

協會抵押權人利益條款－船體

(01/03/1997)

本契約適用英國法律及實務

Institute Mortgagees Interest Clauses – Hulls

(01/03/1997)

This contract is subject to English law and practice.

Mortgagee-1997

Cl. 337

A. RECITAL

Whereas the Assured has entered in a loan agreement commensurate with which the Assured holds certain collateral security including a first mortgage on the Mortgaged Vessel and endorsements of its interests on the Owners' Policies and Club Entries.

Now it is agreed as follows:

1. INSURING CLAUSE

1.1 This insurance will indemnify the Assured for loss resulting from loss of or damage to or liability of the Mortgaged Vessel which, in the absence of an insured Peril set out in Clause 2.1 below, would prima facie be covered by the Owners' Policies and Club Entries, and not excluded therein, but in respect of which there is subsequent nonpayment (or reduced payment which is approved in advance by the Underwriters hereon) by any of the underwriters of Owners' Policies and Club Entries as a result of Insured Peril, **provided always that such Insured Peril occurs or exists without the privity of the Assured.**

1.2 The indemnity payable hereunder shall be

1.2.1 the amount of the Assured's Net Loss and any amounts recoverable under Clause 6 herein, collectively not exceeding the sum insured on the Mortgaged Vessel, or

1.2.2 the amount of the unrecoverable claim or part thereof under any of the Owners' Policies and Club Entries whichever is the lesser amount

1.3 All the above is subject to the Definitions, Exclusions, Warranties and Conditions below.

A. 說明

鑑於被保險人締結一貸款合約，而該合約規定被保險人亦得享有某些包括被抵押船舶之第一順位抵押及船舶所有人保單及防護補償協會入會證明之利益批單之同等擔保時，

謹協議如下：

1. 保險條款

1.1 於無下述第 2.1 條所規定之承保危險，本保險賠償被保險人因抵押船舶之滅失、毀損或責任所致之損失，因任何由船舶所有人的保險單及防護補償協會入會證明之保險人所承保風險之結果，該損失初步係由船舶所有人之保單及防護補償協會的入會證明所承保且未予以除外不保，因隨後拒絕賠償(或保險人事先同意之減額賠償)，然以被保險人對該承保風險之發生或存在不知情為限。

1.2 本保單應支付之賠償金額應為：

1.2.1 被保險人之淨損失額及依據下列第 6 條可獲賠償之任何數額，累加不得超過抵押船舶之保險金額，或

1.2.2 無法獲賠之金額或依據船舶所有人保單及防護補償協會入會證明可獲補償之部分金額，以較低者為準。

1.3 前述所有規定，應適用下列定義、除外事項、擔保及條件。

2. DEFINITIONS

2.1 Insured Perils

- 2.1.1 Avoidance of the Owners' Policies and Club Entries or any of them by the underwriters thereof on the grounds of a misrepresentation or non-disclosure of any material circumstance, whether such misrepresentation or nondisclosure arises from the assured thereunder or any of such assured's insurance agents or insurance brokers.
- 2.1.2 Breach of any statutory provision or any express or implied promissory warranty or condition, including without limitation
 - 2.1.2.1 breach of any implied warranty or seaworthiness or legality,
 - 2.1.2.2 breach of Section 39(5) of the Marine Insurance Act of 1906,
 - 2.1.2.3 breach of trading warranties contained in any of the Owners' Policies and Club Entries,
 - 2.1.2.4 breach of any warranty or condition in any of the Owners' Policies and Club Entries in respect of the classification of the Mortgaged Vessel by a Classification Society or any failure to comply with the recommendations of such Society to the extent required by such warranty or condition,
 - 2.1.2.5 breach of any warranty or condition in any of the Owners' Policies and Club Entries which requires compliance with any condition survey, structural survey or P&I Club survey requirements and pursuant to which clauses underwriters deny a claim,
 - 2.1.2.6 breach of any warranty or condition in any of the Owners' Policies and Club Entries in respect of the Ownership, flag, management or charter on a bareboat basis of the Mortgaged Vessel.
- 2.1.3 failure of the assured under the hull and machinery policy or the owners, managers or superintendents of the vessel or any of their onshore management to exercise due diligence in respect of any loss or damage to the Mortgaged Vessel where such failure to exercise due diligence entitles the underwriters of the owner's hull and machinery policy to deny a claim otherwise recoverable hereunder,
- 2.1.4 any deliberate or fraudulent casting away of or damage to the Mortgaged Vessel,
- 2.1.5 avoidance of a claim under any of the Owners' Policies and Club Entries or of any of the Owners' Policies and Club Entries by reason of breach of the duty of good faith in respect of such claim, or
- 2.1.6 the operation of any applicable provision in any of the Owners' Policies and Club Entries which provides for a time limitation on the presentation of claims,
- 2.1.7 in the event of the total loss of the Mortgaged Vessel, the final judgement or award of the courts or arbitration tribunal agreed to have jurisdiction under

