Michael Kingston DWF LLP - Supplementary written evidence (ARC0070)

1. Supplementary Evidence regarding the Polar Code

1.1. I am grateful to the Committee for asking me to submit further evidence in relation to the Polar Code.

1.2. This is a submission following a request made by the Committee dated 03.12.2014 following my attendance at Maritime Safety Committee 94 (MSC94) of the International Maritime Organisation (IMO) which took place in London on 17 -21 November 2014 when the IMO Safety Committee agreed to adopt the Polar Code.

1.3. I have set out my background at paragraph 1 of my evidence dated 29.09.2014. Of particular note to the committee will be that I have been appointed as the representative (on a voluntary basis) for the International Union of Marine Insurers in the Correspondence Group that has been established to finalise an ‘ice regime methodology’ (the Methodology) that will now be a requirement under the Polar Code and included in its Guidelines. The Correspondence Group is scheduled to finalise the Methodology for IMO Maritime Safety Committee meeting 95 (MSC95) which takes place at IMO Head Quarters in London in June 2015. In order to facilitate the IMO’s preparatory process for MCS95 the Correspondence Group is scheduled to complete their report by 03 March 2015.

1.4. The Committee will have noted from my evidence of 29.09.2014 that I have been working closely with the International Association of Classification Societies to try and include an ice regime in the Polar Code following the ice workshop I assisted The Swedish Polar Research Secretariat organise in conjunction with the Swedish Club, the Nordic Association of Marine Insurers and Lloyd’s of London in March 2014, which involved the Secretary General of the IMO, Mr Koji Sekimizu. The concerns of the insurance industry were relayed by DWF and I in conjunction with Transport Canada to the IMO in an Arctic focus day on 28 February 2014 at IMO Headquarters where I explained the difficulty of analysing risk without an established Methodology.
1.4.1. Agreement in principle had been reached at that stage in the draft Polar Code on definitions for the different categories of ship and the requirements for safe operation in different ice types in Polar waters. All ships operating in Polar waters will require a Polar Ship Certificate and a Polar Waters Operation Manual, which is intended to give guidance for a range of planned and possible situations to determine the worst case scenario in the conditions that may occur. However insurers concerns were that this is only possible if there is an ice regime and guidance from a jurisdiction with that ice regime: then you know the extremes of ice that may occur and can plan for a worst-case scenario. Canada and Russia have ice regimes but in new areas of operation and in areas where temptation is opening up to the inexperienced - such as around Greenland - no ice regimes are in place. Therefore, without knowing the nature of a risk, shipping cannot plan for a worst-case scenario - as there was no ice regime system referenced in the proposed Polar Code. If some flag states with little experience approve Polar Water Operation Manuals and operators obtain their Polar Ship Certificate based on a lack of analysis of the risk because no ice regime is referenced then this is a recipe for disaster if such an incomplete analysis of risk were to slip through the insurance net.

1.4.2. Despite such a worrying scenario, behind the scenes a lot of hard work was being carried out to try and solve this problem to link the various elements coherently, tying together an ice regime and Ice Class, with industry best practice. Discussions at an influential conference in London in March organised (in conjunction with DWF and Lloyd’s) by the Swedish Ministry of Foreign affairs and Nordic Council, and the Swedish Polar Research Secretariat, involving leading insurers such as Lloyd’s, CEFOR, IUMI, the LMA, Allianz, RSA, Zurich, Hiscox, The Swedish Club, and Gard, with leading ice experts, and attended by IMO Secretary General Koji Sekimizu, and a further Ice Workshop in Lloyd’s Adam room, resulted in strong recommendations about an ice regime that were then made to the Arctic Council in time for its meeting with Mr Sekimizu in Yellowknife, Canada. The Seminar and Ice Workshop was also attended by members of the British IMO Delegation.

1.4.3. Following these discussions a Polar Operational Limitation Assessment Risk Indexing System (“POLARIS”) has been developed. At IMO Marine Safety Committee 93 in May,
it was discussed informally. An informal technical working group was formed, led by the International Association of Classification Societies, with input from Arctic and Antarctic State delegates, and others.

1.4.4. The aim of POLARIS is to provide a standard approach for the evaluation of risks to the ship in the ice conditions expected to be encountered by providing a risk index in any geographical area that the ship is intending to travel. This is a system, similar to the established Canadian AIRS System, for other ice areas of the Arctic or Antarctic, and effectively creates a Polar ice regime, drawing also on the very experienced Finnish-Swedish Baltic system, and the Russian ‘Ice Passport’ system, with heavy input from those jurisdictions.

1.4.5. POLARIS uses a Risk Index Outcome (RIO) value to assess limitations for operation in ice. For each geographical area encountered the Risk Index Values (RV) assigned to the ship, based on the ice class, are used to determine a RIO that forms the basis of the decision to operate or limitation for operation. If the RIO is Zero or Positive the ship can proceed without speed limitation, if the RIO is between -1 and -10 the ship can proceed with speed limitation, such speed is calculated by POLARIS, and if the RIO is below -10 the ship cannot proceed. There are also provisions for ice areas broken by ice breakers, so ice breaker assistance is taken into account in the calculations.

