

## Letters of indemnity re delivery cargo without BL and/or change of destination

Whilst members should note that:

- Claims arising out of delivery without production of bills of lading are not covered by P&I (Rule 15.5)
- Claims arising out of discharge at a port other than the one named in the bill of lading are also not covered (Rule 15.5)
- The letter must be signed by a first class bank unless the member is fully satisfied with the financial standing of the charterer/shipper

Three recommended standard form Letters Of Indemnity (word format) are issued:

1. Delivery of cargo without production of original bill of lading  
LOI A (without bank guarantee)  
LOI AA (with bank guarantee)
2. Delivery of cargo at a port other than that stated in the bill of lading against production of at least one original bill of lading  
LOI B (without bank guarantee)  
LOI BB (with bank guarantee)
3. Delivery of cargo at a port other than that stated in the bill of lading and without production of original bill of lading  
LOI C (without bank guarantee)  
LOI CC (with bank guarantee)

\* Two further precautions in respect of Version A and AA are mentioned below following the case of the "Bremen Max"

\* Versions A,B and C for use when the commercial party requesting delivery (the "Requestor") will alone be signing the Letter of Indemnity.

\* Versions AA, BB and CC for use when a bank will be joining in the Letter of Indemnity and which forms incorporate, in addition to the same indemnities given by the Requestor under LOI A, B and C, the separate standard wording agreed with the banks.

Explanation of the principal features of the wordings of these LOI's:

### Financial Limit

The liability of the Requestor should generally not be limited. However, where a bank is to join in the Letter of Indemnity it will generally insist upon a fixed monetary limit. The amount of the limit must be a matter for negotiation in order that it properly reflects the potential exposure in the particular circumstances, taking into account, *inter alia*, the sound market value of the cargo at the time of delivery, but it is recommended that the limit should be a minimum of 200% of the sound market value of the cargo at the time of delivery.

### Duration of security

Under LOI A and AA the liability of the Requestor (and, hence, the bank under AA) terminates upon the delivery of all original bills of lading to the shipowner. If the original bills of lading are not delivered to the shipowner, the Requestor's liability under the Letter of Indemnity continues. Subject to delivery of all original bills of lading as stated, and to the two exceptions described below, the bank's liability under LOI AA is for an initial period of six years, but which is automatically renewable from time to time for further periods of two years at the request of the shipowner. The exceptions are (1) that, rather than agree to an extension of its liability, the bank has the option of discharging its liability by paying the maximum amount payable under its indemnity and (2) that, in the event of a demand being made by the shipowner to the bank for payment under the indemnity before the termination date, or in the event of the bank being notified by the shipowner of the commencement of legal proceedings against the shipowner before the termination date, the liability of the bank will continue until the demand has been paid or the legal proceedings have been concluded, the bank, if called upon so to do, paying the amount of any judgment or settlement payable by the shipowner if the Requestor has failed to do so.

Under LOI B, C, BB and CC, since it is possible for a claim to be pursued against a shipowner for delivering cargo at a port other than that stated in the bill of lading despite cargo being delivered against production of the original bill of lading, or all original bills of lading being subsequently delivered to the shipowner (in particular, in circumstances where a charterer may require a cargo owner to receive his cargo at such other port against his wishes and request the shipowner to accommodate his request), the liability of the Requestor will continue until it can be established to the satisfaction of the shipowner that no such claim will be made.

Accordingly, unless the shipowner is satisfied that no claim of this nature will be made, the liability of the bank under LOI BB and CC will be as described under LOI AA above.

#### Scope of security

The Requestor is obliged to provide bail or other security not only to prevent or lift the arrest of the ship the subject matter of the indemnity, but also any other ship in the same or associated ownership, management or control. In addition, the Requestor is obliged to provide bail or other security to prevent interference in the use or trading of the ship, such as a caveat being entered on the ship's registry to prevent the sale of the ship the subject matter of the indemnity.

Where a bank joins in the Letter of Indemnity it will generally not agree to provide bail or other security. However, the bank will pay any amount up to the limit of its liability under the Letter of Indemnity in order to enable the shipowner to arrange the provision of security if the Requestor fails to provide bail or other security.

#### Tankers

A provision designed to give greater security to tankers has been incorporated, whereby requested delivery of a bulk liquid or gas cargo to a terminal or facility, or to another ship, lighter or barge is to be deemed to be delivery to the party to whom delivery has been requested.

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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 Requestor's bank will have to be consulted if any material change is contemplated. NNPC will be pleased to advise Members regarding any proposed modification.

Finally, it is not uncommon for Members to 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 case of the '*Bremen Max*':

Following the decision in the English Commercial Court in the case of the '*Bremen Max*' (Farenco Shipping Co Ltd -v- Daebo Shipping Co Ltd LLR (2009) Vol 1 81) 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. The precautions relate to:

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

The opening paragraph of the Letter of Indemnity includes a.o. an italicised insertion in brackets re the identity of the party to whom delivery is to be made which is to be completed when the Letter of Indemnity is issued: [*insert name of party to whom delivery is to be made*]

Recommendation: As well as inserting the name of the specific party (person or company) to whom delivery is to be made, Members should request that the blank section be completed as follows: "*X [name of the specific party] or to such party as you*

*believe to be or to represent X or to be acting on behalf of X"*

Reason: 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 some other 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 X or is acting on behalf of X, he can rely on the Letter of Indemnity.

2. *Timing of Demands under the Letter of Indemnity*

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 Clause 3 of the Letter of Indemnity. Therefore, in the event that a Member delivers cargo without production of the bill of lading in return for a Letter of Indemnity and an allegation is subsequently made against the Member that it has mis-delivered the cargo, accompanied by a security demand from the claimant, then the Member should immediately -and in any case definitely **before** the Member provides any security itself to the original claimant- give notice to the issuer of the Letter of Indemnity that:

1. a claim has been notified
2. security has been demanded from the Member
3. the Member now requires to be secured by the issuer in accordance with paragraph 3 of the Letter of Indemnity.