2. 定義

2.1 承保危險

- 2.1.1 因任何重要事實之不實說明或未告知，保險人解除船舶所有人保單及防護補償協會入會證明，而無論該不實說明或未告知係被保險人或其之任何保險代理人或保險經紀人所為。
- 2.1.2 違反任何法定條款或任何明示或默示約定之擔保或條件，包括但不限於：
 - 2.1.2.1 違反任何默示適航擔保或合法性，
 - 2.1.2.2 違反 1906 年海上保險法第 39 條第 5 項，
 - 2.1.2.3 違反規定於船舶所有人保單及防護補償協會入會證明之任何貿易保證，
 - 2.1.2.4 違反在船舶所有人保單及防護補償協會入會證明中，有關船級協會對抵押船舶之船級擔保或條件，或未遵循該船級協會就該擔保或條件所提出之建議，
 - 2.1.2.5 違反於船舶所有人保單及防護補償協會入會證明中，要求遵循任何船況檢驗、結構檢驗或防護補償協會要求之檢驗及依照保險人拒賠條款之任何擔保或條件，
 - 2.1.2.6 違反船舶所有人保單及防護補償協會入會證明中，有關抵押船舶之所有權、船旗、管理或光船租船之任何擔保條件。
- 2.1.3 船體及機器保單下之被保險人、或船舶所有人、船舶經理人或船舶監督人員或其他任何岸上管理人員，就有關抵押船舶疏於謹慎小心，而該疏於謹慎小心使船舶所有人之船體及機器保險單之保人，有權拒絕本應賠償之損失。
- 2.1.4 任何故意或欺詐地遺棄或毀損抵押船舶，
- 2.1.5 因違反求償之誠信義務，而依任何船舶所有人保單及防護補償協會入會證明得予以拒絕理賠之求償，或
- 2.1.6 船舶所有人保單及防護補償協會入會證明中有關任何可適用之求償時效規定之適用，
- 2.1.7 於抵押船舶全損，依據船舶所有人保單及防護補償協會入會證明之明示條款約定有管轄權法院

the express terms of the Owners' Policies and Club Entries (or in the event of their being no such expressed terms a competent court) following a contested hearing whereby the Owners' claim is not recoverable under either the Owners' hull and machinery or war risks policies on the ground that the loss has not been proved to have been proximately caused by a peril insured under those policies and is not otherwise excluded from payment by any exclusion or other provision therein.

- 2.2 **Owners' Policies and Club Entries** – means hull and machinery policies on terms equivalent to or wider than the current Institute Time Clauses Hulls or American Institute Hulls Clauses (if taken, increased values policies on terms equivalent to Institute Time Clauses – Hull Disbursements and Increased Value (Total Loss Only and Excess Liabilities) or American Institute Increased Values and Excess Liabilities Clauses), war risks on terms equivalent to current Institute War and Strikes Clauses Hulls – Time and full protection and indemnity risks on conditions equivalent to the rules of P&I Club that is a member of the International Group of P&I Associations.
- 2.3 **Net Loss**- means the Assured's loss under the loan agreement to the extend secured by mortgage on the Mortgaged Vessel net of any amounts recovered or recoverable under all security arrangements contained in or collateral to the loan including but not limited to all mortgages (whether on vessels insured hereunder or on other vessels), liens, any floating and fixed charges, security interests, guarantees, insurance policies and pledges.
- 2.4 **Mortgaged Vessel** – means the vessel mortgaged to the Assured which is listed on the schedule attached hereto.

