

英國 2009 協會貨物條款修正之探討

摘 要

英國協會貨物條款(Institute Cargo Clause，以下稱 ICC)歷經 1912 年、1930 年、1951 年、1963 年、1982 年各版本之演進，最新之版本為 2009 年。1982 年以前之版本與勞氏保單(Lloyd's S.G. Foam)臍帶關係緊密，1982 年版本揚棄勞氏保單為主體之舊式 ICC，可謂為革命性版本，因之，當年啟用時特別聲明適用於新式保單(with new policy form)。2009 年 ICC 版本針對 1982 年版本修正，負責修正條款之 JCC(Joint Cargo Committee)通函保險業，謂主要之改變為用語(wording)與部份承保範圍之消長。本文以實務觀點，由檢視 2009 年 ICC 版本之架構與內容為起點，發現其修正內容對於保險人與被保險人權益頗有消長，本文亦提出此次修改之一些評論，並建議被保險人解讀 ICC 之模式。

關鍵詞：協會貨物條款(ICC) 除外事項(Exclusion) 因果關係 保險期間(Duration)

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壹、緒 論

一、研究動機

英國協會貨物條款於全球海上貨物保險實務中，具有舉足輕重地位。正式的協會貨物條款(Institute Cargo Clause，以下稱 ICC)由 1912 年版本一路演化至目前之 2009 年版本，觀察各版本之演化¹，變動最為劇烈者為 1982 年版本。該版本取代 1963 年版本，等於揚棄主宰海上保險市場歷史悠久的勞氏保單(Lloyd's S.G. Foam)，蓋 1963 年版本與勞氏保單有臍帶關係²。1982 年版本的劃時代變革，使得當年及其後數年以其為探討主題者盛況空前³。

海上貨物保險於目前台灣之產物保險市場中，市場佔有率固然不大，但並不減少其重要性，畢竟進出口貨物不能缺少海上貨物保險。再者，對於產物保險之業者而言，該險是頗能創造利潤之險種。表一為 1991 至 2008 年該險之業務概況，由表中可發現該險之業務量雖未有爆發性成長，但是就損失率而論，除 2001 與 2006 年之外，長久以來頗為穩定。對於業者於辦理年度再保計劃時，頗能發揮其搭配之功效。

基本上 ICC 條款影響之層面及於貿易商、銀行、運送人，再者，國內產險業者使用之海上貨物保險之保單與基本條款，仍以英國之協會貨物條款為主，因此，2009 年版本相較於 1982 年版本之變更，仍值得注意與探討。再者，仔細比對 1982 年與 2009 年之版本，吾人發

¹ 鄭鎮樑(2000)，英國勞氏保單中之附註條款與協會貨物條款之演化探源，核保學報，第八卷，Pp169~214

² 實際上 1912~1963 年間各版本與勞氏保單均具臍帶關係。

³ 1980 年代海上保險，尤其是海上貨物保險在台灣之產物保險界仍佔有顯著之地位，所受之關注自然亦高。本文撰者之一過去亦曾為文探討 1912 年至 1982 年協會貨物條款之演化過程，並探討該段期間演化之時代意義(請詳鄭鎮樑(2000)，英國勞氏保單中之附註條款與協會貨物條款之演化探源，核保學報，第八卷，Pp169~214)

現其變更之處不在少數，如何解讀其內容，亦為重要之課題。就版本之發展而論，吾人固可認為每一版的變動都是朝正向發展，但亦可檢視其變更之內容是否有過與不及之處。

二、研究方法

本文以實務觀點，採取比對與歸納方法，先行比對 2009 年 ICC 版本與 1982 年 ICC 相異之處⁴，再行歸納分析 2009 年 ICC 版本之架構與內容，並分別由保險人與被保險人立場分析 ICC 最新版本對雙方之影響，並建議被保險人解讀 ICC 之模式。

三、本文架構

本文共分五段，第一段為緒論，已如上述。第二段針對 1912 年 ICC 至 2009 年之 ICC 演進做一回顧，並就較完整之 1930~2009 期間各版本之條文名稱歸納比較為本文後續各段穿針引線；第三段比對 2009 年與 1982 年 ICC 之內容，歸納整理此次修正之架構；第四段為修正分析，係根據修正之架構逐項分析探討修正內容，並對於其中較重要之修正，就其歷史發展貫穿分析，文中亦分析其對於保險人與被保險人之影響；第五段為結論，針對 2009ICC 之修正提出看法，並建議海上貨物保險之供給者與需求者解讀 2009ICC 之架構。

4 2009ICC 推出未久，網路上某些資料僅就 Joint Cargo Committee 之通函再加轉述，對其內容評論者尚少。本文基本上係撰者們對於 1982ICC 與 2009ICC 之解讀分析。

表 1 我國海上貨物保險 1991 年~2008 年業務概況表

新台幣千元

年度	簽單保費	佔有率(%)	賠款	損失率(%)
1991(80)	3,530,701	7.95	1,594,881	45.17
1992(81)	3,529,813	6.66	1,358,246	38.48
1993(82)	3,786,467	6.31	1,512,676	39.95
1994(83)	3,901,111	5.69	1,691,824	43.37
1995(84)	4,360,284	5.82	2,338,456	53.63
1996(85)	4,350,517	5.96	1,973,391	45.36
1997(86)	4,482,268	6.17	2,237,050	49.91
1998(87)	4,492,796	5.92	1,998,296	44.48
1999(88)	3,911,731	4.59	2,145,673	54.85
2000(89)	4,373,770	4.98	2,222,072	50.80
2001(90)	4,298,234	4.73	2,616,792	60.88
2002(91)	4,704,783	4.64	1,756,985	37.34
2003(92)	5,285,559	4.83	2,172,068	41.09
2004(93)	5,859,891	5.07	2,270,256	38.74
2005(94)	5,906,531	4.98	2,260,634	38.27
2006(95)	6,109,198	5.35	4,032,129	66.00
2007(96)	6,415,436	5.70	2,691,077	41.95
2008(97)	6,396,831	5.94	3,068,109	47.96

資料來源：本研究自行整理(原始資料來源：保險事業發展中心)

貳、協會貨物條款版本歷史回顧

一、1912 年、1930 年、1951 年各版本之演進⁵

可稱為正式協會貨物條款之版本可追溯至 1912 年，彼時該套條款僅有二種，分別規範水漬險(With Average，簡稱 W.A.)與平安險(F.P.A.)⁶。不過，未以協會貨物條款模式出現之水漬險與平安險之雛型歷史更早，前者為 1779 年，後者為 1883 年。1779 年與 1912 年之水漬險版本實質承保內容雖無差異，但 1912 年版本正式列示 7 個條文⁷，不過可以表現其「海損」(with average)本質之規定並未置於條文之中，而是適用勞氏保單正文之附註條款。至於平安險，比較 1883 年與 1912 年，前者承保範圍限制較多。

1930 年代初期針對 1912 年版本再度修正，修正幅度頗大。此時 W.A.與 FPA 各具形體，各列 10 個條文⁸，其中第四條為二者之差異所在，分別稱之為 With Average Clause 與 FPA Clause。1951 年出現協會貨物條款全險條件(Institute Cargo Clause(All Risk)，簡稱 A.R.)，至此 W.A.、F.P.A.、A.R.三種承保條件並列，三種承保條件亦均具 10 個條文，僅是第 4 條有所差異，分別為 With Average Clause、FPA Clause、All Risk Clause，該條文區隔三種條件承保範圍之大小。該等承保條件本質上雖在修正勞氏保單 (Lloyd's S.G. foam) 原始承保範圍，但其間

⁵ 鄭鎮樑(2000)，英國勞氏保單中之附註條款與協會貨物條款之演化探源，核保學報，第八卷，Pp169~214

⁶ 該等之全銜稱為 Institute Cargo Clause (for use in policies "With Average", Institute Cargo Clause "FPA"

⁷ 分別為第 1 條為戰爭險除外條款，第二條為罷工暴動民眾騷擾除外條款，第 3 條為共同海損與施救費用條款，第四條為 H/C 條款，第五條為保險期間條款，第六條為駁船條款，第七條為運送契約條款。

⁸ 其餘 9 條是(1)Warehouse to Warehouse Clause, (2)Craft, &c., Clause,(3) Deviation Clause, (5)G/A Clause, (6)Bill of Lading &c Clause,(7)Bailee Clause,(8) F.C.&S. Clause,(9) Strikes, Riots and Civil Commotions Clause,(10) Frustration Clause.請詳 Frederick Templeman and C.T. Greenacre, Marine Insurance Its Principles & Practice, 4th edition,1934. PP396-397

之臍帶關係密切。

二、1963 年、1982 年各版本之演進

二次大戰之後國際性商務問題日益複雜，運輸型態改變，貿易業者之運輸保險問題亦然，因應上述情況，1963 年二度修正協會貨物條款，雖然明確規範三套條款之承保範圍。不過，1963 年 ICC 之內容仍然背負勞氏 S.G.保單結構複雜、用語陳舊、文義晦澀之包袱，再者，條文編排欠缺邏輯，對於消費者而言，不易閱讀。聯合國 UNCTAD 針對會員國長久之問卷調查，針對不同意見整合折衝，於 1978 年 11 月提出改革報告與建議，隨後英國保險人協會成立工作小組針對 UNCTAD 所提進行研究，徹底翻修 1963 年的協會貨物條款與保單，架構全新之保單與條款於 1982 年 1 月 1 日啟用。1982ICC 與 1963 年 ICC 間隔雖僅 20 年，但就其徹底揚棄 200 多年之傳統包袱而論，稱其為革命性質之版本並不為過。

三、2009 年版本之修改過程

事隔 27 年之後，2009 年 ICC 再度修改，此次修改是由 Joint Cargo Committee(以下稱 JCC)擔綱，亦是循著以往廣徵各方意見模式，於 2006 年 2 月起發出問卷，成立工作小組(Working Party)，JCC 於 2008 年 5 月發出修正方案與指南，2008 年 10 月提出更進一步的流通草案供各界評論，基本上已經於當時定調，2009 年 1 月 1 日正式啟用⁹。

⁹ 繼海運之 ICC 之後，JCC 於 2008 年 12 月 17 日另通函保險業者協會貨物條款(空運)之修正情況，亦已於 2009 年 1 月 1 日啟用，該套空運條款分別是 Institute Cargo Clauses (Air) 01/01/2009，Institute War Clauses (Air) 01/01/2009，Institute Strikes Clauses (Air) 01/01/2009。不過，與 1982 年之 Institute Cargo Clauses (Air)比較，2009 年版本主要之改變為 Risks Covered 項目增加一個條文稱為「施救費用條款」(Salvage Charges Clause)，該條文內容為“This insurance covers salvage charges incurred to avoid or in connection with the avoidance of loss from any cause except excluded in Clauses 3,4 and 5 below.”設置該條文主要用意在於因應空運工具可能於著落水面上，因此可能發生施救之情況。其餘內容之改變亦不在少數，但其修改方向與內容與海運適用之 2009ICC 頗為相同。本文探討範圍為海運適用之條款。

四、歷年協會貨物條款條文數量與名稱比較

表 2 1930 至 2009 協會貨物條款各版本條文比較表

1930	1951	1963	1982	2009
Warehouse to Warehouse Clause	Warehouse to Warehouse clause	Transit Clause (Incorporating Warehouse to Warehouse Clause)	1.Risk Clauses (A), (B),(C)	1.Risks Clause (A),(B),(C)
Craft, &c., Clause	Craft, &c., Clause	Termination of Adventure Clause	2.General Average Clause	2.General Average Clause
Deviation Clause	Deviation Clause	Craft, &c., Clause	3.Both to Blame Collision Clause	3.Both to Blame Collision Clause
(1)With Average Clause(2)FPA Clause	(1)FPA Clause(2)WA Clause (3)All Risk Clause	Change of Voyage Clause	4.General Exclusion Clause	4.不置名稱
G/A Clause	G/A Clause	FPA, WA, All Risk Clause	5.Unseaworthiness and Unfitness Exclusion Clause	5. 不置名稱
Bill of Lading &c Clause	Bill of Lading &c., Clause	Constructive of Total Loss Clause	6.War Exclusion Clause	6. 不置名稱
Bailee Clause	Bailee Clause	G.A. Clause	7.Strikes Exclusion Clause	7. 不置名稱
F.C.&S. Clause	F.C.&S. Clause	Seaworthiness Admitted Clause	8.Transit Clause	8.Transit Clause
Strikes, Riots and Civil Commotions Clause	Strikes, Riots and Civil Commotions Clause	Bailee Clause	9.Termination of Contract of Carriage Clause	9.Termination of Contract of Carriage Clause
Frustration Clause	Frustration Clause	Not to Inure Clause	10.Change of Voyage Clause	9.Change of Voyage Clause
		Both to Blame Collision Clause	11.Insurable Interest Clause	11.Insurable Interest Clause
		F.C.&S. Clause	12.Forwarding Charges Clause	12.Forwarding Charges Clause
		F.S.R. & C.C. Clause	13. Constructive Total Loss Clause	13. Constructive Total Loss Clause
		Reasonable Despatch Clause	14.Increased Value Clause	14.Increase value Clause
			15. Not to Inure Clause	不置名稱
			16.Duty of Assured Clause	16.Duty of Assured Clause
			17.Waiver Clause	17.Waiver Clause
			18. Reasonable Despatch Clause	18.不置名稱
			19.English Law and Practice Clause	19.不置名稱

