

Japan – The Effects of the Tsunami and Nuclear Incidents

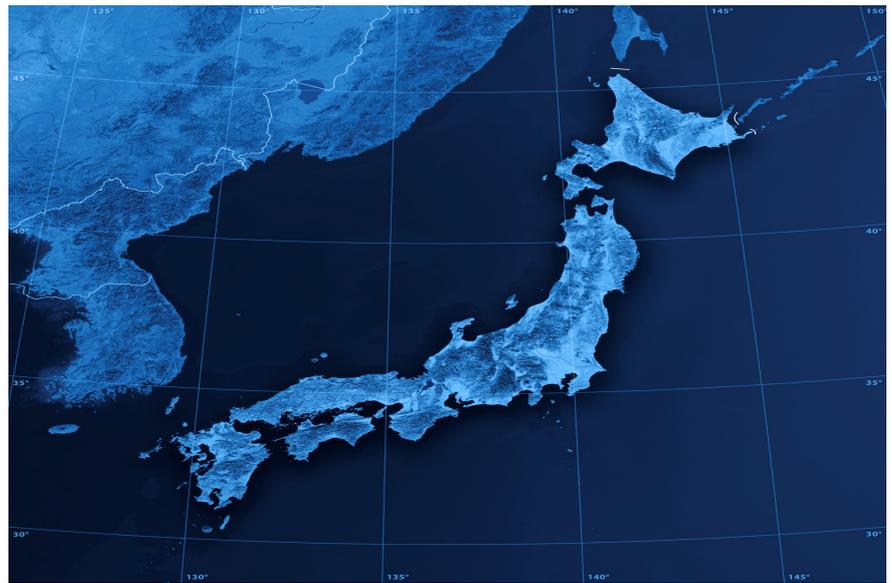
The Club has been receiving many enquiries from Members anxious to understand the implications of the recent tragic events following last week's earthquake off Sendai.

Whilst the Club is not in a position to give specific advice upon the safety or otherwise of particular ports, information has been received from the Club's Tokyo correspondents, ISS P&I Japan, on the current status of various ports. This advice can be found at the following link to the Club's website:

www.simsl.com/JapanISSReport0311.htm

Lloyd's List of 15th March reports that the ports of Kashima, Hitachinaka, Hitachi, Onahama, Soma, Sendai, Shiogama, Ishinomaki, Kesenuma, Ofunato, Kamashi, Miyako and Hachinohe have all suffered serious damage, and suggests that these ports will be out of operation for many months, if not years.

Understandably, the situation in Japan is changing on a daily basis and Members who have vessels that are expected to either call at Japanese ports or to transit the region are recommended to check with their agents for current information. In addition the following websites should also be a helpful source of information both as regards port conditions and developments in relation to the damaged nuclear installations:



[The International Atomic Energy Agency \[http://www.iaea.org/\]](http://www.iaea.org/)

[Nuclear and Industrial Safety Agency of Japan \[http://www.nisa.meti.go.jp/english/index.html\]](http://www.nisa.meti.go.jp/english/index.html)

[Government of Japan Incident Website \[http://www.kantei.go.jp/foreign/topics/2011/earthquake2011tohoku.html\]](http://www.kantei.go.jp/foreign/topics/2011/earthquake2011tohoku.html)

[Japan Meteorological Agency \[http://www.jma.go.jp/jma/indexe.html\]](http://www.jma.go.jp/jma/indexe.html)

[Japan Coast Guard Navigation Warnings \[http://www1.kaiho.mlit.go.jp/TUHO/nwe.html\]](http://www1.kaiho.mlit.go.jp/TUHO/nwe.html)

The Club's London solicitors have given general preliminary advice, which is summarised as follows:

- a. Cover
Liability arising from nuclear risks, in circumstances such as those arising from the nuclear incident at Fukushima, is generally excluded under Rule 20 of the Club's Rules and by Clause 15 of the terms of entry for charterers. This exclusion applies under the Pooling Agreement and is common to all International Group Clubs. (The Group Clubs can pool and cover claims arising from nuclear risks, when liability has been incurred under insurance guarantees or certificates

referred to in Rule 21, but it seems unlikely that liability will arise on this basis under present conditions). Members' concerns for their crew, vessel and cargo will of course be heightened by the general exclusion of cover for nuclear risks.

b. Exposure

The principal risk to a shipowner is exposure of his crew to radiation, although the hull and cargo are equally likely to be exposed as a result of radioactive contamination, which may result in refusal of port entry, decontamination costs, rejection of cargo and the cost of its disposal. So far as the prospective safety of ports is concerned, it seems that most commercial ports within the vicinity of Fukushima are likely to be inoperable, for a considerable period of time.

c. Compliance with Orders

Whether an owner can refuse to comply with his charterer's order to proceed to a specified port is likely, under English Law, to depend upon objective facts. There is a risk that if an owner were to decline to proceed to any Japanese port upon the basis of objectively unjustified concerns about radiation, that refusal would amount to a breach of contract. However, the objective requirement ought not to be interpreted by reference only to the views or reports of international bodies, which may conflict or be unclear.

The Club's solicitors are naturally hesitant to lay down any general rule, but they do advise that an English tribunal would probably consider whether, given the objective evidence of risk, a reasonable owner might decide that it was unsafe to proceed

In considering that question, the Club's solicitors advise that the following will be of relevance:

- i. The risk advisories and directions issued by the competent local authorities. The fact that, according to the latest BBC report, the Japanese Government has imposed a 30 kilometre no fly zone does not necessarily mean that any port more than 30 kilometres from the plant is "safe".

ii. The following bodies issue guidelines:

- (a) IAEA Safety Series No. 115, International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources.

http://www-pub.iaea.org/mtcd/publications/pdf/ss-115-web/pub996_web-1a.pdf

- (b) International Commission on Radiological Protection (ICRP)

[http://www.icrp.org/publication.asp?id=ICRP_Publication_103_\(Users_Edition\)](http://www.icrp.org/publication.asp?id=ICRP_Publication_103_(Users_Edition))

These contain guidelines which are technical in nature, and it may be difficult for Members to assess their application, and potential exposure

limits, in advance of a vessel's arrival. Members whose vessels are ordered to ports, or to proceed through waters, in the vicinity of Fukushima are advised to obtain the latest publicly available advice upon radiation levels and to consult with the relevant Flag State and the authorities in the country from which the crew originate.

The Managers will continue to seek and pass on advice from the Club's solicitors as further material developments occur.

In the meantime, Members who may be considering curtailing a voyage, or discharging cargo elsewhere than at the original intended port, are recommended to contact the Managers in order to seek advice upon the existing cover, and/or upon special arrangements to cover potential liabilities arising from deviation. Generally speaking, however, and as the advice summarised above indicates, Members who reasonably deviate from their voyages in order to avoid a clear risk of radioactive contamination, will continue to be covered by the Club.

For further information on this topic please contact your usual Syndicate Contact or the Head of the Loss Prevention Department, Steamship Insurance Management Services Ltd.

Tel: +44 20 7247 5490

Email: loss.prevention@simsl.com