3. EXCLUSIONS

In no case shall this policy cover:

- 3.1 any loss or expenses arising from or as a result of
- 3.1.1 the relevant Owners' Policies and Club Entries having been terminated or cover suspended or non-payment of claims by the underwriters or insurance brokers thereof due to non-payment of premium or call.
- 3.1.2 insolvency or financial default of any of the underwriters of the Owners' Policies and Club Entries,
- 3.1.3 inability of any parties to transmit funds
- 3.1.4 any fluctuation in exchange rates
- 3.1.5 the operation of any franchise deductible or provision for self-insurance.
- 3.2 loss or damage directly or indirectly caused by or contributed to by or arising from:
- 3.2.1 ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste of from combustion of nuclear fuel,
- 3.2.2 the radioactive, toxic, explosive or other hazardous or

(或於無該管轄權法院之明示條款)，經過辯論審理後，其最終判決或仲裁庭裁決船舶所有人之求償被判定，由於無法證明該損失係由該保單所規定之承保危險主力近因所致，且非該保單除外條款或其他條款而得以理賠，而無法依據船舶所有人之船體及機器保單或戰爭險保單獲得理賠。

- 2.2 船舶所有人保單及防護補償協會入會證明係指與現行協會船體定期保險條款或美國協會船體保險條款承保條件相同或更廣之條款之船體及機器保單(如採用等同於協會船體費用及增值定期保險條款(僅適用於全損及超額責任保險)或美國協會增值及超額責任保險條款)，與現行協會船體戰爭與罷工保險條款相同之戰爭險及與作為國際防護補償協會集團會員，等同於防護補償協會規章之防護及補償風險之條件。
- 2.3 淨損失係指被保險人於貸款合約下，於以抵押船舶作為抵押擔保之範圍內，依據包含該貸款或該貸款抵押品之所有擔保安排已獲得或可獲得之任何淨損失金額，包括但不限於所有抵押品(無論本保單之承保船舶或是其他船舶)、留置權、任何浮動或固定費用、擔保利益，保證、保單及質借。
- 2.4 抵押船舶係指記載於本保險附表之抵押給被保險人之船舶。

3. 除外條款

於任何情況下，本保險均不承保：

- 3.1 因下列原因所致或所生之任何損失或費用：
- 3.1.1 因未支付保費或協會會費，而導致相關船舶所有人保險單及防護補償協會入會證明之終止或中止承保或保險人或保險經紀人不予賠付
- 3.1.2 船舶所有人保單及防護補償協會入會證明之任何保險人之破產或財務困難
- 3.1.3 任何當事人無法傳送資金
- 3.1.4 兌換率之任何波動
- 3.1.5 任何起賠額、自負額或自保條款之作用
- 3.2 因下列原因直接或間所致或可歸因於或引起之滅失或損害：
- 3.2.1 從核子燃料或廢料、核子燃料燃燒而來之離子輻射或放射性污染，
- 3.2.2 任何核子設施、反應爐或其他核子裝備或其核子組件之放射性、具毒性、爆炸性或其他危險或污染性之

contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof,

- 3.2.3 any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

4. WARRANTIES

It is warranted in respect of the Mortgaged Vessel that:

- 4.1 Owners' Policies and Club Entries have been taken out and, except as a result of the occurrence or existence of an Insured Perils without the privity of the Assured, shall be maintained throughout the currency of this insurance for an insured value and limit of liability not less than the amount insured hereunder or the amount of the outstanding loan to the extent secured by the Mortgaged Vessel,
- 4.2 Each of the Owners' Policies and Club Entries is endorsed to the extent of the Assured's interest, and
- 4.3 The Assured has procured and registered a valid first mortgage.

5. CHANGE OF OWNERSHIP OR CONTROL

This insurance will terminate automatically at the time the Assured becomes or is aware of or privy to any change of:

- 5.1 Classification Society or of change, suspension, discontinuance, withdrawal or expiry of the Mortgaged Vessel's class within that Society,
- 5.2 Ownership, flag, management or control of the Mortgaged Vessel,

Unless the Assured gives prompt notice of such change in writing, and agrees to pay an additional premium, if required, and Owners' Policies and Club Entries are maintained.