資料來源：本研究自行整理

協會貨物條款之版本歷經多年演化，因之，觀察歷年版本之條款名稱，事實上可由其中顯示其演化軌跡，此可由觀察條文名稱與條文數量及其排列順序為之。條文名稱有畫龍點睛之妙，數量多寡可以反應海上貨物保險環境之複雜性大小，條文排列邏輯易於顯現承保範圍大小，進而反應是否合於消費行銷導向。職是之故，本文認為觀察 1930 至 2009 年各版本之條文名稱及其排列順序亦可作為觀察 2009 年版本修改內容是否適當之參考，茲先將各版條文名稱與排列歸納如表 2。吾人如比較 1963 與 1982 年即可發現 1982 年之條文特性有前述之影像¹⁰。

¹⁰ 鄭鎮樑(2000)，英國勞氏保單中之附註條款與協會貨物條款之演化探源，核保學報，第八卷，Pp190~182。

參、ICC2009 版本修正架構與歸類總論

經詳細比對 1982 年 ICC 版本，本文發現並歸納 2009 年 ICC 版本之修正架構如圖一。雖然詳細比對二個版本發現各條文內容均有修正，惟此次修正本文將其歸納為三大項，其一為用語與名詞、其二為保險期間之修正、其三為除外內容之適用限制。

2009 年條文中用語與名詞之變更範圍頗為廣泛，對於當事雙方之權益亦有實質影響，例如對於「被保人」之敘述性定義、對於「恐怖主義」、「受雇人」等等之重新界定、對於「因果關係」用詞之改變，再再影響承保範圍之大小。此外，2009 年版本尚有條文名稱整合、術語統合化、採用平衡性用語之特性，一言以蔽之，用語與名詞之修訂原則上亦有澄清承保範圍之功能。至於保險期間之修正乙節，此次係屬擴大解釋，為航程之再延伸，而除外內容之適用限制，原則上對於海上貨物保險人主張除外責任時有所限制，屬於承保範圍之擴張。

故就廣義之承保範圍而論，該等三項變更非但創造條款整體內容文義之平衡性，亦共同創造承保範圍之消長，基本上對於雙方權益即有實質性之影響。當然，各條文之變更範圍大小仍須詳細比對 1982 年 ICC 與 2009ICC 版本之實質內容，故本文亦逐條比對二個版本之條文內容，將其分類整理如附錄一¹¹，以為本文分析之基本資料。至於修正歸類圖中所涉及之相對條文具體內容，則整理如附錄二¹²。

¹¹ 本文附錄一為 2009 年 ICC 與 1982 年 ICC 條文全文同異比對對照表

¹² 本文附錄二為 2009 年 ICC 與 1982 年 ICC 條文具體修正重點內容歸納表。

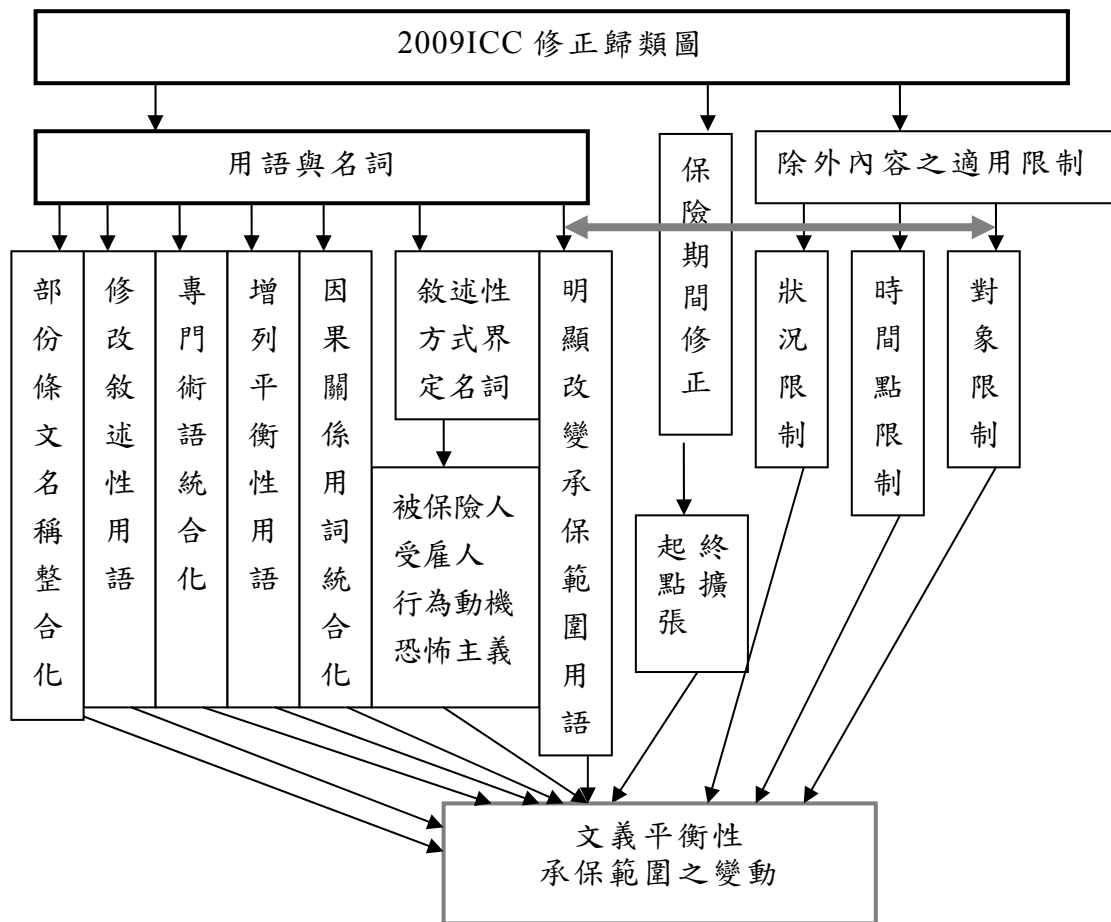


圖 1 2009ICC 修正歸類

資料來源：本研究自行整理

肆、2009 年 ICC 版本修正內容詳析

本節以前節圖一之歸類圖順序分析 2009 年 ICC 版本相對於 1982 年 ICC 版本之改變。

一、部份條文名稱之統合化

1982 年 ICC 共有 19 條，共分八個構成項目，另有備註條款，其架構如圖二。

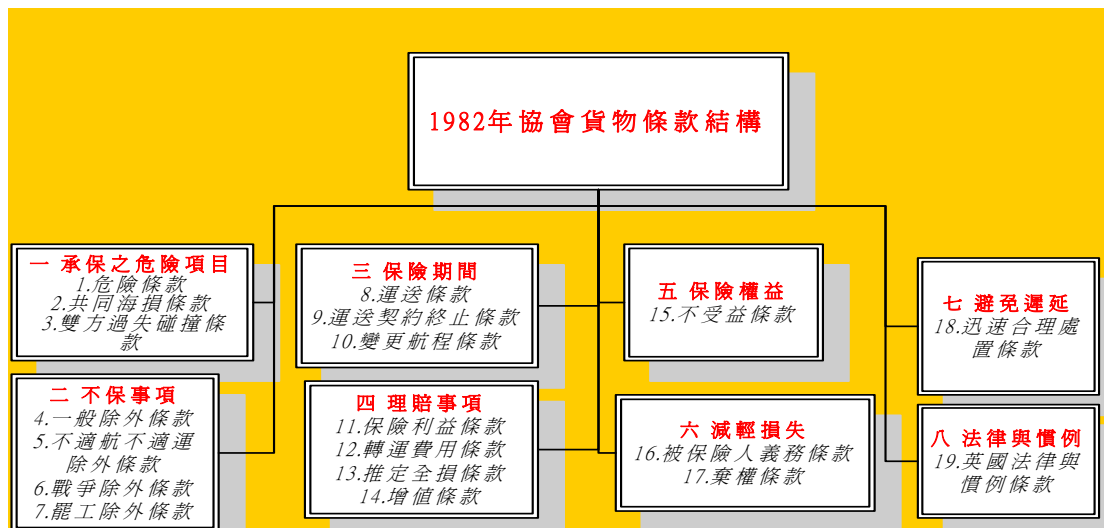


圖 2 1982 年 ICC 條款架構圖

資料來源：本研究自行整理

2009 年條文數量與條文性質分項並未改變，但是部份條文名稱業已統合化，其完整架構如圖三。

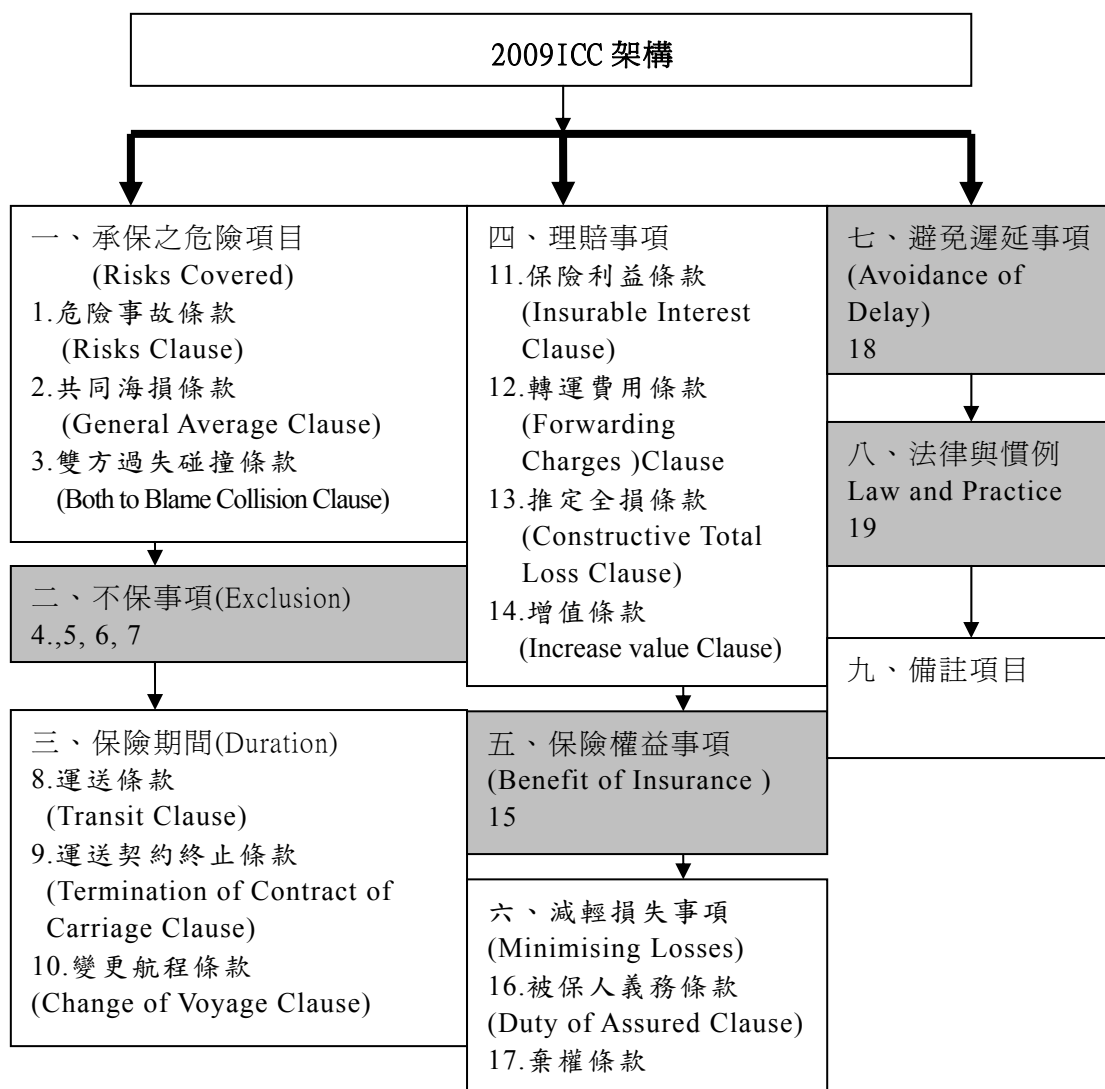


圖 3 2009ICC 架構圖

資料來源：本研究自行整理

由比對 1982 與 2009 之條文架構圖可知，2009 年有四個項目與所轄條文一體化，茲再分述如下。

(一) 除外事項條文群(第 4 條至第 7 條)

各條原來均賦予條文名稱，分別是一般除外條款、不適航及不適運除外條款、戰爭除外條款、罷工除外條款，2009 年 ICC 僅保留除外事項名稱，不置條文個別名稱，檢視其原因應是第七條之除外內容同時涉及罷工與恐怖主義性質不同之危險事故，難以條文名稱同時概括。至於第四條與第五條所述除外內容，每有但書規定，保險人以該等除外內容主張權利時有所限制，雖無條文概括不同內容之問題，並不影響設置條文名稱，惟為求除外事項各條文不置名稱之一致性，相應不置條文名稱。不置條文名稱是否有當，有討論空間，請詳本文第五段之評論。

(二) 條文結構事項與單一條款統合之條文~第 15、第 18 條、第 19 條

第十五條置於保險權益事項之下，第十八條置於避免遲延事項之下，第十九條置於法律與實務事項之下，皆不另立條文名稱，亦屬統合之例。其實第十五條 1982 年 ICC 原稱「不得受益條款」並歸屬於「保險權益」項目，基本上未能完全相稱，觀諸條文內容主要在保全代位求償權，但是第 16 條已有該功能，因此，2009 年 ICC 第 15 條之修改內容已完全匡正 1982 年未能完全相稱之事實，對於意外事故發生時有權獲得補償之對象予以明確規範與定義，的確產生正本清源之效果。

二、專門術語統合化分析

條文內容中名詞與用語之前後一致性、周延性、避免模糊化，應是設計保險條款之基本原則，2009 年 ICC 的確朝該等方向修正，其取代之情況有下列幾個。

(1)以“Carriage”取代“Affreightment”

