



**The Nordic Marine
Insurance Plan of 2013**
Version 2023

Based on the Norwegian Marine Insurance Plan of 1996, Version 2010

Nordic Plan 2023

Chapter 7

Co-insurance of mortgagees

Cf. Clauses 9-2 and 9-7

Nils Christian Evensen

(Willis Towers Watson AS, Oslo)

On behalf of Nordic shipowners' associations

Chapter 7 has remained unchanged for a long period of time.

The revision of specific rules in Chapter 7 has been implemented in order to adapt to the needs of shipowners and the requirements of mortgagees as have been experienced over time from Nordic as well as international banks and lenders.

The procedures are made more efficient and shipowner friendly.

Basic principles are maintained:

- Automatic co-insurance.
- Activation of additional rights by notification.
- The co-insurance is not independent.

Each clause and sub-clause is presented separately.

New text in red and old text in blue.

Clause 7-1. Rights of a mortgagee against the insurer

Sub-clause 1:

If the interest covered by the insurance is mortgaged, the insurance also covers the mortgagee's interest, but the insurer may invoke the rules relating to identification in Cl. 3-36 to Cl. 3-38.

COMMENTS:

No change.

Principle of automatic co-insurance of the interests of the mortgagees remains, whether relating economically to the capital value of an insured object (the vessel) or to the future income from the operation of the insured vessel.

The co-insurance is not independent.

Clause 7-1. Rights of a mortgagee against the insurer (cont.)

Sub-clause 2:

If the insurer has been notified of the mortgage, the rules contained in Cl. 7-2 to Cl. 7-4 shall apply. If the co-insurers are represented by a claims leader, it is sufficient that such notice is submitted to the claims leader, cf. Cl. 9-2, sub-clause 3 (a). The Notice takes effect from the time it reaches the insurer or the claims leader.

COMMENTS:

First sentence unchanged, stating principle that by notification to insurer the mortgagee is secured certain additional rights – aiming at protecting the mortgagee against certain acts and omissions by the assured, like amendments and cancellation of the insurance policy. No requirements as to form of notice.

Additional rights of the mortgagee will take effect without any assignment or endorsement of the insurance policy.

Sufficient that notice is provided to claims leader as per Cl. 9-2, sub-clause 3 (a).

No notice but insurer learns of mortgage in some other way, considered sufficient to trigger additional rights.

Clause 7-1. Rights of a mortgagee against the insurer (cont.)

Sub-clause 3:

The insurer shall inform the mortgagee that it has been notified about the mortgage as per sub-clause 2 above. If the co-insurers are represented by a claims leader and the claims leader was provided such notification, the claims leader shall convey such information to the mortgagee.

COMMENTS:

Not a substantive rule, intended for information only.

No material change other than wording made clearer in first sentence.

Second sentence amendment to include reference to claims leader as per Cl. 9-2, sub-clause 4.

Clause 7-1. Rights of a mortgagee against the insurer (cont.)

Sub-clause 4:

Any special requirements of the mortgagee to be included in the insurance contract other than the rules contained in Cl. 7-2 to Cl. 7-4 shall not take effect unless and until they are specifically agreed by the insurer. If the co-insurers are represented by a claims leader, the claims leader is authorized to accept such special requirements on behalf of the co-insurers, provided that the special requirements are within customary market practice according to Cl. 9-2, sub-clause 3 (b).

COMMENTS:

New provision. Mortgagees often require special terms deviating from the Plan: Longer periods of notice of amendments and cancellation, different threshold amount for payment of claims without the consent of the mortgagee etc.

Special requirements typically emerge from loan agreements or Notice of Assignment and/or Loss Payable Clause put forward by the mortgagee for inclusion in the insurance contract.

“Specifically agreed” aims to ensure clarity whether or not special requirements are accepted by insurer and to avoid whether or not “tacitly accepted” etc.

Reference to claims leader in second sentence is cross-reference to Cl. 9-2, sub-clause 3 (a) clarifying claims leader’s authority on behalf of co-insurers to: (i) receive notice, and (ii) accept special requirements (“within customary market practice”).