6. DUTY OF THE ASSURED (SUE AND LABOUR)

- 6.1 The Assured shall report in writing to the Underwriters any circumstances which may give rise to a claim under this insurance within 30 days of the Assured's knowledge of such circumstances and shall thereafter keep the Underwriters fully informed of all developments.
- 6.2 It is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance.
- 6.3 The Underwriters will reimburse charges properly and reasonably incurred by the Assured their servants or agents for such measures except for legal costs and expenses incurred by the Assured in relation to any claim under Owner's Policies and Club Entries which shall only be reimbursed in accordance with Clause 6.4 herein.
- 6.4 Subject to the condition precedent that the Mortgaged Vessel is entered in a Freight, Demurrage and Defence

財產，

- 3.2.3 任何運用原子或核子分裂及或融合或其他類似反應或放射力或物質之戰爭武器。

4. 擔保

就抵押船舶，謹此擔保：

- 4.1 船舶所有人保單及防護補償協會入會證明業已獲得，且除因發生或存在被保險人知情之承保危險情況下，於本保險整個期間應保持某投保金額，並限制其責任不低於下列投保金額或於抵押船舶擔保範圍內之到期應支付貸款金額；
- 4.2 任一船舶所有人保單及防護補償協會入會證明應批註被保險人之利益；及
- 4.3 被保險人已取得並有效地登記為第一抵押權人。

5. 船舶所有權或控制權之變更

本保險於被保險人對下列任何變更有所知曉或已知或知情之時起，應自動終止：

- 5.1 被抵押船舶之船級於其船級協會之變更、終止、中止、撤回或逾期；
- 5.2 抵押船舶之所有權、船旗、經理或控制權，
- 於被保險人迅速地將該變更為書面通知並同意支付附加保費(若有要求)之情況下，船舶所有人保單及防護補償協會入會證明得繼續有效。

6. 被保險人義務(損害防阻)

- 6.1 被保險人應於知曉依據本保單可能引起求償之任何情況之 30 日內，將其書面通知保險人並報告所有進展。
- 6.2 被保險人及其受雇人及代理人，有義務採取任何可合理避免或減輕依據本保險可獲賠償損失之任何措施。
- 6.3 對於被保險人、其受雇人或代理人採取是項措施所合理發生之費用，保險人會予以補償，然被保險人就有關依據船舶所有人保單及防護補償協會入會證明所提出之任何求償發生之法律費用及開支外，該費用及開支僅能依照下列第 6.4 條規定獲得補償
- 6.4 於適用受抵押船舶已加入承保船舶所有人保單及防護補償協會入會證明所生之

Club covering the cost of the owner proceeding against the Owners' Policies and Club Entries, the Underwriters will reimburse those legal costs and expenses incurred by the Assured in pursuing the non-paying Owners' Policies and Club Entries not otherwise recoverable as part of the Net Loss but only where the Assured can demonstrate to the satisfaction of the Underwriters that it has made every reasonable effort to compel the owner to pursue the non-paying Owners' Policies and Club Entries. This policy shall not pay for legal costs and expenses incurred by the Assured in monitoring the claim against the Owners' Policies and Club Entries.

- 6.5 Any amounts payable under this clause shall be included within and shall not be additional to the Sum Insured.
- 6.6 Measures taken by the Assured or the Underwriters with the object of averting or minimising a loss which would be recoverable under this insurance shall not be considered as a waiver or acceptance of a claim otherwise prejudice the rights of either party.

7. CLAIMS

- 7.1 The Assured shall prove a claim under this insurance by:
- 7.1.1 demonstrating to the satisfaction of the Underwriters, that by reason of the perils insured under clause 2.1 there is no reasonable prospect of the Owners and/or Assured succeeding in the claim against the underwriters of the Owners' Policies and Club Entries, or
- 7.1.2 in the event of disagreement between the Underwriters and the Assured by either referring the issue to a sole arbitrator in London to be agreed upon between the Underwriters and the Assured or on final court judgement or arbitration award delivered in favour of the underwriters of Owners' Policies and Club Entries.
- 7.2 The Underwriters shall pay any claim hereunder within 3 months of the date that both the claim is proved in accordance with Clause 7.1 and Net Loss is established.

8. SUBROGATION

- 8.1 Upon payment to the Assured of a claim hereunder, the Underwriters shall be subrogated to all rights and remedies of the Assured in respect of such payment.
- 8.2 It is a condition of this insurance that any payments by the Underwriters shall not be applied by the Assured in or towards discharge or satisfaction of the outstanding indebtedness.

