

## 중국 선박보험약관에 관한 연구

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### A Study on Basic Interpretation of the Hull Insurance Clauses of the People's Insurance Company of China

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#### 요 약

최근 中國의 改革·開放의 물결과 더불어 中國 保險業의 발전도 매우 빠르고, 保險에 관한 立法活動도 매우 활발하게 이루어지고 있다. 그리고 이와 관련한 여러 法律과 法規도 점차 完備되어 갔다. 『中華人民共和國海商法』, 『中華人民共和國保險法』의 公布·施行 및 『中國人民保險公司船舶保險約款』의 改正은 中國 海上保險業 한층 더 發展하는데 있어서 매우 重要한 意味를 가진다.

모든 中國保險會社는 지금까지 中國人民保險公司의 保險約款을 사용하였다. 이러한 점을 감안하여 本 論文에서는 中國의 保險實務와 保險法理論에 따라 1986년 『中國人民保險公司船舶保險約款』에 대하여 條文에 따라 해설을 하였으며, 또한 1983년 『英國保險協會船舶期間保險約款』과도 비교하여 연구하였다.

『中國人民保險公司船舶保險約款』은 다음과 같은 11개 條文으로 구성되었다.

#### (1) 責任範圍

船舶保險의 주요 種類는 “全損險”과 “分損險”이다.

#### (2) 免責事由

네 가지의 免責事由를 규정하고 있다.

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### (3) 控除額

約款에서 규정하고 있는 것은 “絶對的인 控除額”이지만, 실제에 있어서는 單獨海損과 같은 部分損害에 대한 保險補償에만 적용한다.

### (4) 航海

이 條項은 保險船舶의 운항에 대하여 一定한 제한을 하는 조항이다. 그러나 保證은 아니며, 保險契約의 解止와도 다르다.

### (5) 保險期間

期間保險과 航海保險의 保險期間에 대하여 규정을 두고 있다. 期間保險의 保險期間은 1년으로 制限하고 있다. 이 조항에서는 貨物을 船積한 船舶과 船積하지 아니한 船舶에 대하여 각각 規定하고 있다.

### (6) 終了

본 條項에는 세 부분으로 規定하고 있는데, 첫째는 保險契約의 自動終了, 즉 保險者가 被保險者의 損害를 전부 補償한 경우이고, 둘째는 保險期間을 延長하지 못하는 10가지 危險變更의 경우이고, 셋째는 保險契約를 延長할 수 있는 保證에 대한 규정을 두고 있다.

### (7) 保險料와 解約還給金

航海保險은 保險責任이 開始한 후 契約解除를 인정하지 아니하고, 還給金도 지급하지 아니한다.

期間保險에 대하여는 保險契約이 期間滿期前에 解止하거나 또는 船舶이 碇泊하여 있는 경우의 解約還給金에 대한 규정을 두고 있다.

### (8) 被保險者의 義務

被保險者는 事故發生의 通知義務, 損害防止 및 代位求償權의 行使에 協助할 義務 등이 있다.

### (9) 公開入札

본 條項에서는 保險者가 被保險船舶의 修理에 대하여 公開入札을 통하여 落札者를 選定할 수 있는 權利와 被保險者에 대하여 遲延部分의 損害를 補償할 責任을 규정하고 있다.

### (10) 求償權과 補償

본 條項에서는 除斥期間, 全損과 分損에 대한 補償範圍, 非定額保險에 대한 補償, 姊妹船舶間의 補償方法 등에 대하여 각각 규정하고 있다.

### (11) 紛爭의 解決

保險者와 被保險者가 紛爭이 발생하여 仲裁나 訴訟을 進行할 경우, 被告의 住所地를 仲裁나 訴訟地로 한다는 규정을 두고 있다.

『中國人民保險公司保險約款』과 『英國保險協會船舶期間保險約款』에 대한 비교를 통하여 『中國人民保險公司船舶保險約款』은 1906년 『英國海上保險法』과 『英國保險協會船舶期間保險約款』에 따라 일부 규정을 補完함으로써 國際海上運送의 需要에 適應하여야 한다고 생각된다. 또한 1992년에 『中華人民共和國海商法』이 公布·施行되고, 1995년에 『中華人民共和國保險法』이 公布·施行되었기 때문에 1986년에 制定된 保險約款도 새로운 法規에 符合되도록 改正이 필요하다.

## 1. Purpose of Study

The marine insurance provisions, Chapter 12 Article 216 to Article 256, have been legislated as a part of the Maritime Code of the People's Republic of China (hereinafter called the MCC) which came into force on July 1, 1993. The Insurance Law of the People's Republic of China (hereinafter called the ILC) has been promulgated and came into force on October 1, 1995, in which property insurance provisions have been legislated as an important part.

The People's Insurance Company of China (hereinafter called the PICC) is the biggest insurance company in China. In Chinese marine insurance market, the PICC Clauses are still the main clauses used by the other insurance companies in China. So this study aims to make basic interpretation of the rules of the PICC Clauses in

comparison with the Institute Time Clauses Hulls 1983 (hereinafter called the ITC).

