

# 中国船东互保协会文件

中船保赔字[2012]14 号

## 关于推荐使用新的承运易流态化货物租约条款的通函

各会员公司：

### 背景

近年来某些散装货物因含水量过高而在运输途中流态化，从而导致船货安全事故频发。特别是某些并未在《国际海运固体散货安全操作规则》（IMSBC Code）中列名的货物流态化所引发的安全问题，如铁精矿和镍矿等更是引起了航运界广泛而持续的关注。在某些情况下，由于船东及其代表面临极端的压力甚至是人身威胁，无法在相关货物装货前取样以获得货物的实际含水量数值。为应对此种局面，协会曾于 2011 年 11 月签发赔字【2011】20 号通函《关于推荐使用承运易流态化货物租约条款的通函》，向所有会员推荐使用国际保赔集团（IG）所制定的“承运易流态化货物租约条款”。近日，国际保赔集团会同波罗的海航运公会（BIMCO）共同制定了新版本的“承运易流态化货物租约条款”。协会推荐会员在租约合同（包括期租租约和程租租约）中并入此新版本条款。该条款将取代协会赔字【2011】20 号通函中向会员推荐的旧版本条款。

## 条款的主要特点

新版本“承运易流态化货物租约条款”主要有以下三个特点：首先，针对装运易流态化货物，根据 IMSBC Code 的规定，租家应当在货物开装前充足的时间内向船东提供托运人签署的书面文件证明货物的实际含水量并未超过货物的适运水分限（TML）。第二，条款规定船东有权在装货前取样检测，船长有权要求安全处置货物，卸载和替换货物以及当其认为装运该批货物将有害于船员和船舶安全时有权拒绝开航。第三，租家应当承担所有费用并且对其违反有关义务而产生的索赔承担责任。

## 条款的细节内容

（a）条规定了租家负有不可推卸的责任以确保所有的待装散装货物的状况符合所有可能适用的国际公约和法律规范的要求，包括 IMSBC Code。

（b）条中对涉及运输易流态化货物的事项进行了规定。依据 IMSBC Code 的有关规定，在开始装货前，租家必须向船长（或其代表）提供有关货物的证明文件。包括货物适运水分限（TML）证书以及货物实际含水量证书。根据 IMSBC Code 的规定，为测定货物实际含水量而进行的取样应当在装货开始前 7 天进行，但如果在这段期间内出现任何变化（如强降雨），则应当重新出具有关证书。

（c）条第一款赋予船东在装货开始前进行取样的权利，如果租家要求共同进行检测，则独立实验室应当由船东指定。相关的费用以及时间损失由租家承担。现实中的实际困难是：船长或代理常常由于人身健康和安全原因被拒绝进入货物堆场。因此本款最后一句明确规定船长或其代表应当不受限制与阻止地对货物进行取样。在实际操作中，这可能意味着货物样品是从托



运人的传送带上获取的。

(c) 条第二款规定根据船长“基于其合理判断的最终决定”，如果船长认定货物的流态化（但不仅仅限于流态化）对船舶、人员或货物的安全产生威胁，在这种情况下，船长可以拒绝接收或装载货物或者开航，并要求替换安全货物。

(d) 条是关于责任与赔偿条款，其中规定租家应当对由于其（针对船东的）指示或未能履行其义务而产生的所有损失、费用、花费和责任负责。

(e) 条明确说明本条款不影响租家在租约项下的其它义务；同时船长或船东对本条款的遵守并不意味着对船东权利的放弃。

特此通函。

附件：国际保赔协会集团推荐使用的“承运易流态化货物的租约条款”



关键词：中船保、易流态化、租约、通函

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抄送：大连办事处、上海办事处、中国保赔服务（香港）有限公司

中国船东互保协会

2012年12月17日印发

附件:

QUOTE

**Solid Bulk Cargoes that Can Liquefy Clause for Charter Parties**

(a) The Charterers shall ensure that all solid bulk cargoes to be carried under this Charter Party are presented for carriage and loaded always in compliance with applicable international regulations, including the International Maritime Solid Bulk Cargoes (IMSBC) Code 2009 (as may be amended from time to time and including any recommendations approved and agreed by the IMO).

(b) If the cargo is a solid bulk cargo that may liquefy, the Charterers shall prior to the commencement of loading provide the ship's Master, or his representative, with all information and documentation in accordance with the IMSBC Code, including but not limited to a certificate of the Transportable Moisture Limit (TML), and a certificate or declaration of the moisture content, both signed by the shipper.

(c) The Owners shall have the right to take samples of cargo prior to loading and, at Charterers' request, samples to be taken jointly, testing of such cargo samples shall be conducted jointly between Charterers and Owners by an independent laboratory that is to be nominated by Owners. Sampling and testing shall be at the Charterers' risk, cost, expense and time. The Master or Owners' representative shall at all times be permitted unrestricted and unimpeded access to cargo for sampling and testing purposes.

If the Master, in his sole discretion using reasonable judgement, considers there is a risk arising out of or in connection with the cargo (including but not limited to the risk of liquefaction) which could jeopardise the safety of the crew, the Vessel or the cargo on the voyage, he shall have the right to refuse to accept the cargo or, if already loaded, refuse to sail from the loading port or place. The Master shall have the right to require the Charterers to make safe the cargo prior to loading or, if already loaded, to offload the cargo and replace it with a cargo acceptable to the Master, all at the Charterers' risk, cost, expense and time. The exercise by the Master of the aforesaid rights shall not be a breach of this Charter Party.

(d) Notwithstanding anything else contained in this Charter Party, all loss, damage, delay, expenses, costs and liabilities whatsoever arising out of or related to complying with, or resulting from failure to comply with, such regulations or with Charterers' obligations hereunder shall be for the Charterers' account. The Charterers shall indemnify the Owners against any and all claims whatsoever against the Owners arising out of the Owners complying with the Charterers' instructions to load the agreed cargo.

(e) This Clause shall be without prejudice to the Charterers' obligations under this Charter Party to provide a safe cargo. In relation to loading, anything done or not done by the Master or the Owners in compliance with this Clause shall not amount to a waiver of any rights of the Owners.

UNQUOTE