(2)以“Insurers”取代“Underwriters”

(3)以“Carriers”取代“Shipowners”

(4)以“Subject-matter insured”取代“Cargo”

(5)以“Employees”取代“Servants”。

上列各項經分析，有些純為一致性取向，“例如 Carriage”取代“Affreightment”，有些可以解釋為適用範圍之擴大，例如運送人(Carrier) 取代船東(Shipowners)。而以保險標的物(Subject-matter insured)取代貨物(Cargo)，係回歸保險術語，在解釋上較為周延。至於以“Employees”取代“Servants”乙節，是否僅是純用語之變更，須先行討論二者之意義。依 Black’s Law Dictionary 之解釋，“Servants”一詞為「Servants，指受僱就雇主事務執行服務者，其執行服務之實體行為受雇主所控制或雇主對其有控制監督之權。」¹³該法律字典又稱「受僱人，為受他人僱用，其應為之工作與應採用何種方法以完成工作受到管制監督。」¹⁴。而“Employees”一詞，該法律字典之解釋雖多¹⁵，其中有謂「一般言之，當一人為他人執行服務時，該他人對其有控制權，其應完成之工作及其細節與方法亦受該他人之指示者，稱為Employees」¹⁶。依上述之解釋，“Employees”與“Servants”二者之實質意義似乎相當，該法律字典另亦援引判例稱“Servants”與“Employees”為同義詞¹⁷。由上述，二個名詞似可視為同義，因此用語改變對於當

¹³ “One employed to perform service in master’s affairs, whose physical conduct in performance of the service is controlled or is subject to right to control by the master.”見 Black’s Law Dictionary, revised fourth edition, 1968. P1533 見 Black’s Law Dictionary, revised fourth edition, 1968. P1533。

¹⁴ A person in the employ of another and subject to this control as to what work shall be done and the means by which is shall be accomplished”

¹⁵ 該字典由該字來源為法文起始一路解釋，並援引判例解釋其意義。見 Black’s Law Dictionary, revised fourth edition, 1968. P617~618

¹⁶ 該段原文較長，正文中取其大意。原文為“Generally, when person for whom services are performed has right to control and direct individual who performs services not only as to result to be accomplished by work but also as to details and means by which result is accomplished individual subject to direction is an employee”，見 Black’s Law Dictionary, revised fourth edition, 1968. P617~618

¹⁷ Gooden v. Mitchell 等對訟案，詳 Black’s Law Dictionary, revised fourth edition, 1968. P618

事人應無影響。

不過，2009 年 ICC 仍未全面統一名詞用語，關於「船舶」一詞，條文中“Vessel”與“Ship”二詞仍然並存，交替使用¹⁸，當然，此種情況並未影響契約當事人之權益。

三、敘述性用語之修正分析

用以敘述 ICC 條文內容的文字改變，須為較細密之觀察，因為 ICC 所列前後條文通常有關聯。2009 年敘述性用語變更較為明顯者，約有下列幾項，茲分析如下。

(一) 第一條危險事故條款中“excluded by the provisions of”取代“Provided in”¹⁹

此種用語變更對於保險人與被保險人之權益看似無任何影響，惟在解讀時應視保單之承保方式而定。按 ICC(A)條款採用概括式，故其承保範圍是否改變，應視除外事項是否改變而定，由於 2009 年之除外事項頗有修改，其中包括除外責任啟動基礎之用語變更，除外危險事故之定義改變，除外內容之適用限制等等(請詳本文後敘)，應可確定 2009 年 ICC(A)之承保範圍有所改變。如謂變更之文字本身有何具體效用，就契約當事雙方言之，勉強可謂其直接點出「除外」字眼，在文義上較為清晰，有單刀直入之優點，亦可謂對概括式條件承保方式產生第一道澄清功效，亦是值得肯定。至於 ICC(B)與 ICC(C)之文字變更與 ICC(A)同，但其採用列舉危險事故方式承保，所列除外事項屬於補充說明承保範圍之性質，不過，由於除外事項中常有「除外之除外」規範，原則上應為承保範圍擴大觀點解讀。關於「除外事項」之規範，ICC(A)與 ICC(B)、ICC(C)雖僅有一點不同，但是 2009 年除外事項中之用語則完全一致，請詳本文後述。

¹⁸ 2009ICC(A)第四條 4.6 採用 Vessel，第五條第一項採用 Vessel，第三項採用 Ship。

¹⁹ 1982ICC(A)與 2009ICC(A)第一條參照。

(二) 第二條共同海損條款中“ or elsewhere in this insurance”取代“below”一詞

此種改變乍看似無變更，但就前後文觀察，顯然有其差異，吾人試觀察其前後文如下。

表 3 共同海損條款(1982 VS 2009)

1982ICC	2009ICC
-----from any cause except those excluded in Clauses 4,5,6, and 7 <u>or elsewhere in this insurance.</u>	----- from any cause except those excluded in Clauses 4, 5, 6 and 7 <u>below.</u>

依文義推論，無法適用於共同海損之情況，2009ICC 非常明確，僅為除外事項所列舉之四個條文所列舉之原因，但是 1982 年 ICC 之適用內容，依文字所述除了所列舉之除外事項，尚及於包括保險契約內之其他地方，形式上之限制較為廣泛。

(三) 雙方過失碰撞條款(第 3 條)敘述用語之變更

第三條雙方過失碰撞條款敘述用語之改變頗多，值得詳細討論，先將其條文不同之處比對如表 4。

整個 2009ICC 第三條之內容變更為用語重整、專用名詞變更²⁰、敘述用語重整，前二項變更已於前分析，茲就敘述用語之重整部份，陳述如下。

1.1982ICC 用語「延伸補償」(is extended to indemnify)直接改為

²⁰ 專用名詞主要為以 Carriage 取代 Affreightment，此是延續第二條名詞之一致性，以“Insurers”取代“Underwriters”，亦在開啓後列條文用語之一致性，此部份並無實質影響。但是以「運送人」“Carriers”取代「船東」“Shipowners”，已擴大適用範圍內，因為「運送人」在解釋上應較「船東」為廣，已如上述。

「補償」(**indemnifies**)，吾人或可解釋為由 1982 年之疑似「附加補償性質」融入「直接補償性質」。

2.2009 年 ICC 稱“in respect of any risk insured herein”，非常明確的將第一條所承保之危險事故與第三條碰撞責任之關係性連結，界定引起碰撞之源頭應為承保之危險事故。

3.ICC 條款設置雙方過失碰撞條款，原係在因應運送人於載貨證券中設置雙方過失碰撞條款以將其對於貨主之碰撞損害責任轉嫁於被保險人。1982ICC 所稱碰撞責任百分比(such proportion of)有其背景，按載貨證券中之雙方過失碰撞條款，係在適應美國法院對於兩船都有過失之碰撞責任的判決情況，所謂判決係指 1935 年「多魯瑪號」之訴訟案，故現行雙方過失碰撞條款源自多魯瑪條款(Toluma Clause)。按美國法律，凡二船碰撞均負過失責任，並不考慮實際過失程度，而係依雙方過失相等以確定其損害賠償責任之限度²¹。事實上，美國之最高法院(Supreme Court)曾判決運送人於提單(Bills of Lading)內設定之雙方過失碰撞條款無效²²，但另一案之判決則謂傭船契約中之雙方過失碰撞條款有效²³。為何美國法院判決美國載貨證券內無效，而 ICC 條款中仍保留雙方過失碰撞條款，有文獻認係法院美國法院之判決是否適用於所有運送契約尚難確定之故²⁴，2009 年 ICC 持續將雙方過失碰撞條款保留，諒係考慮上述原因。不過 2009 年用語改為「運送契約內任何雙方過失碰撞條款」，文中加入「任何」二字，顯然較可概括上述之問題。唯其以「碰撞責任」取代「碰

²¹ 參照(1)N. Geoffrey Hudson, *The Institute Clauses*, 2nd edition, Lloyd's of London Press Ltd. 1995. P16(2)羅漢文，海上貨物船舶保險條款釋論，初版，著者印行，三民書局總經銷，中華民國七十八年三月。Pp39~41。

²² *United States of America v. Atlantic Mutual Insurance Co.* 【1952】A.M.C.659.

²³ *America Union Transport Inc. v. United States of America* 【1976】

²⁴ 羅漢文，海上貨物船舶保險條款釋論，初版，著者印行，三民書局總經銷，中華民國七十八年三月。P41。

撞責任百分比」，是否已修正原先 50%對 50%規定？此等疑問其實尚待確認。

4. 以“Herein”取代“*in the contract of insurance*”²⁵以及“Under this insurance”²⁶。此種改變應可視為將基本條款之抽象文字轉為具體性文字之表徵，對於消費者應有指引功效，對於實質權益則無影響。

表 4 雙方過失碰撞條款(1982 VS 2009)

1982ICC	2009ICC
This insurance <i>is extended to indemnify</i> the Assured against <i>such proportion of</i> liability <i>under</i> the contract of <i>affreightment</i> “Both to Blame Collision” Clause <i>as is in respect of a loss recoverable hereunder</i> . In the event of any claim by <i>shipowners</i> under the said Clause the Assured agree to notify the <i>Underwriters</i> who shall have the right, at their own cost and expense, to defend the Assured against such claim.	This insurance <i>indemnifies</i> the Assured, <i>in respect of any risk insured herein</i> , against liability <i>incurred</i> under <i>any</i> Both to Blame Collision Clause <i>in</i> the contract of <i>carriage</i> . In the event of any claim by <i>carriers</i> under the said Clause, the Assured agree to notify the <i>Insurers</i> who shall have the right, at their own cost and expense, to defend the Assured against such claim.

四、附註條款用語之變更

表 5 附註條款(1982 VS 2009)

1982ICC	2009ICC
<i>It is necessary for the Assured when become aware of an event which is “held covered” under this insurance to give prompt notice to the Underwriters and the right to such cover is dependent upon compliance with this obligation.</i>	<i>Where a continuation of cover is requested under Clause 9, or a change of destination is notified under Clause 10, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation.</i>

²⁵ 1982ICC 與 2009ICC 8.1.1, 8.1.2, 9.2 參照

²⁶ 1982ICC 與 2009ICC 14.1 參照

附註之內容原在提醒被保險人，於危險情況變更時如欲使保險效力持續，有儘速通知保險人之義務，1982 年僅為原則性規範，但是 2009 年則具體指出發生第九條(運送契約終止條款)與第十條(變更航程條款)之情況始為適用，由於界定被保人履行通知義務之情況，應可避免擴張解釋之情形。再者，1982 年用語稱“Held Covered”(一般稱 H/C)，對被保險人而言，為不易了解之用語，但其原意在表達保險效力不致中斷，2009 年改稱保險效力持續(a continuation of cover)，應有消除用語艱澀之效用。本附註之用語頗有改變，茲將其內容比對如表 5。

五、因果關係用語之修正分析

2009 年除外事項使用之因果關係用語之變更與趨向統一為重要修正，欲探究其改變，首須回顧 1982 年 ICC 因果關係用語。

(一) 1982 年 ICC 因果關係基礎用語探討

1982 年 ICC 條款對於因果關係之用語有六種，分別為 (1)Reasonably Attributable to (2)Attributable to (3)Proximately Caused by (4)Caused by (5)Arising from (6)Resulting from。條文用語多樣化，閱讀保單者易於陷入文字內涵泥沼，茲先就基本用詞探討以釐清該等用語之基本差異。考諸海上保險文獻對於 Attributable 與 Caused by 二詞之解讀，認為前者之適用範圍較後者為廣，除直接指出前述觀點外，並謂在解釋 1982ICC(B)條款承保「火災」(Fire)危險事故時，指出「火災一詞包括因主力近因為火災所致之熱氣毀損，亦包括滅火行動或為避免火災擴大而合理採取之行動所致之毀損」²⁷(Geoffery,1995)，另有謂「ICC(B)與 ICC(C)條款第一條第一項所列舉承保之危險事故無須主力近因之測試」(Robert,1995)²⁸。至於第一種加入「合理」一詞與第

²⁷ N. Geoffrey Hudson, The Institute Clauses, 2nd edition, Lloyd's of London Press Ltd. 1995.P17,P36

²⁸ Robert H. Brown, The Cargo Insurance Contract and the Institute Cargo Clauses, 1st edition, Witherby & Co. Ltd., 1995 Section Six P3。

二種未加入，差異似不大，海上保險文獻亦未針對此特別探討。

第三種與第四種極易引起誤解，不過海上保險文獻對於二者在適用上持無差異之見解(Robert,1995)²⁹。另有謂 1982ICC4.5 有關主力近因為遲延所致損失之敘述，加入 *proximately* 一字主要是為與英國海上保險法五十五條第二項第二款相一致(Geoffery,1995)³⁰。至於 Arising From，文獻中較少深入討論，但亦有「除外條款中之用語 Arising from 之後所述危險事故，保險人證明連鎖事件之任何連結導致之損失，如該等連結為除外之一，即可據以抗辯索賠，無須考慮主力近因」之論述(Robert,1995)³¹，上述論述似與前所討論之 Reasonably Attributable to、Caused by 等等不同。最後有關 Resulting from，則未見特殊解釋，惟在性質上與 Arising from 應無二至。

(二) 2009 年 ICC 之變更

2009 年 ICC 除保留原用於 ICC(B)與 ICC(C)第一條第一項之 Reasonably Attributable to 與除外事項第一條第一項之 Attributable to 外，在除外事項中之用語類多採用“caused by”³²，僅有少數仍採用 arising from(第 5 條)、resulting from(第七條第二項)。於除外事項中採用 caused by”較多，即保險人適用因果關係在解釋上較為嚴格，對於被保險人而言，應處於較有利之地位。

