

# WIKBORG | REIN

## ARCTIC OPENING – AN EMERGING REALITY

*The unprecedented retreat of sea ice and changes to seasonal lengths and weather patterns in the Arctic region provide new opportunities and risks for the shipping industry. In particular the time saving achievable by sailing through the Northern Sea Route along Russia's coastline attracts increasing interest. This emerging reality is illustrated by IMO's on going work on the Polar Code, increased focus on polar hazards amongst the IACS members and rising attention to the risks and possibilities in the Arctic region shown by a number of governments.*

As a matter of course the marine insurance industry is responding, and will increasingly respond, to the growing desire to navigate the Northern Sea Route and other polar waters. The purpose here is to take a bird's eye view at the insurance cover under the Nordic Marine Insurance Plan (the "Nordic Plan") in respect of navigation in the Northern Sea Route.

The starting point is that the Northern Sea Route is part of the excluded trading area. This follows from the Nordic Plan Cl. 3-15 and also from the so-called Cefor Trading Area Clause which was issued in November 2013. Hence, the insurance cover is suspended unless permission from the insurer to transit the Northern Sea Route has been obtained.

*"Hence, the insurance ceases to be in effect unless permission from the insurer to transit the Northern Sea Route has been obtained."*

But what is the legal position if permission to transit the Northern Sea Route is granted by the insurer?

Breach of "safety regulations" as defined in the Nordic Plan may lead to loss of cover if there is causation between the breach and the casualty and there is negligence on the part of the insured, ref. Cl. 3-22 and Cl. 3-25. It is common ground that the classification society's rules and the flag state's regulations constitute safety regulations which must be complied with, but also coastal states' regulations constitute safety regulations to the extent that they are binding on the insured.

When it comes to the Northern Sea Route in particular, provisions and orders given by the Russian authorities on the safety of navigation such as icebreaker assistance, use of ice pilots and shipboard ice navigators and rules on the regulation of maritime traffic therefore constitute relevant safety regulations to the extent that they are legally binding on the insured. Information about the Russian regulations can be found on <http://www.nsra.ru/>. The views on the extent of Russia's jurisdiction over the Northern Sea Route differ. This may lead to questions as to the scope of the applicable safety regulations.

In addition to the statutory safety regulations and the rules of the classification society, the Nordic Plan provides the possibility to incorporate particular safety regulations into the policy. Such safety regulations may be demands for ice class, voyage planning, additional navigational and emergency equipment, additional spare parts, towage and other emergency preparedness, protection against ice build-up, particular Arctic operational manuals etc.

If such particularly agreed safety regulations have been breached, cover will be lost if there is causation and negligence on the part of the insured or anyone whose duty it is to ensure compliance on behalf of the insured. Alternatively, special safety rules may be drafted as warranties, such as in the

English marine insurance system, even where the policy is based on the Nordic Plan. However, it is probably less likely that Nordic insurers will adopt this approach.

If a casualty has been caused by gross negligence, ref. the Nordic Plan Cl. 3-33, cover may be lost. Although the new Cefor Trading Area Clause (if incorporated into the policy) implies that the classification societies' rules regarding ice class no longer constitute safety regulations due to the deletion of Cl. 3-22 sub-clause 3, it may, depending on the circumstances, still be considered as gross negligence to navigate through ice infested waters without appropriate ice class.

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