount.

The assured decides which repairers shall be used, but the insurer's liability for the costs of repairs and removal is limited to an amount corresponding to the amount that would have been recoverable if the lowest adjusted tender had been accepted.

If the assured, because of special circumstances, has justifiable reason to object to the repairs being carried out by one of the repairers that have submitted tenders, he may demand that the tender from that repairer be disregarded.

Clause 4-19. Removal for repairs

Subject to the limitation that follows from Cl. 4-18, the insurer is liable for the costs of moving the Unit to the repair location and back to the relevant location.

If another insurer has expressly disclaimed liability during the removal in accordance with the Plan Cl. 3-20, the insurer who is liable for the damage to the Unit shall also be liable for any loss that arises during or in consequence of the removal, and which would otherwise have been recoverable from the other insurer.

The insurer may disclaim any liability during the removal in accordance with the Plan Cl. 3-20.

Clause 4-20. Apportionment of common expenses

Expenses incurred which are common to repair work for which the insurer is liable and other work which is not covered by the insurance, shall be apportioned on the basis of the cost of each category of work. However, common expenses which depend on the length of the period of repairs shall be apportioned on the basis of the time that the recoverable and the non-recoverable work would have required if each category of work had been carried out separately.

Clause 4-21. Deductible

For each casualty the amount stated in the insurance contract shall be deducted.

Damage or loss to each insured Unit shall be considered to be a separate casualty.

Damage caused by the same atmospheric or geological disturbance, up to a limited period of 72 consecutive hours, shall be regarded as a single casualty.

Damage or loss to multiple Units caused by a continuous event involving the same vessels, floating equipment or other floating objects, shall be regarded as a single casualty.

Costs in connection with the claims settlement, cf. the Plan Cl. 4-5 and loss arising from measures to avert or minimise the loss, see the Plan Cl. 4-7 to the Plan Cl. 4-12, are recoverable without any deductible.

Section 2b

Total loss

Clause 4-22. Total loss

In the event of a Unit being lost, the assured may claim payment of the sum insured of the Unit, but not in excess of the insurable value of the Unit, cf. Cl. 4-2, sub-clause 2 and Cl. 4-3, sub-clause 2.

A Unit is considered lost if:

- a. it is lost without there being any prospect of it being recovered, or
- b. it is damaged and cannot be repaired, or
- c. the estimated cost of repairs as per Section 2a amount to more than 80% of the insurable value.

No deductions shall be made for unrepaired damage sustained in connection with an earlier casualty, so long as it has not already been claimed and compensated by the insurance.

Clause 4-23. Total loss in the event of a combination of perils

If the casualty which gives rise to total loss is also caused by perils not covered by the insurance, the compensation shall be reduced correspondingly, cf. the Plan Cl. 2-13, Cl. 2-14 and Cl. 2-16.

If the casualty is caused by such combination of marine and war perils as referred to in the Plan Cl. 2-14, second sentence, cf. the Plan Cl. 2-16, the decision whether the conditions for a condemnation are met shall be based on the valuation applicable to the insurance against marine perils.

Clause 4-24. Request for total loss

If the assured wishes to claim total loss of a Unit as per Cl. 4-22, sub-clause 2, letter c, the assured must submit a request to the insurer after it has had an opportunity to survey and assess the damage. This request may be withdrawn as long as it has not been accepted by the insurer.

Clause 4-25. Liability of the insurer during the period of clarification

If the assured is entitled to claim for a total loss in accordance with Cl. 4-22, sub-clause 2, letter c, an insurer who is not liable for the total loss shall not be liable for new casualties occurring after the casualty that resulted in a total loss.

Clause 4-26. (open)

Clause 4-27. (open)

Clause 4-28. (open)

Clause 4-29. (open)

Section 3

Supplementary Cover

Clause 4-30. Applicable rules

Supplementary cover is conditional upon the parties having agreed a separate sum insured for each supplementary cover. The agreed sums insured under Chapter 4 Section 3 is subject to the Property Single Limit, cf. Cl. 4-4, sub-clause 3.

If the insurance contract states a deductible for a specific supplementary cover, Cl. 4-21 shall apply correspondingly.

For each supplementary cover the rules in Chapter 1 and Chapter 4, shall apply unless otherwise provided in Section 3.

Clause 4-31. Insurance of additional costs of repositioning

If an insured object is wrongly positioned as a consequence of a peril recoverable by Cl. 1-4 causing loss of, or damage to a contractor's vessel, plant or equipment, this insurance will indemnify the assured's additional costs of repositioning the insured object.

Clause 4-32. Insurance of increased repair costs caused by weather conditions

If weather conditions increase the repair costs by way of extended hire of vessel, plant, equipment and labor, exceeding the sum insured for the respective Unit, this insurance will indemnify the assured for these increased costs of extended hire.

This insurance does not cover any costs if the assured claims payment of unrepaired damage as per Cl. 4-10 or the sum insured as per Chapter 2b.

Clause 4-33. Insurance of costs of removal of wreck and debris and residual property

If an insured object is lost or damaged this insurance covers the assured's costs of safeguarding and removing the wreck, debris or residual property where this:

- a. follows from mandatory law and the assured is ordered by the relevant authorities to do so, or
- b. follows from the assured's contractual liability, or
- c. interferes with the assured's normal operations.

Clause 4-34. Insurance of evacuation expenses

If a recoverable loss of or damage to an insured object makes it necessary to evacuate personnel from an object insured, this insurance covers the assured's costs of evacuation and costs for accommodation and maintenance of the personnel.

Clause 4-35. Insurance for costs of measures to avert or minimise loss of time

If the assured incurs extra costs in connection with temporary repairs or in connection with extraordinary measures taken in order to avert or minimise loss of time arising as a result of a recoverable loss of or damage to an insured object, this insurance covers the assured in respect of such costs, insofar as such extra costs are not recoverable under Chapter 5.

Clause 4-36. Insurance of forwarding expenses

If an insured object is in transit and the transit is terminated at a port or place other than the intended destination as a result of a casualty, this insurance covers the assured for any necessary extra charges incurred in unloading, storing and forwarding the property insured to the intended destination.

Chapter 5
Operation risk business interruption insurance

Chapter 6

War risks insurance - Construction

Clause 6-1. Perils covered

Cl. 2-9 of the Plan shall not apply.

This war risk insurance will only cover specific perils set out below in sub-clause 3 and 4 or agreed in the insurance contract.

This war risks insurance covers perils within the scope set out in:

- a) Institute War Clauses Builders Risk (1st June 1988).
- b) Institute Strikes Clauses Builders Risk (1st June 1988).
- c) Institute War Clauses (AIR and POST) 1st March 2009.
- d) Institute War Clauses (CARGO) 1st March 2009.
- e) Institute Strikes Clauses (CARGO) 1st January 2009.
- f) Institute Strikes, Riots and Civil Commotion Clauses (Air Cargo) 1st January 2009.

This insurance also covers the following perils:

- a) derelict mines torpedoes bombs or other derelict weapons of war.
- b) riots, sabotage, acts of terrorism, any malicious act of any person or group of persons, strikes or lockouts.
- c) use of arms or other implements of war in the course of military exercises in peacetime.

Clause 6-2. Interest insured and sum insured

The insurance covers the interests within the scope set out in 7-1, sub-clause 2 and the interests in Chapter 2 and 3 against the perils in 6-1, sub-clause 4. The sums insured are identical to the sums insured set out in Chapter 1 and Chapter 2 and Chapter 3.

Clause 6-3. War between the major powers

In the event of war or war-like conditions breaking out between any of the following States: The United Kingdom, the United States of America, France, the Russian Federation, the People's Republic of China, the insurance against war perils shall automatically terminate.

Clause 6-4. Use of nuclear arms for war purposes

In the event of any use of nuclear arms for war purposes, the insurance shall automatically terminate.

Clause 6-5. Cancellation

In the event of a change of risk, the person effecting the insurance as well as the insurer are entitled to cancel the insurance by giving seven days' notice (such cancellation becoming effective on the expiry of 7

days from midnight of the day on which notice of cancellation is issued by or to the insurer). Cancellation also applies to the rights of the mortgagee, but the insurer shall immediately notify the mortgagee of the cancellation.

The insurer will endeavor, to the extent practically and commercially possible, to submit a proposal for continuation of the insurance at the best available terms in the changed circumstances.

Clause 6-6. Excluded and conditional areas

In addition to the Plan Cl. 3-15 the following applies:

The insurer may at any time designate new or change existing areas of operation. The insurer may in this connection decide that:

- a. certain areas shall be designated as conditional areas. The objects may still transit such areas, but subject to an additional premium.
- b. certain areas shall be designated as excluded areas. Such areas fall outside the area of operation.

Chapter 7

War risks insurance - Operation

Clause 7-1. Perils covered

The Plan Cl. 2-9 shall not apply.

This war risk insurance will only cover specific perils set out below in sub-clause 3 or agreed in the insurance contract.

This insurance covers the following perils:

- a) derelict mines torpedoes bombs or other derelict weapons of war.
- b) riots, sabotage, acts of terrorism, any malicious act of any person or group of persons, strikes or lockouts.
- c) use of arms or other implements of war in the course of military exercises in peacetime.

Clause 7-2. Interest insured and sum insured

The insurance covers the same interests covered in Chapter 4 and Chapter 5. The sums insured are identical to the sums insured set out in Chapter 1 and Chapter 4 and Chapter 5.

Clause 7-3. War on land exclusion

This insurance does not cover any loss or liability occurring on dry land or from operations on dry land.

For objects removed from the Windfarm, the insurance is suspended on completion of unloading of the object at the port. The insurance attaches on commencement of loading operations of objects from the port onto a vessel.

Clause 7-4. War between the major powers

In the event of war or war-like conditions breaking out between any of the following States: The United Kingdom, the United States of America, France, the Russian Federation, the People's Republic of China, the insurance against war perils shall automatically terminate.

Clause 7-5. Use of nuclear arms for war purposes

In the event of any use of nuclear arms for war purposes, the insurance shall automatically terminate.

Clause 7-6. Cancellation

In the event of a change of risk, the person effecting the insurance as well as the insurer are entitled to cancel the insurance by giving seven days' notice (such cancellation becoming effective on the expiry of 7 days from midnight of the day on which notice of cancellation is issued by or to the insurer). Cancellation

also applies to the rights of the mortgagee, but the insurer shall immediately notify the mortgagee of the cancellation.

The insurer will endeavor, to the extent practically and commercially possible, to submit a proposal for continuation of the insurance at the best available terms in the changed circumstances.

Clause 7-7. Excluded and conditional areas

In addition to the Plan Cl. 3-15 the following applies:

The insurer may at any time designate new or change existing areas of operation. The insurer may in this connection decide that:

- a. certain areas shall be designated as conditional areas. The objects may still transit such areas, but subject to an additional premium.
- b. certain areas shall be designated as excluded areas. Such areas fall outside the area of operation.

Commentary to the Nordic Offshore Wind Insurance Conditions (NOWIC)

General

Introduction

This introductory comment to the NOWIC is included with the purpose of briefly explaining and describing the contextual background of the NOWIC conditions and commentary. The conditions and commentaries, and the structure and link between them, are to a large extent based on, and inspired by, the Nordic Plan 2013, Version 2023 (the “Plan”).

Although some users of the NOWIC will already be familiar with the Plan, it is expected that many are not. Because of this, it may be useful to briefly set out the historical background of the Plan, provide some general comments on the “Plan-system” as it works today, some brief comments on what can be referred to as the “Nordic tradition” when it comes to drafting and claims handling in marine insurance, the structure of the Plan, and lastly in general terms how the NOWIC relates to the this contextual background.

The background of the Plan

Generally, the Plan is colloquially referred to as the standard Nordic marine insurance provisions for Hull and Machinery (“H&M”). As will be touched upon below, today the Plan offers provisions for other interests than just H&M.

The Plan has long historical roots. The first Norwegian plan was published in 1871. At the time, standard provisions already existed in both Denmark and Sweden. The Norwegian plan 1871 was to a large extent inspired by the then applicable so-called “Hamburg Plan” (Hamburger allgemeine Seeversicherungs-Bedingungen, (ASB)) from 1867. These rules, with previous versions dating back to 1731, were again inspired by continental ordinances and policies that can be traced back to the 14th century. An important aspect of these conditions is that they were negotiated by a committee with representatives from insurers, assureds, adjusters, and academics specialising in insurance and maritime law. As a consequence, the conditions became what is referred to as an “agreed document” and not only standard provisions. The result was more balanced provisions than what would have been the result if they for instance had been drafted solely by insurers. The provisions were drafted in a brief and succinct language in a similar manner as the drafting of statutes. A particular feature of the Norwegian plan 1871 was that the minutes of meeting from the negotiations in the committee was published together with the conditions as such. This made it easier for the users to understand the conditions when construction issues arose in practice.

Another feature was that the conditions were updated in line with technological advancement in the shipping industry, insurance practice and events that took place around the world affecting shipping. The first update took place in 1881, and the Norwegian plan was later updated in 1894, 1907, 1930, 1964, and in 1996 (with several later versions).

The Nordic countries have a long tradition of legislative cooperation within the area of private law. In 2010 an agreement was entered into between the Nordic Association of Marine Insurers (Cefor), the Norwegian Shipowners' Association, Danish Shipping, the Swedish Shipowners' Association, and the Finnish Shipowners' Association, to draft a set of common provisions with commentaries in line with the tradition. It was agreed that the Norwegian plan 1996, Version 2010 was to form the basis for the agreed Nordic plan. The result was the Nordic Plan 2013, which was updated with later Versions in 2016, 2019, and the latest in 2023.

The current Plan

In line with tradition, both the conditions and commentaries are drafted by a representative committee (referred to as the Plan's Standing Revision Committee). This means that both the Plan's conditions and commentaries are agreed documents. By agreeing that the Plan shall be updated in new versions, the Plan becomes flexible and dynamic so that both changes in marine insurance practice and in the industry as such can be taken into account in the updated versions. Because the committee consists of representatives from the industry, if issues of construction arise under one version of the Plan, this can be addressed and altered in the next version. Such issues and how these are addressed are typically explicitly commented upon in the commentaries. It is believed that this process, in combination with the Plan being a balanced agreed document, are important reasons for why there have been relatively few disputes under the Plan.

Although the drafting process of the Plan today follows a tradition dating back to the 1870s, there are some important developments that should be emphasized. The Norwegian versions of the plan were drafted in the Norwegian language. Now the official language is English for both the conditions and the commentary. Another very important development is that the commentaries are precisely that: commentaries to specific provisions. Whereas the commentaries to the early Norwegian plans were minutes of the negotiations in the committee, this is not the case today. The commentaries are supposed to in a more detailed manner explain the particular provision and set out its background. A consequence of this is that the provisions can be drafted in a brief and succinct language. The commentaries are an integral part of the conditions and shall not be regarded as preparatory works (*travaux préparatoires*). Accordingly, without explicit agreement to the contrary, when the parties agree that the conditions in the Plan shall apply for an insurance contract, they simultaneously agree that the commentaries shall also apply. Because the conditions presuppose the commentaries, and as the same obviously applies vice versa, it is generally not advised to agree on only the conditions to apply without the commentaries.

This background, both when it comes to the drafting of the conditions and the relatively low degree of disputes, is often referred to as the “Nordic tradition” in marine insurance.

A brief overview of the structure and system of the Plan

Insurance under Plan conditions can generally be divided into two parts. The first part are the general provisions that applies for all insurance contracts using the Plan system. In the Plan this is referred to as “Part One: Rules common to all types of insurance”. This consists of nine chapters (chapters 1-9), with some of them again being sub-divided into different sections. In these chapters, provisions on, inter alia, duties of disclosure, settlement, premium, are found. The second part are the provisions that apply for the specific type of insurance contract being entered into, i.e. the interest covered. This can for instance be hull insurance. Provisions on hull insurance are found in the Plan’s “Part Two: Hull insurance”. This part consists of four chapters (chapters 10-14). Other examples could be Loss of Hire insurance (chapter 16), found in the Plan’s “Part Three: Other insurances for ocean-going vessels”, or Insurance of mobile offshore units (MOUs) (chapter 18), found in the Plan’s “Part Four: Other insurances”.

Although the general provisions in the Plan’s Part One generally apply to all insurances under the Plan, certain amendments and modifications to the general provisions in the first part are sometimes necessary in the specific provisions. An example of this is Cl. 18-1 which sets out the amendments that are made to the provisions in the Plan’s Part One.

The relationship between the Plan and the NOWIC

As mentioned above, the NOWIC wording and commentaries are a result of the agreement that was entered into in September 2023 between Equinor ASA, the Norwegian Shipowners’ Association, Danish Shipping, the Swedish Shipowners’ Association, and the Finnish Shipowners’ Association, and the Nordic Association of Marine Insurers (Cefor), with the aim of drafting standard and agreed conditions for the insurance of floating windfarms and associated activities. It was agreed that the conditions were to be drafted based on the process and principles of the Plan.

In a similar way as for the Plan, the NOWIC wording and commentaries have been negotiated and drafted by a committee with representatives from both insurers and assured. The representatives in this committee have experience with the Plan, but also with products such as WELCAR and WINDCAR. As the parties have agreed that the conditions and commentaries shall be an agreed document, the aim has been that this shall be balanced and acceptable for both insurers and assureds.

Despite not formally being a part of the Plan yet, the NOWIC wording and commentaries have been negotiated and drafted in the same way as other insurance contracts based on the “Plan-system”. This means that the Plan’s provisions in Part One apply as a part of the NOWIC conditions, but with several general amendments to these being made in Cl. 1-2, Cl. 1-3 and elsewhere in certain provisions. It should always be clear in the NOWIC whether a different solution than under the Plan has been followed.

An advantage of this decision is that the NOWIC, by implementing the Plan's general conditions, are in line with what may be referred to as the Nordic principles of marine insurance. A further advantage is of course that the NOWIC can make use of the preexisting commentaries to the Plan, both directly when the relevant provisions are applicable as a part of the insurance contract, but also indirectly by the use of comparison when the NOWIC conditions and commentaries explicitly deviate from a position under the Plan.

Section 1
General rules relating to the scope of the insurance

Clause 1-1. Application of the Nordic Marine Insurance Plan and Commentaries

Sub-clause 1

The first sentence establishes that the rules in the Nordic Marine Insurance Plan of 2013, Version 2023 (the Plan), Part One, including the Commentary to the Plan, shall apply unless specifically deleted or amended. That the Plan, including its Commentary, applies, has several benefits, as set out above under “General”.

The reference to the Plan, “*including the Commentary*” to the Plan, entails that the Commentary to the Plan is considered an integrated part of the Plan and the NOWIC Wording. The latter entails that the Commentary, as a clear starting point, has the same bearing on the interpretation of the Clauses in the NOWIC Wording as for the interpretation of the Plan . Hence, the Commentary serves to provide guidance on the interpretation of the NOWIC Wording.

The last sentence, that “*Commentaries to Clauses tailored for the NOWIC wording shall be considered an integrated part of the NOWIC wording*”, merely serve to make it evident that also such clauses (not having an equivalent in the Plan), shall be interpreted based on the same approach; namely, the Commentaries to Clauses tailored for the NOWIC wording (“**NOWIC Commentaries**”). In case of conflict between the Commentary to the Plan and the NOWIC Commentaries, the latter will presumably prevail as per the principle “*lex specialis*”.

Sub-clause 2

This provision states that any reference in the Plan Part One to provisions in the Plan Part Two, Three or Four shall be replaced with the corresponding provisions in this NOWIC wording. This would also follow from a natural interpretation of the provisions but is clearly set out for the sake of good order.

Sub-clause 3

This provision set out that reference to vessel in the Plan Part One shall be replaced with object insured, except where it is a reference to a vessel being specific for the relevant project. This would also follow from a natural interpretation of the provisions but is clearly set out for the sake of good order.

Sub-clause 4

This provision establish arbitration as the dispute resolution solution.

Clause 1-2. Rules not to apply

The provision set out rules in the Plan, Part One that shall not apply as these are not applicable for a windfarm.