1.5. At IMO MSC94 I participated in the Working Group on the Polar Code with the International Union of marine Insurers. The Report of the Working Group on the Polar Code and final Polar Code following adoption by the Maritime Safety Committee in Plenary session represents a significant result for the Insurance Industry, as the Polar Code now includes a Methodology for limitation of operation in ice that is a requirement in order to obtain a Polar Ship Certificate.

1.6. In particular it is now the case that in mandatory Part 1A of the Code it is necessary for operators to explain their ‘methodology to assess operational capabilities and limitations in ice to the satisfaction of the Administration, taking into account guidelines to be developed by the organisation’. What this means is that an operator will have to show how they have prepared and will be able to operate in the extremities that can occur in the geographical area that they are intending to operate in by reference to an ice regime system methodology, be it the
existing Canadian AIRS system, the Russian ‘Ice Passport’ system, or alternative systems, such as the POLARIS system as explained in paragraph 1.4.

1.6.1. The reference to ‘guidelines to be developed by the organisation’ refers to a ‘Correspondence Group’ that is being established to ‘perfect’ POLARIS and other options as an alternative system to the already established systems- for use in the other areas of the Arctic and Antarctic (and in Canada & Russia if the Administrations are satisfied to allow alternative systems). It is in this Correspondence Group that I now represent the International Union of Marine Insurers as referred to at paragraph 3 above.

1.7. This is a significant result for underwriting risk analysis as it will establish clear benchmarked guidelines to enable underwriters to consider the risks being presented, and will assist operators to present risk in a manner that gives an explanation of what they are trying to do linked to a ‘methodology’ that everyone understands. Similarly it enables administrations to understand what it is the operator is intending to do more clearly.

1.8. Another issue discussed at length in the Working Group at MSC94 that is of importance to the insurance market and industry in general that the Committee should be aware of is the possibility in certain circumstances for administrations to waive the requirement for a physical survey when issuing a Polar Ship Certificate. Mandatory Part 1 A of the Polar Code now states: ‘For Category C cargo ships, if the result of the assessment in paragraph 1.5 is that no additional equipment or structural modification is required to comply with the Polar Code, the Polar Ship Certificate may be issued based upon documented verification that the ship complies with all relevant requirements of the Polar Code. In this case, for continued validity of the certificate, an on board survey should be undertaken at the next scheduled survey’.

1.8.1. This is important to understand as it will apply to Category C cargo vessels that are not ice strengthened which will be normal ships that may be spot chartered to make a trip through the Arctic in circumstances where the ice conditions are very favourable in the summer months – i.e. when there is little or no ice and no additional equipment in required to make the vessel fit for purpose. In such circumstances, following the assessment to ensure the ship complies with the Polar Code risk
assessment guidelines and taking into account all the circumstances, the Administration may allow the issuance of a Certificate without survey, but such Certificate will only last until the next standard Safety of Life at Sea survey. This does not apply to passenger vessels.

1.8.2. It is also possible in certain circumstances (particularly thinking of the circumstances in the last paragraph) for an Ice Navigator to come on board and assist the Master, rather than the entire crew having to be stringently trained which is the requirement for all other circumstances under the Polar Code.

1.8.3. These two exceptions are sensible and are good news for operators and underwriters which will result in already safe operations in such circumstances being able to continue where ordinary ships carrying out single one-off voyages are spot chartered.

1.9. In the Correspondence Group’s work on the finalisation of POLARIS it is envisaged that a practical application of the POLARIS methodology will be carried out in the Antarctic and in the Arctic. The purpose of these trials is to perfect the system so that it can be effectively appended to the Polar Code, and so that it will be clearly understood by all concerned. Captain Juan Frias from the Argentinian delegation to the IMO is assisting in a practical application of the POLARIS methodology in the Antarctic which the Argentinians will co-ordinate in conjunction with the Correspondence Group. I have been asked to participate in that practical. It is the intention to carry out similar practicals in the Arctic. It is also noteworthy and indeed commendable that the Cruise Line International Association (CLIA) are also assisting with their vessels.

1.10. Whilst there is, of course, still more hard work to be done, these developments in the Polar Code in a short space of time demonstrate the importance of the British marine insurance industry in the Arctic, something that I highlighted at the Arctic Circle Conference in Reykjavik, Iceland in the British Government Delegation on 01.11.2014. The Methodology now included in the Polar Code owes a lot to the work of Robert Hindley, Lead Specialist – Arctic Technology, Lloyd’s Register, and Tom Boardley, Marine Director of Lloyd’s Register. Mr Hindley has conducted leading work for Lloyd’s Register on behalf of the International Association of Classification societies, and Mr Boardley’s support and understanding of the
issues has been pivotal. Lloyd’s Register’s efforts are to be highly commended. It is noteworthy that Mr Boardley will be President of the UK Chamber of shipping in 2015 and was also part of the British Government Delegation to Iceland 30.10.2014 – 02.11.2014. I have no doubt that awareness of Arctic issues will feature on Mr Boardley’s agenda to highlight British Interests there.

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