六、平衡性用語之導入

危險有所變更，保險人與被保險人如何處理始可平衡雙方之權益，於 2009 年 ICC 有所修正，此種原則性概念值得稱道。此係規定

²⁹ Robert H. Brown, The Cargo Insurance Contract and the Institute Cargo Clauses, 1st edition, Witherby & Co. Ltd., 1995 Section Six P1,P3。

³⁰ N. Geoffrey Hudson, The Institute Clauses, 2nd edition, Lloyd's of London Press Ltd. 1995.P19。

³¹ Robert H. Brown, The Cargo Insurance Contract and the Institute Cargo Clauses, 1st edition, Witherby & Co. Ltd., 1995 Section Six P1

³² 見 2009ICC(A)除外事項第四至第七條。

於 2009 年 ICC 第十條(航程變更條款)，比對條文可知 2009 年較 1982 年之規定為寬大，保險人讓步甚多，蓋其加入保險繼續生效前之損失仍在保障之內，惟條文中亦規定須以保險人可尋得市場上合理費率與條件為前提。至於 2009 年 10.2 係屬新增，亦為一種平衡當事雙方權益之措施，規定被保人或其受雇人在不知情之情況下，保險契約之效力並未中斷，其效力視同自運送開始時。本條改變甚大，茲將原文比對如表 6。

表 6 航程變更條款(1982 VS 2009)

1982ICC	2009ICC
Where, after attachment of this insurance, the destination is changed by the Assured, <u>held covered at a premium and on conditions to be arranged subject to prompt notice being given to the Underwriters.</u>	10.1 Where, after attachment of this insurance, the destination is changed by the Assured, <u>this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.</u> 10.2 <u>Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 8.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.</u>

七、採用敘述性方式界定重要名詞

2009 年 ICC 針對被保險人、受僱人、恐怖份子、恐怖主義等等以敘述性方式重新界定其範圍，茲分析如下。

(一) 被保險人範圍之擴大

2009 年 ICC 以敘述保險權益方式同時界定被保險人之範圍，置於

保險權益項下之第十五條內容即是界定被保險人之核心文字，吾人如比對 1982 與 2009 之條文內容可發現被保人之範圍業已擴大(表 7)。

2009 年 ICC 廢除第十五條之條文名稱，直接歸屬「保險權益」項目之下已如前述。條文分為二項，第一項規定「本保險承保之被保險人，包括保險契約中有權或是代表請求補償之人或是受讓人」，本項在於澄清對於本保險有主張補償請求權之人，除被保人本人之外，尚包括代表被保人者。較特別之處為將受讓人明白標示，即以出口商與進口商而論，如貿易契約中規定由賣方購買保險，賣方於押匯之後於保單背面背書之後，買方即成受讓人，此縱然在 1982 年 ICC 中亦應如是解釋，但此處明白宣示無論貨物轉讓幾次，只要是處於受讓人地位，於損失發生時具有保險利益者，均屬於被保險人範圍之內。但為避免誤解，第二項特別聲明排除運送人或其他受託人，其旨意與 1982 年同。

表 7 1982ICC15 VS 2009ICC15

1982ICC	2009ICC
15. Not to Inure Clause This insurance shall not inure to the benefit of the carrier or other bailee.	15. This insurance 15.1 <u>covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,</u> 15.2 shall not extend to or otherwise benefit the carrier or other bailee.

2009ICC 對於被保險人之定義，事實上尚與除外事項之規定前後互相呼應，按 4.6 即規定其所列之除外情況並不適用於「凡在保險契約業已轉讓之情況下，或求償主張者(受讓人)依合約在誠信之下已購買或同意購買保險標的物者」。

(二) 受僱人(Employees)之界定

2009ICC 第 4.3 規定受僱人(employee)未包括獨立承攬人

(Independent contractor)在內³³。

(三) 「恐怖主義」、「行為動機」之界定

1982 年第七條之條文稱為「罷工除外條款」，而該條文第三項所稱“恐怖份子或任何懷有政治動機者”，並無太大之關聯性，2009 年取消罷工除外之條文名稱，目的在於解除 1982 年名實不符之情況，並於 ICC7.3 與 7.4 中明確界定恐怖主義範圍，為 2009 年 ICC 第七條為主要之改變，茲分述如下：

1. ICC7.3 定義何謂「恐怖主義」

按該條文之內容先作概括式定義，稱恐怖主義為「任何人之恐怖主義行為所致者」。依該定義，何謂恐怖主義為主要重點，該條文後段稱，恐怖主義係指任何人代表任何組織或與任何組織聯結所為之行為，而其執行之行動係以武力或暴力為手段以遂其推翻或影響任何政府為導向，無論該政府在法律上是否已建立。」³⁴

2. 「動機」之種類與「行為者」之範圍

就 2009 年 ICC7.4³⁵與 1982 年 ICC7.3³⁶相比對，二者不同之

³³ Black's Law Dictionary, revised fourth edition, 1968. P618, 亦稱“Employee” must be distinguished from “independent contractor.” The term is often specially defined by statutes.。又依該字典 P911 稱“independent contractor”為 One who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to the control of his employer except as to the result of the work

³⁴ ---caused by any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted—。又我國恐怖主義保險附加條款(商業火災保險適用)第二條對於恐怖主義之定義為「本附加條款所稱恐怖主義(Terrorism)係指任何個人或團體，不論單獨或與任何組織、團體或政府機構共謀，運用武力、暴力、恐嚇、威脅或破壞等行為以遂其政治、宗教、信仰、意識型態或其他類似意圖之目的，包括企圖推翻、脅迫或影響任何政府，或致使民眾或特定群眾處於恐懼狀態。」與 ICC7.3 所列有其差異。

³⁵ 7.4 caused by any person acting from a political, ideological or religious motive.

處在於行為「動機」之種類與「行為者」之範圍。2009 年擴大解釋行為「動機」一詞為「政治動機、意識型態、宗教動機」，1982 年僅謂「政治動機」，而「行為者」之範圍，1982 年規範為「恐怖份子或任何懷有政治動機者」，2009 年以「任何人」概括。總括言之，2009 年較 1982 年所界定範圍為廣。

八、擴張保險期間與承諾特定情況下保險期間可持續

(一) 保險期間之範圍

論及海上貨物保險之保險期間，擬先行回顧其演變過程。ICC 條款未出現之前，海上貨物保險之保險期間依勞氏保單承保主文之規範。按其對於保險之規範為“----beginning the Adventure upon the said Goods and Merchandises, from the loading thereof aboard the said Ship, upon the said Ship, and so shall continue and endure, during her Abode there, upon the said Ship, &c ; and further until the said Ship, with all her Ordnance, Tackle, Apparel, etc., and Goods and Merchandises whatsoever, shall be arrived at upon the said Ship, etc., until she hath moored at anchor twenty-four Hours in good Safety, and upon the Goods and Merchandises until the same be there discharged and safety landed.”³⁷由上文可知彼時海上貨物保險之保險期間之起點為貨物實際裝載於指定之船上，其終點為貨物於目的港安全卸貨，可謂為港口對港口(Port to Port)時期。

根據 1912 年 Institute Cargo Clauses (For Use in Policies "With Average")第 5 條規定，已擴展為倉庫至倉庫(Warehouse to Warehouse)時期，不過，吾人仍須注意，「倉庫所在地」限制於保單上所記載者，按該條之規定為“Including (subject to the terms of the Policy) all risks

³⁶ 1982ICC7.3 caused by any terrorist or any person acting from a political motive.

³⁷ Lloyds' S.G. Policy Form 參照。

covered by this Policy from shippers' or manufacturers' warehouse until on board the vessel, during transshipment if any, and from the vessel whilst on quays wharves or in sheds during the ordinary course of transit until safely deposited in consignees' or other warehouse at destination named in Policy.”由上述規定可知保險期間可擴充至與海上航程期間有連接性陸上運送期間，並包括轉船，至於正常運送過程中必要之儲存亦屬保險期間界定之內。又依第 6 條規定“Including risk of craft, raft, and/or lighter to and from the vessel. Each craft, raft, and/or lighter to be deemed a separate insurance. The Assured are not to be prejudiced by any agreement exempting lightermen from liability.”可知必要之駁船運送期間亦屬承保期間³⁸。而根據該版本第 4 條規定“Held covered, at a premium to be arranged, in case of deviation or change of voyage---”，可知偏航或航程變更期間經另訂保費之後，保險效力仍在。由上可知 1912 年版本之規範非但具備往後 1930、1951、1963 等之 ICC 版本倉庫至倉庫條款(Warehouse to Warehouse clause)之重要雛型，亦已初具海上貨物保險廣義保險期間之精神。

茲為分析更進一步 ICC 條款中海上貨物保期間之情況，先將 1930 年至 2009 年各版本 ICC 條款與保險期間相關條文名稱列示比對如表 8。觀察 1930 年版本第 1 條倉庫至倉庫條款³⁹，與 1912 年相較，保險

³⁸事實上該段期間仍可歸屬於前述正常運送過程之內，此處主要在於強調每一駁運工具視為個別危險爾，因為單獨海損之情況下，按每一駁運工具計算，可降低保險人依起賠式自負額之賠償責任，1930,1951,1963 各版本之 Craft, &c., Clause 設定之用意均同。

³⁹原條文內容為“The risks covered by this policy attach from the time the goods leave the warehouse and/or Store at the place named in the policy for the commencement of the transit and continue during the ordinary course of transit, including customary transshipment if any, until the goods are discharged overseas from the overseas vessel at the final port.” Thereafter the risks covered are continued whilst the goods are in transit and/or awaiting transit until delivered to final warehouse at the destination named in the policy or until the expiry of 15days (or 30days if the destination to which the goods are insured is outside the limits of the port) whichever shall first occur. The time limits referred to above to be reckoned from midnight of the day on which the discharge overseas of the goods hereby insured from the overseas vessel is completed. Transshipment, if any, other than as above, and/or delay in excess of the above time limits arising from circumstances beyond the

期間有明顯之擴張，最重要者為最終卸貨港卸載完畢之後，當日午夜起算於港口可有 15 日之停留期間，如目的地超出卸貨港範圍，則可延長至 30 日。為應付二次大戰期間交貨困難之問題，倉庫至倉庫條款再度修改，擴充在目的港停留期為 60 天，此為 1951 年版本與 1930 年不同之處。針對倉庫至倉庫條款之一些適用疑問⁴⁰，1963 年 ICC 修正為運送條款⁴¹，條文中特別規定「正常過程以外之儲存、分配、分銷等等」不在承保範圍之內，澄清以往版本之疑問。1982 年運送條款之實質內容與 1963 年規範大致相同，僅是條款號碼與用語之澄清⁴²。須特別注意者，各版本之限期規定，無論是 15 天、30 天或是 60 天，在適用上有其限制，周詠棠（2004）謂「關於 60 天之期限，並非被保險人可以當然利用，而是在不得已情形下之通融時間」⁴³。

control of the assured, held covered at a premium to be arranged. (引自 Frederick Templeman and C.T. Greenacre, *Marine Insurance Its Principles & Practice*, 4th edition, 1934. P396)按條文中之 outside the limits of the port 亦有解釋謂「目的地無特定之卸載港者」。詳劉宗榮，海上運送與貨物保險論文集。三民書局印行，初版，中華民國 80 年。P117。

⁴⁰例如，Martin v. Russel 1960 對訟案中有關最終倉庫是否包括分配或分銷倉庫之爭論。

⁴¹ 原條文內容為「This insurance attaches from the time the goods leave the warehouse or place of storage at the place named in the policy for the commencement of the transit, continues during the ordinary course of transit and terminates either on delivery.(a) to the consignees' or other final warehouse or place of storage at the destination named in the policy,(b) to any other warehouse or place of storage, whether prior to or at the destination named in the policy, which the assured elect to use either (i) for storage other than in the ordinary course of transit or (ii)for allocation or distribution,or (C) on the expiry of 60 days after completion of discharge overside of the goods hereby insured from the oversea vessel at the final port of discharge,whichever shall first occur.If after discharge overside from the oversea vessel at the final port of discharge, but prior to termination of this insurance, the good are to be forwarded to a destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above, shall not extend beyond the commencement of transit to such other destination.This insurance shall remain in force (subject to termination as provided for above and to the provisions of Clause 2 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment, but shall in no case be deemed to extended to cover loss damage or expense proximately caused by delay or inherent vice or nature of the subject matter insured.」

⁴² 劉宗榮，海上運送與貨物保險論文集。三民書局印行，初版，中華民國 80 年。P117

⁴³ 周詠棠，貿易貨物保險，四版，三民書局，中華民國 93 年。P84

表 8 1930～2009ICC 條款保險期間相關條文名稱比較表

1930	1951	1963	1982	2009
Warehouse to Warehouse Clause	Warehouse to Warehouse clause	Transit Clause(Incorporating Warehouse to Warehouse Clause)	8.Transit Clause	8.Transit Clause
Craft, &c., Clause	Craft, &c., Clause	Termination of Adventure Clause	9.Termination of Contract of Carriage Clause	9.Termination of Contract of Carriage Clause
Deviation Clause	Deviation Clause	Craft, &c., Clause	10.Change of Voyage Clause	9.Change of Voyage Clause
		Change of Voyage Clause		

如表 8 所述，1982 年 ICC 與 2009ICC 對於廣義保險期間之規範，均涉及於第八條、第九條、第十條。2009 年條文修正後與 1982 年顯著不同之處，在於保險期間之擴張與保險期間持續性之加強，前者為第八條之修正，主要在於擴張保險期間，運送過程由起運倉庫至目的地倉庫，此或可稱為全程保險概念，後者見於第十條之變更文字(請詳前述平衡性目的用語之導入乙節)，至於第九條(運送契約終止條款)，1982ICC 與 2009ICC 不同之處大部份為用語改變，全在配合前述條文之一貫性，例如界定保險效力之終點。較大不同之處在於第一項以「卸貨」(Unloading)取代「抵達」(Delivery)，亦為承保期間之擴大。