Even if the PICC Clauses are used as an agreement of contract of hull insurance in the Chinese marine insurance market, the formatting of the PICC policy is different from the ITC-Hull policy. However, the PICC Clauses are interpreted and applied according to the same principles as the ITC, that is to say, the PICC Clauses must be clarified with the basic principles mainly adopted from the English marine insurance law and practice.

## 2. Method and Scope of Study

The study of the PICC Clauses shall be carried out with the analysis of the PICC Clauses clause by clause and also with the comparison with the ITC where necessary. The PICC Clauses are reproduced in full as Appendix 3, but each clause is quoted in boldfaced type prior to its explanation.

The PICC Clauses shall be interpreted on the basis of the principles of the MCC and the ILC and also on the basis of the principles and cases of the English law and practice.

The detail scope of the study is limited upto the concept and construction of the PICC Clauses and agreement elements of marine insurance contract, special clauses and legal effect of the contract.

## 3. Construction of the PICC Clauses

The PICC Clauses have only 11 clauses and the ITC consist of 26 clauses, whereas the former have some clauses corresponding to the ITC, but in different order. The corresponding relations between them are shown in the following table.

## 4. Main Contents of the PICC Clauses

### 4.1 Scope of Cover

In the PICC Clauses there are only two hull insurance kinds: Total Loss Cover and All Risks Cover.

ITC	PICC
Navigation	Shipping (Clause 4)
Continuation	Period of Insurance (Clause 5.1)
Breach of Warranty	Termination (Clause 6.3)
Termination	Termination (Clause 6.2)
Assignment	(No corresponding clause)
Perils	Scope of Cover (Clause 1.1)
Pollution Hazard	Scope of Cover (Clause 1.1.7.5)
3/4ths Collision Liability	Scope of Cover (Clause 1.2.1)
Sistership	Claim and Indemnity (Clause 10.6)
Notice of Claim and Tender	Duty of Insured (Clause 8.1) & Tender (Clause 9)
General Average and Salvage	Scope of Cover (Clause 1.2.2)
Deductible	Deductible (Clause 3)
Duty of Assured (Sue and Labour)	Duty of Insured (Clause 8.1) & Scope of Cover (Clause 1.2.3)
New for Old	Claim and Indemnity (Clause 10.3.1)
Bottom Treatment	Claim and Indemnity (Clause 10.3.2)
Wages and Maintenance	(No corresponding clause)
Agency Commission	Claim and Indemnity (Clause 10.4)
Unrepaired Damage	(No corresponding clause)
Constructive Total Loss	Claim and Indemnity (Clause 10.2.3)
Freight Waiver	(No corresponding clause)
disbursements Warranty	(No corresponding clause)
Returns for Lay-up and Cancellation	Premium and Returns (Clause 7.1)
War Exclusion	(No corresponding clause)
Strikes Exclusion	(No corresponding clause)
Malicious Acts Exclusion	(No corresponding clause)
Nuclear Exclusion	(No corresponding clause)

#### 4.1.1 Total Loss Cover

As far as Total Loss Cover is concerned, the PICC Clauses have total loss only.

Perils covered by Total Loss Cover are divided into two groups: perils being subject to the exercise of due diligence in the operation of the ship on the part of the assured, owners or managers, as the case may be; and perils not subject to due diligence. The cover is similar to that of Clause 6 of the ITC.

#### 4.1.2 All Risks Cover

All risks cover means that the insurer is liable for either a total loss or a partial loss of or damage to the insured vessel, including collision liability, general average, salvage, salvage charges and sue and labour.

The PICC Clauses divide All Risks Cover into three parts:

- 1) collision liabilities (Clause 1.2.1);
- 2) general average and salvage (Clause 1.2.2);
- 3) sue and labour (Clause 1.2.3).

##### 4.1.2.1 Collision Liabilities

The PICC Clauses in Clause 1.2.1 stipulates that "This insurance covers legal liabilities of the Insured as a consequence of the insured vessel coming into collision or contact with any other vessel, or any object, fixed, floating or otherwise". And it also stipulates that "The Insurer's liability (including legal costs) under this clause shall be in addition to his liability under the other provisions of this insurance, but shall not exceed the insured amount of the vessel hereby insured in respect of each separate occurrence".

When the insured vessel comes into contact with an object, this principle also applies, that is to say, the insurer not only covers the contact with the vessels, but also covers the contact with any fixed or floating object.

##### 4.1.2.2 General Average and Salvage

This insurance covers the insured vessel's proportion of general average, salvage or salvage charges, but in case of general average sacrifice of the vessel, the Insured may recover fully for such loss without first obtaining contributions from other parties.

Clause 1.2.2.2 of the PICC Clauses stipulates that "General average shall be adjusted in accordance with the relative contract and/or governing law and practice. However, where the contract of affreightment or carriage does not so provide, the adjustment shall be according to the Beijing Adjustment Rules or similar provisions or other rules".

