

## **South China Insurance Institute Mortgagees Interest Wording — (Amended 1/2/05)**

106.12.08(106)華產企字第335號函備查

Subject to the conditions of this wording, this policy shall indemnify the Insured Mortgagee for any amount up to the sum insured as stated in this policy and or schedule attaching hereto on the vessel(s) named in the policy here under:-

### **1. COVERAGES**

This insurance to indemnify the Insured for loss of, or damage to, or liability arising in connection with the vessel.

- i. Which is prima facie covered by the Owners' Policies and/or Club Entries as per Section 3 but in respect of which, there is subsequent non-payment or part non-payment by Underwriters of the Owners' Policies and/or Club Entries resulting from any act or omission of any one or more of the Owners and/or Operators and/or Charterers and/or Managers of the vessel concerned and/or their Servants and/or Agents or anyone else held responsible (hereinafter together called the "Relevant Parties") including any breach of warranty or condition whether expressed or implied or any misrepresentation or non-disclosure or alleged non-disclosure of any fact or circumstances of any kind whatsoever, or the application of any provision for a time limitation on the presentation of claims or
- ii. Which occurs by virtue of any alleged deliberate, negligent or accidental act or omission or any knowledge or privity of any of the Relevant Parties including the deliberate or negligent casting away or damaging of the vessel or the vessel being unseaworthy or inadequately equipped, manned or certified (including but not limited to the requirements set out in Conventions and or by Class Societies) or
- iii. Which, by virtue of any act or omission, any breach or alleged breach of warranty or condition whether expressed or implied, any misrepresentation or non-disclosure, any deliberate, negligent, or accidental act or omission or any knowledge or privity of any of the Relevant Parties, including the deliberate or negligent casting away or damaging of the vessel or the vessel being unseaworthy or inadequately equipped, manned, certified (including but not limited to requirements set out in Conventions and/or by class societies) or having breached the stipulated geographical warranties or has deviated from the designated or usual and customary route which results in a compromise settlement by Underwriters of the Owners' Policies or Club Entries or

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- iv. Which arises following the occurrence of a Third Party claim in connection with the vessel resulting in the exercise of a lien having priority over the mortgage of the vessel in favour of the Insured, the amount of which is allegedly not recoverable from Underwriters of the Owners' Policies or the Club Entries by virtue of any act, error, omission or privity of any of the Relevant Parties or
- v. In the event of the total Loss of the Mortgaged vessel which is allegedly not recoverable under either Owners' hull and machinery or war risk policies due to a dispute on the grounds 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 or
- vi. In the event of any of the Owners Policies or Club Entries being cancelled, suspended or terminated under the provisions of a Hull Classification Clause or as a result of non-compliance with I.S.M, ISPS requirements or any other international convention, or any other cancellation, suspension or termination provision in the Owners Policies or Club Entries. (Such cancellation, suspension or termination of the Owners Policies or Club Entries will not be held to be a breach under the terms and conditions provided by this policy subject to no explicit consent of the Insured to any act or omission that would result in such cancellation, suspension or termination).

## **2. CLAUSES PARAMOUNT**

IT IS EXPRESSLY AGREED AND HEREBY DECLARED THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN THE COVERAGE UNDER CLAUSE 1 SHALL APPLY FOR SO LONG AS THE INSURED IS NOT PRIVY TO THE OCCURRENCE OF ANY OF THE EVENTS ENUMERATED THEREUNDER.

IT IS UNDERSTOOD HOWEVER THAT SUCH PRIVITY TO THE OCCURRENCE OF ANY OF THE EVENTS ENUMERATED IN CLAUSE 1 WILL ONLY PREJUDICE THIS INSURANCE 48 HOURS AFTER SAFE ARRIVAL AT THE NEXT PORT OF CALL IF ON A BALLAST VOYAGE, OR 48 HOURS AFTER SAFE ARRIVAL AT THE FINAL PORT OF CALL IF ON A CARGO VOYAGE, OR AFTER A PERIOD OF 4 BUSINESS DAYS IF IN PORT.

