

12 September 2023

Updated suite of IG-approved Letter Of Indemnity wordings

The International Group (“IG”) Standard Form Letters of Indemnity (given in return for delivery of cargo without production of an original bill of lading and/or delivery of cargo at a port or place other than stated in the bill of lading) were last reviewed in 2010. Despite the risks involved they remain widely used (and, in some trades, it is almost the rule that cargo is delivered pursuant to a Letter of Indemnity). A number of recent English Court judgements have upheld their overall effectiveness, despite attempts by some parties to escape their contractual obligations.

Nevertheless, no documents such as these can stand still, and over recent years an IG working group has undertaken a review of the wordings, with assistance from charterer and owner representatives and from BIMCO. As a result, the Group Clubs are today publishing revised versions of the Standard Forms of Letters of Indemnity, which can be found attached to this Circular. The Clubs were particularly grateful to receive support and advice on the wordings from retired English Commercial Court judge Sir Nigel Teare.

In a departure from previous versions, the revised wordings are accompanied by explanatory notes which examine the individual changes and reflect on their rationale. These notes can also be found attached to this Circular. Importantly the new wordings feature a prominent warning to remind Members that accepting a Letter of Indemnity in the relevant circumstances will prejudice a Member’s P & I cover, and liabilities will only be covered if a Club’s Board of Directors decides in its discretion that it is appropriate to do so. Use of the standard wordings does not overcome this position. In the circumstances, Members who accept Letters of Indemnity are strongly advised to ensure they are fully satisfied with the financial standing of any counterparty to a Letter of Indemnity.

The review was carried out through the Group’s Bills of Lading Committee, whose remit also includes electronic bills of lading. The period of the review has also seen a growth of interest in electronic bills. Operators who have adopted them report that this comes with a corresponding fall in the need to rely on Letters of Indemnity, removing commercial risk from an owner’s shoulders, and reducing the sizeable burden of potential liabilities for charterers, which for some corporates can run into hundreds of millions of dollars a year.

All IG Clubs support the use of electronic bills, and where an electronic trading system has been approved by the IG, cover is in place as if that bill of lading was a paper bill. As at today’s date, there are ten electronic bill of lading platforms that have been approved by the IG. That number is expected to rise, particularly as legal systems adapt to reflect the growth in electronic trading. In the UK, the Electronic Trade Documents Act 2023 is due to come into force on 20 September 2023. This is a very significant development, under which English law will recognise that, subject to meeting certain criteria, an electronic bill of lading has the legal equivalence of a paper bill. This could do away with the need for many of the complex contractual arrangements that the current platforms have had to use to overcome the legal lacunae that existed prior to the Act, and enhance the prospects of the exponential increase in the use of electronic bills to which many leading transport operators and shippers have committed.

However, until that time, Letters of Indemnity will be needed, and the Group is confident that these revised wordings will reduce the scope for disputes even further.