關於第八條所涉複雜，本文擬比對 1982ICC 與 2009ICC 中重要不同之處進行分析。

(二) 第八條(運送條款)第一項比對

1. 概述

第一項在於規範海上貨物保險期間之起點與終點問題，並特別指出本條之運作須與第十一條(保險利益條款)相連結(全文比對如表 9)

表 9 第八條(運送條款)第一項比對(1982ICC VS 2009)

1982ICC	2009ICC
<p>8.1 This insurance attaches from the time the <u>goods leave</u> the warehouse or place of storage at the place <u>herein</u> for the commencement of the transit, continues during the ordinary course of transit and terminates either.</p> <p>8.1.1 on <u>delivery to the consignees' or other</u> final warehouse or place of storage at the destination named <u>herein</u>,</p> <p>8.1.2 on <u>delivery to the consignees' or other final</u> warehouse or place of storage, whether prior to or at the destination named <u>herein</u>, which the assured elect to use either</p> <p>8.1.2.1 for storage other than in the ordinary course of transit or</p> <p>8.1.2.2 for allocation or distribution, or</p> <p>8.1.3 on the expiry of 60 days after completion of discharge overside of the <u>goods hereby</u> insured from the oversea vessel at the final port of discharge, whichever shall first occur.</p>	<p>8.1 <u>Subject to Clause 11 below</u>, this insurance attaches from the time the <u>subject-matter insured is first moved in</u> the warehouse or <u>at the</u> place of storage (at the place <u>named in the contract of insurance</u>) for the purpose of the <u>immediate loading into or onto the carrying vehicle or other conveyance</u> for the commencement of transit, continues during the ordinary course of transit and terminates either</p> <p>8.1.1 on <u>completion of unloading from the carrying vehicle or other conveyance in or at the</u> final warehouse or place of storage at the destination named <u>in the contract of insurance</u>,</p> <p>8.1.2 on <u>completion of unloading from the carrying vehicle or other</u> conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named <u>in the contract of insurance</u>, which the Assured <u>or their employees</u> elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or</p> <p>8.1.3 <u>when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit</u> or</p> <p>8.1.4 on the expiry of 60 days after completion of discharge overside of the <u>subject-matter</u> insured from the oversea vessel at the final port of discharge, whichever shall first occur.</p>

2. 保險瞬間生效點之概念

1982ICC8.1 指出「貨物離開倉庫或儲存地開始運送」為保險開始生效之瞬間點，2009ICC8.1 之瞬間生效點更為提早，該項所指，其時間點係「為開始運送，將保險標的物立即裝載於運送工具或其他運送工具之中，而於倉庫或儲存處所中第一次移動之時」。當然，所謂的儲存處是指保險契約上所記載的儲存處所，至於在通常的運送過程中當然是持續有效，則無庸再論。

3. 保險效力終止之種類與用語

保險效力終止之種類與用語，頗有不同。1982 年有四種情況(其中三種規定於第一項，另一種於第二項)，2009 年有五種情況(其中四種規定於第一項，另一種置於第二項)，茲分述如下。

(1) 第一種情況

第一項第一款為最正常的保險效力終止的情況，1982ICC 規定「至本保險單所載目的地之受貨人或其他最終倉庫或儲存處所時」，但是 2009ICC 將保險效力延伸至「保險標的物在保險契約所記載的目的地之最後倉庫或儲存處所，自運送工具或其他運送工具完全卸貨時為止。」由上可發現 1982 年採用到達主義，2009 年採完全卸貨主義。

(2) 第二種情況

第一項第二款為違反通常運送過程之情況。1982ICC 規定「至本保險單所載之目的地或中途之任何其他倉庫或儲存處所而為被保險人用作(a)通常運送過程以外之儲存,或(b)分配或分送時」終止。而 2009ICC 將保險效力延伸，其內容為「於本保險單所載之目的地或抵目的地前之其他地點之任何其他倉庫或儲存處所自運送工具或其他運送工具完全卸貨時

為止，而該等倉庫係被保險人或其受雇人選擇用為通常運送過程以外之儲存，或分配或分送時。」此規定之精神與第一種情況相同。

(3) 第三種情況。

此為 2009ICC 新增，但仍在規範違反通常運送過程之情況。2009ICC 第八條第一項第三款指出「被保險人或其受雇人選擇使用通常運送過程以外之載運工具或其他運送工具或任何貨櫃之儲存。」

(4) 第四種情況。

為完成卸載後起算屆滿 60 天之情況，1982ICC 第八條第一項第三款規定「至所保貨物自海輪在最終卸貨港完成卸載後起算屆滿 60 天時」，2009 年 ICC 歸屬於第八條第一項第四款，內容並無改變，僅有用語修改，將貨物改以「標的物」。該款內容為「至所保標的物自海輪在最終卸貨港完成卸載後起算屆滿 60 天時」。

(5) 第五種情況

第五種情況為改變目的地之終止，2009 年條文亦為文字用語之修改。

(三) 第八條(運送條款)第二項之比對

表 10 第八條(運送條款)第二項之比對(1982 VS 2009)

1982ICC	2009ICC
8.2 If after discharge overside from the oversea vessel at the final port of discharge, but prior to termination of this insurance, the good are to be forwarded to a destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above , shall not extend beyond the commencement of transit to such other destination.	8.2 If, after discharge overside from the oversea vessel at the final port of discharge, but prior to termination of this insurance, the subject-matter insured is to be forwarded to a destination other than that to which it is insured, this insurance, whilst remaining subject to termination as provided in Clauses 8.1.1 to 8.1.4 , shall not extend beyond the time the subject-matter insured is first moved for the purpose of the commencement of transit to such other destination.

1982ICC 第二項之內容為「如所承保貨物自海輪在最終卸貨港完成卸載後，但在本保險效力終止之前，將貨物運往本保險所載以外之其他目的地時，本保險之效力除仍受前述保險終止之約定外，應於該項貨物開始運往其他目的地時終止。」而 2009 年 ICC 之內容則為「如所承保標的物自海輪在最終卸貨港完成卸載後，但在本保險效力終止之前，將標的物運往本保險所載以外之其他目的地時，本保險之效力除仍受本條款第一項第一款至第四款保險終止之約定外，應於該項保險標的物為開始運往其他目的地時而為第一次移動之時終止。」觀察其文字內容，可發現除考慮「意圖」之外，另亦注重「實際」之行動，故文中有「第一次移動時」之規定。茲將原文比對如表 10。

(四) 第八條(運送條款)第三項之比對

1982 年與 2009 年 ICC 第八條第三項不同之處純粹是遣詞用字與前後條文相關聯結配合，例如「船東與租船人」改為「運送人」一詞概括。而運送契約中以「carriage」取代「affreightment」，亦不過是在配合前述各條用語一致。

九、除外事項之增縮

(一) 第四條之修正分析

2009ICC(A)第四條之 4.3，4.6 至 4.7 修正之處頗多，對於保險人與被保險人之權益頗有影響，茲分析如下。

1.包裝不足或整備不當

2009ICC(A)4.3 有關「包裝不足或整備不當」除外乙節所涉及者頗有修改，詳如下原文比對(如表 11)與分析。

表 11 1982ICC4.3 VS 2009ICC4.3

1982ICC	2009ICC
4. In no case shall this insurance cover 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this clause “packing” shall be deemed to include stowage in a container <u>or liftvan</u> but only when such stowage is carried out prior to attachment of this insurance by the Assured or their <u>servants</u>)	4. In no case shall this insurance cover 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject matter insured <u>to withstand the ordinary incidents of the insured transit where such packing or preparation</u> is carried out by the Assured or their <u>employees or</u> prior to the attachment of this insurance (for the purpose of these Clauses "packing" shall be deemed to include stowage in a container <u>and "employees"</u> <u>shall not include independent contractors</u>)

(1)適用狀況限制之修正

2009ICC 對於保險標之物之包裝不足、包裝不當、整備不當乙節，限制僅適用於「經得起被保航程中之正常的事件」(to withstand the ordinary incidents of the insured transit where such packing or preparation)之狀況，用語中所謂「正常的事

件」，應是指航程中正常的風浪，2008ICC 則未作任何的限制。

(2)適用對象之再定義

2009 年使用“Employees”取代“Servants”，二者並無實值差異，已如前述討論，惟為進一步澄清其範圍，4.3 中特別指出“Employees”並未包括獨立承攬人 (Independent contractors)，已見前述。

(3)適用工具範圍之修正

條文中稱「包裝」一詞包括堆置(Stowage)，1982 年包括貨櫃(Container)與貨箱(Liftvan)，2009 則僅以貨櫃為限。論及堆置，基本上應與一定的空間相對應，適用於貨櫃應無疑義，但是貨箱是否能完全適用，顯有爭論餘地，2009 年 ICC 將適用工具限制在貨櫃，顯然在於避免可能之爭論。

(4)適用時間範圍之修正

1982 年 ICC 稱“包裝”一詞，應包括貨櫃與貨箱之堆置，惟其適用有時間點限制，因此原條文中稱「但以保險生效前被保人或其受僱人(Servants)完成者為限」。2009 年 ICC 則有較不一樣之規定，條文中稱「---由被保人或其受僱人所完成或在本保險生效前所完成者」，亦即，保險生效前所為者固然是除外的，即使是保險生效後被保人或其受僱人所為者亦應除外。

2.喪失清償能力或拖欠債務

有關船舶所有人、經理人、租船人或營運人喪失清償能力或拖欠債務之所致之損失或費用產生之除外問題，2009 年之用語變動頗大，首先比對原文內容如下(表 12)。

表 12 1982ICC4.6 VS 2009ICC4.6

1982ICC	2009ICC
4.6 loss damage or expense <u>arising from</u> insolvency or financial default of the owner managers charters or operators of the vessel	4.6 loss damage or expense <u>caused by</u> insolvency or financial default of the owners managers charters or operators of the vessel <u>where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage</u> <u>This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract</u>

其次，就內容之變更情形分析如下。

(1)因果關係用語改變

由“arising from”轉為“caused by”，可謂為導回主力近因範圍。

(2)適用時點、對象與情況之限制

2009 年 ICC 針對船舶所有人、經理人、租船人或營運人喪失清償能力或拖欠債務產生之問題，與 1982 年 ICC 主要不同之處，在於加入適用時間點與被保險人知情與否之限制。條文中稱「於保險標的物裝船時，被保人知道或於通常業務過程中應該知道，該等喪失清償能力或拖欠債務之情況會阻礙航程之正常進行。」雖有上述之重大變更，但是為保護善

意第三人，對於被保人之範圍有所限制，凡在保險契約業已轉讓之情況下，或求償主張者(受讓人)依合約在誠信之下已購買或同意購買保險標的物，其權益不受影響。此項變更對於被保人之責任基本上是降低的。

3.有關使用原子、核子分裂及/或融合或其它類似反應、或放射物質之武器所引起之毀損、滅失或費用

2009ICC 對於本款之改變為因果關係基礎之用語由“arising from”轉為“directly or indirectly caused by”。另外擴大武器之範圍包括設施(device)。原則上為不保事項之擴大。1982ICC4.7 與 2009ICC4.7 之原文比對如表 13。

表 13 1982ICC4.7 VS 2009ICC4.7

1982ICC	2009ICC
4.7 loss damage or expense <u>arising from</u> the use <u>of any</u> weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.	4.7 loss damage or expense <u>directly or indirectly caused by or</u> arising from the use of any weapon <u>or device</u> employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

(二) 第五條之修正分析

1.2009ICC5.1,5.2 與 1982ICC5.1 之比對分析

表 14 1982ICC5.1 VS 2009ICC5.1 & 2009 ICC5.2

1982ICC	2009ICC
<p>5.1 In no case shall this insurance cover loss damage or expense arising from unseaworthiness of vessel or craft, unfitness of vessel craft conveyance container <u>or liftvan</u> for the safe carriage of the subject-matter insured, where the Assured <u>or their servants are</u> privy to the such unseaworthiness or unfitness, at the time <u>the subject-matter insured is loaded therein.</u></p>	<p>5.1 In no case shall this insurance cover loss damage or expense arising from</p> <p>5.1.1 unseaworthiness of vessel or craft <u>or</u> unfitness of vessel <u>or</u> craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein</p> <p>5.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, <u>where loading therein or thereon is carried out prior to attachment of this insurance or by the Assured or their employees and they</u> are privy to such <u>unfitness</u> at the time <u>of loading.</u></p> <p>5.2 Exclusion 5.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.</p>

1982 年 ICC 條款對於不適航與不適運除外之規定共有二項，其中第一項為「本保險不承保載運船舶或駁船的不適航，或載運船舶或駁船、運輸工具、貨櫃或貨箱不適安全裝運引起保險標之物之毀損、滅失或費用，惟此種不適航或不適運以被保險人或其受僱人於保險標之物裝船時已知情者為限」。2009 年 ICC 將運送工具與裝載工具之除外規定分開處理，茲比對(如表 14)並分析說明如下。

(1)運送工具之不適航與不適運

用以安全運載保險標之物之載運船舶或駁船的不適航，或載運船舶或駁船之不適運，惟以保險標之物裝船時被保險人已知情者為限。

(2)裝貨工具之不適運

用以安全運載保險標之物之貨櫃或運載工具之不適運，惟以本保險生效前已完成者，或由被保險人或其受雇人完成裝貨且於裝貨時已知情者為限。

(3)2009ICC5.1.2 之分析

與 1982 年 ICC 條文比較，新條文之 5.1.2 未將 1982 年「貨箱」一詞列入，並明定除外不保之情況有二種，其一為保險生效前業已完成裝貨之情況，其二為由被保險人或其受雇人完成之裝貨，但在裝貨時已知其不適運之情況。