UPON THE PRIVITY OF THE INSURED COVER UNDER THIS CLAUSE SHALL RESPOND (UNTIL TERMINATION OF COVER HEREON) TO THE EXTENT OF

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## COVERAGE PROVIDED ON THE SAME PERILS AS PER OWNERS POLICIES AND CLUB ENTRIES.

PRIVITY OF THE INSURED MUST INCLUDE EXPLICIT WRITTEN  
NOTICE TO ANY PERSONNEL OF THE INSURED WHO HAS SPECIFIC  
RESPONSIBILITY FOR A PARTICULAR LOAN.

### 3. WARRANTIES

It is warranted in respect of the vessel(s) to which this policy relates that the Insured shall use best endeavours to ensure that:-

- i. Hull and Machinery Policies on terms equivalent to International Hull Clauses and/or Institute Time Clauses (Hulls) and/or American Institute Hull Clauses and/or Norwegian and/or German Conditions and/or Italian "Camogli" Conditions and where applicable, Increased Value Policies equivalent to Institute Time Clauses - Hulls Disbursements and Increased Value Total Loss only including Excess Liabilities and/or American Increased Value and Excess Liabilities Clauses or Norwegian Hull Interest Clauses or German Increased Value Clauses, also War Risks Policies equivalent to Institute War and Strikes Clauses Hulls - Time or American, Norwegian or German War Clauses and Protection and Indemnity Risks (herein referred to as 'the Owners' Policies and Club Entries") have been taken out and shall be maintained throughout the currency of this policy, provided always that the Insured shall be covered as per Clause 2 herein after any notice of termination, cancellation or suspension to Insured by the Insurers, or the brokers acting on behalf of the Insurers under the Owners' Policies or Club Entry.
- ii. The Owners' Policies and Club Entries, warranted in 3(i) above, shall have been taken out on insured values and limit of liability not less than the amount insured hereunder.
- iii. Each of the Owners' Policies and Club Entries shall have been endorsed noting the Insured Mortgagees Interest in such Policies/Certificate of Entry. Receipt by the Insured of confirmation from brokers and/or agents of such endorsements shall be compliance hereunder.
- iv. Where Owners Policies are partly or fully arranged on restricted or extended conditions it is hereby noted and agreed that this policy shall only respond to the extent of failure to pay claims that are prima facie insured by owners policies and Club Entries. Such restricted or extended conditions shall not be a breach of warranty as defined in Clause 3(i).

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- v. Where Owners Policies or Club Entries are voidable from inception or thereafter by reason of one of the Perils listed in Clause 1 this will not be a breach of warranty as defined in Clause 3(i).
- vi. Noted and agreed that Clause 3(i) is to apply to Owners' Policies and Club Entries separately, and that termination, cancellation, suspension, non existence, or otherwise, of any one or more of the Owners' Policies and Club Entries will only result in Underwriters hereon not being liable in respect of those Owners' Policies and Club Entries not in force, other than as provided in Clause 2 herein, but not affecting Underwriters' liability in respect of those Owners' Policies and Club Entries still in force.

#### 4. INDEMNITY

- i. The indemnity payable hereunder shall not be determined by reference to the sound market value of the vessel or Insurable value of the vessel but shall be an amount equal to whichever is the least of either:-
  - (a) the amount not paid under the Owners' Policies/Club Entries by reason of the circumstances specified in Clause I (COVERAGES) of the wording.
  - or
  - (b) the Total Indebtedness due to the Insured at the time of payment under Clause 4 (iii) hereof
  - or
  - (c) the sum insured stated in the relevant policy and/or stated in the declaration attaching hereto.

"Total Indebtedness" includes all sums of money due and owing or to become due and owing by the Owners to the Insured under the Mortgage including:

any principal sum, interest, costs, commission, expenses and any and all other sums whatsoever due or to become due to the Insured from the Owners or for their account, whether alone or jointly with others, including any outstanding liabilities when incurred by the Insured for the Owners and all liabilities to the Insured or incurred by the Insured on the Owners behalf of any Bills, Guarantees or otherwise howsoever.

- ii. For the purpose of this Insurance there shall be deemed to be a non-payment by Underwriters on Owners' Policies and or Club Entries after

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a reasonable period not exceeding 365 days has elapsed from the date which Owners or the Insured has demanded payment under the Owners Policy and/or Club Entries. The Insured shall formally present its claim hereunder when it has become apparent to the Insured that Underwriters have denied liability or failed to pay.

