

No. 20 2010/2011 - International Group Standard Form Letters of Indemnity

October 2010

Dear Sirs

INTERNATIONAL GROUP STANDARD FORM LETTERS OF INDEMNITY

Delivery of cargo without production of Bills of Lading

Members are referred to the Circular on delivery of cargo under bills of lading, without production of the original bill of lading, issued in February 2001 and the accompanying International Group Standard Form Letters of Indemnity.

Following the decision in the English Commercial Court in the case of 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. 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 number of italicised insertion instructions in brackets which are to be completed when the Letter of Indemnity is issued. This Circular deals with the identity of the party to whom delivery is to be made which appears as:

[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 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*

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 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
- (c) the Member now requires to be secured by the issuer in accordance with paragraph 3 of the Letter of Indemnity.

It is essential that this is done before the Member provides any security itself to the original claimant.

Reason: 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.

All Clubs in the International Group of P&I Clubs have issued similar circulars.

Yours faithfully

For: **West of England Insurance Services**
(Luxembourg) S.A.
(As Managers)

R J B Searle
Director