Clause 1-3. Rules amended

The provision set out amendments to some of the rules in the Plan, Part One to adapt these to insurance of a windfarm.

Letter (a) The area of operation / Ref. the Plan Cl. 3-15

Clause 3-15 does not apply to windfarm insurance. The offshore location is designated for clarity, as there will be no change in the area of operation like with movable units.

Letter (b) Change of ownership/Ref. the Plan Cl. 3-21

If the ownership of the windfarm change, this provision provides cover for a 14 days period from the time of ownership change, whereafter the insurance will terminate.

Letter (c) Safety regulations/ Ref. the Plan Cl. 3-22

Sub-clause 1 defines safety regulations as “rules concerning measures for the prevention of loss”. A fundamental requirement in order for a rule to have the status of safety regulation is that it is intended to prevent loss. A rule may sometimes pursue several purposes. If one of them is to prevent casualties or mitigate their effect, then a breach may be relevant under this provision.

The text states that safety regulations can be expressed in three different ways.

The first alternative is that the rule is issued by “public authorities”. The term “public authorities” means governmental bodies, or private entities with delegated authority from such governmental bodies, that have authority to issue rules that are binding for the assured. For instance in Norway, the Norwegian Ocean Industry Authority (“Havtil”) may issue rules for a windfarm subject to Norwegian jurisdiction that an operator must comply with.

The second alternative is rules “stipulated in the insurance contract”. This includes the safety regulations stipulated other places in the NOWIC wording, for example in Cl. 2-9 and Cl. 4-8 setting out specific safety regulations for the particular risks associated with the respective insurance cover. In addition, the individual insurance contract can itself contain provisions concerning measures to be taken to ensure the technical and operational safety of a wind farm. If these are clear and specific, they will fall within letter (f). An example of such a provision in the individual insurance contract could be requirements regarding certification, or class regime applicable to the project, a Unit, or a part thereof.

The third alternative is rules “prescribed by the insurer pursuant to the insurance contract.” Where insurance cover for an activity is subject to consent from the insurer, cf. for example Cl. 4-1, sub-clause 2, last sentence, the consent may be subject to specific safety regulations. If the insurer wishes to include

powers beyond what is provided by the NOWIC **wording** in order to also have the authority to issue new safety regulations during the insurance period, a specific provision to that effect must be inserted into the individual insurance contract. In practice, this means that the contract must contain written authority and set out clear parameters for subsequent safety regulations. If such parameters or authority is not included in the contract, the insurer must resort to the rules on alteration of the risk. Under these rules, the insurer may only impose new requirements if a situation has arisen that constitutes an alteration of the risk in accordance with the Plan Cl. 3-8. If this is the case, the insurer may exercise his right to cancel the contract and establish a new contractual relationship with new requirements.

The Plan Cl. 3-22, sub-clauses 2 and 3 are deleted, as these provisions are not relevant for a wind farm.

Letter (d) Identification/ Ref. the Plan Chapter 3, Section 6

Introduction

For an overview of the questions and problems of identification reference is made to the General remarks in the introduction in the Commentary to the Plan Chapter 3, Section 6. The Plan Commentaries to the specific rules in Chapter 3, Section 6 is mainly developed around marine insurance for vessels. At the outset it may be questions whether these rules and commentaries can be used for construction insurance and insurance cover for objects being transported as cargo seems. However, with minor amendments of the wording the basic principles set out in the Plan may still be used. Thus Cl. 3-36 and 3-37 has been amended.

Note also that if safety regulations are nominated as “*special*” safety regulations this will regulate identification with regard to breach of such safety regulations.

Due to the nature of a complex construction project the question of identification may however in some circumstances be less relevant for a property insurance. An example illustrates this: If a co-assured third part supplier’s conduct prejudice the insurance for an insured object and this supplier still carries the risk of loss of, or damage to the object, other assureds will not suffer any property loss due the insurance being prejudiced. The value interest is still with the supplier and his errors will only effect itself. For the developers income interest the situation may however be different if the lost or damaged object causes delay resulting in loss of revenue or it may cause cancellation and re-contracting costs for other assureds in the Construction Project. As a starting point the general rules regarding identification and the use of special safety regulations will govern the question of identification in these latter circumstances.

To protect an assured from identification with another assured it may be agreed that an assured shall be independently insured as per the Plan Cl. 8-7. This enables a careful assessment of whom of the parties in the project that has a particular need for protection.

Cl. 3-36

Sub-clause 1 has been deleted as this is not relevant for a windfarm.

Cl. 3-37

This provision has been amended by deleting the reference to “co-owners” and adapting the wording to “construction or operation of the windfarm”.

Letter (e) Chapter 9 Relations between the claims leader and co-insurers

The terms “claims leader” in the Plan is replaced with “Leading insurer”. The Leading insurer will have the same authority as the claim leader in the Plan in addition to the authority stipulated in the rules in the NOWIC wording and as set out in the individual insurance contract.

The Plan Cl. 9-3 is deleted as lay-up will not be applicable to a windfarm.

Clause 1-4 The system of perils insured

Introduction

The perils insured against by an insurance based on Chapter 2 to 5 is based on the “all risks principle”. This means that the insurance covers “all perils” that are not specifically excluded.

The scope of perils covered for a windfarm are, however, normally narrower than other marine insurances, which is reflected in the present Cl. 1-4. The classic war perils in the Plan Cl. 2-9, cf. the reference in Cl. 1-4, letter a, are excluded. Further, the exclusions in Cl. 1-4, letter b and c, are broader than the exclusions in the Plan, Cl. 2-8. Furthermore, some perils may be excluded by several provisions; for example, “malicious acts” may be excluded by the reference in Cl. 1-4, letter a, to the Plan Cl. 2-9, letter c, as well as Cl. 1-4 letter c.

Chapter 6 and 7 provide insurance cover for certain “war perils”. For such insurances to be effected, the parties must agree separate sums insured for the interests covered as per Cl. 6-2 and Cl 7-2. There is nothing to prevent one and the same insurance contract covering marine perils as well as war perils using the same values and sums insured both under the marine perils and war risks insurance.

Sub-clause 1

As stated above the perils covered are, as a starting point negatively defined as so-called “all risk” cover, cf. the wording “all perils to which the interest is exposed”. However, that starting point is modified by the subsequent modifications. See further the Commentary to the Plan Cl. 2-8 and 2-9.

Letter a.

In lack of an agreement to cover certain war perils as per Chapter 6 and 7, the “perils covered by an insurance against war perils in accordance with the Plan Cl. 2-9” are excluded. The reference to the Plan Cl. 2-9 entails that the following perils are excluded:

- a. *war or war-like conditions, including civil war or the use of arms or other implements of war in the course of military exercises in peacetime or in guarding against infringements of neutrality,*
- 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,*
- c. *riots, sabotage, acts of terrorism or other social, religious or politically motivated use of violence or threats of the use of violence, strikes or lockouts,*
- d. *piracy and mutiny,*
- e. *measures taken by a State power to avert or limit damage, provided that the risk of such damage is caused by a peril referred to in sub-clause 1 (a) - (d).*

See the Commentary to the Plan Cl. 2-9 for an explanation and elaboration of the content of these perils. From a practical perspective, however, some of the said perils in the Plan Cl. 2-9 may be less relevant for wind parks; for example, “capture at sea” and “mutiny”.

Letter b.

This provision excludes “*any intervention by any state power regardless of the type or purpose of the intervention*”, which goes further than exclusion of state interventions in the Plan Cl. 2-8, letter b. First, by contrast to the Plan Cl. 2.9 letter b, also interventions made for the furtherance of an overriding national or supranational political objective, interventions due to abuse of power or corruption, as well as less qualified interventions made as part of the enforcement of customs and police legislation, are excluded under the present Cl. 1-4 letter b. Second, by contrast to the Plan Cl. 2-9 letter b, the term “*any intervention*” in the present Cl. 1-4 letter b entails that there is no need to include a separate exclusion as in the Plan Cl. 2-8 letter c; see also the Commentary to this provision in the Plan.

The term “*any state power*” includes both own state power as well as foreign state power. “*Organisations and individuals exercising supranational authority or who unlawfully purport to exercise public or supranational authority*” comprise all persons or organizations exercising public or supranational authority. Hence, if an intervention is decided and implemented by representatives of a group of states (alliance, block etc.), for example an intervention by NATO, it must be regarded as an intervention by a state power.

The broad exclusion of any intervention by a state power makes it necessary to have specific wording to achieve the purpose of the so called “pollution hazard clause”. Thus, second sentence in letter b) states that “Measures taken by a state power for the purpose of averting or limiting damage shall not be regarded as an intervention, provided that the risk of such damage is caused by a peril otherwise covered

by this insurance". This rule was introduced in Norwegian and English conditions after British authorities in 1967 considered bombing the "Torrey Canyon" following a casualty, for the purpose of limiting the threatening oil spill. The way the rule is now worded, it is aimed not only at the pollution situation, but at any potential damage that the ship might cause, as long as the risk of the relevant damage can be traced back to a peril covered by the insurance against marine perils. There is no reason to believe that the wording of the Plan will entail any major extension. Frequently the costs of such measures will in any event be covered by the relevant insurer as costs of measures to avert or minimise the loss.

Letter c.

The starting point is that "any malicious act of any person" are excluded. As mentioned above, certain "malicious acts" will also be excluded by the reference in Cl. 1-4 letter a to the Plan Cl. 2-9. See the Commentary to Cl. 7-1, sub-clause 3, letter b which elaborates more on this.

Letter d. and e.

These provisions are similar to the Plan Cl. 2-8, letter c. and letter d. Reference is made to the Commentary to these provisions.

Clause 1-5. Combined single limit for the construction insurance

The insurer's financial exposure from the insurance contract can be managed by various clauses and drafting techniques, and such clauses may have a strong bearing on premiums etc. The normal starting point is, however, by agreeing on a so-called "sum insured", and Cl. 1-5 is based on such a starting point.

Conceptually the "sum insured" is the amount for which an interest is insured and serves as the insurer's limit of liability for the respective interest for each individual casualty. The sum insured is conceptually different from the so-called "value of the interest insured", which is determined by the "insurable value". According to traditional insurance law principles, the insurer's liability is subject to a double limitation in the event of a total loss: it can neither exceed the sum insured nor the insurable value.

Normally, the insurable value will be agreed and identical to the sum insured. However, an object under construction will not reach its fully agreed value until the construction phase is completed. Therefore, the agreed value of an object under construction is normally subject to a separate definition for the purpose of total loss; see Cl. 2-3, sub-clause 4, and Cl. 2-23. However, the agreed sum insured will still apply for a partial loss as per Chapter 2, Section 2.

By contrast to regular marine insurance of a vessel, the nature of a windfarm raises the question whether the assured's ownership interest in the property should be insured based on one combined insured value for the entire windfarm or by splitting the windfarm into certain units; see below in Cl. 2-3, sub-clause 1 to 3 and its Commentary, whereby a Unit Structure is established.

Although the starting point is that the sum insured represents the insurer's limit of liability per casualty, additional limits might apply for certain types of loss or damage. For example, costs of measures to avert or minimize loss will be covered up to the agreed value per Unit per casualty, in addition to the sum insured per Unit. See also the solution for inter array cables in Cl. 2-3, sub-clause 1, letter a. Further one casualty may result in damage or loss of multiple Units.

As a tool to manage the insurer's exposure caused by a casualty striking the property interests, a concept of so-called "Property Single Limit" is established, cf. Cl. 2-4, sub-clause 3, whereby it may be agreed to limit the insurer's exposure for loss or damage to property covered by Chapter 2, including additional covers under its Section 3.

Insurance cover for the assured's income interest is also based on a Unit approach, however, the sum insured limits the insurer's liability from all casualties occurring during the insurance period. Further, there is no additional limit for costs of measures to avert or minimize loss. Cover of such costs are limited to the amount the insurer would have had to pay if the measures had not been taken. [Loss or Revenue Single Limit?].

Besides exclusions of certain losses, the insurer's exposure may also be managed by agreeing deductible as per Cl. 2-22 or a Serial Defect Limitation as per Cl. 2-6 and Cl. 3-2.

The assured's needs are catered for by the Escalation clause, cf. Cl. 2-5 and the possibility to agree certain additional covers with separate sums insured as per Chapter 2, Section 3.

A casualty may lead to a cumulation of loss arising from the various interests covered under one insurance contract. Moreover, the value of the various interests may be substantial. On this basis, it may be agreed an absolute maximum limit for the insurer's liability caused by one casualty. Hence, Cl. 1-5 establish a concept of a combined single limit for all interests covered. Accordingly, the insurance contract may state "a combined single limit for the construction insurance" which will "be the aggregate sum insured for all interests insured under the construction insurance resulting from any one casualty". This limit will apply to all property loss under Chapter 2, including additional covers under its Section 3, and income loss covered by Chapter 3.

Clause 1-6. Combined single limit for the operation insurance

This provision set out a combined single limit for the operation insurance like Cl. 1-5 for the construction insurance. Reference is made to the Commentary to Cl. 1-5.

Chapter 2 Construction Risk Insurance

Section 1

General rules relating to the scope of construction risks insurance

Clause 2-1. Outline of the covered activities

Clause 2-1 sets out the activities covered by the construction insurance, i.e. “*construction activities*” and “*operation of Units*” until completion of the project as such. By covering operation of completed Units until completion of the Construction Project there will be a clear transition to the operation insurance, cf. Cl. 4-1. As the operation insurance, in addition to “*operation activities*”, covers inter alia “*residual work from the construction phase*” there will be no gaps in cover. The commencement and expiry of the construction insurance is regulated in Cl. 2-7, which also has been adapted to the corresponding provision Cl. 4-6 in the operation insurance. Together with the incidence of loss provision in the Plan Cl. 2-11 this ensures a seamless transition from the construction insurance to the operation insurance.

The starting point is that Chapter 2 applies to “*construction activities*” for an offshore windfarm, referred to as “*the Construction Project*”. The term “*construction activities*” is a broad term and it applies to all customary activities of a construction work of this particular type, from early project studies to completion of a “*Construction Project*”. The commencement of the construction risks insurance is governed below in Cl. 2-7.

Regarding when a Construction Project shall be considered completed with the effect that the construction insurance terminates and the operation insurance commences, it is beneficial to take into account the construction contract between the employer and the contractor. Between employer and contractor, completion of the “*construction activities*” normally has several essential contractual and legal effects; for example, concerning passing of risk, end of liquidated damages, commencement of warranties for defects, reduction or expiry of financial guarantees etc. For the same reasons, it is paramount for the parties to know exactly when the said effects occur. However, in a complex Construction Project it may be difficult to determine exactly when the “*construction activities*” shall be considered completed, typically because it may be ready for being operated, even though minor carry over work (“*punch items*” etc.) may be remaining. To ensure clarity on this matter between the employer and the contractor, the Construction Contract normally provides a mechanism to determine a time of completion. The most typical mechanism is to consider “*completion*” to take place according to a formalised document; typically, when the Employer or Engineer has issued a “*Taking-Over Certificate*” (FIDIC) or the parties have agreed on a “*Delivery Protocol*” (“*Norwegian Total Kontrakt*”). From the same point of time, it will normally be appropriate to terminate the construction insurance and commencement of the operation insurance. To ensure a seamless and clear transfer of the insurance

from the construction risks insurance to the operation phase, the parties should in the policy explicitly agree on when the “construction activities” shall be considered completed; typically, by relying on the said mechanism in the construction contract. See also Cl. 2-7 below on insurance period.

In addition, the rules in Chapter 2 covers operation of a Unit until completion of the Construction Project. In a large Construction Project, some Units may be completed and ready for operation while other Units are still in the construction phase. For the insured, it may be beneficial to put the Units into production successively as they are completed. The construction contract between the employer and the contractor normally has a particular completion mechanism in this respect; so-called “partial take-over” of specific Units. Such “partial take-over” between the employer and the contractor, however, will have no effect on continued cover under the construction insurance.

Clause 2-2. Assured and co-insureds

Introduction:

An insurance contract is a contract entered into between the insurer and the person effecting the insurance, cf. the Plan Cl. 1-1 litra (b). If the person effecting the insurance procures insurance of its own objects, that person is the person effecting the insurance and, at the same time, the principal assured.

In a Construction Project, however, a number of persons other than the employer may have an economic interest in the objects insured. For example, contractors, manufacturers and suppliers of parts or components to a Unit may have such an interest, typically where a Unit or parts of components to a Unit are damaged prior to passing of risk or completion. Third parties may, even though they have no such economic interest in the objects insured, need protection against liability in case they cause damage to a Unit or the Project.

If all such third parties have to procure their own insurances in respect of their interest in the property or potential liabilities, it might be numerous and overlapping insurances, which is not beneficial from an economical point of view. The incremental costs of such multiple and overlapping insurances will eventually end up with the owner of the Project.

The concept of being a co-insured relies on the Nordic law on third party beneficiaries (*No. “tredjemannsløfter”*), which entails that a co-insured, in the capacity of being a third-party beneficiary, is entitled to make claims in its own name under the insurance, even though it is not a party to the insurance contract. That it is “*automatic*” entails that the co-insured is considered co-insured *ipso jure* from the inception of the policy. Hence, there is no requirement that the co-insured is named or otherwise mentioned in the policy, that the insurer notifies the co-insured about its status as co-insured, or that the co-insured notifies the insurer about its status as co-insured, provided that the person falls within the ambit of the group of co-insured.

The effect of being a co-insured is twofold. *First*, the co-insureds interest in the property is basically insured as if the co-insured had procured its own property insurance. *Second*, the status as co-insured entails, as a firm starting point, that the co-insured is protected against subrogation from the assured's insurer; it works as a waiver of subrogation.

Clause 2-2 provides two categories of co-insured parties. The *first* category concerns co-insurance of a so-called "*Principal Assured*", which are named as such in the insurance contract as per Cl. 2-2, sub-clause 1. The latter entails that such co-insurance is not "automatic"; it only includes persons or companies named as "*Principal Assured*" in the insurance contract. A Principal Assured is fully protected against subrogation from the insurer, even though it may prevent the assured or its insurer from holding a Principal Assured responsible under a contract between the assured and the Principal Assured. Furthermore, by contrast to an automatically co-insured under sub-clause 2, no subsidiarity applies for the Principal Assured. The latter follows from the last sentence of sub-clause 2, which has no equivalent in sub-clause 1. Unless otherwise agreed, the status as co-insured Principal Assured occurs at the time of inception set out in the insurance contract between the person effective the insurance and the insurer.

The *second* category of co-insureds concerns the automatic co-insurance of "third parties" as per Cl. 2-2, sub-clause 2. By contrast to Cl. 2-2, sub-clause 1, this category includes third parties not named as Principal Assured in the insurance contract, provided that they fall within the ambit of the group of co-insureds under Cl. 2-2. The starting point is that also such third parties interests are covered and that they are protected against subrogation from the insurer. However, the third sentence of Cl. 2-2, sub-clause 2, provides an exception from this starting point, namely where "*the co-insured third party has undertaken an express contractual obligation towards an assured to remain liable for losses covered by the insurance*". The logic is that an insured shall not be prevented from invoking contractual remedies where its contract party has undertaken such an "*express*" obligation; typically, an obligation to rectify damages to a Unit or a part of a Unit caused by a defect. In the absence of such an exception, it could make a mockery of the assureds contractual remedies towards its contract party. Furthermore, if a party has undertaken such an "*express*" obligation towards the insured, it has no reasonable expectation to rely on its status a co-insured as a defense against such a contractual claim. For the same reason, the third party may have procured its own insurance to cover such liability under the contract. Unless otherwise agreed in the "*applicable contract*", the status as co-insured occurs "*from from the time such third party is awarded a contract related to the Construction Project*". The latter entails, for example, that if a Principal Assured awards a contract to a subcontractor (not being named as Principal assured), the subcontractor is considered a co-insured "third party" from the time of the subcontract. Furthermore, if the same subcontractor awards a contract to a (sub-subcontractor or) supplier, the supplier will be considered a co-insured "third party" from the time of the supply contract. To get a full picture of the scope of the co-insurance, however, it is necessary to take into account from when the co-insurance takes effect; see below concerning the third sub-clause.

