

PRACTICAL GUIDE

BILLS OF LADING

Letters of Indemnity

Executive summary

- A Letter of Indemnity (LOI) should be requested if asked to do something that one is not contractually or legally obliged to do.
- The LOI can act as a replacement for the P&I cover where the P&I cover has been prejudiced.
- Three International Group LOI wordings exist.
- The financial strength of party offering the LOI must be considered.

A. Who is this article intended for?

This article is written with the member, in-house claims teams or legal counsel in mind and anyone else involved in preparing a LOI.

For a more detailed explanation we refer to the Club's publication *'In Focus: Letters of Indemnity'* and recommend that the two be read and considered together.

B. When should a Letter of Indemnity be requested?

Ask for a LOI whenever the carrier, or other party, is requested to do something that the carrier, or other party, is not already contractually or legally obliged to do.

C. Why should a Letter of Indemnity be requested?

A LOI shifts exposure to additional risks from the carrier, or other party, to the party signing the LOI. It also acts as a replacement for the P&I cover where the P&I cover has been prejudiced in complying with the request.

D. Points to consider

Points to consider if a LOI is offered are:

- a. Whether the terms of the LOI are acceptable in so far as providing adequate protection?
- b. Whether the financial standing of the party providing the LOI is adequate.
- c. It is vital that LOIs are accepted only from parties that have sufficient financial resources to meet the significant liabilities that the carrier might be exposed to by complying with the request.
- d. Whether the LOI is in respect of a fraudulent act.

e. LOIs provided in respect of fraudulent acts are unlikely to be enforceable in any court of law. Consider whether the provider can be relied upon, especially if the LOI is not legally enforceable - will the provider be 'as good as their word'?

f. Whether the LOI is to be counter-signed by a first-class bank.

g. Ideally, a LOI should be counter-signed by a first-class bank – albeit this is often costly and time-consuming and is only rarely achievable.

h. If the LOI should be obtained from multiple parties.

If it is possible to obtain LOIs from more than one party, this is also recommended. Sometimes it is possible to get a LOI from a shipper and charterer.

E. P&I cover

Where P&I cover has been prejudiced as a result of complying with the request, the prejudice will not be resolved and P&I cover will not be reinstated by obtaining a LOI. In such cases, the LOI stands as a replacement for P&I cover, and not a complement to it. A LOI should not be regarded as protection for the carrier that is equal to, or as reliable as, their P&I cover.

F. The International Group of P&I Club's three standard wordings

There are three standard International Group of P&I Clubs (IG) approved wordings. They cover the following situations:

a. INT GROUP A (& AA): Delivering cargo without production of the original bill of lading.

b. INT GROUP B (& BB): Delivering cargo at a port other than that stated in the bill of lading.

c. INT GROUP C (& CC): Delivering cargo at a port other than that stated in the bill of lading and without production of the original bill of lading.

The AA, BB and CC versions include a bank's countersignature and include the bank's agreement to guarantee the LOI.

G. DIY Letters of Indemnity

If a 'DIY' LOI is to be drafted, the following points should be borne in mind:

a. Ensure the LOI is on the letterhead of and signed by/on behalf of the party providing it. Using the words 'Authorised signatory' under the space left for the signature, may assist.

b. Ensure the LOI is correctly addressed to the party receiving it.

c. As with the IG wordings, ensure the vessel, voyage, cargo and bill(s) of lading involved are all correctly identified.

d. Accurately describe what has happened and what the party being given the LOI has been asked to do e.g. 'The vessel has loaded a cargo of 'x' and is now being asked to load a cargo of 'y' on top', or, 'the vessel has been asked to continue to load the cargo of 'z' during periods of rain'. If you have sufficiently described, firstly, what has happened and, secondly, what is being asked of the party receiving the LOI, then the generally worded, indemnity paragraphs below ought to be sufficient

e. Insert the operative words: 'In consideration of your complying with our above request, we hereby agree as follows:'

f. Add the indemnity paragraphs (which are based on the IG 'INT GROUP' wordings) below.

1. *'To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of your complying with our request.'*

2. *'In the event of any proceedings being commenced against you or any of your servants or agents in connection with your complying with our request as aforesaid, to provide you or them on demand with sufficient funds to defend the same.'*

3. *'If, in connection with your complying with our request as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.'*

4. *'The liability of each and every person under this indemnity shall be joint'*

and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.'

5. 'This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.'

Note: Paragraph 4 is only appropriate where more than one party is signing the LOI, but if included when

only one party is signing, it will probably do no harm if included by mistake.

It is important to note that the bail and security indemnity set out in paragraph 3 above is not a guarantee that the issuer of the LOI will provide bail or security in order to release a vessel, which is arrested or detained as a result of complying with the request of the issuer of the LOI.