- iii. The indemnity payable hereunder shall be paid within one calendar month of the date on which the Insured shall have presented its claim in writing to the Underwriters of this policy.
- iv. The indemnity payable under Clause 4 (i) hereof shall be payable notwithstanding the existence of other security in respect of the amount due to the Insured as mortgagee of the vessel(s) covered.

## **5. DUTY OF THE INSURED (SUE AND LABOUR)**

- i. It is the duty of the Insured and their servants and agents to take such measures as may be reasonably agreed upon between the Insured and the Underwriters from time to time for the purpose of averting or minimising a loss which would be recoverable under this contract but it is understood that such measures do not include those which may be taken against Owners Managers/Charterers or any other security apart from Owners' Policies and Club Entries.
- ii. The Underwriters will reimburse charges properly and reasonably incurred by the Insured their servants or agents for such measures promptly on demand.
- iii. Measures taken by the Insured or the Underwriter with the object of averting or minimising a loss which would be recoverable under this contract shall not be considered as a waiver or acceptance of a claim or otherwise prejudice the rights of either party.
- iv. The sum recoverable under this Clause 5 shall be in addition to the loss otherwise recoverable under this contract.

## **6. SUBROGATION**

Upon payment to the Insured of a claim hereunder, the Underwriters shall be subrogated to all rights and remedies of the Insured up to the amount of such payment, always limited to the rights and remedies that the Insured may have under the Owners' Policies and Club Entries related to the particular vessel and the particular incident.

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## **7. CHANGE OF OWNERSHIP/CANCELLATION**

If during the policy period the Ownership of the vessel is transferred to another Owner with the Insured's written approval then, in absence of agreement to the contrary, this policy shall, otherwise as provided in clause 2 herein, automatically terminate. However, this insurance shall automatically reattach upon the change of Ownership if the Insured still is Mortgagee of the vessel.

## **8. INSTITUTE NOTICE OF CANCELLATION. AUTOMATIC TERMINATION OF COVER AND WAR AND NUCLEAR EXCLUSIONS CLAUSE - HULLS. ETC. (CL. 359) 1/1/95 Paragraph 3.2 to 3.2.3 inclusive of Cl. 359 is deemed replaced by Cl. 370.**

Unless specific notice is given for this policy it is agreed cover is automatically reinstated at termination of the notice period when general Notice on War Risks is given.

## **9. EXCLUSIONS**

- i. Underwriters of this Policy shall have no liability to the Insured, other than as provided in Clause 2 herein, if at the date on which any such loss, damage or liability as aforesaid arises, the relevant Owners' Policies or Club Entries (as the case may be) have been lawfully terminated by the Underwriters thereof due solely to non-payment of premium or call.
- ii. No claim that would be recoverable hereunder as a result of non-payment or part payment of a claim under any of the Owners' Policies or Club Entries will be payable if such non-payment or part payment (as the case may be) arises solely from:-
  - (a) Insolvency of the Underwriters under the Owners' Policies and or Club Entries,  
or
  - (b) Inability of any Underwriters under the Owners' Policies or Club Entries to remit funds by reason only of laws in force and imposed in the country or jurisdiction in which such party mainly conducts its business.



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**INSTITUTE NOTICE OF CANCELLATION, AUTOMATIC TERMINATION  
OF COVER AND WAR AND NUCLEAR EXCLUSIONS CLAUSE -  
HULLS, ETC. (CL. 359) 1/1/95**

**This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.**

**1. Cancellation**

Cover hereunder in respect of the risks of war, etc may be cancelled by either the Underwriters or the Assured giving 7 days notice (such cancellation becoming effective on the expiry of 7 days from midnight of the day on which notice of cancellation is issued by or to the Underwriters). The Underwriters agree however to reinstate cover subject to 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

**2. Automatic Termination of Cover**

Whether or not such notice of cancellation has been given cover hereunder in respect of the risks of war, etc, shall TERMINATE AUTOMATICALLY

2.1. 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;

2.2. in respect of any vessel, in connection with which cover is granted hereunder, in the event of such vessel being requisitioned either for title or use

**3. Five Powers War and Nuclear Exclusions**

This insurance excludes

3.1. loss damage liability or expense arising from

3.1.1. 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:

3.1.2. requisition either for title or use.