Due to the different effects of being a Principal Assured and a no-named “third party”, respectively, and its potential bearing on the contractual remedies, the person effecting the insurance (typically the developer) must carefully consider the preferred solution in each individual project, i.e. who to name as Principal Assured.

Sub-clause 3 stipulates when an object attaches to the insurance and applies both for sub-clause 1 and sub-clause 2. It provides that the insurance and co-insurance attaches when the following two requirements are met: (i) the object is clearly identified for the Construction Project, and (ii) the “*risk is transferred to an assured or co-insured under sub-clause 1 or 2*”.

Clause 2-2, sub-clause 4 merely supplements the administration regulation in the Plan Cl. 8-5.

Sub-clause 1:

Sub-clause 1 States that “[t]he insurance is effected for the benefit of the person effecting the insurance and others named as Principal Assured in the insurance contract”. The provision provides an option for the person effecting the insurance to name other persons as Principal Assured with the effect of full protection against subrogation (see above).

That an insurance is “*effected for the benefit*” of “the person effecting the insurance and others named as Principal Assured in the insurance contract” means that the insurance covers their respective interests in the objects insured “*within the scope and overall limits of the insurance*”. Further, the insurer “*does not have any right of subrogation against a Principal Assured*”. This latter solution extends the protection compared to the Plan Cl. 8-2 and gives the Principal Assured the same cover as the person effecting the insurance, regardless of any risk or liability regulation in the project contract between the person effecting the insurance and the Principal Assured or between Principal Assureds.

Sub-clause 2:

Sub-clause 2 regulates co-insurance of other third parties than Principal Assureds. The *first sentence* set out when a third-party gets the status as assured. The *second sentence* set out the main rule and the *third sentence* limits the extent of the insurance cover provided to a co-insured third party, both the extent of the value interest and the extent of protection against subrogation from the insurer. The *fourth sentence* provides a subsidiary clause.

The starting point in the *first sentence* is that a third party is automatically co-insured “*from the time it is awarded a contract related to the Project*”. The term “*awarded*” refers to the time of contract; when the contract became binding between the relevant parties. That a contract awarded to the third party must be “*related*” to the “*Construction Project*” will normally be straight forward, and the term “*related*” covers everything from major objects to minor components for the Construction Project, provided that the two requirements for attachment set out in Cl. 2-2, sub-clause 3, are met. At the outset, contracts that would have been entered into by a co-insured third party regardless of the Construction Project, for example

supplies of electricity, might not be considered “*related*” to the Construction Project. At the same time, it is evident that such contracts are indeed required for the Construction Project, and for the same reason also such contracts shall be considered “*related*” to the Construction Project. We might, for example, imagine that a voltage drop caused by the supplier of electricity causes damages to a wind turbine under testing at the site.

The reservation in the first sentence concerning “*unless otherwise agreed in the applicable contract*”, entails that the parties may opt out of a co-insurance arrangement by agreeing that a third party shall not be considered co-insured. That such a third party does not have the status as co-insured, has a bearing on contracts awarded by such a third party (typically further down the contractual chain); such sub-contractors will not be considered co-insured, even though the sub-subcontract is “*related*” to the Construction Project.

The extent of cover provided to an automatic co-insured third party is as a starting point similar to that of a Principal Assured; its value interest in an insured object is covered, and the insurer does not have any right of subrogation against, cf. *second sentence*.

The *third sentence* in sub-clause 2 provides an exception from the cover and protection against subrogation, namely where “... *the co-insured third party has undertaken an express contractual obligation to an assured to remain liable for losses of the kind otherwise covered by the insurance*”. Such undertaking may be in the form of a contractual obligation to the person effecting the insurance, to an assured (or any Principal Assureds) or to another co-insured third party in the contractual chain. As the third party’s undertaking must be “*express*”, it is not sufficient to rely on implied terms or other ways of gap-filling the contract with background law.

A manufacturer or supplier of parts or components will normally carry the risk of damage to parts or components until delivery to the buyer. Details of such issues will normally be set out in the contract between the parties or left to the background law. That that the manufacturer or supplier carries such risk according to the contract or background law is not such an “*express*” contractual obligation to “*remain liable*”.

On the other hand, a typical example of an “*express*” undertaking to “*remain liable*” will be provisions in the contract where the contractor/manufacturer/supplier provides a “*guarantee*” or “*warranty*” concerning the functionality or quality of a product or component. Such a “*warranty*” will often be combined with specific remedies, typically an obligation to rectify defects, including damages to the contract object, but it is not required that such an “*express*” warranty expressly sets out the remedies. Another example of such an “*express*” undertaking to “*remain liable*”, is a contractor who whilst performing trenching services has undertaken to indemnify its client for damage to the cable up to a certain maximum amount. Here the contractor will not be covered and protected from subrogation up to

the maximum amount he has undertaken to remain liable. For the excess amount he will still have the benefit of insurance.

The *last sentence* in sub-clause 2 provides a subsidiarity clause, and it simply states that the co-insurance provided under this sub-clause is subsidiary to any insurance effected by the co-assured himself covering the same risk. One of the purposes of the co-insurance clauses in construction contracts are to avoid double-insurance. If the co-assured has nevertheless taken out a separate insurance against the same risks, there is no reason why the loss, damage or liabilities shall also be covered under the construction risk insurance of the Project. The subsidiarity only applies to third parties co-insured under sub-clause 2, not a Principal Assured so insured under sub-clause 1.

Sub-clause 3:

That there is an assured, a Principal Assured or a “third party” co-insured under Cl. 2-2 first or second subclause is not sufficient to determine that an object is covered by an insurance. Therefore, *Sub-clause 3 stipulates* when an object attaches to the construction risks insurance, and it applies for sub-clause 1 (Principal Assureds) and sub-clause 2 (automatic co-insureds). As the damage must be related to the relevant Construction Project, it is necessary to draw a line between objects (deliveries, materials, components, equipment etc.) intended for the Construction Project and, on the other hand, objects in the possession of the assured, Principal Assured or the “third party” not intended for the Construction Project; typically, objects meant for another customer or another project, or generic off the shelf items. Otherwise, the co-insurance would apparently cover the whole inventory. It is not straight forward to draw such a line on a general basis, but the *subclause* provides that the insurance and co-insurance attaches when the following two requirements are met: (i) the object is clearly identified for the Construction Project, and (ii) the “risk is transferred to an assured or co-insured under sub-clause 1 or 2”. The reasoning behind requirement (i) is that until an object is “clearly identified for the Construction Project”, typically by markings on the goods (attached packing slip etc.), it cannot be separated from objects not related to the relevant Construction Project; for example, generic off the shelf items.

Requirement (ii) refers to when the “risk is transferred” from a contractor/supplier to an assured or co-insured, which is a reference to the “passing of risk” from a contractor/supplier to an assured or co-insured. Transfer of “risk” entails that if the object is damaged after that point of time, a buyer nevertheless has to pay the full purchase price, unless the damage is due to an act or omission of the seller (see, for example, Art 66 in the Convention of International Sales of goods, 1980; “CISG”). The reasoning behind this requirement is that until the risk has passed to an assured or co-insured, the contractor or supplier will normally ensure that the object is insured, and from the passing of risk the assured or co-insured will normally be expected to insure the object. When the risk passes depend on what is agreed between the contractor/supplier and the assured or co-insured. In sales contracts, the transfer of risk is often governed by referring to or incorporating an INCOTERM; for example, “CIF”, “FOB”, “DDP”, or “EXW” etc. Construction contracts may have a more detailed regulation of the transfer of risk (the risk typically passes when the “Delivery Protocol” (or similar) is issued), and such contracts

normally stipulates from when the employer shall insure the object. If the parties have not agreed on the transfer of risk, it must be determined by the applicable background law; see, for example, CISG Art 67-70, which are representative for a number of legal systems.

Sub-clause 4:

Sub-clause 4 supplements the rule in the Plan Cl. 8-5. With multiple insured parties there is a need for provisions governing who is entitled to submit an insurance claim or claim return of premium. The sub-clause applies to all co-insured parties, both under sub-clause 1 (Principal Assureds) as well as those insured under sub-clause 2 (automatically co-insureds). It states that a “*claim for compensation or return premium ... may only be exercised by the person effecting the insurance*”. Therefore, a co-insured cannot itself submit a claim against the insurer. Instead, a co-insured must submit its claim to the person effecting the insurance, who must then make a claim under the insurance contract. The sub-clause has three closely related implications. First, only the person effecting the insurance is entitled to make a claim under the insurance. Second, for the same reason, a co-insured cannot make a claim in his own name, but only through the person effecting the insurance, and the person effecting the insurance must then timely submit the claim. As a firm starting point, the above enables the person effecting the insurance to control that the claim suggested by the co-insured is *prima facie* covered by the insurance. However, the person effecting the insurance cannot refuse to timely forward a claim suggested by a co-insured as it could undermine the position as a co-insured. Third, unless otherwise agreed or directed by the person effecting the insurance, any payments from the insurer shall be made to the person effecting the insurance.

The said starting points are not feasible where the co-insured is a mortgagee, because the mortgagee would then be exposed for an unacceptable credit risk. Therefore, sub-clause 4 provides an exception for mortgagees co-insured under the Plan Chapter 7; see particularly Cl. 7-3 and 7-4. If security is established by way of assignment of the insurance to a mortgagee, the specific provisions in the assignment agreement will prevail over the regulation in Chapter 7 and Cl. 8-5.

Clause 2-3. Objects insured and insurable value

Introduction

A windfarm consists of a number of objects. Sub-clause 1 refers to three categories of insured objects referred to as “Units”, while sub-clause 2 provides that “Contractor’s vessel, plant and equipment” are not covered.

As a windfarm consists of a number of Units located within a specific geographical area, and the various Units are connected, a windfarm might be considered one insured object with one combined value. However, such a “top down” (or “uniform”) approach providing one combined value for the entire wind farm would, in the context of windfarms, be hard to align with certain basic insurance concepts, like the

concept insurable value. For example, if a loss or damage occur related to a specific Unit, it would not be appropriate that the costs of repairs could be incurred up to the combined value of all the Units. Another example concerns the concept total loss; how should one combined value be understood in this respect? Therefore, in the context of insurable value, it is beneficial to divide a windfarm into suitable Units, where each of the Units (as defined in sub-clause 1) are listed with an agreed value in the insurance contract. The latter considerations explain the “Unit by Unit approach” (or “bottom-up” approach) set out in sub-clause 3, where the parties have to agree on a list of the value of each Unit, which again relies on the Units defined in sub-clause 1. Such a list will have some similarities with the Welcar Schedule B, but the specific solutions might differ. The same considerations explain the solution in sub-clause 4 concerning total loss.

Sub-clause 1

Sub-clause 1 divides a windfarm into three typical categories of “Units”, where each category comprises closely related objects forming a functional Unit. Together, the three categories of Units comprise the key objects of an offshore windfarm, where letter (c) serves as a “rest category” covering certain objects not expressly covered by letters (a) and (b). The parties are, however, free to agree on a different division if this is considered suitable. Splitting the windfarm up into too small units may, however, create practical challenges.

Letter (a) concerns the “wind turbine” in a broad sense. In addition to the wind turbine generator as such, it includes the following objects forming key elements of a “wind turbine”:

- The wind turbine generator inclusive of nacelle, hub, blades, gear box, generator, etc.
- The foundation or floater, tower and transition piece.
- Mooring and anchoring systems.
- Temporary work.

The said objects listed in letter (a) typically concern elements being integrated as a *permanent* part of such a Unit. Letter (a) also includes a proportionate and undivided share of the inter array cables; see further on this mechanism below. The alternative “*temporary installations related thereto being a part of the construction work*”, however, entails that the construction risk cover also includes certain “*temporary*” installations, provided that two requirements are met. The two requirements are closely interlinked. *First*, the temporary installation must be “*related*” to any of the said objects listed in letter (a). The requirement will evidently be met where the temporary installation is physically connected to any of the said object as a part of the construction phase, but it is not a requirement that it is physically integrated, provided that it is “*necessary*”. *Second*, the temporary installation must be “*a part of the construction work*”. The latter requirement will evidently be met if the temporary installation was necessary to carry out the construction work, but it is sufficient that it was feasible to facilitate efficient or safe construction work. A practical example meeting both requirements, is a temporary foundation for a mobile crane at the work site (it follows from sub-clause 2 that the mobile crane as such is not covered).

It is not necessarily straight forward to distinguish between “*temporary work*” in sub-clause 1 and the exclusion of contractor’s “*plant and equipment*” in sub-clause 2. As a starting point it will be decisive whether the objects or structures are non-reusable (sub-clause 1) or reusable (sub-clause 2). Concrete formworks may serve as an example. A stationary form made by wood or plywood is normally non-reusable as a form and will fall within the cover for “*temporary installations*”, even though the wood may in principle be reused a few times for other projects etc. On the other hand, modular formwork systems made of durable materials to be reused by Contractor in other projects, fall within the exclusion for Contractor’s “*plant and equipment*” in sub-clause 2.

Letter (b) provides that each “*offshore sub-station*”, including certain “*temporary installations*” and the following objects, is considered an Unit:

- Mooring and anchoring systems (if any)
- Export cables.

Whether the Construction Project includes an onshore and/or offshore sub-station depends on the particular project and the agreement between the operator and the transmission system operator (TSO) / Offshore Transmission Owner (OFTO) and/or offtaker. If such substations are not considered a part of the relevant Construction Project, they will not be listed in the schedule as a part of the Project. Letter (c) also includes a proportionate and undivided share of the export cables; see further on this mechanism below

Letter (c) provides that each “*onshore sub-station*”, including certain “*temporary installations*”, is considered an Unit. Reference is made to the comments under letter (a) regarding “*temporary installations*”. Letter (b) also includes a proportionate and undivided share of the export cables; see further on this mechanism below.

Letter (d) provides that “*other components, equipment and materials manufactured or procured for the Project*” are to be covered as a separate Unit. The reference to “*other*” components etc. implies that the objects are not part of, or belongs to any of the positively defined Units listed in letter a), b) or c). Such objects are nevertheless covered by the construction risk insurance, provided that they are “*manufactured or procured*” for the Construction Project. Typical examples of objects covered as a Unit under letter (d) are tools, ROVs, lifting appliances and spare parts that will belong to the windfarm also after the Completion of the Construction Project; by contrast to Contractor’s “*plant and equipment*” excluded in sub-clause 2. There is no requirement for cover under letter (d) that the components etc. will be used as a part of the construction phase. It is sufficient that such an object might be used in the construction phase; for example, as a spare part.

While each of the Units set out in letters (a), (b) and (c) typically form an integrated and functional Unit, letter (d) concerns a kind of mixed “*rest category*”. The latter entails that it is essential to identify such objects in the list of insured values as per sub-clause 3. Spare parts, equipment and materials will typically be kept in a land-based storehouse. The list of insured values may refer to such a storehouse as Unit with

a specific value, which enables the total loss provisions to apply in case of a casualty destroying the stored objects, for example, a storehouse fire.

Sub-clause 2 regarding “*pro rata share*” of cables:

A windfarm consists of an integrated structure of Units, and the production from the wind turbines is distributed through various cables to the grid. The point in the present context, is that a number of wind turbines in a windfarm are normally dependent on the same cable or cables to distribute its production to the grid. In addition to the cables offshore connecting the wind turbines (so-called inter array cables), the wind turbines may be dependent on offshore sub-stations and/or onshore sub-stations, which are again dependent on so-called export cables. Hence, several wind turbines are normally dependent on the same cable(s).

For the same reasons, it would be artificial to try to assign a specific part of the inter array cable to a specific turbine. Even a damage to a minor part of such a cable may entail that the whole cable cannot be used, and for the same reason it is not – at least from a practical and operational point of view – feasible to try to determine each of the wind turbines’ “relative” (or “individual”) dependency on the same cable. In principle, the said issues could be resolved by defining the inter array cables, or separate parts of the inter array cables, as separate “Units” with a separate value and sum insured. For the reasons set out above, however, it is not straight forward to divide the inter array cables into separate Units, and it is not advisable to have many Units with a limited value. Furthermore, if the inter array cables were defined as a separate Unit with a separate sum insured, it could be unfortunate in case of a total loss of a wind turbine, namely where a part of the inter array cable may hold no residual value to the assured. However, by considering a “pro rata” share of the cable as a part of the relevant Units, a part of the value of the inter array cable is compensated together with the value of the wind turbine.

The solution set out in sub-clause 2 – where each turbine holds a “*pro rata share*” of the relevant cables – are based on the above considerations. The concept is best illustrated by some examples:

A windfarm consists of 20 wind turbines, each of them with a value of 40, and the total value of the inter array cables is 200. Then, each wind turbine Unit “pro rata share” is 10 (200/10). Thus, in case of a total loss of such a completed wind turbine Unit, for example due to major damage to the generator and tower, but no significant damages to the inter array cable, the total loss compensation will include the value of the wind turbine Unit (40), plus a pro rata share of the inter array cable (10); i.e. the assured will receive 50 in total loss compensation. This solution also implies that if the assured, in the same example, instead of claiming total loss decides to repair the damage to the generator and tower, the limit of repair (the sum insured for the Unit) will be 50 (40 +10).

The wording of second sentence of sub-clause 2 provides that the construction risks insurance also cover damages to the cables, even though there is no damage to the Units set out in letters (a), (b) or (c). On this basis, the second sentence of sub-clause 2 provides that the “pro rata share” applies accordingly

where there is a damage to an inter array cable, but no damage to the wind turbine Unit set out in letter (a). Hence, if there is a damage to an inter array cable, but no damage to any of the wind turbines, the costs of repairing the cable will be covered pro rata by each of the wind turbine Units up to the agreed value of each wind turbine Unit. If the repair of the cable amounts to 80, each of the 20 turbines must carry its pro rata share, being 4. The same example reveals that the total insured value available for cable repair will thus consist of the sum of the values of all letter a) Units; in our example, 1000 (20 x 50).

The repair costs shall also be apportioned pro rata where the same casualty results in damage to a wind turbine *and* a cable. However, if the costs of repairing that Unit (the wind turbine Unit, including its pro rata share of the cable; in total, 50) exceed the sum insured for that Unit (50), the excessive costs concerning the repair of the cable damage must be apportioned on the other 19 wind turbines Units (up to the pro rata share per wind turbine Unit). As a matter of consistency, the same applies if the extent of damage to a wind turbine Unit results in a total loss payment to the assured; then the excessive costs concerning the repair of the cable damage must be apportioned on the other 19 wind turbines Units (up to the pro rata share per wind turbine Unit).

If the configuration of a wind farm entails that certain objects are jointly used by several wind turbines, for example where several wind turbine Units utilizes the same mooring system, the said pro rata system may be used to allocate the costs of repairing damages to the mooring system. The latter is, however, not set out in the wording of sub-clause 2.

Sub-clause 3

This provision provides the following exclusion: the *“insurance does not cover Contractor’s vessel, plant and equipment not to form a permanent part of any Units”*. Thus, a contractor should procure insurance for such objects separately. The term “permanent” must be read in light of letter (a), (b) and (c) in sub-clause 1, which typically concern objects forming a permanent part of such Units.

Sub-clause 4

“The number of Units shall be listed in the insurance contract with their agreed values”. The natural starting point for agreeing values under a construction insurance will be the estimated construction costs per Unit. The estimate will typically include engineering, design, drawings and planning allocated to the relevant category of Units and split pro rata between the Units.

Agreeing values provides flexibility; for example, if the assured, due to uncertainty regarding the estimates, would like to add contingency to the values. Furthermore, agreed values provides predictability for the parties by avoiding subsequent adjustments based on whether or not the final value of a Unit deviates from the estimates. Regarding adjustment of the *agreed* values, however, see Cl. 2-5 on escalation.