#### 4.1.2.3 Sue and Labour

The PICC Clauses stipulate that sue and labour charges shall be paid by the insurer in addition to the indemnification to be paid with regard to the subject matter insured and the extent of the insurer's liability is limited to the insured amount.

### 4.2 Exclusions

The excluded losses stipulated in the PICC Clauses are as follows:

- (1) unseaworthiness including not being properly manned, equipped or loaded, provided that the Insured knew, or should have known, of such unseaworthiness when the vessel was sent to sea.
- (2) negligence or intentional act of the Insured and his representative.
- (3) ordinary wear and tear, corrosion, rottenness or insufficient upkeep, or defect in material which the Insured should have discovered with due diligence, or replacement of or repair to any part in unsound condition as mentioned above.
- (4) risks covered and excluded in the Hull War and Strikes Clauses of this Company.

Literally, the excluded clauses are more effective than the included clauses, but the burden of proof lies on the insurer.

### 4.3 Deductible

Deductible is an amount or percentage specified in the policy which must be exceeded before a claim is payable. According to Clause 3.1 of the PICC Clauses, deductible does not apply to collision liability, salvage & general average and sue & labour, it only applies to particular average.



#### 4.4 Shipping

The PICC Clauses do not cover loss, damage, liability and expense caused under the following circumstances:

- (1) towage or salvage service undertaken by the insured vessel;
- (2) cargo loading or discharging operation at sea from or into another vessel (not being a harbour or inshore craft) including whilst approaching, lying alongside and leaving;
- (3) the insured vessel sailing with an intention of being broken up or sold for breaking up.

#### 4.5 Period of Insurance

This clause restricts time policies to not more than 12 months. Cover will attach and terminate at the time and date stated in the policy.

The PICC Clauses provide that in some cases if the assured gives notice to the insurer before the policy expires, cover continues automatically, until the ship arrives at the destination intended at the time the policy was due to expire. The additional premium paid for the continuation is pro rata daily premium. In case of a total loss of the vessel during such period of extension, an additional six months premium shall be paid to the insurer. The additional six months premium includes the additional pro rata daily premium paid for the continuation.

#### 4.6 Termination

The PICC Clauses stipulate three circumstances where the insurance terminates automatically as follows:

- (1) in the event of payment for total loss of the insured vessel, which is a unique provision in the PICC Clauses;
- (2) at the time of any change of the Classification Society of the insured vessel, change of, cancellation or withdrawal of her class therein, change in the ownership or flag, assignment or transfer to new management, charter on a bareboat basis, requisition for title or use of the vessel;
- (3) in case of any breach of warranty as to cargo, voyage, trading limit, towage,



salvage services or date of sailing which is the same as Clause 3 of the ITC.

#### 4.7 Premium and Returns

Regarding premium and returns, the PICC Clauses are more beneficial to the insured. If the insurance is terminated, premium shall be returned pro rata daily net for the uncommenced days. But the ITC stipulate to return premium pro rata monthly (Clause 22.1.1).

#### 4.8 Duty of Assured

The PICC Clauses restrict that the insured shall give notice to the insurer within 48 hours upon receipt of advice of any accident or loss to the insured vessel, and if the vessel is abroad, to the insurer's nearest agent immediately.

In accordance with Clause 10.1 of the ITC, it is expected that such notice will be given with reasonable diligence as soon as the assured is aware of the accident, but a reasonable amount of time will be allowed for the assured to verify the reliability of the information.

#### 4.9 Tenders

Invitations to tender must be sent to repair firms and no tender must be accepted without the insurer's approval.

#### 4.10 Claim and Indemnity

This clause stipulates the time limit for claims and the measure of indemnity as to total loss and partial loss. As to claim time limitation, the PICC stipulates to be two years, counting from the day on which the peril insured against occurred.

#### 4.11 Treatment of Disputes

In China, when any dispute occurs between the insurer and the assured and it is necessary to submit to arbitration or take legal action, such arbitration or legal action shall be carried out at the place where the defendant is domiciled. This

clause will preserve the benefit of the defendant.

## 5. Conclusion

Through a rough study of the PICC Clauses I think that the Chinese laws should supplement some provisions based upon the MIA 1906 and the ITC so as to fit in with the needs of the development of the international ocean shipping. As conclusion this thesis has pointed out the following main differences between the PICC Clauses and the ITC:

(1) The PICC Clauses cover 4/4ths collision liability, but the ITC cover 3/4ths collision liability.

(2) The coverage of collision liability in the PICC Clauses includes contact with any object, fixed, floating or otherwise. However the ITC do not.

(3) According to the PICC Clauses, deductible only applies to partial loss; However in the ITC it also applies to collision liability, salvage, general average and sue and labour.

(4) As to claim time limitation, the PICC Clauses stipulate to be two years, but the ITC have no such stipulation.

(5) The PICC Clauses provide that, where a dispute happens, arbitration or legal action is carried out at the place where the defendant is domiciled. But the ITC is subject to English law and practice.

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