

# CIRCULAR

SETTING THE STANDARD FOR SERVICE AND SECURITY

TO ALL MEMBERS

20 October 2010

Dear Sirs

## **INTERNATIONAL GROUP STANDARD FORM LETTERS OF INDEMNITY AND DELIVERY OF CARGO WITHOUT PRODUCTION OF BILLS OF LADING**

The purpose of this circular is to:

- 1 remind members of the implications for club cover of delivering cargo without production of the bills of lading and of the International Group of P&I Clubs (IG) standard form letters of indemnity and
- 2 advise members of new precautions to be taken when accepting a letter of indemnity for delivery of cargo without production of the original bill of lading

### **Club cover and letters of indemnity**

If cargo is delivered without production of the original bill of lading there may be an allegation that the cargo has been delivered to the wrong party. Members are reminded that, unless the board otherwise determines, there shall be no recovery from the club in respect of liabilities arising out of the delivery of cargo without production of the original bill of lading and/or delivery at a port other than that stated in the bill of lading. If they cannot produce the bill of lading, cargo claimants may offer a letter of indemnity. In such circumstances, members are strongly advised to ensure that they are fully satisfied with the financial standing and authority of those who are to issue and sign these indemnities.

The standard form letters of indemnity are designed to cover a broad range of trades and operations, and members may wish to modify the standard forms to suit particular requirements. However, in this event, it must be appreciated that if a bank is to join in the letter of indemnity there may be limited scope for amendment, and that the bank will have to be consulted if any material change is contemplated. The managers will be pleased to advise members regarding any proposed modification.

Members may be requested by charterers to agree clauses in charter parties which expressly provide for the delivery of cargo without production of bills of lading and/or at ports other than those stated in the bills of lading against letters of indemnity. Members are strongly advised not to accept such clauses and it is recommended that members seek advice from the managers before responding to such requests.

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#### **The Standard Steamship Owners' Protection and Indemnity Association (Europe) Limited**

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The IG has previously recommended three standard forms of letters of indemnity to be issued when the party requesting delivery is to sign the letter of indemnity. These letters are given in return for:

- (A) delivery of cargo without production of the original bill of lading (INT GROUP A wording)
- (B) delivery of cargo at a port other than that stated in the bill of lading (INT GROUP B wording)
- (C) delivery of cargo at a port other than that stated in the bill of lading and without production of the original bill of lading (INT GROUP C wording).

A second version of each of these letters of indemnity was drafted for use when a bank counter signs (INT GROUP AA, INT GROUP BB and INT GROUP CC wordings respectively).

### **Delivery of cargo without production of bills of lading – new additional precautions**

Following a recent English court decision (Farenco Shipping Co Ltd –v- Daebo Shipping Co Ltd (LLR (2009) Vol 1 81 (the ‘*BREMEN MAX*’)) the club recommends that members take two further precautions if they choose to accept a letter of indemnity for delivery of cargo without production of the original bill of lading.

#### 1. *The identity of the party to whom delivery is to be made*

The opening paragraph of the letter of indemnity includes several items of information that should be inserted when the letter of indemnity is issued. It is recommended that as well as inserting the name of the specific party to whom delivery is to be made, members should request that the wording is extended to include that party’s representatives (in the INT GROUP A, AA, C and CC wordings). For example, if the member is asked to deliver the cargo to XYZ Ltd, the letter of indemnity should expressly state the party to whom delivery is to be made is:

*"XYZ Ltd or to such party as you believe to be or to represent XYZ Ltd or to be acting on behalf of XYZ Ltd".*

If a specific party only is named in the letter of indemnity, the member may be assuming the burden of properly identifying that party. If the member then mis-identifies the party, and delivers to a different party, there is then the risk that the member is not entitled to an indemnity, because he has not satisfied the pre-conditions in the letter of indemnity for delivery to the named party. The wording suggested above is designed to ensure so far as possible, that if the member believes that the party to whom physical delivery of the cargo is given is XYZ Ltd or is acting on behalf of XYZ Ltd, he can rely on the letter of indemnity.

#### 2. *Timing of demands for security under the letter of indemnity*

If a member delivers cargo without production of the bill of lading (in return for a letter of indemnity) and it is alleged that it has mis-delivered the cargo, the claimant may demand security. If so, the member should immediately give notice to the issuer of the letter of indemnity that:



- (a) a claim has been notified,
- (b) security has been demanded from the member, and
- (c) the member now requires to be secured by the issuer in accordance with paragraph number 3 of the letter of indemnity.

It is essential that this is done before the member provides any security to the claimant. The member may prejudice his right to demand and receive security under the letter of indemnity if he provides security to the claimant before making his own demand for security under paragraph number 3 of the letter of indemnity.

All clubs in the International Group have issued circulars on this subject.

Yours faithfully

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