In operation the considerations regarding values might be different from construction, see the Commentary to Cl. 4-3, sub-clause 2 regarding “*Objects insured and insurable value*” in the operation insurance.

Sub-clause 5

This provision defines the insurable value of a Unit before the Construction Project is completed. The provision is based on the assumption that the value of a Unit under construction increases as the construction work progresses. However, instead of assessing the actual value of the work performed at the time of a casualty, the provision starts with the agreed value as per sub-clause 2, but deductions are to be made for “*un-incurred or revokable costs of works, components, equipment and materials to the Unit*”.

Clause 2-4. The limit of the liability of the insurer.

Introduction

The combined insurable value of the Project will be the sum of the agreed values of the Units scheduled as per Cl. 2-3. This combined insurable value will normally be the basis for calculation of premium and stipulated in the insurance contract. However, the combined amount as such does not represent the insurer’s total and maximum liability for the project resulting from one casualty. The latter is regulated by sub-clause 3, which limit the insurer’s maximum liability resulting from any one casualty to the Property Single Limit. Sub-clause 1 regulates the sum insured per Unit.

Sub-clause 1

This provision establishes the principle that the insurer is liable up to the sum insured for any one casualty.

The sum insured for loss or damage to a Unit caused by any one casualty is limited to the agreed value of the Unit scheduled in the insurance contract as per Cl. 2-3, sub-clause 3.

For damage there will be cover for repair costs up to the sum insured. If the assured makes a request for and is entitled to compensation for total loss the insurance will cover up to the sum insured but limited to the insurable value as set out in Cl. 2-3, sub-clause 4.

The limit of the insurer’s liability is linked to the term “*any one casualty*”. Although it is expressly stated that the Plan Cl. 4-18 in general does not apply, the term “any one casualty” shall have the same meaning as in the Plan Cl. 4-18. Hence, reference is made to the Commentary to Cl. 4-18. Note that the deductible in Cl. 2-22 also applies per “casualty” and some guidance may be found in the practice related to its corresponding provision in the Plan Cl. 12-18, but the content of the casualty concept will not necessarily be exactly the same.

Sub-clause 2

Insurance cover for costs of measures to avert or minimise loss follows the rules in the Plan Chapter 4, Section 2, which sets out provisions on recoverable costs for measures to avert and minimise loss.

Sub-clause 3

This provision explicitly limits the insurer's maximum liability under Chapter 2 resulting from any one casualty to the Property Single Limit, which shall be stated in the insurance contract. This overall limitation will also include the separate sums insured for other interests insured under this Chapter 2 such as costs of measures to avert or minimize loss and sums insured under Supplementary Covers taken out for the Project as per Chapter 2, Section 3. Thus, it is expressly stated that the Plan Cl. 4-18 shall not apply.

It is not uncommon that this Property Single Limit is lower than the combined insurable value of the Project. This does not mean that there is formal underinsurance as per the Plan Cl. 2-4. As stated above in Cl. 2-3 this insurance operates on a Unit basis with an agreed value. This agreed value of a specific unit is fully insured by a corresponding sum insured for loss or damage to the Unit, see sub-clause 2. The Property Single Limit will only operate as an aggregated cap of the insurer's liability in case of one casualty causing damage to many Units.

Clause 2-5. Escalation

Introduction

As mentioned in the Commentary to Cl. 2-3, sub-clause 4, the agreed values will be based on estimates. Thus, it is not unlikely that the circumstances will change during the construction process, typically by way of increased values.

The Plan Cl. 2-3, sub-clause 2, contains a specific provision addressing change of agreed insurable values. For a reduction in agreed insurable values this provision in the Plan shall still apply. However, in construction contracts there is a need for a different regulation with regard to an *increase* of values. Clause 2-5 entails that there will be an automatic increase of the agreed values. However, the extent of the automatic increase must be balanced against the insurer's need of clear limits on the total monetary exposure under the insurance contract, cf. sub-clause 2.

Sub-clause 1

The automatic escalation follows from first sentence stating that *"if the value of a completed Unit at any point of time during the Construction Project exceeds the agreed values listed as per Cl. 2-3, sub-clause 4, the agreed value of the respective Unit shall be automatically increased to its actual value, with a corresponding adjustment of the sum insured as per Cl. 2-4, sub-clause 1"*. If a casualty occurs prior to the assured having declared the new values to the insurer, the assured has the burden of proving the increase of value, cf. the Plan Cl. 2-12, sub-clause 1. If there is a damage to an uncompleted Unit the

wording allows for an escalation if the assured are able to prove that the final completed value will exceed the agreed values. Second sentence states that the person effecting the insurance “*shall declare the new values to the insurer without undue delay and latest prior to expiry of the insurance period*”. It is likely that the exact new values cannot be calculated until the Construction Project as such is completed. However, if the person effecting the insurance at an early stage know that construction costs will significantly exceed the initial estimates there is no good reason to wait until exact figures are available. Say as an example that it is reported to various stakeholders that the budget for the turbines will be exceed by 10% this should also be reported to the insurers. An increase in the agreed values of the Units mean that the premium has to be adjusted correspondingly, thus the provision states that the “*premium payable shall be calculated pro rata on the value increase*”. The basis for the calculation is the agreed premium for this insured interest.

Sub-clause 2

It is considered that a 25% increase is sufficient and provides a good balance between assured’s commercial needs and available insurance capacity. An increase of more than 25%, must be resolved on a case-by-case basis by mutual agreement between the assured and the insurer.

Clause 2-6. Serial Defect Limitation

Introduction

An offshore windfarm will consist of multiple objects of the same design, material and workmanship. Because certain objects typically are made in the same manufacturing process, they will often have the same defects. Hence, so-called “serial defects” are a recurring issue in large windfarm projects, which may result in a corresponding number of damaged Units. The costs of repairing serial defects may be significant, and to strike a fair balance between the assured and the insurer, it is common to limit the insurer’s exposure for such defects.

The Serial Defect Limitation clause is one alternative for limiting the insurer’s liability for damage caused by serial defects. Exclusions could be another alternative; for example, by excluding the consequences of certain types of defects, wholly or partly. If all physical loss or damage caused by a defect are excluded (see Cl. 2-13B), there is no need for a Serial Defect Limitation clause. If, however, an exclusion only excludes certain types of damage caused by a defect (see Cl. 2-13A), the Serial Defect Limitation Clause may be used in combination with such exclusion clauses to further manage the insurer’s exposure.

Other rules might also be relevant in these situations. Under the Plan Cl. 3-30, the assured has a duty to avert further damage. Thus, if it becomes likely that a damage is caused by a defect, the assured has a duty to do what is reasonable to prevent damage to other units. Failure to comply with this duty might prejudice cover as per the Plan Cl. 3-31. Further, the assured will have a duty to disclose these circumstances to the insurer at renewal, cf. the Plan Chapter 3, Section 1.

Sub-clause 1

This clause applies to “*damage as a result of the same error in design, faulty material or faulty workmanship*”. The term “*damage*” has the same meaning as in Cl. 2-10 below and reference is made to the Commentary to this provision. The terms “*error in design*”, “*faulty material*” and “*faulty workmanship*” have the same meaning as in Cl. 2-13A and 2-13B below and reference is made to the Commentary to these provisions.

Normally, serial defects will have be inherent in an object since it was designed or manufactured, but serial defects can also be due to defects in objects acquired later; for example, where components are replaced with new components in connection with repair or maintenance.

The schedule set out in sub-clause 1 entails that the number of Units in the left column must be agreed in the insurance contract. In the absence of such agreement, Cl. 2-6 will not be operational.

The limitations set out in the scale applies to the claim after the adjustment is drawn up based on the applicable insurance conditions. Thus, specific provisions in the insurance contract that excludes damage or limits the scope of cover caused by “*error in design, faulty material or faulty workmanship*” shall be applied before applying the Serial Defect Limitation clause.

Sub-clause 2

Units as set out in Cl. 2-3 letters a), b) and c) includes a pro rata share of cables. This raises a question how to solve multiple damages to a cable caused by the same defect. As each Unit must cover its pro rata share of the repair costs one alternative interpretation is that the schedule must apply based on the number of Units affected by the damage. This solution would create some strange results. Say that there are 10 Units sharing a cable. If there are only two damages to the cable it would be illogical to treat this as 10 damaged Units. Further, say that the first damage in itself would have necessitated replacement of the cable, it would be unreasonable to treat this as 10 damaged Units simply because there are multiple damages to the cable.

Based on this sub-clause 2 first sentence states that “*for the purpose of this clause each part of the cable shall be considered as a separate Unit. If the number of damaged parts exceed the number of Units having a pro rata share of the cable as per Cl. 2-3, the total indemnifiable claims shall be divided on these Units for the purpose of applying the schedule*”. A “part” in this clause has the same meaning as in Cl. 2-11 and 2-12. I.e. if it is technically and economically feasible to repair only parts of the cable (“natural unit of repair”) the schedule shall be applied on such a “part” basis, not per affected Units. Depending on how the cable is designed this may result in a high number of parts which may also be unfortunate for the assured. Thus, the second sentence states that if “*the number of damaged parts exceed the number of Units having a pro rata share of the cable as per Cl. 2-3, the total indemnifiable claims shall be divided on these Units for the purpose of applying the schedule.*”

Sub-clause 3

The Serial Defect Limitation clause applies before application of the deductible.

Sub-clause 4

This provision set out that *“loss or damage to Units shall be indemnified in the chronological order that follows from the application of the Plan Cl. 2-11”*. The types of causes regulated in sub-clause 1, i.e. *“error in design, faulty material or faulty workmanship”*, will in the context of the Plan Cl. 2-11 in most situations fall within its concept of *“defect”* and be regulated by its sub-clause 2. Thus, it will be decisive when the damage *“started to develop”*. See the Plan Commentary to this provision. See also the Commentary to the Plan Cl. 2-12 regarding burden of proof in relation to Cl. 2-11, incidence of loss.

Clause 2-7. Insurance period

Sub-clause 1

Sub-clause 1, first sentence, presupposes that the attachment date of the insurance is expressly set out in the insurance contract. If not, the default position of Cl. 1-5, sub-clause 1, will apply so that the insurance attaches immediately when the parties have agreed on the terms. If only the date of attachment is agreed and not the exact hour, Cl. 1-5, sub-clause 2, will apply so that the insurance attaches at 00:00 UTC on that date.

Sub-clause 2

Sub-clause 2 sets aside the Plan Cl. 1-5, sub-clause 3. The first sentence states that the insurance remains in effect until the date stipulated in the insurance contract as the completion of the Construction Project. Thus, the parties to the insurance contract shall agree on a completion date. Normally this would be the same date as agreed between the employer and the contractor, see on the Commentary to Cl. 2-1 on when a Construction Project shall be considered completed. If completion of the Construction Project is delayed, however, the second sentence provides that the insurance automatically remains in effect until the actual completion date, provided the Project is not delayed more than nine months. The parties can off course agree on an extension of the insurance period beyond 6 months.

The assured must pay an additional premium for the extension period calculated pro rata of the premium agreed for the initial insurance period, but the parties may have agreed in advance on an additional premium for the extension period. If delivery takes place before the stipulated delivery date, the assured is entitled to a return of the excessive part of the premium as per the Plan Cl. 6-5.

If the operation insurance is based on Chapter 4, the commencement date of the operation insurance is automatically postponed accordingly, see Cl. 4-6, sub-clause 2.

Sub-clause 3

Reference is made to the Commentary to the Plan Cl. 1-5, sub-clause 4.

Sub-clause 4

This provision stipulates an absolute time-limit for notice of a casualty of 2 years from expiry of the insurance period, thus setting a hard stop on the tail of a construction insurance. This provision has similarities with the so called “discovery clause” in other market clauses.

The provision applies regardless of the assured’s knowledge of the casualty. The timing of when a casualty has occurred is governed by the incidence of loss provision in the Plan Cl. 2-11.

Clause 2-8. Place of insurance

The designated offshore location for the windfarm shall be set out in the insurance contract, cf. Cl 1-3 letter a).

Sub-clause 1

The starting point is that the insurance is in effect anywhere in the world, subject to the requirements under sub-clause 2, see further below. Thus, the assured is free to place orders with suppliers and contractors wherever they may be located. When the insurance attaches for the various components, parts or equipment must be decided according to Cl. 2-2, sub-clause 3.

Subsequent transport for incorporation into the project at another port or place where assembly takes place is also covered, subject to the limitation in sub-clause 3.

Sub-clause 2

This provision requires that all locations of main yards, workshops and/or work sites for construction and assembling of the Unit’s main components shall be agreed with the Leading insurer. In practice this information will be provided to [all] [most] of the insurers prior to concluding the agreement, thus also agreed by all insurers. These issues may probably also be part of agreeing the scope of work of the marine warranty surveyor pursuant to Cl. 2-9, sub-clause 1. To avoid a dispute on what is a main component this may also be set out in the agreement in the scope of work for the marine warranty surveyor.. Any change of location shall be notified to and agreed by the Leading insurer. Failure to notify must be treated as an alteration of the risk, cf. the Plan Chapter 3, Section 2.

Clause 2-9. Safety regulations

Introduction

Reference is made to Cl. 1-3, letter (c) and its Commentary which defines safety regulations and set out how these may be expressed. Clause 2-9 sets out specific safety regulations for the construction insurance applying in addition to the regulations that may be set out by relevant public authorities.

In a construction project, the procedures, drawings, design and calculations are important to, *inter alia*, reduce the risks of the various activities to be conducted. As risk mitigating measures these documents could have been given the status as safety regulations. However, a general reference to such documents as safety regulations would not meet the requirement that a safety regulation shall be clear and specific, cf. the Commentary above to Cl. 1-3, letter (c). To avoid uncertainties on when such or similar documents shall be considered safety regulations, and on the practical consequences, the appointed marine warranty surveyor approves specific activities relevant for the project on certain conditions. These approvals, recommendations, requirements or restrictions from the marine warranty surveyor will be considered as special safety regulations according to the Plan Cl. 3-25, sub-clause 2. This solution is similar to solutions already existing in the market.

Sub-clause 1, first sentence

The provision sets out that a marine warranty surveyor (MWS) approved by the Leading insurer shall be appointed prior to commencement of any project activities. Generally, the role of the MWS in this context will be to review, give recommendations and approve relevant project documents. In addition, the MWS will normally approve critical operations by issuing certificate of approvals and to check compliance with the approved procedures by physical attendance during specific operations.

The specific scope of work of the MWS during the project shall be agreed between the Leading insurer and the Principal Assured. The scope of work may be tailored for the specific project or done by reference to an established code of practice for marine warranty surveyors, e.g. JR2021-28. Agreeing on the scope of work includes, *inter alia*, setting out which activities that are subject to a so called "Certificate of Approval" (COA).

The COA is the final document in the approval process, referencing the activities carried out by the MWS and importantly: stating the required project procedures, restrictions and MWS "*recommendations*" to be complied with during the specific activity. For a "*recommendation*" to become a safety regulation it must be specific, measurable, time-bound and clearly listed, attached to and referenced in the COA. These requirements ensure that the assured knows when requirements set out by the MWS constitute a special safety regulation.

Sub-clause 1, second sentence

Based on the system described above, the second sentence states that "*the marine warranty surveyor's recommendations, requirements or restrictions shall be regarded as special safety regulations in relation to the Plan Cl. 3-25, sub-clause 2*".

Sub-clause 2

This sub-clause sets out safety regulations for transport of insured objects falling outside the scope of work of the marine warranty surveyor as per sub-clause 1.

First, the assured shall ensure that the means of transport is "*suitable*". The suitability of the means of transport will have to be determined both in relation to the nature of the goods to be transported and the transport conditions for the transit in question. If objects may be expected to sustain certain types of damage that would have been avoided with another means of transport, the chosen means of transport cannot be considered "*suitable*".

Second, the assured shall ensure that the objects are packed and protected to withstand ordinary foreseeable stresses during transport. Which requirements that should be applied to packing and protection must be determined for each individual transit on the basis of the nature of the goods and what is customary for transits of the type of goods in question. It is natural that transport guidelines issued by the maker represents minimum requirements. The assured shall also ensure that the objects are secured in such a way that they are in fact able to withstand the transit in question.

Regarding special safety regulations see the Commentary above to sub-clause 1, second sentence.

Section 2a

Loss of or damage to the object insured

Introduction

The specific rules on the scope of the property cover are divided in Section 2a covering costs of repair or replacement of damage to the property or loss of parts thereof and Section 2b regarding total loss where the assured may claim payment of the sum insured of the Unit, but not in excess of the insurable value.

Loss or damage

For Section 2a to apply it is a basic requirement that a Unit has been damaged or parts thereof have been lost.

That an object has been “*lost*” refers to a physical loss where it has either disappeared or it is uneconomical to retrieve the object.

That an object has been “*damaged*” means that an identifiable physical change in a part of the object must have occurred, and this impairs the functionality and/or durability of the Unit or part. In the absence of a damage the insurer will not be liable for any costs of replacing a part with a built-in weakness or defect.

Causation

The insurer’s liability will further depend on what has caused the loss or damage. The starting point is that the insurance covers “*all perils to which the interest may be exposed*”, cf. Cl. 1-1, letter a), cf. the Plan Cl. 2-8. This means for example that if a built-in weakness or defect in a part causes a loss or damage to the subject matter insured the cost of repairs will be covered as a starting point.

The general rules in Chapter 1 and Part One of the Plan contains exclusions and limitations affecting this starting point. In addition, Section 2a contains special limitations and exclusions, see as an example Cl. 2-12 regarding wear and tear and the optional rules in Cl. 2-13A and 2-13B regarding error in design, faulty material or faulty workmanship.

The extent of losses covered

The insurer’s liability is limited to the costs of restoring the Unit “*to the condition it was in prior to the occurrence of the damage*”. This means that the insurance indemnifies the assured for costs of repair or replacement with materials of the like kind or quality, without deduction for depreciation, i.e. on a “new for old” basis. Costs incurred to improve the original design, material or workmanship is not covered.

Details regarding the extent of loss covered are set out in the Commentary to Cl. 2-10 together with Cl. 2-11, 2-12 2-13A and 2-13B.

Clause 2-10 Damage

Sub-clause 1

According to *sub-clause 1*, the rules shall apply when the Unit or parts thereof have been lost or damaged and the rules concerning total loss “*are not applicable*”.

For the rules concerning total loss to be applicable, there must be a total loss and the total loss rules must be invoked. If the conditions for a total loss of the Unit are met, but the assured decides to have it repaired, the insurer’s liability will in principle be regulated by the rule in Cl. 2-10. There is no provision corresponding to the Plan Cl. 12-9 in the NOWIC wording, i.e. there is no requirement to deduct the scrap value of the damaged unit or part from the claim.

The concept of “loss or damage”

It is a basic condition for the insurer’s liability that a Unit or parts thereof have been lost or damaged, cf. the Introduction to Section 2a. In addition to the statements therein, the term “*damage*” deserves some further elaborations. “*Damage*” means that an identifiable physical change must have occurred which impairs the functionality or durability of the Unit or part. For example, the development of tiny cracks or fractures only discoverable by the use of specialist techniques, such as fluoroscopy, might be sufficient if these cracks impair the utility of the parts. However, it should be noted that, under extreme magnification, many parts may exhibit cracking or other imperfections which in themselves do not necessarily affect their operational use and which can therefore not automatically be considered “*damage*”. Whether the physical change impairs the functionality or durability, is normally a question of reduced structural integrity and/or a reduced lifetime of the part. Each case must be judged on its facts on the basis of specific technical analyses. Without a “*damage*” the insurer will not be liable for any costs of replacing/ rectifying a part having a built-in weakness (or “*defect*”). A typical example of such a weakness is an error in design, is built with faulty material or by faulty workmanship.

Concrete work might serve as an example. Several errors may be made by the workers, such as adding a wrong component, poor mixing of the components, poor vibrating of the concrete in the form creating voids and honeycombing, etc. All these errors may lead to an impairment in the structural integrity of the concrete after curing impairing the functionality or durability of the object. In these circumstances, the concrete has not been “*damaged*” as no subsequent physical change has occurred, the piece of concrete was simply defective from the moment of its creation. The same will be true if part of the form or other objects make their way into the concrete and are left there, even if this happens by accident. Again, the piece of cured concrete has a built-in weakness from the outset.