Clause 7-1. Rights of a mortgagee against the insurer (cont.)

Sub-clause 5:

If a vessel is insured as part of a fleet, each of the vessels thereunder shall be deemed to be separately insured in respect of: (i) amendment or cancellation (cf. Cl. 7-2), and (ii) set-off (cf. Cl. 7-4, sub-clause 6).

COMMENTS:

New provision to provide a default rule reflecting market practice and with intention to facilitate use of Chapter 7 in international loan agreements. Unless otherwise agreed, provision applies where insurance policy covers more than one vessel, whether or not named “fleet insurance”, “fleet placement” etc.

Item (i): Amendment/termination concerning vessels not mortgaged, will not apply to vessels mortgaged. Item (ii): Insurer is not entitled to set-off towards mortgagee with counterclaims related to other vessels.

“Separately insured” (example): Insurer prevented from set-off with counterclaim related to vessel A (typically due premium) towards settlement concerning vessel B where vessel A and vessel B have same mortgagee.

Clause 7-2. Amendments and cancellation of the insurance

*If the insurance contract has been amended or cancelled, the rights of the mortgagee shall not be affected unless the insurer has given the **mortgagee** specific notice of not less than fourteen days.*

However, this shall not apply to war risks insurance, cf. Cl. 15-8, sub-clause 1, second sentence.

COMMENTS:

No change.

No obligation on insurer to notify mortgagee if insurance expires and not renewed.

Clause 7-3. Handling of claims, claims adjustment, etc.

Sub-clause 1:

Decisions required in respect of casualties, adjustments, claims against third parties or provision of security for loss or liability covered under the insurance may be made without the consent of the mortgagee.

COMMENTS:

Reflects common practice: Handling of claims etc. is carried out by the assured without involvement of the mortgagee. A starting point only, it can be changed as a special requirement of mortgagee (until time for insurer's payment) – cf. Cl. 7-4 ensuring mortgagee a reasonable control over compensation payments.

Widened to confirm that the assured is vested with authority to provide security for loss or liability covered under insurance.

Clause 7-3. Handling of claims, claims adjustment, etc. (cont.)

Sub-clause 2:

The right to compensation for a total loss may not be waived, wholly or in part, to the detriment of the mortgagee.

COMMENTS:

No change.

Protection of mortgagee for every payment of cash compensation (including compromised total loss), cf. Cl. 12-1, sub-clause 1 (complete repairs impossible or unreasonably expensive) and Cl. 12-2 (unrepaired damage), deemed unnecessary. In such cases mortgagee has protection afforded by Cl. 7-4, sub-clause 3.

Clause 7-4. Handling of claims, claims adjustment, etc.

Sub-clause 1:

In the event of a total loss, the mortgagee's interests take priority.

COMMENTS:

No change.

Commentaries elaborate on issue of perfection (Norw: «rettsvern») for priority towards third parties, e.g. bankruptcy estate of assured. Perfection for assigned claim (priority) is subject to notification of debtor cessus (insurer) by assignor (assured) or assignee (mortgagee). As pointed out in Commentaries to Cl. 9-2 concerning co-insurance and claims leaders, *such* notice cannot be given to claims leader, because claims leader is neither assignor nor assignee.

Clause 7-4. Handling of claims, claims adjustment, etc. (cont.)

Sub-clause 2:

Compensation for loss from a single casualty exceeding 5% of the sum insured, or as otherwise agreed, shall, in the absence of consent from the mortgagee, only be paid by the insurer upon presentation of a receipted invoice of repairs carried out. If the vessel is insured with one or more insurers against the same perils, this restriction applies to the combined payments from the insurers.

COMMENTS:

Principle that if compensation for partial loss is used to repair insured object (typically the vessel) mortgagee's interests are protected by the value of vessel having been restored.

Changed to reflect that in practice loan agreements normally require other threshold amounts than 5% of sum insured, typically a specific amount for 100% claim. Requires specific agreement with insurer, cf. sub-clause 2 about special requirements of mortgagee.

Clause 7-4. Handling of claims, claims adjustment, etc. (cont.)

