

The Nordic Plan v. Institute Time Clauses (Hulls) (ITCH)

This is a limited overview of the most significant differences between the Nordic Plan 2013, version 2016 (the Plan) and the Institute Time Clauses Hulls 1983 (ITCH). Whereas the Nordic Plan contains a vast majority of regulation directly in its wording, the ITCH are typically subject to English law and jurisdiction and therefore significant interpretation has to be deducted from background law.

Perils Insured

The Nordic Plan's hull conditions against marine perils cover all risks subject to a few specific exceptions. This means that unless specifically excluded all perils will be covered. The insurer has the burden of proving that an exception applies. The Plan also deals with war insurance, loss of hire insurance and total loss insurance and these covers are co-ordinated to provide a comprehensive linked framework.

The ITCH works based on the named peril principle and these perils are named in cl. 6 and 7. and the MIA 1906 s. 55. In practice this means that the insured will have the burden of proving that the loss is within one of the named perils.

Insurance of Mortgagees

Chapter 7 of the Plan provides for automatic co-insurance of mortgagees. If the insurer has received notice that the interest insured is mortgaged, the mortgagees will automatically have the same rights as the original assured. The mortgagee must also be informed of amendments or cancellation of the insurance policy. The Plan's regulation provides security for the mortgagees against practical administration mistakes and omissions.

The ITCH does not have any similar clauses. Mortgagees are typically protected through a series of assignment clauses specifically drafted for that purpose.

Constructive Total Loss – Trigger

The Plan establishes that a vessel can be declared a Constructive Total Loss when the cost of repairing the casualty damage will exceed 80 per cent of the insured value or the market value of the vessel after repair, whichever is the higher. Cost of repairs or total loss are payable in addition to the salvage costs. The Plan does not only consider economic assessment, it is also a consideration done from a technical viewpoint (Unrepairability).

Under the ITCH a constructive total loss may be claimed if the costs of recovery and/or repair would exceed 100% of the insured value, see MIA Section 60 and ITCH Clause 19. The assured is required to give notice of abandonment in accordance with MIA Section 61. Under the ITCH it is mainly the economic point of view that is taken under consideration.

Collision and Striking cover

The NMIP covers collision or striking (thereby both RDC and FFO) under NMIP Section 13. There must be physical contact between the assured vessel and the third party property and the collision or striking must have been caused by the vessel's movements, not by the separate movement of its accessories. An additional sum insured is available for this liability and a separate deductible is applicable.

Under clause 8.1 of the ITCH liability cover is limited to liability resulting from collision (no FFO.) The insurers' liability is limited to 3/4th of the sum insured and is allowed in excess of the sum insured.

Only one deductible applies under clause 12 for both PA and RDC. The full deductible will apply for collision if the vessel is deemed a total loss.

Costs to minimize loss, GA, Sue and Labour

NMIP Clause 4-7 regulates costs incurred to avert and minimize loss. It covers all extraordinary and reasonable costs incurred to avert or minimize the vessel from an insured peril (including GA and Salvage.) Cover is limited to an additional sum insured.

ITCH covers measures to avert and minimize loss in two separate clauses. Clause 11 addresses General Average and Salvage and Clause 13 addresses Sue and Labour. Clause 11 and Clause 13 are subject to same deductible as applied to PA and RDC. Cost under Clause 13 (Sue and Labour) are limited to an additional sum insured. No deductible will be applicable to allowed costs under Clause 13 if the vessel is deemed a total loss.

Interest on Claims

The Plan allows the assured to claim interest from one month after the date on which notice of the casualty was sent to the insurer ref. Cl. 5-4. Interest runs also on all recoverable disbursements. The rate of interest is six month CIBOR, NIBOR or STIBOR + 2 %. This compensates the assured for the inflation loss and is particularly important in periods of high interest rates.

ITCH do not allow interest on insurance claims.

Expediting Damage Repairs - The 20 per cent rule

The Nordic Plan recognises the fact that the income lost due to a casualty is a relevant factor when deciding on how, when and where to repair the vessel. It therefore provides a daily earnings compensation for the purposes of evaluating the hull insurer's liability to cover costs of various options to speed up repairs. The insurer covers up to 20 per cent per annum of the vessel's agreed hull value.

ITCH do not have any equivalent.

Recovery Apportionment

Plan's clause 5-13 allows for any recovery to be apportioned between the interest in the recovery claim. Costs associated with the recovery are apportioned using the same method. In other words the assured will receive a proportional part for his deductible contribution.

ITCH's clause 12.3 states that any recovery shall be credited first 100% to the Underwriter, then remaining is to the benefit of the Assured.