2.2009ICC5.2 之規定

2009ICC5.2 之規定是針對 5.1.1 之適用對象進一步限制，亦即受讓人不在除外之列。條文中對於保險契約之受讓人更進一步規範為「業已受讓保險契約者，而所謂業已受讓，係指依據授權契約，在誠信之下業已購買或同意購買保險契約中所承保之保險標之物而主張理賠之當事人。」

3.新增條文 2009ICC5.3 之規定

表 15 1982ICC5.2 VS 2009ICC5.3

5.2The <u>underwriters</u> waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured destination, <u>unless the Assured or their servants are privy to such unseaworthiness</u> or unfitness.	5.3 The <u>Insurers</u> waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.
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2009 年 ICC5.3 與 1982 年 ICC5.2 頗有差異(原文見比較表 15)，

1982 年 ICC5.2 原先之規定為「除被保險人或其受僱人已知情之不適航或不適運原因外，保險人放棄任何違反船舶適航或適運保險標的物至目的地之默示保證規定。」2009 年除以“Underwriter”字眼取代“Insurer”之外，刪除被保險人或其受僱人已知情之不適航或不適運原因之規定，亦即保險人完全放棄被保險人對於運送保險標的物之船舶適航與適運默示保證之規定。船舶之適航與適運保證期間原及於整個運送過程，此項規定並非在否定第一項之規定，僅係放棄保單生效後或是裝貨後之船舶適航與適運默示保證。

基本上，2009 年不適航與不適運之規定類似協會商品貿易條款(Institute Commodities Trade Clauses)，協會商品貿易條款主要與原料之狀況有關。亦即，不適航除外所反應者現在與 A 式協會商品貿易條款(Institute Commodities Trade Clauses(A))所設定之不保事項更為接近⁴⁴。

(三) 第六條之修正分析

1. 海盜是否承保之原則性問題

1982 年 ICC(B)與 ICC(C)之戰爭除外條款並未放置 6.2 之「海盜除外」(piracy excepted)字眼，2009 年 ICC 則將 ICC(A)、

⁴⁴ 該條款 1983 年 5 月 9 日開始啓用，全名為 Institute Commodities Trade Clauses(A) Agreed with The Federation of Commodity Associations for the insurance of shipment of Cocoa, Coffee, Cotton, Fats and Oils not in bulk, Hides, Skins and Leather, Metals, Oil Seeds, Sugar (Raw or Refined), and Tea. 按 A 式協會商品貿易條款第 5 條不適航與不適運除外條款(Unseaworthiness and Unfitness Exclusion Clause)之規定如下。5.1 In no case shall this insurance cover loss damage or expense arising from 5.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein 5.1.2 unfitness of container or land conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out prior to attachment of this insurance or by the Assured or their servants. 5.2 Where this insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract, exclusion 5.1.1 above shall not apply. 5.3 The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.」

ICC(B)、ICC(C)之戰爭除外條款將「海盜除外」(piracy excepted)字眼均放置，惟此非謂 ICC(B)與 ICC(C)已將海盜危險事故承保在內，因為 ICC(B)與 ICC(C)係採列舉式方式承保，所以，2009 年 ICC(A)、ICC(B)、ICC(C)中將海盜承保在內者仍以 ICC(A)為限。

2. 共同海損條款與海盜之連結性問題

ICC(B)與 ICC(C)之除外事項中第 6 條第 2 項雖明確指出，被「海盜所捕獲、扣押、拘留、禁制或扣留等非屬戰爭險範圍，惟如前所述，ICC(B)與 ICC(C)均為列舉式承保方式，因之，被保人對於海盜險仍應另加費加保」，但此係針對第一條列舉式之承保方式而論，事實上本條如與第二條「共同海損條款」(General Average Clause)連結，則依條文之連結性，因海盜所致之共同海損應在承保範圍之內。亦即，吾人可由第二條與第六條第二項共同推論。按第二條之條文內容稱「本保險承保依運送契約及/或管轄法律與慣例所理算或認定之共同海損與救助費用，而其發生係為避免或有關避免本條款後列第 4、5、6、7 以外之任何原因所致之損失。」而第 6.2 條文內容為「捕獲、扣押、拘留、禁制或扣留(海上劫掠除外)，及其結果或任何威脅企圖」。

(四) 第七條之修正分析

2009ICC 第七條之修正，主要為恐怖主義、行為者、行為動機，其界定之解釋已如前述，茲不再贅述。

伍、結 論

綜觀 2009 年 ICC 之修正內容，基本架構雖未改變，但力求導正 1982ICC 容易引起爭論之處，修正之處大都有利於被保險人，就定型化契約之觀點論，在平衡契約當事雙方之權益觀點，應是值得肯定。不過，下列幾點仍值得注意。

一、關於條文名稱與分類之問題。

(一) 不置條文名稱之商榷

2009ICC 以除外事項概括四個除外條款，不置條文個別名稱，似有商榷餘地。檢視其原因，應只是第七條之除外內容同時涉及罷工與恐怖主義性質不同之危險事故，難以名稱同時概括，本文認為條文名稱有畫龍點睛之妙，因此，如將第七條第三項與第四項獨立一條，賦與恐怖主義除外條款，既可解決概括問題，又可維持條文名稱之完整性。同理吾人認為，第 15 條、第 18 條、第 19 條不置條文名稱，雖項目名稱可分別代表，但就一致性觀點，似不恰當。

(二) 第 12 條轉運費用(Forwarding Charges Clause)條款之概括問題

本條以轉運費用概括卸貨、倉儲、轉運等三種費用，似亦可有新名稱概括以符實際。

(三) 條文性質分類另一思考

按性質觀察，ICC 條文之基本架構可以分為承保範圍、不保事項、理賠事項、法律與實務等四項⁴⁵，蓋第 11 條至第 18 條在性質上均可

⁴⁵ 一般之條款性質分類尚包括一般事項，在於規範申請訂立保險契約至理賠發生前之相關情事。ICC 條款未置該項，但因最後一條之內容等同適用英國法律與實務條款，故其相關規定適用英國 1906 年海上保險法(Marine Insurance Act 簡稱 1906MIA)及其相關法律與慣例。

歸屬於理賠性質條款，其概念如圖 4 所示。如將該等條文全以理賠事項概括，則第 15 條直接稱為保險權益條款、第 18 條直接稱為避免遲延條款，加上第 19 條直接稱為法律與實務條款，則可解決前述一致性問題。

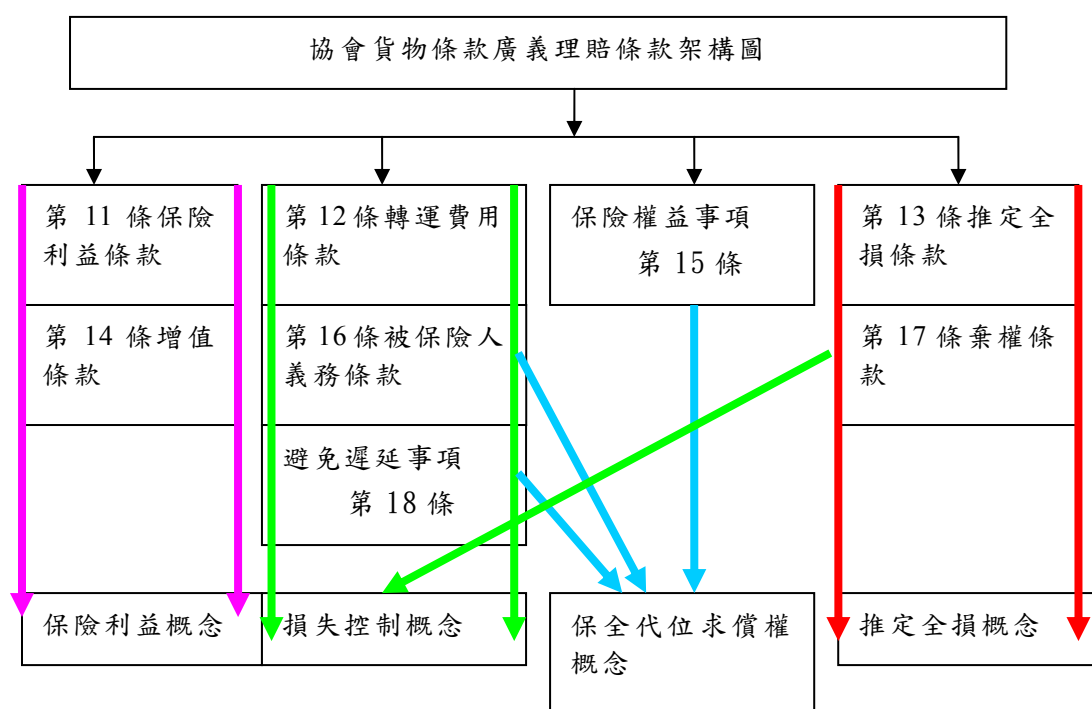


圖 4 協會貨物條款廣義理賠條款架構圖

資料來源：本研究自行整理

二、許多重大變更之影響仍有待未來實務之驗證

2009ICC 重大改變之處，大部份為有利於被保險人之解釋，尤其是除外事項之縮小、保險期間之擴大等等，對於未來之理賠事件是否有其顯著影響，甚至更進一步影響保險費率水準，有待觀察。再者，

前述 2009ICC(B)與 ICC(C)第六條中澄清海盜非屬於戰爭危險之範圍，則投保該等條件時，因海盜所致之共同海損費用與救助費用是否在承保範圍之內，尚待未來實務之驗證，尤其是目前國際海盜猖獗之情況下，更須注意。本文前已認為第二條之條文內容已指出除第四條至第七條以外所致者之外皆屬承保之內，認為似應包括在內。

三、適用之緩衝期

任何新條款之引進需要時間適應，特別是海上貨物險與信用狀規定之保險條款有相當關係，開狀銀行本身是否能立即接受或多久時間才能認知，尚須時間觀察。

四、海上貨物保險之供給者與消費者應就 ICC 為全貌了解。

無論 ICC 條文如何修正，其內容仍然錯綜複雜，須注意條文之聯結，始能了解 ICC 條文全貌，始克了解 ICC 真正之承保範圍與除外事項。茲就條文內容為聯結圖如下。

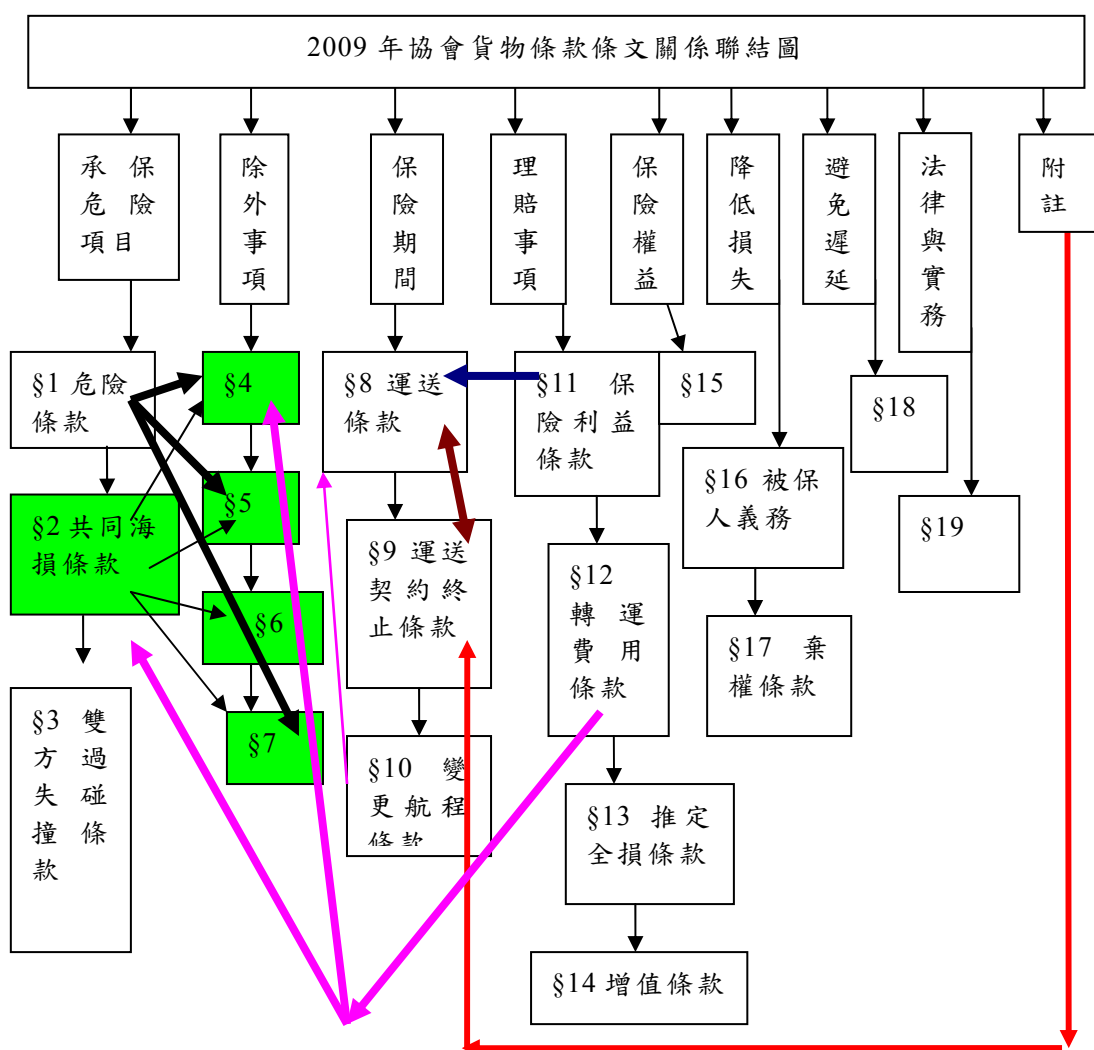


圖 5 2009 年協會貨物條款條文關係聯結圖

資料來源：本研究自行整理

註：圖五中單箭頭粗黑線係指解讀危險條款(第 1 條)時應同時考量第 4 至第 7 條；單箭頭細黑線係指共同海損條款(第 2 條)之解釋範圍應同時考慮第 4 至第 7 條；單箭頭粗深藍線指運送條款(第 8 條)在適用時須考慮保險利益條款之限制；雙箭頭粗紅線指運送條款(第 8 條)與運送契約終止條款(第 9 條)運用上互有關聯；單箭頭粗深紅線指附註條款僅適用於運送契約終止條款(第 9 條)與變更航程條款(第 10 條)；單箭頭細紫線係指變更航程條款(第 10 條)在適用時受限於運送條款(第 8 條)；單箭頭粗紫線係指轉運費用條款(第 12 條)在適用時受限於第 4 至第 7 條，但不適用於共同海損條款(第 2 條)。