Sub-clause 3:

Compensation under Cl. 12-1, sub-clause 4, and Cl. 12-2, may not be paid without the consent of the mortgagee.

COMMENTS:

No change.

Cl. 12-1, sub-clause 4: Compensation for depreciation in value for: (a) complete repairs impossible, or (b) less extensive repairs due to unreasonable costs of complete repairs.

Cl. 12-2: Compensation for unrepaired damage.

Since compensation in such case is a substitute for reduction in the value of the mortgage, the mortgagee must be entitled to have compensation paid to the mortgagee against corresponding reduction of the mortgage.

Clause 7-4. Handling of claims, claims adjustment, etc. (cont.)

Sub-clause 4:

Compensation for loss of time may not be paid without the consent of the mortgagee who has a mortgage in the vessel's income.

COMMENTS:

No change.

Protects interests of a mortgagee holding security in the vessel's freight income – loss-of-hire insurance.

Sub-clauses 1-3 relate only to a mortgagee holding security in the capital value of the vessel, who has no protection in relation to payment under loss-of-hire insurance.

Clause 7-4. Handling of claims, claims adjustment, etc. (cont.)

Sub-clause 5:

Liability to a third party covered by the insurance may only be settled upon presentation of a receipt from the third party. If the claims leader has provided security as per Cl. 7-3, sub-clause 1, Cl. 9-7, sub-clause 2 applies.

COMMENTS:

First sentence no change. General term «liability» entails that it applies where assured held liable for loss caused to third party as well as when third party makes claim against assured for salvage award.

Second sentence new for situation where claims leader has provided security. As outlined under Cl. 9-7, sub-clause 2, claims leader's interest takes priority; if security becomes effective co-insurers will have to pay directly to the claims leader and not to the assured or any other co-insured party, like a mortgagee.

Clause 7-4. Handling of claims, claims adjustment, etc. (cont.)

Sub-clause 6:

In the absence of the mortgagee's consent, the insurer may only set off claims which have arisen out the insurance contract relating to the vessel in question and which have fallen due in the course of the last two years prior to settlement of the claim.

COMMENTS:

No change.

The right to set-off is stated in general terms and may be relevant to amounts due to insurer other than premium.

Right to set-off is limited to claims for vessel in question, and does not apply to assured's other vessels.

Time limit is linked to payment of compensation.

Clause 9-2. The right of the claims leader to act on behalf of the co-insurers

Sub-clauses 3 and 4 were new in 2023, aiming to:

- clarify authority of claims leader to act on behalf of co-insurers, and
- enhance administrative benefits of having a claims leader, avoiding burden of having to include whole panel of insurers in all kind of communications with assured, mortgagees etc.

Sub-clauses 1 and 2 remain unchanged:

*Unless otherwise agreed, the claims leader is entitled to take the steps referred to in Cl. 9-3 to Cl. 9-9 with binding effect on the co-insurers. In all such cases **the claims leader** shall, as far as possible, take into consideration the interests of all the insurers.*

*Notwithstanding that the claims leader has acted contrary to agreements with the co-insurers, or otherwise disregarded their interests, steps taken by **the claims leader** in matters governed by Cl. 9-3 to Cl. 9-8 shall be binding on the co-insurers in relation to the assured, unless the assured knew or ought to have known of the facts.*

Clause 9-2. The right of the claims leader to act on behalf of the co-insurers (cont.)

Sub-clause 3:

Unless otherwise agreed, the claims leader is authorized on behalf of its co-insurers to:

- (a) receive notice of mortgage triggering the additional rights of the mortgagee as set out in Cl. 7-1, sub-clause 2;*
- (b) agree to special requirements of the mortgagee, provided that the special requirements are within customary market practice. Cl. 9-2, sub-clause 2 applies accordingly.*

COMMENTS:

As per letter (a) notice of mortgage (cf. Cl. 7-1, sub-clause 2) to claims leader is sufficient and with effect for co-insurers. Simplified and swift procedure to achieve additional rights for the mortgagee, to the benefit of assured, lenders and mortgagees.