9. EFFECT OF UNDER INSURANCE

If the loan amounts are not fully insured hereunder at the time of loss then the indemnity payable hereunder including any sue and labour amounts shall be reduced in proportion to the

船舶所有人訴訟費用之運費、延滯費及抗辯協會之前提條件下，保險人會補償被保險人於追訴不付款之船舶所有人保單及防護補償協會入會證明時所生之法律費用，該法律費用不得作為淨損失之一部分，且僅於被保險人能證明並滿足保險人其已善盡合理努力，迫使船舶所有人進行不付款之船舶所有人保單及防護補償協會入會證明時，才能作為淨損失。本保險不賠付被保險人於監控船舶所有人保單及防護補償協會入會證明之訴訟時所發生之法律費用及開支。

- 6.5 依據本條款可獲賠償之任何金額，應包括於投保金額內，而不應為該投保金額以外之金額。
- 6.6 被保險人或保險人為避免或減輕本保險可獲求償之損失所採取之措施不得視為委付之放棄或承諾或有損任何一方之權利。

7. 求償

- 7.1 被保險人應以下述方式證明本保險之任一求償：
- 7.1.1 提出令保險人滿意之證明，其係因第 2.1 條之承保危險，船舶所有人及/或被保險人無合理成功機會向船舶所有人保單及防護補償協會入會證明之保險人求償，或
- 7.1.2 如保險人與被保險人間存有分歧，或將爭議提交一由保險人及被保險人協議於倫敦之單一仲裁人或由法院作出有利於船舶所有人保單及防護補償協會入會證明之保險人之仲裁裁決或終局判決。
- 7.2 保險人應於依據第 7.1 條所證明之求償及淨損失確認之日起三個月內賠付任何求償。

8. 代位權

- 8.1 於向被保險人支付賠償後，保險人應代位取得被保險人就該賠款有關之所有權利及救濟。
- 8.2 保險人所支付之任何賠償，被保險人不得用於清償或補償到期債務金額為本保險之條件。

9. 不足額保險的後果

如損失發生時，貸款金額未全額承保，則依據本保險可賠付之賠償，包括任何損害防阻費用，應根據該不足額保險依比例扣

under insurance.

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10. AUTOMATIC TERMINATION

10.1 Cover hereunder for loss of or damage to or liability of a Mortgaged Vessel shall terminate in respect of those risks covered by the War and Strikes Clauses of the Mortgaged Vessels.

10.1.1 AUTOMATICALLY upon the outbreak of war (whether there be a declaration of war or not) between any of the following

United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China.

10.1.2 AUTOMATICALLY in respect of a Mortgaged Vessel in the event of that Mortgaged Vessel being requisitioned either for title or use

10.1.3 7 days after the Underwriters of the Owner's War Risks Insurances or any of them have given notice of cancellation unless such War Risks Insurances have been reinstated prior to or from the expiry of such notice and any new rate of premium and amendments to terms, conditions or warranties, if any, have been agreed, or

10.1.4 7 days after the Underwriters hereon have given notice of cancellation in respect of such risks.

10.2 Cancellation in accordance with Clauses 10.1.3 and 10.1.4 shall become effective on the expiry of 7 days from midnight on the day on which the notice of cancellation is given. The Underwriters agree however to reinstate this insurance subject to the agreement between the Underwriters and the assured prior to the expiry of such notice of cancellation as to new rate of premium and/or conditions and/or warranties.

10. 自動終止

10.1 本保險所承保之抵押船舶之滅失或損害或責任，就有關由抵押船舶之戰爭及罷工險條款所承保之風險，於下列情況應予終止：

10.1.1 於下述任何國家間爆發戰爭(無論宣戰與否)時自動終止：

英國、美國、法國、俄國、中國

10.1.2 有關抵押船舶，於該抵押船舶之所有權或使用權被徵用時自動終止

10.1.3 於船舶所有人之戰爭保險保險人或其中之任何人發出解約通知後7日，然以該戰爭險保險於該通知屆滿或之前已恢復，且已同意任何新的保險費率及條款、條件或擔保之修改(若有)者除外，或

10.1.4 於保險人就有關該風險發出取消通知7天後。

10.2 依據第10.1.3條及10.1.4條之取消，自發出該取消通知7日後之午夜生效。然保險人同意恢復本保險，然以在此取消通知屆滿前，保險人與被保險人，就新保險費率及/或條件及/或擔保達成協定者為限。