3.2. loss damage liability or expense directly or indirectly caused by or arising from

3.2.1. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel

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3.2.2. the radioactive, toxic, explosive or other hazardous or 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 of radioactive force or matter.

#### **4. Law and Practice**

This clause is subject to English law and practice.

Cover in respect of the risk of war, etc shall not become effective if, subsequent to acceptance by the Underwriters and prior to the intended time of attachment of risk, there has occurred any event which would have automatically terminated cover under the provisions of this clause.

Cl. 359.



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## **Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause**

**This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith**

1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from
  - 1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
  - 1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
  - 1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
  - 1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes
  - 1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

10/11/03

CL370

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## **INSTITUTE CYBER ATTACK EXCLUSION CLAUSE**

1.1 Subject only to clause 1.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

1.2 Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, Clause 1.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

10/11/03

CL380

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## **SANCTION LIMITATION AND EXCLUSION CLAUSE (JH2010/009)**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

## **CONDITIONS AND WARRANTIES CLAUSE**

1. A breach of warranty (a "Breach Of Warranty") or condition (a "Breach of Condition") by the Insured under this policy shall not discharge the Insurers from any liability under this policy unless the Breach of Warranty or Breach of Condition:
  - 1.1 is material to the risks underwritten by the Insurers under this policy by reference to the circumstances existing at the date of breach; and
  - 1.2 has not been remedied on or prior to the Non-Payment claimed under this policy; and
  - 1.3 has directly caused the loss claimed by the Insured under this policy.
2. The Insurers shall have the burden of proving that a Breach of Warranty or Breach of Condition by the Insured discharges the Underwriters from any liability under this policy.
3. Subject to clause 1.1, a Breach of Warranty or Breach of Condition by the Insured under this policy shall only result in the discharge of the Insurers liability under this policy in respect of a claim hereunder in relation to which the Breach of Warranty or Breach of Condition has occurred, and shall not adversely affect prior or subsequent claims by the Insured under this policy.

## **CLAIMS CONTROL CLAUSE**

In the event of a loss which may cause a claim under this Reinsurance the Reinsured shall give immediate notice to Reinsurers.

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Reinsurers shall have the right to take absolute control of any claim arising hereunder and no settlement shall be made without the approval of Reinsurers.

### **LOSS PAYABLE/CUT THROUGH CLAUSE**

In respect of named vessels reinsured hereunder and specifically agreed by reinsurers hereon, the reinsurer and the ceding company hereby agree that in the event that the ceding company shall become insolvent go into liquidation or receivership or administration and as a result is unable to pay a claim under their policy for account of the original insured and/or mortgagee (subject to the provision of the Loss Payee Clause in the original policy), then it is expressly agreed by the ceding company that the reinsurer, in lieu of payment to the ceding company, shall pay directly to the mortgagee the reinsurer's share of any loss of losses incurred by the ceding company which are within the limit, terms and conditions Of this reinsurance, to the full extent of their interest without any deduction or deductions whatsoever, other than in policy conditions, always provided that the liability Of the reinsurer to the original insured and/or mortgagee shall be reduced by the amount of payments made by the reinsurer on account of the same loss of losses to the ceding company.

The reinsurers shall be given prompt notice, by the ceding company or the original insured and/or mortgagee of every claim or loss which may involve this reinsurance. The reinsurers shall have the right at their sole discretion, to investigate the claim or loss and to interpose, at their own expense, any defence which they deem necessary where the claim or loss is to be adjudicated. A proportionate share of the expenses thus incurred by the reinsurers shall be chargeable against the ceding company to the extent of the benefit accruing to the ceding company solely as a result of the defence undertaken by the reinsurers.

If is fully understood and agreed by the ceding company that is a condition precedent to liability under this reinsurance that payments made directly to the original Insured and/or mortgagee pursuant to this clause shall absolve the reinsurer from making any payments to the ceding company or its liquidators, receiver or administrator and shall constitute a full discharge and release of the reinsurer from any and all further liability in connection herewith.