Similar benefits derive from letter (b) in respect of obtaining agreement for special requirements of mortgagee. “Cl. 9-2, sub-clause 2 applies accordingly”. This governs the situation where claims leader has agreed on special requirements that co-insurers consider to go beyond “customary market practice”. Provided the mortgagee is in good faith that the claims leader was entitled to agree on behalf of co-insurers, they will be bound. Typically a situation where a proper mortgagee could reasonably believe that the special requirements complied with “customary market practice”. (cont.)

Clause 9-2. The right of the claims leader to act on behalf of the co-insurers (cont.)

Sub-clause 3 COMMENTS (cont.):

Sometimes difficult to determine whether within "customary market practice". What is to be considered "customary" might change over time, but the below examples are presumed outside scope of customary market practice as currently understood and thus not to be accepted by claims leader on behalf of co-insurers:

The mortgagee shall be advised by each of the co-insurers

- (a) *"promptly (or immediately) of any default in payment of any premium", or*
- (b) *"of expiry or failure to renew the insurance at least 14 days prior to the date of expiry or renewal thereof" or "of any renewal or replacement of the insurance at least 14 days prior to the effective date of renewal or replacement", or*
- (c) *"of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part the insurance".*

At times such clauses are combined with or included in Loss Payable Clause (or Notice of Cancellation Clause etc.). The examples are confusing and/or do not serve a proper purpose, and by imposing obligation on *each* co-insurer, benefits of the Nordic concept of claims leader might be undermined.

If claims leader is in doubt whether within "customary market practice", claims leader should consult co-insurers prior to accepting.

Content of agreed special requirements should preferably be communicated to co-insurers. Without knowledge it may be difficult for co-insurers to comply.

In practice co-insurers are typically made aware of agreed special requirements by communication between claims leader and representatives (brokers) of the different co-insurers.

Sometimes difficult for claims leader to get a complete overview of all involved co-insurers. This is why new sub-clause 3 does not stipulate obligation on claims leader to inform co-insurers of "special requirements".

Clause 9-2. The right of the claims leader to act on behalf of the co-insurers (cont.)

Sub-clause 4:

The claims leader shall confirm to the mortgagee receipt of notice of mortgage under sub-clause 3 (a) above.

COMMENTS:

Not a substantive provision with regard to legal effects.

Notice of mortgage are important for mortgagees and hence a prudent claims leader should confirm receipt on behalf of co-insurers.

Clause 9-7. Provision of security

Sub-clause 1:

If the claims leader has provided security on behalf of the co-insurers for loss or liability covered under the insurance, the claims leader may claim a commission of 1 % of the provided security amount. If an open guarantee is provided, the commission shall be calculated on the basis of the effective gross loss or gross liability.

COMMENTS:

Wording has been streamlined and extended and thereby made more general to include any provision of security (including countersecurity) “for loss or liability covered under the insurance”. This includes third party liability and security for repair costs covered under the insurance.

Claims leader may claim commission equivalent to 1% of provided security, to be charged once as a lump sum.

Clause 9-7. Provision of security (cont.)

Sub-clause 2:

*If a co-insurer has been notified that the claims leader has provided a **security** in accordance with sub-clause 1, the co-insurer is liable for its proportionate share of the liability directly to the claims leader and cannot discharge its liability by paying directly to the assured or any co-insured parties.*

COMMENTS:

Scope now extended to be equivalent to sub-clause 1.

Notification deprives assured of its position as creditor; co-insurer is liable for its proportionate share directly to claims leader and therefore cannot discharge its liability by paying directly to assured or any co-insured parties, like a mortgagee. If co-insurer nevertheless pays compensation directly to assured or any co-insured parties, co-insurer may have to pay again to claims leader.

Clause 9-7. Provision of security (cont.)

Sub-clause 3:

*The co-insurer may not set off against the claims leader counterclaims against the assured, unless **the co-insurer** has made a special reservation to that effect prior to the provision of security.*

COMMENTS:

Wording in sub-clause 1 is now extended to provision of security “for loss or liability covered under the insurance”. This means that on a general basis co-insurers have no right to set-off towards claims leader without having to make specific reservation.