Another example is defective welds. Faulty workmanship during welding might lead to weld imperfections, for example by way of micro cracking due to lack of pre-warming. Here the welding

process has resulted in an inherent weakness in the weld area. That a weld has been made with an imperfection is not as such considered a “*damage*” within the context of Cl. 2-10. However, if the imperfection later causes a crack which impairs the utility of the part, for example when load is applied to the welded part, this consequential crack is considered a “*damage*” in terms of Cl. 2-10. On the other hand, rectifying undamaged faulty welds, which have not yet resulted in damage to other parts of the Unit, will not be covered by Cl. 2-10.

The extent of loss covered by the insurer

The Unit shall be “*restored to the condition it was in prior to the occurrence of the damage*”. This means first and foremost that the repairs shall bring the damaged part to an equally good condition as it was prior to the occurrence of the damage. In this respect, and subject to the comments below concerning modification, improvements, etc., no account is to be taken of the fact that older materials and/or parts may be replaced by new ones. When damage occurs prior to a Unit being put in use, the main rule is that the repair shall be carried out with new parts, but there might be situations where a question of repairs with used or reconditioned components will arise. Here the insurer’s liability must be tied to the contractor’s or supplier’s obligation vis-à-vis the wind farm operator. If, for example equipment is subject to warranties or guarantees from the contractor, the repairs must satisfy the requirements for these warranties or guarantees to be maintained. If, however, the contract allows, or the parties subsequently agree to carry out repairs, possibly combined with a warranty, the insurer’s liability must be limited in the same way. On this point, however, the situation might be different for a wind farm in operation, see the Commentary to Cl. 4-9.

Furthermore, that the Unit shall be “*restored to the condition it was in prior to the occurrence of the damage*” entails that increased costs incurred to improve, modify, strengthen, alter the design or in any other way remedy any shortcomings that the incident reveals are not covered, see also sub-clause 3 below. This might be costs incurred solely in respect of remedial works relating to a pre-existing weakness but the same applies if the costs of repairs in other ways are increased, for example, due to new requirements by applicable law. If repair of the damage rectifies the built-in weakness without an increase of repair costs, all costs will be covered. As an example, if a part contains a casting error with the result that it breaks, purchasing a new part of the same type and specification (without a casting error) does not increase costs of repairs, meaning that these costs will be covered in full under this provision. Other provisions might however exclude this loss, see Cl. 2-13A and 2-13B.

Non-Nordic insurance conditions often limit the liability to “*reasonable cost of repairs*”. Whether a corresponding limitation should be incorporated in the wording was considered but not included for the same reasons as set out in the Commentary to the Plan Cl. 12-1 on this topic. In essence, the assured should be prepared to demonstrate that it has exercised reasonable diligence to make sure that the repairs were carried out in a cost-effective manner under the given circumstances.

“Costs of repairing” includes the actual costs of repair or replacement costs, as well as other associated costs and expenses necessary to have the repairs carried out. This may include the provision of oversight (superintendence), the use of certain equipment such as lights, generators/fuel or the hire of vessels to support repair works. Likewise, it may include the cost of tests and/or trials in searching for damage, or repeated tests and trials. Such associated costs or expenses may be associated with the repairs in question or be common expenses pursuant to Cl. 2-21 subject to apportionment.

On the other hand, access work is not a common expense to be apportioned under Cl. 2-21. This constitutes a direct part of the actual repair work. For example, opening a turbine to gain access to the internal mechanisms is not ancillary to repair works, but instead a required step in the physical process of carrying out repairs. However, if access work has been necessary for recoverable as well as non-recoverable repairs, the practice has been to split these costs on a 50/50 basis.

For a windfarm it is likely that significant costs will be on a time rental basis. Furthermore, it is likely that these types of repair work will be sensitive to the weather conditions. Thus, rented vessels or equipment might have to spend time waiting for a suitable weather window. These waiting costs will, subject to apportionment as per Cl. 2-21, be part of the ordinary costs of repairs.

A difficult question is as to the extent to which the insurer must cover expenses that must be regarded as a substitute for another loss which according to its nature had to be covered under the insurance, i.e. so-called “substituted expenses”. Cover of such expenses was considered in the drafting of these conditions but rejected. The content of the term “substituted expenses” is difficult to establish and, if basic cover of such expenses were allowed, the door would be opened to a discussion of a whole series of claims. If the insurer has to cover such expenses, this must be on the basis of an advance agreement between the parties. This is also the position under the Nordic Plan.

Sub-clause 2.

When damage occur during construction it will often be expedient to utilize resources already contracted or mobilized to the Project for repairs. A damage should not, however, be exploited to increase rates and costs already agreed. Thus, sub-clause 2 states that if repairs are *“carried out by a party who is awarded a contract related to the Project recoverable costs will be limited to the lowest of the pre-agreed contract rates or the costs of repairs tendered by another repairer”*. This applies regardless of the party’s position in the contractual chain.

The provision is limited to pre-agreed contract rates for carrying out the repairs, i.e. work and employment of vessel, equipment or material. Thus, the provision does not apply to a purchase of new parts for the repairs from a party who previously have delivered parts to the Construction Project.

Sub-clause 3

This provision sets out deductions from the compensation if a *“Unit has been strengthened or the equipment improved”*, and that this has entailed *“special advantages”* for the assured.

If the assured takes the initiative himself to have the Unit strengthened or the equipment improved beyond its capacities prior to the damage, it is obvious that the assured must carry such additional costs itself. However, the provision will also apply where relevant authorities have stipulated new requirements which entail that the Unit will be improved by the repair. Such a deduction shall, however, only take place if the strengthening or the improvement has made the repairs more expensive.

The *“special advantages”* requirement indicates some specific benefit or gain. As a starting point, it is natural to assume that the assured will obtain a certain advantage if the repair entails an improvement. It is nevertheless not sufficient to justify a deduction that the replacement of a worn part by a new part represents an advantage to the owner. However, a deduction must be made if a part is installed with higher performance or better quality than the old part. This nevertheless presupposes that a similar part is obtainable. If that is not the case, and the improvement is inevitable, no deduction shall be made, regardless of whether or not the assured is able to take advantage of the improvement.

Sub-clause 4

This provision is necessary to mark the contrast to the general right to claim compensation for unrepaired damage as per Cl. 2-11.

Clause 2-11 Unrepaired damage

For a Unit under construction, it will likely be less practical that a loss or damage is left unrepaired.

Furthermore, it is only the assured who is entitled to claim compensation under this provision; the insurer cannot demand to pay compensation on an unrepaired basis.

The compensation for unrepaired damage shall be determined based on the estimated hypothetical cost of repair. Regarding periodization, such compensation must be determined based on the repair prices at the time of the expiry of the insurance period. In the case of multi-year insurance contracts, the expiry of each individual annual insurance period is decisive, cf. the Plan Cl. 1-5, sub-clause 4.

When repairing a damage certain type of costs may be subject to apportionment cf. Cl 2-21. Reference is also made to the Commentary to Cl. 2-10 regarding splitting of access costs in certain circumstances. Deciding not to repair and instead claim unrepaired damage compensation leaves the assured with the option to carry out the repairs at a later and more convenient point in time together with other uninsured work. The latter, however, may complicate the apportionment of the costs to be allocated to the insurance. One solution to the problem is to fully exclude common costs. Another is to only cover the cash value of the item damaged or lost. The Plan Cl. 18-2 has a third alternative whereby estimated common expenses are not recoverable except for 50% of certain types of costs. The solution chosen in Cl. 2-11 is to cover the

estimated costs of repairs, including common expenses, except that *“only 50% of estimated removal, quay hire and installation costs are recoverable”*.

Sub-clause 2 states what must be considered evident, namely that no compensation may be claimed if an Unit becomes a total loss or qualifies for condemnation under Cl. 2-23. The rationale is that a claim for compensation for unrepaired damage in addition to compensation for total loss would give the assured an unjustified windfall. If an Unit becomes a total loss or qualifies for condemnation in a subsequent insurance period, no deduction shall be made for compensation related to damage sustained in an earlier period. This solution applies regardless of whether or not the compensation has been paid.

Clause 2-12 Wear and tear, etc.

Damage caused by ordinary wear and tear, ordinary corrosion, and inadequate maintenance are normally excluded from insurance cover.

Drawing a line between damage caused by *“wear and tear”* and *“error in design”* might in certain circumstances be difficult but necessary as the level of coverage might differ. The distinction towards *“error in design”* must be drawn based on the examples and guidelines in the Commentary to Cl. 2-13A.

The exclusion is limited to the part *“that is in a damaged condition”* as a result of the mentioned circumstances. Thus, the provision is an exclusion of three kinds of damages: damages caused by ordinary wear and tear, ordinary corrosion, or inadequate maintenance. Costs of renewing or repairing damages caused by one of the said three causes are excluded from cover, regardless of the damaged part’s place or significance in the causal chain. Hence, the exclusion applies even if such a part did not trigger the casualty or the casualty can be traced back to another external cause. For example, if it is discovered, after a casualty triggered by an external cause, that parts were so worn that they should in any case have been replaced, the repairs or replacement of such parts are excluded from cover. On the other hand, if such a worn part has caused damage to another part, this damage to the other part is not excluded by this clause.

The costs which are excluded from cover under the provision are, in addition to the costs of purchasing or processing a new part, the expenses incurred in access work and installation of the part, plus a reasonable proportion of the common costs of repairs, cf. Cl. 2-21.

“part”

Determining what shall be considered a *“part”* under the exclusion may be an issue where it is an integrated component of a larger unit. Whether or not something shall be considered a *“part”* shall be decided based on considerations of what is technically and economically feasible and efficient. If it is technically or economically sensible to carry out a separate renewal or repair of a component, only that element shall be considered a *“part”* excluded from cover. If, however, the most feasible and efficient

procedure from a technical and economic point of view is to replace a larger unit, and not merely the damaged component, the entire component will be excluded from cover.

Neither the size of the relevant part nor its value will be of significance. Thus, if a nut or bolt has rusted to pieces and it would have been possible to replace it without any major problems, it is only the costs of the renewal of the nut or bolt that are excluded.

“ordinary”

The provision only excludes *“ordinary”* wear and tear damage and *“ordinary”* corrosion damage. In this context, *“ordinary”* refers to wear and tear damage and corrosion damage normally occurring over a certain period of time, typically because of expected fatigue or a limited lifetime of the relevant component. On the other hand, if the wear and tear damage or corrosion damage is a result of a sudden and unforeseen cause it will not be excluded by this provision, see below.

Whether the part was worn or corroded beyond the applicable minimum requirements will have to be evaluated by technical experts.

When assessing whether wear and tear or corrosion has been *“ordinary”* the maker’s expected lifetime of the part will be the natural starting point. However, and particularly with new technology or existing technology operating in new environments, the expected lifetime may not be as long as initially stated by the manufacturer. Nevertheless, this would likely still constitute wear and tear insofar as the deterioration is caused by the ordinary working of the part in question without external fortuitous factors exerting any influence beyond the *“normal”* conditions of the environment in which the unit is deployed. This will be a question of technical fact, but a useful indicator may be how other identical parts are faring in similar circumstances. For example, if the bearings on 18 of 20 turbines require replacement 5 years earlier than the manufacturers stated, this would indicate that the normal lifespan is just shorter than anticipated. On the other hand, if only 2 of 20 bearings are affected, that may indicate a manufacturing or installation error.

Example 1: A windfarm was installed outside of Denmark with turbines with an expected lifetime of 20 years. After 20 years, it is concluded that the turbines may be used for a longer period, except for worn out seals that must be changed due to wear and tear. Here the damage to the seals will clearly be excluded as ordinary wear and tear.

Example 2: Same facts as in Example 1, but damage to the blade bearings is discovered and the damage is caused by the worn out seals. Based on this, it is concluded that the lifetime of the seals are not 20 years as expected. All seals should have been changed after maximum 15 years. The damaged/worn out seals are still excluded as ordinary wear and tear. The damage to the blade bearings, however, is as a starting point not excluded.

The lifetime of a part will be affected by the particular environment within which it is used. *Example 3:* The example is again the same type of windfarm as above, but this one is installed outside Hammerfest (in the northern part of Norway). Due to the harsh weather and temperature conditions in Hammerfest, it is concluded that the normal lifetime of the seals is reduced to 12 years. Here 12 years will be used as a benchmark for what is considered as “ordinary” wear and tear. *Example 4:* The same applies if the particular environment proves to be even harsher; for example, if the same wind turbines were installed outside the Canary Islands and exposed to fine sand particles carried by the wind from Sahara. If the lifetime of the seals proves to be 5 years in such an environment, this will be considered as “ordinary” wear and tear under these circumstances. At least if the seals at the time of installation was the best available option, see further below in the Commentary to Cl. 2-13A regarding “error in design”.

As said above, if a damage is a result of a sudden and unforeseen cause, it will not be excluded by the exclusion for wear and tear. [*Example 5:*] If for example an unexpected volcanic eruption leads to massive amounts of volcanic ash being carried by the wind hitting the wind farm. Then, two years later it is discovered that the seals have been worn out due to heavy abrasion caused by the ash. This damage to the seals will be recoverable.

The exclusion for parts being damaged due to “corrosion” is also limited to “ordinary”, namely corrosion normally occurring over a certain period of time. On the other hand, *corrosion* can be triggered by a casualty; for example, where a fire causes damage to a coating aimed to protect against corrosion. Another example is where a seal is suddenly damaged and water penetrates and corrodes a shaft or bearings. This is not “ordinary” corrosion as such parts of the unit should not have been exposed to water.

Inadequate maintenance

The exclusion for parts damaged due to “inadequate maintenance” applies, for example, if a part is worn out prior to its normal lifetime due to inadequate maintenance.

The provision presupposes a standard for what can be considered “adequate maintenance”. A typical starting point to determine the minimum requirements meeting the standard “adequate maintenance”, will be the user’s manual provided by the supplier. The user manual typically requires certain inspections, to be carried out in order to maintain operability and prevent damage. The user manual may also stipulate the scope and frequency of such inspections, and it may also require that the inspections are properly documented. If the assured as a part of such inspections or otherwise discovers irregularities, it has a duty to act within a reasonable time to rectify the irregularities and prevent damage.

A difficult problem relating to “inadequate maintenance” concerns faults or negligence by the assured’s employees or those who have been delegated to perform maintenance tasks. Generally, inadequate maintenance presupposes that it occurs over a certain period of time, typically because there is no adequate system in place for maintenance. Provided that there was a proper maintenance system in

place an isolated deviation from the maintenance system does not *per se* entail that a damage is considered to be due to “*inadequate maintenance*”. However, even an isolated fault may be considered to be due to “*inadequate maintenance*” if the fault was material. We might imagine that the assured’s employee forgot to inspect a component being highlighted in the maintenance system as a very sensitive and valuable part of the Unit; for example, to inspect and lubricate a gearbox every 6 month. On *one* occasion, a wind turbine technician fails to do so. This is an isolated incident and therefore the damage due to lack of lubrication cannot be considered due to “*inadequate maintenance*”. On the other hand, provided that no damage has started to develop within the next 9 or 12 months, and the same mistake is made (omitting lubrication routines) during the next inspection, it may indicate “*inadequate maintenance*”.

The exclusion for “*wear and tear, corrosion, inadequate maintenance*” is worded as a rule of causation. This means that the general rule on apportionment in the event of a combination of several perils in the Plan Cl. 2-13 regarding “Combination of perils” applies. The insurer may therefore be held partly liable for replacing a part where the damage must in part be attributable to inadequate maintenance or to some other excluded cause of damage, and partly to the strain to which the part has been exposed in connection with a casualty.

The rules in Cl. 2-12 must be seen in connection with the rules on safety regulations. If, for example, worn out or damaged seals should have been discovered by following the applicable maintenance program, the rules regarding safety regulations in the Cl. 2-9 may apply.

The limitations of liability in Cl. 2-12 apply only to loss or damage as per Section 2a. If the circumstances mentioned in Cl. 2-12 result in a total loss as per Section 2b the insurer will be fully liable, unless other exclusions apply, for example a breach of safety regulations, cf. the section above.

Clause 2-13A Option I – Limitation of cover for error in design, faulty material or faulty workmanship

Introduction – opt-in clauses

There is a variety of contractual solutions on how to regulate the risk of damage caused by error in design, faulty material or faulty workmanship, ranging from outright exclusions of all consequences of these perils to more limited exclusions of specific types of damage or loss caused by these perils. Cl. 2-13A and Cl. 2-13B provide two alternative regulations the parties may opt to use. Cl. 2-13A is a limited exclusion stating that the insurer “*is not liable for costs incurred in renewing or repairing a damaged part which were not in a proper condition as a result of error in design, faulty material or faulty workmanship*”, whilst Cl. 2-13B is an outright exclusion of all consequences of the mentioned circumstances. Other examples of clauses regulating this issue are the model exclusion clauses developed by the London Engineering Group (“LEG”) – the so-called LEG 1, LEG 2 and LEG 3.

If the parties have not explicitly opted into Cl. 2-13 A, the exclusions do not apply. For the same reasons, it will not, for example, be necessary to consider what is an “*error in design*”.

Error in design

“*Design*” refers to the entire process from initial studies determining overall functionality and performance to defining in detail how the various parts of a Unit should be configured and assembled. Hence, the term “*design*” includes everything from so-called “*general design*” to so-called “*detailed engineering*” setting out how to construct an Unit, the quality and specification of materials to be used, detailed assembly instructions etc.

The core of an “*error in design*” is that the defective part would have had a different design, typically a more robust, durable or feasible design, if the design issue had been known at the time of design and construction.

An “*error in design*” must be distinguished from where a contractor has not carried out the (physical) construction work in accordance with the design, typically the work shop drawings being a part of the detailed engineering. The latter is not a matter of “*error in design*”, but rather a case of error in construction; it might also be included in the exclusion for “*faulty workmanship*”.

The exclusion of “*error in design*” set out in the opt-in clause 2-13A is limited to subjective errors in design, by contrast to objective errors in design. There is a *subjective* error if the design deviated from the established knowledge and standards. On the other hand, there is an *objective* error if the design complied with the established knowledge and standards, meaning that the design issue was discovered later and hence is the benefit of hindsight. It might be difficult to draw a line between subjective and objective errors in design; for example, in the period from a design issue is discovered and understood until it becomes established knowledge in the industry. It should also be taken into account that there is a rapid technical development in this industry, which means that what was an unknown issue at the time of the initial and general design, might become known prior to completion of the construction process. Subjective errors should, as a starting point, be limited to established knowledge in the industry at the time of the completion of the detailed engineering; i.e. what a professional designer or contractor should have known at that time. The latter strikes a fair balance between, on the one hand, clarity and predictability concerning the scope of the exclusion for “*error in design*”, and, on the other hand, practical considerations of when it is too late to change the design. At the time of completion of the detailed engineering, the parties will normally proceed with procurement, which entails that it will normally be too late to change the design.

A subjective design error in design might overlap with a risk that is, in any case, not covered by the insurance, namely where an assured has taken a so-called deliberate business risk. For example, where

the assured deliberately chose a solution, for example less expensive materials, that was not the most robust and durable available.

As indicated, the finer nuances of the concept “*error in design*” cannot be captured in a brief definition, but there are certain guidelines to be considered, which are best illustrated by certain examples. The following examples and commentaries revolve around the guidelines addressed by Wilhelmsen/Bull in the “Handbook on Hull Insurance” 2nd edition page 301 onwards.

The example above to Cl. 2-12 regarding the windfarm installed outside the Canary Islands can be developed to serve as an illustration. If the seals installed were the best available option at the time, they would not have been changed even if it was discovered that the lifetime was maximum 5 years. The situation may be different if there, at the time of completion of the detailed engineering (and prior to procurement of seals), were other seals available in the market designed to withstand the effect of the sand and the assured was unaware of these. If such seals were considered and disregarded by the assured, the error must be considered a deliberate business risk taken by the assured.