參考文獻

- 1.周詠棠，貿易貨物保險，四版，三民書局，中華民國 93 年。P84
- 2.羅漢文，海上貨物船舶保險條款釋論，初版，著者印行，三民書局總經銷，中華民國 78 年。P39~41。
- 3.劉宗榮，海上運送與貨物保險論文集。三民書局印行，初版，中華民國 80 年。P117
- 4.鄭鎮樑，英國勞氏保單中之附註條款與協會貨物條款之演化探源，核保學報，第八卷，2000，P169~214
- 5.海上保險實務經驗
- 6.Black's Law Dictionary, revised fourth edition, 1968. P617~618, P911,P1533
- 7.Frederick Templeman and C.T. Greenacre, Marine Insurance Its Principles & Practice, 4th edition, 1934. P396-397
- 8.N. Geoffrey Hudson, The Institute Clauses, 2nd edition, Lloyd's of London Press Ltd. 1995.P16,P17,P19,P36
- 9.Robert H. Brown, The Cargo Insurance Contract and the Institute Cargo Clauses, 1st edition, Witherby & Co. Ltd., 1995 Section Six P1, P3。
- 10.Joint Committee of the IUA and LMA, Institute Cargo Clauses Review, 3 October 2008.
- 11.Joint Committee of the IUA and LMA, Institute Cargo Clauses Review, 17 December 2008.

附錄 1 2009 年 ICC 與 1982 年 ICC 全部條文同異對照表

Item	1982ICC	2009ICC
RISKS COVERED		
Risks	1. This insurance covers all risks of loss of or damage to the subject-matter insured except as <u>provided in</u> Clauses 4,5,6 and 7 below.	1. This insurance covers all risks of loss of or damage to the subject-matter insured except as <u>excluded by the provisions of</u> Clauses 4, 5, 6 and 7 below.
General Average	2.This insurance covers general average and salvage charges, adjusted or determined according to the contract of <u>affreightment</u> and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4,5,6, and 7 <u>or elsewhere in this insurance.</u>	2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of <u>carriage</u> and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 <u>below.</u>
"Both to Blame Collision Clause"	3.This insurance <u>is extended to indemnify</u> the Assured against <u>such proportion of</u> liability <u>under</u> the contract of <u>affreightment</u> "Both to Blame Collision" Clause <u>as is in respect of a loss recoverable hereunder.</u> In the event of any claim by <u>shipowners</u> under the said Clause the Assured agree to notify the <u>Underwriters</u> who shall have the right, at their own cost and expense, to defend the Assured against such claim.	3.This insurance <u>indemnifies</u> the Assured, <u>in respect of any risk insured herein,</u> against liability <u>incurred</u> under <u>any</u> Both to Blame Collision Clause <u>in</u> the contract of <u>carriage.</u> In the event of any claim by <u>carriers</u> under the said Clause, the Assured agree to notify the <u>Insurers</u> who shall have the right, at their own cost and expense, to defend the Assured against such claim.
EXCLUSIONS		
	4.General Exclusion clause 4.In no case shall this insurance cover 4.1 loss damage or expense attributable to willful misconduct	Exclusion 4. In no case shall this insurance cover 4.1 loss damage or expense attributable to willful misconduct of

<p>of the Assured</p> <p>4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured</p> <p>4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this clause "packing" shall be deemed to include stowage in a container <u>or liftvan</u> but only when such stowage is carried out prior to attachment of this insurance by the Assured or their <u>servants</u>)</p> <p>4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured</p> <p>4.5 loss damage or expense <u>proximately caused by</u> delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)</p> <p>4.6 loss damage or expense <u>arising from</u> insolvency or financial default of the owner managers charters or operators of the vessel</p> <p>4.7 loss damage or expense <u>arising from</u> the use of any weapon <u>of war</u> employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.</p>	<p>the Assured</p> <p>4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured</p> <p>4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject matter insured <u>to withstand the ordinary incidents of the insured transit where such packing or preparation</u> is carried out by the Assured or their <u>employees or</u> prior to the attachment of this insurance (for the purpose of these Clauses "packing" shall be deemed to include stowage in a container <u>and "employees" shall not include independent contractors</u>)</p> <p>4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured</p> <p>4.5 loss damage or expense <u>caused by</u> delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)</p> <p>4.6 loss damage or expense <u>caused by</u> insolvency or financial default of the owners managers charters or operators of the vessel <u>where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage</u> <u>This exclusion shall not apply where the contract of insurance has</u></p>
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		<p><u><i>been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract</i></u></p> <p>4.7 loss damage or expense <u><i>directly or indirectly caused by or</i></u> arising from the use of any weapon <u><i>or device</i></u> employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.</p>
	<p>Unseaworthiness and unfitness exclusion clause</p> <p>5.1 In no case shall this insurance cover loss damage or expense arising from</p> <p>unseaworthiness of vessel or craft, unfitness of vessel craft conveyance container <u>or liftvan</u> for the safe carriage of the subject-matter insured, where the Assured <u>or their servants are</u> privy to the such unseaworthiness or unfitness, at the time <u><i>the subject-matter insured is loaded therein.</i></u></p> <p>5.2 The <u>underwriters</u> waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured destination, <u>unless the Assured or their servants are privy to such unseaworthiness or unfitness.</u></p>	<p>5.1 In no case shall this insurance cover loss damage or expense arising from</p> <p>5.1.1 unseaworthiness of vessel <u>or</u> craft or unfitness of vessel <u>or</u> craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein</p> <p>5.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, <u><i>where loading therein or thereon is carried out prior to attachment of this insurance or by the Assured or their employees and they</i></u> are privy to such <u><i>unfitness</i></u> at the time <u><i>of loading.</i></u></p> <p>5.2 Exclusion 5.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith</p>

		<p>under a binding contract.</p> <p>5.3 The <u>Insurers</u> waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.</p>
	<p>6. War Exclusion Clause</p> <p>In no case shall this insurance cover loss damage or expense caused by</p> <p>6.1 War civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power</p> <p>6.2 capture seizure arrest restraint or detainment (piracy excepted), and the consequences thereof or any attempt thereat</p> <p>6.3 derelict mines torpedoes bombs or other derelict weapons of war.</p>	<p>6.</p> <p>In no case shall this insurance cover loss damage or expense caused by</p> <p>6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power</p> <p>6.2 capture seizure arrest restraint or detainment (piracy excepted), and the consequences thereof or any attempt thereat</p> <p>6.3 derelict mines torpedoes bombs or other derelict weapons of war.</p>
	<p>7. Strikes Exclusion clause</p> <p>In no case shall this insurance cover loss damage or expense</p> <p>7.1 caused by strikers, locked-out workmen, or persons taking part on labour disturbances, riots or civil commotions</p> <p>7.2 resulting from strikers, locked-out workmen, or persons taking part on labour disturbances, riots or civil commotions</p> <p>7.3 caused by any terrorist or any person acting from a political motive.</p>	<p>7. In no case shall this insurance cover loss damage or expense</p> <p>7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions</p> <p>7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions</p> <p>7.3 caused by any <u>act of</u> terrorism <u>being an act of</u> any person acting <u>on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence,</u></p>

		<p><u>of any government whether or not legally constituted</u></p> <p><u>7.4 caused by any person acting from a political, ideological or religious motive.</u></p>
Duration		
8. Transit Clause	<p>8.1 This insurance attaches from the time the <u>goods leave</u> the warehouse or place of storage at the place <u>herein</u> for the commencement of the transit, continues during the ordinary course of transit and terminates either.</p> <p>8.1.1 on <u>delivery to the consignees' or other</u> final warehouse or place of storage at the destination named herein,</p> <p>8.1.2 on <u>delivery to the consignees' or other final</u> warehouse or place of storage, whether prior to or at the destination named <u>herein</u>, which the assured elect to use either</p> <p>8.1.2.1 for storage other than in the ordinary course of transit or</p> <p>8.1.2.2 for allocation or distribution,</p> <p>or</p> <p>8.1.3 on the expiry of 60 days after completion of discharge overseas of the <u>goods hereby</u> insured from the overseas vessel at the final port of discharge, whichever shall first occur.</p> <p>8.2 If after discharge overseas from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the <u>goods are</u> to be forwarded to a</p>	<p>8.1 <u>Subject to Clause 11 below,</u> this insurance attaches from the time the <u>subject-matter insured is first moved in</u> the warehouse or <u>at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance</u></p> <p>for the commencement of transit, continues during the ordinary course of transit and terminates either</p> <p>8.1.1 on <u>completion of unloading from the carrying vehicle or other conveyance in or at the</u> final warehouse or place of storage at the destination named <u>in the contract of insurance,</u></p> <p>8.1.2 on <u>completion of unloading from the carrying vehicle or other conveyance in or at any other</u> warehouse or place of storage, whether prior to or at the destination named <u>in the contract of insurance,</u> which the Assured <u>or their employees</u> elect to use either for storage other than in the ordinary course of transit or for allocation or distribution,</p> <p>or</p> <p>8.1.3 <u>when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for</u></p>

	<p>destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above, shall not extend beyond the commencement of transit to such other destination.</p> <p>8.3 This insurance shall remain in force (subject to termination as provided for above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment.</p>	<p><u>storage other than in the ordinary course of transit</u> or</p> <p>8.1.4 on the expiry of 60 days after completion of discharge overseaside of the <u>subject-matter</u> insured from the overseas vessel at the final port of discharge, whichever shall first occur.</p> <p>8.2 If, after discharge overseaside from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the <u>subject-matter insured</u> is to be forwarded to a destination other than that to which <u>it is</u> insured, this insurance, whilst remaining subject to termination as provided <u>in</u> <u>Clauses 8.1.1 to 8.1.4</u>, shall not extend beyond the <u>time the subject-matter insured is first moved for the purpose of</u> the commencement of transit to such other destination.</p> <p>8.3 This insurance shall remain in force (subject to termination as provided for <u>in</u> <u>Clauses 8.1.1 to 8.1.4</u> above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to <u>carriers</u> under the contract of carriage.</p>
Termination of Contract of Carriage	<p>9.If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is</p>	<p>9.If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated</p>

	<p>otherwise terminated before <u>delivery</u> of the <u>goods</u> as provided for in Clause 8 above, then this insurance shall also terminate unless prompt notice is given to the <u>underwriters</u> and continuation of cover is requested when the insurance shall remain in force, subject to an additional premium if required by the <u>Underwriters</u>, either</p> <p>9.1 until the <u>goods are</u> sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the <u>goods hereby</u> insured at such port or place, whichever shall first occur, or</p> <p>9.2 If the <u>goods are</u> forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named <u>herein</u> or to any other destination until terminated in accordance with the provisions of Clause 8 above.</p>	<p>before <u>unloading</u> of the <u>subject-matter insured</u> as provided for in Clause 8 above, then this insurance shall also terminate unless prompt notice is given to the <u>Insurers</u> and continuation of cover is requested when this insurance shall remain in force, subject to an additional premium if required by the <u>Insurers</u>, either</p> <p>9.1 until the <u>subject-matter insured is</u> sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the <u>subject-matter</u> insured at such port or place, whichever shall first occur, or</p> <p>9.2 if the <u>subject-matter insured is</u> forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named <u>in the contract of insurance</u> or to any other destination, until terminated in accordance with the provisions of Clause 8 above.</p>
Change of Voyage	<p>10.</p> <p>Where, after attachment of this insurance, the destination is changed by the Assured, <u>held covered at a premium and on conditions to be arranged subject to prompt notice being given to the Underwriters.</u></p>	<p>10.</p> <p>10.1</p> <p>Where, after attachment of this insurance, the destination is changed by the Assured, <u>this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.</u></p> <p>10.2 <u>Where the subject-matter insured commences the transit</u></p>

		<u>contemplated by this insurance (in accordance with Clause 8.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.</u>
CLAIMS		
11 Insurable Interest	<p>11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.</p> <p>11.2 Subject to 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the <u>Underwriters</u> were not.</p>	<p>11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.</p> <p>11.2 Subject to Clause 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the <u>Insurers</u> were not.</p>
12 Forwarding Charges	<p>12. Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter is covered under this insurance, the <u>Underwriters</u> will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter to the destination to which it is insured hereunder.</p> <p>This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in</p>	<p>12. Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter insured is covered under this insurance, the <u>Insurers</u> will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter <u>insured</u> to the destination to which it is insured.</p> <p>This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4,</p>