Furthermore, an “*error in design*” requires a qualified error: If the design issue is not rectified it must entail a risk for the safety of the Unit, breakdown in operation or a serious casualty. Thus, immaterial design issue shall not be considered “design errors”. The example above under Cl. 2-12 regarding the wind farm installed outside Hammerfest is illustrative. Say that it was discovered after a couple of years in operation that the seals would last maximum 12 years. This would not make it required to immediately replace the seals. Replacement would probably be postponed to the end of the proven lifetime of 12 years. If the seals remain in place after this period of 12 years, then any damage would fall under “wear and tear” or “inadequate maintenance” rather than an error in design (notwithstanding that the initial stated lifespan was, say, 20 years).

The time element may also be relevant to consider whether there is a “design error”. Firstly, it may be relevant whether the damage developed gradually over time or occurred suddenly. A more gradual development of a damage will typically be a consequence of ordinary wear and tear. Secondly, it may be relevant to consider how long time it took from the Unit was taken in use until the damage occurred. A short period may indicate that an “*error in design*”, whereas a long period may be considered ordinary wear and tear. Using again the wind farm examples under Cl. 2-12 above: Say that for a new park outside Denmark a replacement of the seals was made to extend the lifetime to 20 years in line with the other parts of the turbines. After 3 years, the new seals deteriorate rapidly and immediately have to be changed to avoid severe damage to the bearings. In this scenario, it is natural to consider the rapid and unexpected deterioration of the seals as an “*error in design*”. If, however, the new seals function satisfactorily for a significant period of time, for example 15 of the estimated 20 years, the failure after 15 years is not necessarily a matter of “*error in design*”. The reason that the new seals only lasted for 15 years may be the effect of the Unit’s use may have been underestimated or that the Unit has operated in

conditions that are more demanding than anticipated, which entail that the damage after 15 years may be caused by “*ordinary wear and tear*”.

It must also be considered whether the damage was an inevitable consequence of the use and hence a part of the assured’s business risk. For example, it is not an “*error in design*” if a damage is an inevitable consequence of the use or the assured has deliberately chosen solutions that entail a degree of uncertainty about serviceability or useful lifetime.

Referring again to the example above with the windfarm installed outside the Canary Islands: If seals designed to withstand sand were disregarded as too expensive, it is evident that the assured took a calculated business risk. Damage is simply an inevitable consequence of the choice made and must be considered ordinary wear and tear under these particular circumstances. The same is the situation if a wind turbine concept has been thoroughly tested offshore western Europe. If the same concept is utilized in the northern parts of Europe with exposure to frost and ice resulting in a more rapid general deterioration of the structure, hereunder extensive material fatigue and development of multiple small cracks etc., these damages must be considered as an inevitable consequence of this particular use, i.e. the damage is a result of ordinary wear and tear in these particular conditions.

Faulty material

“*Faulty material*” refers to the fact that the material used suffers from some weakness or deficiency compared to applicable standards, typically regarding durability. Faults in the material are often a result of errors during the manufacturing process; for example, the steel is not manufactured according to the specifications or procedures.. The exclusion is not limited to faulty material present at the time of delivery of the Unit. The exclusions also includes material that became a part of the Unit during subsequent modifications or repairs. On the other hand, if the material as such is sound, but the material is not fit for its intended use, this should rather be considered as an “*error in design*”. Damage to material resulting from a casualty is of course outside the scope of these provisions and must be covered by the insurer at the time the damage occurred.

Faulty workmanship

“*Faulty workmanship*” refers to faults committed in connection with work carried out during construction/manufacturing of a part or Unit, typically where the quality of the work does not meet the specifications, recognized norms and good construction practice. For example, the welding work or painting work may be substandard. Damage due to accidents during work, e.g. fire damage resulting from negligence during welding is not excluded as “*faulty workmanship*” under this provision.

Clause 2-13B Option II – Exclusion of cover for error in design, faulty material or faulty workmanship.

Reference is made to the introduction to Cl. 2-13A.

According to Cl. 2-13B “*the insurer is not liable for loss or damage as a result of error in design, faulty material or faulty workmanship*”. This is an outright exclusion of all consequences of the mentioned circumstances.

For the understanding of “*error in design, faulty material or faulty workmanship*” reference is made to the Commentary to Cl. 2-13A.

Clause 2-14 Losses that are not covered

This provision sets out certain types of losses that are not covered under the property insurance as per section 2a. Cover for some of these losses may, however, be covered by supplementary cover as per Section 3 or by Chapter 3.

Letter a

This is similar to the exclusion in the Plan Cl. 4-2, and reference is made to the commentary to this provision.

Letter b

This is similar to the Plan Cl. 18-21, letter b, and reference is made to the commentary to this provision.

Letter c

The property insurance does not cover loss of “*electronically stored data*”. This will typically be production data that normally will be continuously transmitted to shore. The hardware in a Unit on which such data/information is stored on, including the software, is nevertheless covered but only for the cost of replacement. Thus, costs or recovering digital data/information will not be recoverable under this insurance.

Clause 2-15 Deferred repairs

The clause is verbatim the same as the Plan Cl. 12-6 and Cl. 18-23 and reference is made to the Plan’s Commentary to Cl. 12-6

Clause 2-16 Temporary repairs

Sub-clause 1 is verbatim the same as the Plan Cl. 18-24, sub-clause 1 and reference is made to the Plan’s Commentary to this provision.

Sub-clause 2 regulates the situation where permanent repairs can be carried out, but where the assured has an interest in postponing the permanent repairs. Here the insurer’s liability for the costs of the temporary repairs is limited to amount saved through the postponement of permanent repairs.

Clause 2-17 Survey of damage

The clause is verbatim the same as the Plan Cl. 12-10 and Cl. 18-27 except for sub-clause 4 and reference is made to the Plan's Commentary to Cl. 12-10.

Sub-clause 4 has been amended to the effect that the umpire shall be appointed by the Nordic Offshore and Maritime Arbitration Association's Board of Directors.

Clause 2-18 Invitations to tender

Sub-clause 1 is similar to the Plan Cl. 12-11, sub-clause 1 and Cl. 18-28, sub-clause 1, except that the word "*demand*" is replaced by "*request*" as the latter fits better with the second sentence, i.e. if the request is not accommodated by the assured, the insurer may obtain a tender. Tenders by the insurer must be obtained from contractors which as a minimum have sufficient technical and economic capacity to be relevant for comparison as per Cl. 2-19, see particularly sub-clause 3 which also sets out other relevant circumstances.

Reference is made to the Plan's Commentary to 12-11, sub-clause 1.

Clause 2-19 Choice of repairers

Sub-clause 1

If several tenders have been obtained, the tenders shall be adjusted by adding the costs of removal when ascertaining which tender is in fact the lowest.

Sub-clause 2

It is a basic rule in Nordic marine insurance law that it is the assured who decides where to repair. The assured may for example have an interest in a more expensive, but faster repair alternative reducing the income loss. The property insurer's liability is however limited to the lowest adjusted tender regardless of the choices made by the assured.

Sub-clause 3

The wording of sub-clause 3 has been adapted to insurance of a windfarm and the structure of this insurance.

This provision regulates the situation where the assured does not want to have the repairs carried out by a particular contractor. Provided that the assured "due to special circumstances" has "justifiable reason to object to the repairs", he may demand that a specific tender shall be disregarded. An example of circumstances which give the assured "justifiable reason" to object to a tender is justifiable doubt as to whether the contractor has sufficient technical and economic capacity, cf. Brækhus/Rein: Håndbok i kaskoforsikring (Handbook on Hull Insurance), p. 491. The fact that the assured is not on good terms with the contractor due to disputes concerning the payment for earlier assignments is normally not relevant. An actual threat of strike at the contractor will also be relevant, as will a situation where the contractor

has relatively recently been the victim of repeated strikes and there is reason to fear that the conflict has not been resolved.

Another relevant issue would be the level of Environmental, Social and Governance (“ESG”) friendly operations of the relevant contractor. In general, the assured will have the right to demand repairs to be carried out by a contractor which complies with applicable minimum ESG standards reasonably and usually required by the assured for repairs for the assured’s own account.

Clause 2-20 Removal for repairs

Sub-clause 1

The sub-clause entails that the removal of a Unit to the place of repair is considered a part of the repair costs to be covered by the insurer. Such removal costs shall be apportioned among recoverable and non-recoverable work under Cl. 2-21 regarding “Apportionment of common expenses”.

“Removal” covers the entire process from dismantling etc. at the place of damage to transportation from the place of damage to the place of repair and back to the relevant location. The typical place of damage will be the location of the windfarm. However, the clause also covers the situation where damage to a part or an Unit occurs during transportation to a windfarm; if so, the clause also covers the costs of transporting the repaired part or Unit to the place of damage.

The removal costs include costs of preparing the Unit for removal as well as costs for necessary vessels to conduct the removal, for example tugs, barges, cranes etc. If it is necessary to take out additional insurance, cf. sub-clause 2, the premium must be regarded as removal expenditure. Costs of removal does not, however, include interest on debt, general insurance premiums, or any share of the owner’s general administrative costs.

In accordance with practice, no portion of the removal expenses will normally be attributed to damage arising during the removal to the place of repair. By contrast, a proportion of these expenses shall be attributed to damage that is not discovered until the vessel is at the place of repair, but which clearly existed before the removal commenced.

Sub-clause 2

For the insurer to be able to disclaim liability during the removal based on the Plan Cl. 3-20, it must entail a “substantial increase of the risk”. In practice, the Leading insurer will be entitled to decide the issue of removal on behalf of the co-insurers, cf. the Plan Cl. 9-6. If the claims leader has accepted the removal of an Unit, the individual co-insurer or total loss insurer may not invoke the provision in Cl. 3-20.

If an insurer who is liable for repair of the damage is to be able to invoke the provision, there must be other, less perilous options available. If there is only one single possibility of the unit being repaired at all, the alternative can be that the Unit may be considered a total loss. Thus, to avoid a total loss the insurer

might have to bear the risk during the removal. For further comments see the Commentary to the Plan Cl. 3-20.

Clause 2-21 Apportionment of common expenses

The clause is verbatim the same as the Plan Cl. 18-31.

The clause regulates the apportionment of repair expenses that are common to work the insurer is liable for and work not covered by the insurance.

According to the first sentence, expenses that are common to recoverable and non-recoverable work shall be apportioned based on the cost of each category of work. The second sentence makes an exception for common expenses which depend on the length of the period of repairs, whereby the costs shall be apportioned over the time each category of work would have taken if it had been carried out separately.

Where equipment or vessels are hired on time, there might still be lump sum costs involved, for example mobilization and demobilization fees. Here the lump sum costs shall be apportioned on a cost basis and the hire on a time basis.

If the time related common expenses are so minor that it is not worthwhile making an extra calculation of them, these costs may on a discretionary basis be apportioned based on the costs of each category of work, provided that this is considered reasonable.

With exception of the broader basis for apportionment of common expenses under this Clause, the adjusting practice as explained in the commentary to Cl. 12-14 is relevant and reference is made to what is said there. However, there is a practice to disregard the assured's work if the costs represent less than 5% of the total cost of repairs.

Clause 2-22. Deductible

Sub-clause 1 corresponds to the Plan Cl. 12-18, sub-clause 1, and reference is made to the Plan's Commentary to this provision.

Sub-clause 2 sets out that the deductible must be calculated for each Unit. In the event of damage to several Units, an equivalent number of deductibles shall be calculated in the settlement. The same solution follows by way of interpretation of the corresponding provisions in the Plan.

Sub-clause 3 Damage caused by the same atmospheric or geological disturbance, limited to 72 consecutive hours, shall be regarded as one casualty.

“Atmospheric” disturbance - means a low atmospheric pressure which results in a severe storm pattern with strong winds combined with heavy seas, rain, snow, sleet, hail, ice, thunder and lightning, hurricane, typhoon, cyclone or tornadoes etc., as defined by a public weather bureau.

“Geological” disturbance – means

- (i) shaking or trembling of the earth that is tectonic in origin, including tsunami resulting from earth movement, i.e. sea waves and sea movement caused by movement of earth.
- (ii) volcanic activity and volcanic eruptions

Sub-clause 4

This provision sets out that *“damage or loss to multiple Units caused by a continuous event from the same vessels, floating equipment or other floating objects, shall be regarded as a single casualty”*. *“Continuous event”* means an uninterrupted event, for example if a vessel without engine power drifts into a windfarm and causes damage to several turbines. On the other hand, if for example a vessel servicing the windfarm by negligent navigation collides with a turbine, and then sail to a new turbine to carry out services and again by negligent navigation collides with this new turbine, this is two events. This is not a *“continuous event”* as there is a distinct break between the events.

Sub-clause 5 corresponds to the Plan Cl. 12-18, sub-clause 3 and reference is made to the Plan's Commentary to this provision.

Section 2b

Total loss

Clause 2-23 Total loss

Sub-clause 1

The provision states that in *“the event of a Unit being a total loss, the assured may claim payment of the sum insured of the Unit, but not in excess of the Unit’s insurable value, cf. Cl. 2-2, sub-clause 3”*.

The concepts of insurable value and sum insured are of particular practical relevance when claiming for a total loss under a construction insurance contract. These amounts follow from Cl. 2-3 and Cl. 2-4, and reference is made to the Commentary to these provisions for an explanation of their relationship. Before a Unit is completed, the sum insured will normally be higher than the insurable value and the compensation will be limited to the insurable value as defined and calculated according to 2-2, sub-clause 4.

If the insurer pays total loss compensation pursuant to Cl. 2-23, he has a right to take over the Unit including any undamaged components or materials, cf. the Plan Cl. 5-19, sub-clause 1. Hence, the insurer can utilize the residual value of the Unit may have after the damage triggering the total loss compensation; typically, undamaged components or materials. For the same reason, the assured cannot utilize any residual values or undamaged components or materials unless the insurer agrees. However, in most cases it is in the insurer’s interest to come to an agreement with the assured on an appropriate reduction in the compensation payable in consideration for leaving the title to any residual values or undamaged components or material with the assured.

Sub-clause 2

This provision sets out three scenarios where the assured may claim a total loss.

First, letter a provides that a Unit is considered a total loss if it is *“lost without there being any prospect of it being recovered”*. The provision covers the situation where a Unit is lost. For example, if the Unit has foundered in deep waters where it cannot be recovered. There is, however, a gradual transition from a lost Unit to cases where it is an economic assessment whether or not to undertake salvage and repair work. Such an economic assessment will depend on whether the likely salvage and repair costs will exceed the agreed insurable value.

Secondly, letter b provides that a Unit is a total loss if *“it is damaged and cannot be repaired”*. That a Unit *“cannot be repaired”* will be the situation if it is considered destroyed as a Unit, making repairs impossible or meaningless from a economical point of view. *“Repairs”* in this connection mean repairs which meet the conditions under Cl. 2-10 , i.e. repairs which will restore the Unit to the state it was in prior to the damage, and a state which is expected to last. Whether it is possible to repair a Unit is primarily a technical question.

However, there might be situations where it from a purely technical point of view is possible to repair, but the repairs cannot be conducted due to reasons entirely outside the control of the assured.

Thirdly, letter c provides that a Unit is a total loss if “*the estimated costs of repairs amount to more than 100% of the insurable value*”. For a Unit under construction, the insurable value must be calculated as set out in Cl. 2-3, sub-clause 4. The insurable value during the construction period is dynamic and increases based on work performed, and for the same reason the threshold for claiming total loss compensation will be dynamic and develop during the construction period. The estimated costs of repairs include all costs of removal and repairs recoverable under Chapter 2, Section 2a, which at the time of the request for condemnation must be anticipated if the Unit is to be repaired.

At the completion of a Unit, it is presumed that the insurable value will be equal to the sum insured. To harmonize the condemnation formula in Cl. 2-23, sub-clause 2, letter c, with the condemnation formula under Cl. 4-22, sub-clause 2, letter c, the assured has an alternative option to claim for total loss compensation if costs of repairs amount to more than 80 % of the sum insured. This secures a seamless transfer from the construction risks insurance to the operations insurance under Chapter 4.

Sub-clause 3

Reference is made to the commentary to the Plan Cl. 11-1, sub-clause 2.

Clause 2-24. Total loss in the event of a combination of perils

The clause is verbatim the same as the Plan Cl. 11-4 and Cl. 18-11 and reference is made to the Plan’s Commentary to Cl. 11-4.

Clause 2-25. Request for total loss

The wording of the clause has been adapted to insurance of a windfarm and the structure of this insurance. Compared to the Plan Cl. 11-5 there is no time limit for requesting a total loss, otherwise the meaning of the clause is similar to the Plan Cl. 11-5 and reference is made to the Plan Commentary to this provision.

Clause 2-26. Liability of the insurer during the period of clarification

The wording of sub-clause 1 has been adapted to insurance of a windfarm and the structure of this insurance. However, the meaning of the clause is similar to the Plan Cl. 11-9, sub-clause 1 and reference is made to the Plan Commentary to this provision.

Clause 2-27. (open)

Clause 2-28. (open)

Clause 2-29. (open)

Section 3

Supplementary insurance covers

Introduction

Chapter 2, Section, 3 sets out various supplementary insurance covers, and each of them can be agreed on as a supplement to the main covers set out in Chapter 2 and 3.

Clause 2-30. Applicable rules

Sub-clause 1

First sentence states the evident, namely that none of the supplementary covers apply unless the parties have agreed a separate sum insured for the respective insurance cover. Second sentence sets out that the sums insured agreed for supplementary covers are subject to the Property Single Limit in Cl. 2-4, if such limit is agreed.

Sub-clause 2

With separate sum insureds, the supplementary covers are not subject to the deductible agreed for Section 2a. Therefore, if a deductible shall apply for specific supplementary cover, this must be stated in the insurance contract. If this is agreed, the provision on deductible(s) in Cl. 2-22 apply for the deductible agreed for the relevant supplementary cover.

Sub-clause 3

The rules in Chapter 1 and Chapter 2 shall apply to any supplementary cover unless otherwise provided in Section 3.

Clause 2-31. Insurance for additional costs of repositioning

This supplementary insurance covers the additional costs of repositioning an insured object where it has been wrongly positioned following a loss of, or damage to contractor's vessel, plant or equipment. Hence, it is a requirement that the loss or damage is caused by a recoverable peril as per Cl. 1-4; for example, if a crane suffers a damage during integration of a wind turbine resulting in one of the turbine sections being wrongly assembled and the latter requires dis- and re-assembly.

On the other hand, if the wrongly positioned object is damaged by the incident necessitating removal and repairs, such costs must be considered under clause 2-10.

Clause 2-32. Insurance for increased repair costs caused by weather conditions

Sub-clause 1

Hired vessels, plant, equipment or labor may be sensitive to the weather conditions and might have to spend time waiting for a suitable weather window. Still, these waiting costs will be part of ordinary costs of repairs recoverable as per Section 2a. The cover provided thereunder will be limited by the agreed sum insured for the Unit.

When estimating “*costs of repairs*” the uncertainty connected to the weather must be taken into account and a reasonable contingency must be added to the estimate. If the assured decides to repair there will still be uncertainty due to the actual weather conditions during repairs. Thus, there is a risk that the costs of repairs may exceed the sum insured. To cater for this uncertainty this insurance will give additional cover for the hire costs of vessels, plant, equipment and labor whilst waiting for appropriate weather conditions to conduct the repairs. The terms “*plant*” and “*equipment*” encompasses both off-shore and on-shore plant and equipment, such as an onshore crane and onshore facilities.

When assessing questions of causation it must be taken into account that marine operations within the offshore wind industry is complex and inseparable. Similar to construction, a repair project may follow an assembly line methodology, where e.g. wind turbines are dismantled and re-assembled inshore before being hauled to field by a vessel spread. This operation creates an inevitable interdependency between the assembly and tow. A standby situation for one of the operations therefore directly affects the other and should consequently be considered in conjunction and be covered. However, the assured has a general duty to avert or minimise loss as per the Plan Cl. 3-30 thus it is expected to undertake feasible measures to minimise standby costs and idle labor time, such as releasing vessels from hire or reallocating the workforce to alternative tasks.

Sub-clause 2

The insurance provided by sub-clause 1 protects the assured for the uncertainty connected to the weather conditions whilst conducting repair. If the assured decides not to repair this does naturally not apply, thus there will be no payment under this insurance if the assured claim compensation for unrepaired damage as per Cl. 2-11 or claims payment of the sum insured based on total loss as per Section 2b.

Clause 2-33. Insurance for cancellation and re-contracting costs for the Construction Project

Introduction

Loss of objects, or damage, to a Construction Project may entail that contracts for the hire of vessels, plant, equipment or labor cannot be used within reasonable time with the effect that the assured cancels such contracts; typically, because the loss of objects or damage will significantly delay the commencement of the relevant work the vessels etc. were contracted for. Cancellation for convenience (Norwegian: “*avbestilling*”) is normally subject to damages or an agreed fee, which may be significant, and the supplementary cover under Cl. 2-33 covers such cancellation costs on the part of the named Principal Assured(s).

In addition to the cancellation costs as such, the supplementary cover under Cl. 2-33 also includes extra costs for “recontracting such vessel, plant, equipment and labor, to complete the Construction Project”. The latter entails that the supplementary covers also includes costs derived from the cancellation, namely the costs to hire “recontract” the kind of resources that were cancelled.

Alternatively, the last sentence of the second paragraph provides that the supplementary cover also includes “costs of measures taken in order to avert or minimise such cancellation and re-contracting costs”. For example, where the named Principal assured is able to agree on a commercial settlement under which, for example the vessel, will be suspended until the loss of objects or damage do not any longer prevent the commencement of the work. However, such cover is limited to “the amount the insurer would have had to pay if the measures had not been taken”.

Sub-clause 1:

Sub-clause 1 provides two alternatives with respect to the reason behind the cancellation.

The starting point in letter a, is that if contracted vessels, plant, equipment or labor is cancelled (No. “avbestilt”) as a consequence of a “recoverable loss of, or damage to an insured object”, this insurance will indemnify the named Principal Assured’s “costs for cancellation and extra costs for re-contracting such vessel, plant, equipment or labor to complete the Construction Project”. The term “recoverable” means that the loss of, or damage to a Unit is recoverable under Chapter 1 and Sections 2a or 2b.

The alternative in letter b refers to a situation where the cancellation is due to “loss of or damage to a nominated contractor’s vessels, plant or equipment”. Such contractor items are not as such covered under this insurance, cf. Cl. 2-3, sub-clause 2. The purpose of this supplementary cover is to cater for situations where a unique or a highly specialized vessel or equipment incurs damage. The cover is limited to “nominated” contractor’s vessels, plant or equipment that are already “mobilised” for the Construction Project. In practice, this may be a cable laying vessel, or an onshore crane, whose uniqueness make them a potential bottleneck for the entire project. “Nominated” for the Construction Project means that the details of the contractor and the relevant items, for example the name of the nominated vessel, must be set out in the insurance contract.

The alternative “mobilised” requires that the vessel or equipment is already directed to or already present on the Construction Project.

Finally, coverage for cancellation costs under letter b will only be provided where the damage to the vessel or equipment was caused by a peril that would have been covered under this insurance contract, i.e. Cl. 1-4.

This insurance covers “costs for cancellation”, i.e. fees and penalties for which the named Principal Assured is liable to pay its contractual parties when cancelling the contract. With respect to letter b, the owner of the damaged item, for example the owner of the damaged vessel, will normally cover the risk of damages to its vessel; the damaged vessel will typically be off-hire. Hence, if the owner due to such a damage is not able to provide the vessel to the assured, the assured will normally not have to cancel the vessel. For the same reason, the assured will not have to pay cancellation damages or a cancellation fee to such contractors. However, the fact that a nominated or mobilized vessel is damaged, may entail that the assured is not able to utilize other contractor’s vessels, plant or equipment (which are not damaged);

typically, where the damaged item forms an essential part of the work or is a bottleneck. The latter entails that the assured may have to cancel the contracts with other contractors, and such “derived” cancellation costs are covered by letter b.

Cancellation will often result in a need to re-hire vessels and equipment in order to complete the Construction Project once the damage has been repaired. Therefore, in order to restore the Principal Assured to the same position it was prior to the casualty, the insurance also cover extra costs the Principal Assured may incur in connection with “*re-contracting similar vessels, plant, equipment and labor*”. The cover is limited to the “*extra*” costs; i.e. the costs incurred in addition to what was planned for.

Coverage under this clause is limited to costs for cancellation and extra costs for re-contracting “*as a consequence of*” loss of or damage to specific items as per letter a. or letter b. The following scenarios may be used as a guidance on the understanding of this requirement of causation:

An inter-array cable is damaged during a cable laying operation requiring replacement of the cable. Costs of cancelling the cable laying vessel, demobilization, re-mobilization at a later date, alternatively costs of remaining on standby would be considered “a consequence of” the damage and thus covered under letter a.

The requirement of causation does not limit coverage to vessels, plant, equipment and labor mobilised or currently working on the damaged asset. Say that a service offshore vessel is hired for pulling in the damaged inter-array cable. Should the pull-in be prevented due to the cable being damaged, cancellation of that offshore vessel would be considered a “consequence” thereof .

Another example may be a situation where a turbine component sustains a damage while being assembled at the quay. Cancelling a contract for the onshore crane and vessels contracted for towing out the turbine, their demobilization, re-mobilization or standby, would also be considered as a consequence resulting in coverage for extra costs incurred thereto. By applying the extension to nominated vessels or equipment engaged on the Construction Project, coverage would be provided also in situation where damage would be sustained by the crane itself, if nominated under the policy.

The second sentence makes it clear that if the assured takes an alternative course of action to avoid cancelling contracts costs of such measures will be covered “limited to the amount the insurer would have had to pay if the measures had not been taken”.

Sub-clause 2

Similar to Chapter 3 covering loss of revenue, public authority’s interventions or restrictions and the assured’s decision to stop activities on undamaged objects fall outside the scope of cover, see the Commentary to Cl. 3-1, sub-clause 2. In both these situations, it is not the damage or physical loss of an object in itself that is the cause of the cancellation of the contracts.

Clause 2-34. Insurance for costs of removal of wreck, debris and residual property

This insurance provides cover for the assured’s legal or contractual liability for the costs of “*safeguarding and removing*” the wreck, debris or residual property where the insured object is lost or damaged.

The term “*safeguarding*” cover costs incurred to minimise the risks associated with the wreck, debris or residual property, such as marking it with buoys, attaching lights, radar beacons, audible warnings, guard vessel etc. “*Residual property*” means the part of the object that remains intact following loss of parts of, or damage to the object and which may also require removal for legal or contractual reasons or may interfere with the assured’s operations following a casualty.

Letter a covers the situations where the assured has a mandatory obligation under law to safeguard and remove a wreck etc., provided that the assured on this basis is ordered by the relevant authorities to do so.

Letter b entails that the cover is not limited to mandatory obligations under law as per letter a, but also includes a contractual obligation to safeguard and remove a wreck etc.

According to letter c, the clause also covers the cost of removal where the wreck, debris or residual property interferes with the assured’s “normal” operations. For example, the wreck/debris will prevent cable laying operations due to blocking the trench or complicates anchoring in the relevant area.

Clause 2-35. Insurance for evacuation expenses

This insurance covers costs of evacuating personnel following a recoverable loss of or damage to an insured object. The term “*recoverable*” means that the loss of, or damage to a Unit is recoverable under Chapter 1 and Sections 2a or 2b. Cover is only triggered by recoverable damage to the objects insured. There is no cover in the event of unrelated medical emergencies. The cover comprises both evacuation from the damaged objects as well as from undamaged insured objects. Evacuation from contractor’s vessel, plant or equipment is not covered.

The “*costs of evacuation*” comprises transportation off/on the insured object and temporary accommodation and maintenance of personnel. However, the clause does not cover lost wages.

Clause 2-36. Insurance for costs of measures to avert or minimise loss of time

The scope of cover is identical to the cover provided in Cl. 3-4, sub-clause 1 and Cl. 5-4, sub-clause 1, and reference is made to the Commentary to these provisions.

This insurance only applies “*insofar as such extra costs are not recoverable under Chapter 3*”. On this point note the Commentary to Cl. 3-4, sub-clause 3 regarding extra costs apportioned on the assured’s uninsured interests, which may be covered by this supplementary cover.

Clause 2-37. Insurance for forwarding expenses

This insurance applies to circumstances where an insured object is in transit, and the transit is terminated short of destination, due to any casualty. As the insured object will usually be carried by a third-party vessel not insured under this insurance contract, the reason for the termination of the transit is of no importance

to this cover, provided that it is accidental in nature, and that termination is not a result of issues such as contractual disputes, non-payment of freight etc.

The insurance only cover “necessary extra charges reasonably incurred in unloading, storing and forwarding the property insured to the intended destination” as a consequence of the termination. It does not cover costs of avoiding a delay.

In some circumstances, the costs of unloading, storing and forwarding the property may be recoverable as general average, and the insurer shall receive credit accordingly.

Clause 2-38. Insurance for cable cutting costs

Introduction

Unplanned cutting of a cable prior to completing the cable laying operation may result in an interruption of the project’s schedule with various additional costs. This insurance cover costs the assured has incurred under specific circumstances that necessitated unplanned cutting of the cable in order to safeguard safety of the personnel and property involved in the cable laying operation.

Sub-clause 1

The clause provides cover for “costs incurred in the event that the cable has to be cut by reason of an imminent threat to the safety of property or people involved in the cable laying operation, and costs of reinstating the cable operation to the same position that had existed prior to the event”.

The main requirement for cover is an “*imminent threat to the safety of property or people involved in the cable laying operation*”, such as the cable itself or the cable laying vessel. “*Imminent*” means that the threat must arise suddenly in course of a cable laying operation, which puts the assured, the vessel’s master, or the personnel responsible for the operation in a position requiring a decision in reaction to the change of conditions that were accounted for when planning the operation. The most common application of this clause will be an unexpected change of weather forecast, where continuing in the cable laying would impose a threat to the operation, cable, vessel or the crew. Should such situation arise, the weather conditions and the decision to interrupt the cable laying operation shall be assessed on the basis of forecasts broadcasted by the meteorological body and approved by the marine warranty surveyor in line with the Cl. 2-9. Contrary to that, the criterion would not be met in case where information about the potential adverse weather conditions were available before the cable laying operation was initiated. Therefore, the vessel’s master, and/or personnel responsible for the operation onboard the vessel are expected to monitor and take account of weather and sea conditions forecast at the relevant locations. Frequency of the monitoring shall be in accordance with the industry practice. This insurance covers both the costs necessary incurred on cutting the cable and interrupting the operation as well as costs of bringing the assured to the same position as was prior to the interruption. Naturally, this means costs of bringing the vessel to shelter and back to the operation site once the conditions imposing the imminent threat have passed.

Sub-clause 2

Whilst any damage to the cable resulting from cutting the cable as per sub-cl. 1 would be covered under the Cl. 2-10, the insurers shall not be liable for any damage to the vessel, unless insured under the policy, or other uninsured property that may have been caused as a result of cutting the cable or interrupting the operation.

Chapter 3

Construction risk delay in start-up and initial business interruption

Chapter 4 OPERATION - Property insurance

Section 1

General rules relating to the scope of the property insurance

Clause 4-1. Outline of covered activities

Introduction

The rules in chapter 4 covers “*operation*” of an offshore windfarm, cf. sub-clause 1. As a starting point, “*operation*” refers to the whole period between completion of construction (cf. Cl. 2-7, sub-clause 2) and decommissioning of the windfarm, including the period the wind farm is producing and exporting electricity as per its intended purpose.

In addition to the production and export activity, it is natural that “*operation*” includes activities such as ordinary maintenance and repair of damage. In practice, there are different approaches to maintenance and repair of windfarms. Therefore, to avoid uncertainties, maintenance and repair are separately addressed in the wording.

If there is a change in the type of activities, the general rules regarding alteration of the risk may be applicable, cf. the Plan, Chapter 3, Section 2. However, to ensure predictability it is common that specific activities are specifically regulated, see sub-clause 2, which sets out activities the assured is allowed to carry out within the operation insurance and when insurer’s approval is necessary. These activities are in other market conditions often labelled as “*minor works*”, but this term is not used in this insurance.

Some market conditions often include specific requirements for cover, e.g. use of marine warranty surveyors etc. In this Chapter 4, such requirements are made general and included in Cl. 4-8 regarding safety regulations. Thus, these provisions apply to all activities covered under Cl. 4-1, not only those mentioned in sub-clause 2.

For activities not covered by the operation insurance there are various alternatives. One alternative is to separately tailor and insure the planned activities in addition to the operation insurance. Another solution is to insure the existing windfarm and the planned activities based on Chapter 2 from an agreed commencement date until the completion of the activities/ project. The latter may be practical if the planned activities may extend beyond a normal insurance period under operation insurance, thus avoiding a renewal of insurances prior to completion of the activities/ project. It will also ensure that circumstances typical for a project/construction are properly regulated and catered for. This solution might also be the

preferred solution for some type of activities that would have been covered by the existing operation insurance.

Sub-clause 1

The wording provides that Chapter 4 covers “*operation activities for a offshore windfarm – “the Windfarm”, including work of ordinary maintenance and repair of damage”*”.

“ordinary maintenance”

The term encompasses manufacturers' requirements, scheduled routine inspections, adherence to established maintenance programs based on industry norms etc. This includes, inter alia, periodical maintenance, and periodical or routine replacement of components or systems within a Unit.

What is considered “*ordinary*” maintenance might develop over time. Therefore, whether any method for maintenance, such as tow-to-port, in-situ, or any other maintenance operation fall within the term “*ordinary*” maintenance, must be considered based on what is, at any time, considered ordinary industry practice.

Information provided to the insurer prior to the insurance contract will also be relevant to determine what is “*ordinary*” maintenance in a project. For example, if the assured informed of particular maintenance activities to be undertaken during the windfarm's operational phase, and this was accepted by the insurer under the onset of the operational policy, such activities should be covered by the operational insurance as “*ordinary maintenance*” in the relevant project, even though they at the outset may exceed a narrow understanding of “*ordinary*” maintenance.

“repair of damage”

Damage may occur while a wind farm is in operation. Therefore, in the operation phase repair of damage is considered a part of the operational insurance.

Repair work may cause new damages. As the main purpose of a property insurance is to cover the assured's loss caused by a recoverable loss or damage, it would be unfortunate if the insurance did not also cover damage caused by the repair activities. This must apply regardless of whether the loss or damage is recoverable under the insurance in force at the time of repairs. The reason for not being covered by the insurance in force at the time of repair may simply be that the damage has occurred in a previous policy period (being discovered later or repairs having been postponed) or there might be a particular exclusion in the insurance contract. There is, however, a safety valve for the insurer with regard to removals, see Cl. 4-19, sub-clause 2 and 3, and, as mentioned above, the safety regulations in Cl. 4-8 apply.

Ordinary maintenance or repair of damage is covered irrespective of whether they are carried out by the original contractor or a different or new contractor.

Even though maintenance and damage repair can be covered by the operation insurance, the extent of the maintenance and repairs might be of such a magnitude and complexity that it might be preferable to base the insurance on Chapter 2 for the period of repair.

Sub-clause 2

The first sentence extends the operational cover beyond what is covered under sub-clause 1, namely, to include residual work from the construction phase, extraordinary maintenance, and modifications. Hence, it is a kind of parallel to so-called “minor works”.

That the cover extends the operational insurance to include “*residual work from the construction phase*” is a key feature of Chapter 4, which ensures that there is no “gap” in cover between the construction insurance and the operation insurance. It also avoids double insurances.

There is a general requirement for such extended cover that “*the existing structural integrity of the insured objects is maintained*”. Structural integrity refers to the ability of a built structure or component to withstand its intended load based on its original design and engineering, material strength, construction quality etc. The existing structural integrity will rarely be an issue regarding minor modifications, and the structural integrity may also allow disassembly of a Unit. On the other hand, replacing an existing blade with a larger or longer one may increase the loads to such an extent that it exceeds the structural integrity or may increase the fatigue and hence reduce the lifetime.

“Residual work from the construction phase”

The term refers to remaining work, documentation work, or remaining activities to be completed after the construction, installation, and commissioning should have been completed. Such tasks are typically identified during final inspections, testing, or post-commissioning evaluations. Residual work typically includes so-called “carry over work” or “punch items” to ensure that the offshore wind farm meets all technical, regulatory, and safety requirements before final handover or full operational status, but it also includes, for example, warranty work, fine-tuning mechanical, electrical, or structural components, finalize documentation, drawings, certifications, and reports.

“extraordinary maintenance”

The term “extraordinary” refers to any non-routine, maintenance or replacement of components or systems beyond “ordinary maintenance”. Such maintenance is not a part of the maintenance program of the windfarm, which entails that it is typically not foreseen. Such “extraordinary” maintenance is nevertheless necessary to preserve the asset's functional integrity after substantial deterioration, or malfunction, or to avoid the same. Extraordinary maintenance often involves considerable overhauls, or replacements of main components, which entails that it might be hard to draw a line between “extraordinary maintenance” and “repair of damage” under sub-clause 1.

“Modification”

The term shall be understood as any upgrading work or alteration to a Unit or part of a Unit. This includes, but is not limited to, replacing WTGs with a different maker/model, or any other component (provided that the existing structural integrity is upheld). However, the replacement of an IAC with a like-for-like component, even if sourced from a different manufacturer, shall not in itself be classified as an alteration under this definition.

Sub-clause 2, second sentence, is similar to the first part of Cl. 2-2, sub-clause 3, and states that “*objects manufactured or procured for such work attaches to the insurance from the time the risk is transferred to the assured*” and reference is made to the Commentary of Cl. 2-2, sub-clause 3. The last part of Cl. 2-2, sub-clause 3 has not been included as the activities covered hereunder in Cl. 4-1 is of a more limited scope than the construction insurance.

Sub-clause 2, third sentence, clarify that “*an increase in value as a result of the work is covered as per Cl. 2-5*”. This will typically be due to upgrades or improvements of the units.

Sub-clause 2, fourth sentence, imposes limitations on the activities described in sub-clause 2, for which the Leading insurer’s prior approval would be required. Prior approval is necessary for activities encompassing:

- alterations to the structural integrity of the asset or units, or
- heavy lifting with vessels or other equipment
- moves, i.e. the relocation of a Unit
- subsea operations such as cable retrieval or deployment, subsea work on the mooring arrangement, or
- where the initial total contract value exceeds the sum stipulated per Unit

The insurance will cover any damage to or loss of objects that have been specifically manufactured or purchased for the wind farm, when the work falls under sub-clause 2. The coverage for these objects follows the terms outlined in Cl. 2-2, sub-clause 3 of the insurance policy.

Clause 4-2. Assured and co-insured

This provision is identical to Cl. 2-2, except for changing “the Construction Project” to “the Windfarm” and deleting Cl 2-2, sub-clause 3. Reference is made to the Commentary to Cl. 2-2.

Sub-clause 1

For a windfarm in operation there will be fewer persons having a value interest in the property insured compared to the construction period. Furthermore, the persons having value interest changes from the developer and contractors to the operator and owners of the windfarm. Thus, there might be different considerations regarding who to name as Principal Assured under the operation insurance.

For a newly completed Windfarm careful considerations must be made regarding naming contractors from the Construction Project as Principal Assureds in the subsequent operation insurance. It might be natural for some of the contractors to maintain the status as Principal Assured in a period when these are conducting or being responsible for activities to complete residual work from construction or conduct maintenance, cf. Cl. 4-1. The need for naming a contractor as Principal Assured must be assessed in light of the “automatic extended” cover provided by sub-clause 2.