	Clauses 4,5,6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their <u>servants</u> .	5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their <u>employees</u> .
Constructive Total Loss	13. No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter to the destination to which it is insured would exceed its value on arrival.	13. No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter insured to the destination to which it is insured would exceed its value on arrival.
Increased Value	<p>14.</p> <p>14.1 If any increased value insurance is effected by the Assured on the <u>cargo</u> insured <u>herein</u> the agreed value of the <u>cargo</u> shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured <u>herein</u> bears to such total amount insured.</p> <p>In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurance.</p> <p>14.2 Where this insurance is on Increased Value the following clause shall apply:</p> <p>The agreed value of the <u>cargo</u> shall be deemed to be equal to the</p>	<p>14.</p> <p>14.1 If any Increased Value insurance is effected by the Assured on the <u>subject-matter</u> insured <u>under this insurance</u> the agreed value of the <u>subject-matter insured</u> shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured <u>under this insurance</u> bears to such total amount insured.</p> <p>In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.</p> <p>14.2 Where this insurance is on Increased Value the following clause shall apply:</p> <p>The agreed value of the</p>

	<p>total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the cargo by the Assured, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured.</p> <p>In the event of claim the Assured shall de the Underwriters with evidence of the ts insured under all other insurances.</p>	<p>subject-matter insured</p> <p>shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the subject-matter insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.</p> <p>In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.</p>
BENEFIT OF INSURANCE		
	<p>15. Not to Inure Clause</p> <p>This insurance shall not inure to the benefit of the carrier or other bailee.</p>	<p>15. This insurance</p> <p>15.1 covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,</p> <p>15.2 shall not extend to or otherwise benefit the carrier or other bailee.</p>
MINIMISING LOSSES		
Duty of Assured	<p>16. It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder</p> <p>16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and</p> <p>16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised</p> <p>and the Underwriters will, in addition to any loss recoverable</p>	<p>16. It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder</p> <p>16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and</p> <p>16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised</p> <p>and the Insurers will, in addition to any loss recoverable hereunder,</p>

	hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.	reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.
Waiver	17.Measures taken by the Assured or the <u>Underwriters</u> with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.	17.Measures taken by the Assured or the <u>Insurers</u> with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.
AVOIDANCE OF DELAY		
	Reasonable Despatch Clause 18.It is a condition of this insurance that the Assured shall act with reasonable dispatch in all circumstances within their control.	18.It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.
LAW AND PRACTICE		
	English and Law Practice 19.This insurance is subject to English law and practice.	19. This insurance is subject to English law and practice.
NOTE	<u>It is necessary for the Assured when become aware of an event which is “held covered” under this insurance</u> to give prompt notice to the <u>Underwriters</u> and the right to such cover is dependent upon compliance with this obligation.	<u>Where a continuation of cover is requested under Clause 9, or a change of destination is notified under Clause 10, there is an obligation</u> to give prompt notice to the <u>Insurers</u> and the right to such cover is dependent upon compliance with this obligation.

附錄 1.1 2009ICC 年(B)(C)與 1982ICC 年(B)(C)條文對照表

Risks Clause	1982ICC	2009ICC
ICC(B)	<p>This insurance covers, except as <u>provided in</u> Clauses 4,5,6 and 7 below,</p> <p>1.1 loss of or damage to the subject-matter insured reasonably attributable to</p> <p>1.1.1 fire or explosion</p> <p>1.1.2 vessel or craft being stranded grounded sunk or capsized</p> <p>1.1.3 overturning or derailment of land conveyance</p> <p>1.1.4 collision or contact of vessel craft or conveyance with any external object other than water</p> <p>1.1.5 discharge of cargo at a port of distress</p> <p>1.1.6 earthquake volcanic eruption or lightning,</p> <p>1.2 loss of or damage to the subject-matter insured caused by</p> <p>1.2.1 general average sacrifice</p> <p>1.2.2 jettison or washing overboard</p> <p>1.2.3 entry of sea lake or river water into vessel craft hold conveyance container liftvan or place of storage</p> <p>1.3 total loss of any package los overboard or dropped whilst loading on to , or unloading from vessel or craft.</p>	<p>This insurance covers, except as <u>excluded by the provisions of</u> Clauses 4,5,6 and 7 below,</p> <p>1.1 loss of or damage to the subject-matter insured reasonably attributable to</p> <p>1.1.1 fire or explosion</p> <p>1.1.2 vessel or craft being stranded grounded sunk or capsized</p> <p>1.1.3 overturning or derailment of land conveyance</p> <p>1.1.4 collision or contact of vessel craft or conveyance with any external object other than water</p> <p>1.1.5 discharge of cargo at a port of distress</p> <p>1.1.6 earthquake volcanic eruption or lightning,</p> <p>1.2 loss of or damage to the subject-matter insured caused by</p> <p>1.2.1 general average sacrifice</p> <p>1.2.2 jettison or washing overboard</p> <p>1.2.3 entry of sea lake or river water into vessel craft hold conveyance container liftvan or place of storage</p> <p>1.3 total loss of any package los overboard or dropped whilst loading on to , or unloading from vessel or craft.</p>
ICC(C)	<p>This insurance covers, except as <u>provided</u> in Clauses 4,5,6 and 7 below,</p> <p>1.1 loss of or damage to the subject-matter insured reasonably attributable to</p> <p>1.1.1 fire or explosion</p>	<p>This insurance covers, except as <u>excluded by the provisions of</u> Clauses 4,5,6 and 7 below,</p> <p>1.1 loss of or damage to the subject-matter insured reasonably attributable to</p> <p>1.1.1 fire or explosion</p>

	<p>1.1.2 vessel or craft being stranded grounded sunk or capsized</p> <p>1.1.3 overturning or derailment of land conveyance</p> <p>1.1.4 collision or contact of vessel craft or conveyance with any external object other than water</p> <p>1.1.5 discharge of cargo at a port of distress</p> <p>1.2 loss of or damage to the subject-matter insured caused by</p> <p>1.2.1 general average sacrifice</p> <p>1.2.2 jettison</p>	<p>1.1.2 vessel or craft being stranded grounded sunk or capsized</p> <p>1.1.3 overturning or derailment of land conveyance</p> <p>1.1.4 collision or contact of vessel craft or conveyance with any external object other than water</p> <p>1.1.5 discharge of cargo at a port of distress</p> <p>1.2 loss of or damage to the subject-matter insured caused by</p> <p>1.2.1 general average sacrifice</p> <p>1.2.2 jettison</p>
	<p>4.General Exclusion clause</p> <p>4.In no case shall this insurance cover</p> <p>4.1 loss damage or expense attributable to willful misconduct of the Assured</p> <p>4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured</p> <p>4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this clause "packing" shall be deemed to include stowage in a container <u>or liftvan</u> but only when such stowage is carried out prior to attachment of this insurance by the Assured or their <u>servants</u>)</p> <p>4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured</p> <p>4.5 loss damage or expense <u>proximately caused by</u> delay, even though the delay be caused by a risk insured against (except</p>	<p>Exclusion</p> <p>4. In no case shall this insurance cover</p> <p>4.1 loss damage or expense attributable to willful misconduct of the Assured</p> <p>4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured</p> <p>4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject matter insured to <u>withstand the ordinary incidents of the insured transit where such packing or preparation</u> is carried out by the Assured or their <u>employees or</u> prior to the attachment of this insurance (for the purpose of these Clauses "packing" shall be deemed to include stowage in a container <u>and "employees" shall not include independent contractors</u>)</p> <p>4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured</p>

	<p>expenses payable under Clause 2 above)</p> <p>4.6 loss damage or expense <u>arising from</u> insolvency or financial default of the owner managers charters or operators of the vessel</p> <p>4.7deliberate damage to or deliberate destruction of the subject-matter insured or any part thereof by the wrongful act of any person or persons</p> <p>4.8loss damage or expense <u>arising from</u> the use of any weapon <u>of war</u> employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.</p>	<p>4.5 loss damage or expense <u>caused by</u> delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)</p> <p>4.6 loss damage or expense <u>caused by</u> insolvency or financial default of the owners managers charters or operators of the vessel <u>where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage</u> <u>This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract</u></p> <p>4.7deliberate damage to or deliberate destruction of the subject-matter insured or any part thereof by the wrongful act of any person or persons</p> <p>4.8 loss damage or expense <u>directly or indirectly caused by or</u> arising from the use of any weapon <u>or device</u> employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.</p>
ICC(B) ICC(C)	<p>6. War Exclusion Clause</p> <p>In no case shall this insurance cover loss damage or expense caused by</p> <p>6.1 War civil war revolution rebellion insurrection, or civil</p>	<p>6.</p> <p>In no case shall this insurance cover loss damage or expense caused by</p> <p>6.1 war civil war revolution rebellion insurrection, or civil</p>

	<p>strife arising therefrom, or any hostile act by or against a belligerent power</p> <p>6.2 capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat</p> <p>6.3 derelict mines torpedoes bombs or other derelict weapons of war.</p>	<p>strife arising therefrom, or any hostile act by or against a belligerent power</p> <p>6.2 capture seizure arrest restraint or detainment (<u>piracy excepted</u>), and the consequences thereof or any attempt thereat</p> <p>6.3 derelict mines torpedoes bombs or other derelict weapons of war.</p>
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附錄 2 2009 年 ICC 與 1982 年 ICC 條文具體修正重點內容

項目	例	示
	1982ICC	2009ICC
專門術語統合化	Carriage(§2,§3) Underwriters(§3,§5.2,§9, §11,§12, §14.2,§16.2,§17) Servants(§4.3,§12,§16) Goods(§8.1, § 8.1.3, § 8.2, § 9.1, §9.2) Cargo Insured(14.1,14.2) Shipowners or Charters(§8.4)	Affreightment(§2,§3) Insurers(§3, §5.3,§9,§11,§12, §14.2, §16.2,§17) Employees(§4.3,§12, §16) <u>subject-matter insured</u> (§8.1, § 8.1.4, § 8.2, § 9.1, §9.2) <u>subject-matter insured</u> (14.1,14.2) Carriers(§8.4)
修改敘述性用語	provided in(§1)	excluded by the provisions of(§1)
	or elsewhere in this insurance. (§2)	below.(§2)
	is extended to indemnify(§3)	indemnifies (§3)
	Herein(8.1.1, 8.1.2,9.2)	<u>in the contract of insurance</u> , (8.1.1, 8.1.2,9.2)
	Herein(14.1)	Under this insurance(14.1)
	<u>It is necessary for the Assured when become aware of an event which is “held covered” under this insurance</u> to give prompt notice to the <u>Underwriters</u> and the right to such cover is dependent upon compliance with this obligation.(Note)	<u>Where a continuation of cover is requested under Clause 9, or a change of destination is notified under Clause 10, there is an obligation to</u> give prompt notice to the <u>Insurers</u> and the right to such cover is dependent upon compliance with this obligation. (Note)
界定關鍵性名詞意義	caused by any terrorist or any person acting from a political motive .(7.3)	caused by any <u>act of</u> terrorism <u>being an act of</u> any person acting <u>on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted</u> (7.3) <u>caused by any person acting from a political, ideological or religious motive</u> .(7.4)
	This insurance shall not inure to the benefit of the carrier or other bailee.(15)	covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract

		of insurance was effected or as an assignee, (15.1) shall not extend to or otherwise benefit the carrier or other bailee.(15.2)
因果關係用詞統合化	Proximately caused by(§4.4) Arising from(§4.6, 4.7)	Caused by(§4.4) Caused by(§4.6, 4.7) Piracy excepted(ICC(B) and ICC(C)§6.2)
增列平衡性目的用語	<u>held covered at a premium and on conditions to be arranged subject to prompt notice being given to the Underwriters.(10)</u>	<u>this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.(10.1)</u> <u>Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 8.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.(10.2)</u>
明顯改變承保範圍之用語	Shipowners	Carriers(§3)
	against <u>such proportion of liability under the contract of affreightment</u> “Both to Blame Collision” Clause <u>as is in respect of a loss recoverable hereunder.</u>	<u>in respect of any risk insured herein,</u> against liability <u>incurred</u> under <u>any</u> Both to Blame Collision Clause <u>in</u> the contract of <u>carriage.</u> (§3)
		<u>to withstand the ordinary incidents of the insured transit where such packing or preparation(§4.3)</u> <u>and "employees" shall not include independent contractors) (§4.3)</u> <u>where, at the time of loading of the</u>

	<p><u>subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage(4.6)</u></p> <p><u>This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract(4.6)</u></p>
<u>arising from(4.7)</u>	<u>directly or indirectly caused by or arising from(4.7)</u>
where the Assured <u>or their servants are</u> privy to the such unseaworthiness or unfitness, at the time <u>the subject-matter insured is loaded therein.</u>	<u>where loading therein or thereon is carried out prior to attachment of this insurance or by the Assured or their employees and they</u> are privy to such <u>unfitness at the time of loading.(5.1.2)</u>
	Exclusion 5.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract. (新增 5.2)
<u>unless the Assured or their servants are privy to such unseaworthiness or unfitness.(5.2)</u>	
<u>goods leave</u> the warehouse or place of storage at the place <u>herein(8.1)</u>	<u>subject-matter insured is first moved in the warehouse or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance(8.1)</u>
<u>delivery to the consignees' or other(8.1.1)</u>	<u>completion of unloading from the carrying vehicle or other conveyance in or at the(8.1.1)</u>
<u>delivery to the consignees' or other final(8.1.2)</u>	<u>completion of unloading from the carrying vehicle or other conveyance in or at any other(8.1.2)</u>

		<u>when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit(新增 8.1.3)</u>
	Delivery(9.1)	Unloading(9.1)