Sub-clause 2

The wording in the second sentence of sub-clause 2 - “*from the time such third party is awarded a contract related to the Windfarm*” - covers both contracts from the construction period as well as new contracts concluded after delivery. This secures seamless automatic cover for third parties conducting guarantee maintenance under construction related contracts as well as securing third parties awarded new maintenance contracts after completion of the Construction Project.

Sub-clause 3

Reference is made to the Commentary to Cl. 2-2, sub-clause 4.

Clause 4-3. Objects insured and insurable value

Sub-clause 1 and sub-clause 2

Reference is made to what is said in the Commentary to Cl. 2-3, sub-clause 1 and 2.

Sub-clause 3

Sub-clause 3 states that the “*number of Units shall be listed in the insurance contract with their Agreed Values*”. In a similar way as under a construction insurance contract, the construction costs per Unit might be a natural starting point for the assessment of the value of a Unit. However, specifics for conducting repairs during operation should be taken into consideration when agreeing values. Such specifics might for instance be less readily available resources like vessels or spare parts, which may result in increased costs of repairs when compared to construction.

Clause 4-4. The limit of the liability of the insurer

Reference is made to the Commentary to Cl. 2-3.

Clause 4-5 Serial Defect Limitation

This provision is identical to Cl. 2-6, except for Cl. 4-5, sub-clause 3, second sentence, thus as a starting point reference is made to the Commentary to Cl. 2-6.

In the scale set out in sub-clause 1 the number of Units in the left column must be agreed in the insurance contract.

Sub-clause 4, first sentence, states that damage to Units “shall be indemnified in the chronological order that follows from the application of the Plan Cl. 2-11”. The practical main rule deciding the chronological order will normally be when the damage “started to develop”, see the Commentary to Cl. 2-6. By its nature these causes will often remain hidden and be unknown to the assured until either damage is discovered or there is a sudden breakdown of a part of the Unit. Further, a significant amount of time may lapse from the creation of the inherent characteristic until damage starts to develop. The result being that chronological order of damages being allocated to earlier and later insurance contracts. Based on this the parties must agree in the insurance contract whether earlier damage covered by a previous insurance contract shall be counted or not when applying the scale set out in sub-clause 1. The provision also contains an option to regulate how far back in time previous damage shall be counted.

Clause 4-6. Insurance period

Sub-clause 1 presupposes that the commencement and termination dates of the insurance is expressly set out in the insurance contract. If not, the default position of Cl. 1-5, sub-clause 1, will apply so that the insurance attaches immediately when the parties have agreed on the terms. If only the date of attachment is agreed and not the exact time, Cl. 1-5, sub-clause 2, will apply so that the insurance attaches at 00:00 UTC on that date.

Sub-clause 2

To cater for a seamless transfer from the construction insurance to the operation insurance this provision automatically adjust the commencement date of the operation insurance if the construction insurance is extended. If the construction insurance is “extended as per Cl. 2-7, sub-clause 2, the commencement date of this operation insurance is postponed until agreed completion of the Construction Project whereof this insurance commences at the time of termination of the construction insurance”.

Sub-clause 3

Reference is made to the Commentary to the Plan Cl. 1-5, sub-clause 4.

Clause 4-7. Place of insurance

A windfarm will have its designated offshore location set out in the insurance contract, cf. Cl 1-3, letter a), and will normally be stationary during its lifetime.

Regarding no (2) and no (3) reference is made to the Commentary to corresponding conditions in the Plan Cl. 18-3, letter a, no 2. and no 3.

Clause 4-8. Safety regulations

Introduction

Reference is made to Cl. 1-3, letter (c) and its Commentary which defines safety regulations and set out how these may be expressed. Thus, this Cl. 4-8, sub-clause 1, stipulates specific safety regulations for the operation of a windfarm and applies in addition to safety regulations that may follow from Cl. 1-3, letter (c).

An operation insurance for a windfarm will in addition to normal operation also cover work similar to construction projects, cf. Cl. 4-1. Further, due to the complexity of a windfarm also some types of work that falls in the category of normal operation, like for example ordinary maintenance and damage repairs, may represent a significant increase in risk for the insurer. As a result of this, sub-clause 2 set out safety regulations for certain types of activities.

Sub-clause 1

For a wind farm in operation the assured shall *“develop, implement and maintain a risk based technical integrity monitoring and maintenance program in accordance with sound industry practice”*.

Monitoring the technical integrity is important to ensure that the windfarm functions according to its design and that any problems are discovered as soon as possible to avert or minimise damage and loss. Monitoring may be done automatic by electronic systems and alarms or manually by regular physical inspections.

The technical maintenance program will normally be on a regular basis with set intervals. It must also take into account necessary maintenance discovered by the monitoring program.

The provision explicitly set out a requirement to *“develop, implement and maintain”* such programs. A mere establishment is therefore not enough if the system is not prudently maintained and followed up.

Further the provision requires that the monitoring and maintenance program shall be *“risk based”* and *“in accordance with sound industry practice”*. Thus, the requirements will develop and change based on experience acquired for this specific type of operation where design type and location may be of particular relevance. It is obvious that *«sound industry practice»* as a minimum meets requirements that follows from applicable law. Further, it is natural that any requirements set out by a maker to maintain guarantees/warranties represents minimum requirements during the guarantee/warranty period. After this period a *“risk based”* approach may result in an amended program by way of appropriate intervals between maintenance and manual inspections.

Sub-clause 2

As explained in the introduction to this provision, sub-clause 2 set out safety regulations for certain types of activities, namely moves, lifts and subsea operations.

“Moves of a Unit” includes all moves regardless of the means used to move it, i.e. regardless of the it being towed or transported on a heavy lift unit or barge.

“Lifting of component by external vessels/units”, i.e. lifting carried out by permanent cranes, winches etc. on the Unit is not subject to these safety regulations.

“Subsea operations” includes all subsea operations such as cable retrieval or deployment, subsea work on the mooring arrangement.

Regarding the role of the marine warranty surveyor reference is made to Cl. 2-9 and its Commentary. Like Cl. 2-9 the marine warranty surveyor’s recommendations, requirements or restrictions shall be regarded as *“special”* safety regulations in relation to the Plan Cl. 3-25, sub-clause 2.

Sub-clause 3 is verbatim the same as Cl. 2-9, sub-clause 2, and reference is made to the Commentary to this provision.

Section 2

Loss of or damage to the object insured

Clause 4-9. Damage

The clause is verbatim the same as Cl. 2-10. Reference is made to the Commentary to this provision.

Extent of loss covered by the insurer

As mentioned in the Commentary to Cl. 2-10, the Unit shall be “*restored to the condition it was in prior to the occurrence of the damage*”. This means inter alia that the repairs shall bring the damaged part to an equally good condition as it was prior to the occurrence of the damage. When damage occurs after a unit has been taken in to use the question arises whether the damaged part shall be repaired, replaced with a used or reconditioned component, or whether the assured can demand new parts or equipment. The cover is based on “new for old” meaning that if new parts are used during repairs there is no deductions for depreciation of the old parts. However, this does not mean that the assured can demand cover for new parts if repairs with used or reconditioned parts makes the unit equally good as prior to the damage. It should be highlighted that it is the assured who decides the means of repair, while this clause provides limits to the extent of the insurer’s liability.

For a damaged unit with a remaining warranty or guarantee from the original contractor or supplier the insurer’s liability must also comprise the costs of restoring the warranty to its original length and extent. On the contrary, any extension of the warranty or guarantee period must be considered under sub-clause 4. If such an extension results from an increase in costs of repairs, such an increase must be borne by the assured, or apportioned in case both the insurer and the assured benefits from such an increase. Say as an example that the original warranty period was 5 years, the damage occurred in year 2 in the guarantee period and repair results in a new guarantee period for 5 years. Then the insurer should be liable for 3/5 of the increase in repair costs, i.e. the additional costs incurred in order to obtain that guarantee as opposed to an alternative cheaper option which would not have had the extended guarantee period. If the only repair option automatically comes with an extended guarantee then no apportionment is required, and the insurer is liable for the full cost.

If a unit is damaged and no warranty or guarantee period applies the assured must, to a large extent, accept that damaged parts are repaired and not replaced by new ones, even if this entails that the Unit will not be restored to exactly the condition it was in before, provided that the operational performance is not meaningfully affected as a result. The assured must also, to a certain extent, be content with used or reconditioned components. However, he shall have the right to demand that the used component is at least as good as the damaged one as a minimum it must normally be a requirement that the component is newly overhauled.

Clause 4-10. Compensation for unrepaired damage

The clause is verbatim the same as Cl. 2-11 and reference is made to the Commentary to this provision.

Clause 4-11. Wear and tear, etc.

The clause is verbatim the same as Cl. 2-12 and reference is made to the Commentary to this provision.

Clause 4-12A. Option I – Limitation of cover for error in design, faulty material or faulty workmanship

The clause is verbatim the same as Cl. 2-13A and reference is made to the Commentary to this provision.

Clause 4-12B. Option II – Defect Exclusion

The clause is verbatim the same as Cl. 2-13B and reference is made to the Commentary to this provision.

Clause 4-13. Losses that are not recoverable

The clause is verbatim the same as Cl. 2-14 and reference is made to the Commentary to this provision.

Clause 4-14. Deferred repairs

Sub-clause 1 is verbatim the same as the Plan Cl. 18-23 and reference is made to the Plan's Commentary to this provision.

Clause 4-15. Temporary repairs

Sub-clause 1 is verbatim the same as the Plan Cl. 18-24, sub-clause 1 and reference is made to the Plan's Commentary to this provision.

Clause 4-16. Survey of damage

The clause is verbatim the same as Cl. 2-17 and reference is made to the Commentary to this provision.

Clause 4-17. Invitations to tender

Sub-clause 1 is verbatim the same as the Plan Cl. 12-11, sub-clause 1 and Cl. 18-31, sub-clause 1. Reference is made to the Plan's Commentary to 12-11, sub-clause 1.

Clause 4-18. Choice of repairers

The clause is verbatim the same as the Cl. 2-19 and reference is made to the Commentary to this provision.

Clause 4-19. Removal for repairs

Sub-clause 1

This provision is similar to Cl. 2-20, sub-clause 1, and reference is made to its Commentary.

Sub-clause 2

During removal for repairs, all insurances will normally be in effect on the conditions agreed. If repairs are postponed or discovered in a later insurance period this may lead to the repair cost being recoverable under an earlier insurance contract, whilst damage occurring during the removal being recoverable by the insurers at risk when the removal is being carried out. According to the Plan Cl. 3-20, each of the insurers may exclude liability for any loss arising during or as a result of the removal, provided that the removal involves a “*substantial increase of the risk*”. The threshold to object to the removal is however different between the two groups of insurers, i.e. the insurers being liable for the repairs and insurers in a later insurance period when the repair and removal are carried out. See the Commentary to Cl. 2-20, sub-clause 2, the Commentary to the Plan Cl. 3-20 and the Commentary to the Plan Cl. 12-13, sub-clause 2 and 3.

Sub-clause 3

This provision sets out that the Plan Cl. 3-20 may be invoked by any insurer who has granted cover for the vessel in question, also the insurer which is liable for the damage to be repaired. See, however, the Commentary Cl. 2-20 and what is said above regarding the threshold for invoking this rule for the various groups of insurers.

Clause 4-20. Apportionment of common expenses

The clause is verbatim the same as Cl 2-21 and reference is made to the Commentary to this provision.

Clause 4-21. Deductible

The clause is verbatim the same as Cl 2-22 and reference is made to the Commentary to this provision

Section 2b

Total loss

Clause 4-22. Total loss

Sub-clause 1

The provision sets out that in *“the event of total loss the assured may claim payment of the sum insured of the Unit, but not in excess of the Unit’s insurable value, cf. Cl. 4-2, sub-clause 2 and Cl. 4-3, sub-clause 2”*.

This is a traditional principle in insurance law. For a Unit in operation the Unit’s sum insured and agreed insurable value will be similar in practice.

If the insurer pays total loss compensation pursuant to Cl. 4-22, he has a right to take over the Unit including any undamaged components or materials, cf. Cl. 5-19, sub-clause 1. The insurer can therefore utilize the residual value that the Unit, components or materials may have after the damage triggering the total loss compensation. If the assured should find it expedient to complete the Unit after having received the total loss compensation, he cannot utilise any residual values or undamaged components or materials unless the insurer agrees. Normally, it would be in the insurer’s interest to come to agreement with the assured on an appropriate reduction in the compensation payable in consideration for leaving the title to any residual values or undamaged components or material with the assured.

Sub-clause 2

This provision sets out three scenarios where the assured may claim a total loss.

For *letter a)* and *letter b)* reference is made to the Commentary on the corresponding provision in Cl. 2-23.

Letter *c)* set out that a Unit is a total loss if *“the estimated costs of repairs amount to more than 80% of the insurable value”*. The estimated costs of repairs include all costs of removal and repairs which at the time of the request for condemnation must be anticipated if the Unit is to be repaired.

Clause 4-23. Total loss in the event of a combination of perils

The clause is verbatim the same as the Cl. 2-24 and reference is made to the Commentary to this provision

Clause 4-24. Request for total loss

The clause is verbatim the same as the Cl. 2-25 and reference is made to the Commentary to this provision

Clause 4-25. Liability of the insurer during the period of clarification

The clause is verbatim the same as the Cl. 2-26 and reference is made to the Commentary to this provision

Clause 4-26. (open)

Clause 4-27. (open)

Clause 4-28. (open)

Clause 4-29. (open)

Section 3
Supplementary Cover

Clause 4-30. Applicable rules

The clause is verbatim the same as Cl. 2-30 and reference is made to the Commentary to this provision.

Clause 4-31. Insurance of additional costs of repositioning

The clause is verbatim the same as Cl. 2-31 and reference is made to the Commentary to this provision.

Clause 4-32. Insurance of increased repair costs caused by weather conditions

The clause is verbatim the same as Cl. 2-32 and reference is made to the Commentary to this provision.

Clause 4-33. Insurance of costs of removal of wreck and debris and residual property

The clause is verbatim the same as Cl. 2-24 and reference is made to the Commentary to this provision.

Clause 4-34. Insurance of evacuation expenses

The clause is verbatim the same as Cl. 2-36 and reference is made to the Commentary to this provision.

Clause 4-35. Insurance for costs of measures to avert or minimise loss of time

The clause is verbatim the same as Cl. 2-37 and reference is made to the Commentary to this provision.

Clause 4-36. Insurance of forwarding expenses

The clause is verbatim the same as Cl. 2-38 and reference is made to the Commentary to this provision.

Chapter 5
Operation risk business interruption insurance

Chapter 6

War risks insurance - Construction

Introduction

As a starting point what is said below in the introduction to Chapter 7 applies also for the construction insurance and this war risk insurance for construction is based on the same approach. However, construction differs from operation as construction to a large extent includes transportation of objects. Thus, the default scope of cover is broader than the cover set out in chapter 7. by incorporating standard war clauses typically used for construction and transportation of cargo.

Clause 6-1. Perils covered

Sub-clauses 1, 2 and 4 is identical to Cl. 7-1 sub-clauses 1, 2 and 3.

As mentioned in the introduction construction normally includes cover for objects being transported. Thus, this *sub-clause 3* incorporates war clauses normally used for construction and transportation of cargo.

Clause 6-2. Interest insured and sum insured

The clause is to a large extent similar to Cl. 7-2 and reference is made to the Commentary to this provision, however this Cl. 6-2 also includes the interests and scope of cover within the incorporated war risk clauses included in Cl. 6-1, sub-clause 3.

Clause 6-3. War between the major powers

The clause is verbatim the same as Cl. 7-3 and reference is made to the Commentary to this provision.

Clause 6-4. Use of nuclear arms for war purposes

The clause is verbatim the same as Cl. 7-4 and reference is made to the Commentary to this provision.

Clause 6-5. Cancellation

The clause is verbatim the same as Cl. 7-5 and reference is made to the Commentary to this provision.

Clause 6-6. Excluded and conditional areas

The clause is verbatim the same as Cl. 7-6 and reference is made to the Commentary to this provision.

Chapter 7

War risks insurance - Operation

Introduction

The market for war risk insurance for a windfarm is different than the war risk market for vessels. As a result, the scope of cover for war risk insurance cannot be based on the comprehensive regulations in the Plan.

First of all, the perils covered are more limited, thus the starting point is that the Plan Cl. 2-9 does not apply. Chapter 7 will only cover named perils hereunder or as agreed in the insurance contract. The insurance contract may also contain specific limitations or limitations incorporating market clauses, both solutions will take priority over the default provisions in this chapter. Having a set of default positions in this chapter is still beneficial as some of the commonly used market clauses refers to an underlying set of conditions.

Secondly, the only interest covered by this war risk insurance is those set out in Chapter 4.

Clause 7-1. Perils covered

Sub-clause 1

As mentioned above, the war risk insurance for Windfarm is more limited compared to other marine war risk insurances. The Plan Cl. 2-9 shall not apply.

Sub-clause 2

This insurance will only cover specific perils set out below in sub-clause 3 or specifically agreed in the insurance contract.

Sub-clause 3

This provision sets out certain perils covered as a default position under this war risk insurance. As stated in the introduction, this default position may be amended by incorporating market clauses in the insurance or otherwise tailoring the cover in the individual insurance contract.

Letter a)

This provision establishes covers casualties caused by *“derelict mines torpedoes bombs or other derelict weapons of war”*.

Letter b)

This provision covers casualties caused by *“riots, sabotage, acts of terrorism, any malicious act of any person or group of persons, strikes or lockouts, strikes or lockouts”*.

Regarding the terms “riots”, “sabotage”, “strikes or lockouts” reference is made to the Plan Cl. 2-9, letter c). The cover in the Plan Cl. 2-9, letter c) for “other social, religious or politically motivated use of violence or threats of the use of violence” is replaced by “any malicious act of any person or group of persons”. Compared to a solution based solely on the Plan Cl. 2-8 and the Plan Cl. 2-9 this is an extension of the war risk insurance and a limitation of the marine risk insurance. Violent acts without any background in political, social or similar circumstances would be covered by the Plan Cl. 2-8. By covering “any malicious acts” under the war risk insurance drawing the borderline between marine and war risk insurance will be simplified and the solution fits better with the typical buy back cover provided by for example the NR2022-037A, see particularly its letter (c). The term “any person acting maliciously” refers to situations where a person acts in a way which involves an element of spite or ill-will or the like in relation to the property insured or at least to other property or perhaps even a person, and consequential loss of, or damage to, the insured property ensues. In situations where the spite, ill-will or the like is absent loss or damage will be covered by the marine risk insurance.

Letter c)

This provision covers casualties caused by “use of arms or other implements of war in the course of military exercises in peacetime” reference is made to the Commentary to the Plan Cl. 2-9, letter a, relating to this particular wording.

Clause 7-2. Interest insured and sum insured

The war risk insurance covers the same interests as set out in Chapter 4 and Chapter 5.

As a default the sums insured under this war risk insurance are the same as those set out relation to Chapter 4 and Chapter 5, including any limitations that may follow from Cl. 1-6.

Clause 7-3. War on land exclusion

The insurance does not cover any loss or liability occurring on dry land or from operations on dry land.

“Dry land” means the geographical area above the line of ordinary high water around the coastline.

For objects removed from the Windfarm and which are brought on land, the insurance will be suspended for the object in question at completion of unloading from the vessel at the port for onward transit and handling. The insurance will reattach at the time of commencement of loading operations onto a vessel for onward transport to the Windfarm.

Clause 7-4. War between major powers

The clause is verbatim the same as the Plan Cl. 15-5 and reference is made to the Commentary to this provision.

Clause 7-5. Use of nuclear arms for war purposes

The clause is verbatim the same as the Plan Cl. 15-6 and reference is made to the Commentary to this provision.

Clause 7-6. Cancellation

The clause is verbatim the same as the Plan Cl. 15-8 and reference is made to the Commentary to this provision.

Clause 7-7. Excluded and conditional areas

The clause is verbatim the same as the Plan Cl. 15-9 and reference is made to the Commentary to this provision.



Cefor

