

SHIPPING | SEPTEMBER 2023

INTERNATIONAL GROUP ISSUES NEW STANDARD FORM LOIs

On 12 September 2023, the International Group of P&I Clubs (IG) published a suite of updated standard form Letters of Indemnity wordings covering the three main circumstances in which Letters of Indemnity (LOI) are issued:

1. Delivery of cargo without production of the original bill of lading
2. Delivery of cargo at a port other than that stated in the bill of lading
3. Delivery of cargo at a port other than that stated in the bill of lading and without production of the original bill of lading.

While a potential full redraft of the previous iteration of the LOIs was considered, in light of the broad acceptance and use of LOIs in the industry and with the assistance of former Admiralty Judge Sir Nigel Teare, plus consultation with representatives from charterers, owners and BIMCO, the IG has adopted an evolution not revolution approach.

There are a number of changes to the LOIs' form and style, with shorter sentences in the introductory paragraph and helpful sub-sections which make for easier reading and clearer understanding.

An interesting addition is a text box inserted on the first page of each of the new LOIs that parties to LOIs should be cognisant of the fact that acceptance of an LOI "*will take an owner/carrier or other recipient of a LOI outside the scope of their P&I cover*" as well as highlighting the importance of confirming the creditworthiness of the issuer of the LOI. While the amendment does not reflect a change in the P&I Clubs' approach to the use of LOIs, it is a helpful reminder to those that rely on LOIs to satisfy themselves of the financial standing of their counterparty. In many cases that we have handled, this is often the real impediment to recovery under LOIs.

The key substantive changes to the operative provisions of the LOIs are

- (i) the protection against arrests or interference with vessels of parties other than the owners of the vessel who are actually delivering cargo without original bills (such as Charterers who are receiving LOIs as part of a charter chain); and
- (ii) the inclusion of an express obligation of the LOI issuer in paragraph 3(b) to provide substitute security or counter security if the LOI beneficiary has already provided security, and this is the case even if the security which has been put in place exceeds the value of an arrested vessel.

These will be welcomed amendments by LOI recipients as they widen the protection of the LOIs, particularly for charterers in a chain, and in circumstances where security has already been provided.

Whilst not a substantive amendment to the operative provisions of the LOI, the jurisdiction clause has been slightly amended to automatically refer disputes under the LOI to the exclusive jurisdiction of the English Courts. The IG notes in its pro forma documents that parties to an LOI may be assisted by the benefits afforded by English law and the English courts which other courts may not provide, however parties remain free to agree their own law and jurisdiction clause.

Overall, the amendments to the standard LOI wording make for easier reading. The substantive changes should also offer wider protection and not cause those who rely on LOIs to re-evaluate their use.

Summary of amendments and comments on the new standard form LOIs:

1. Express obligation for issuer of LOI to provide substitute or counter security in circumstances where security has already been provided, even if the security exceeds the value of an arrested vessel.

2. Amendments to structure and phrasing of the introductory paragraph to assist with clarity and understanding of the purpose of the LOIs.
3. Referring any dispute or enforcement of the LOI to the exclusive jurisdiction of the English Courts and to English law, with an associated text box advising of the benefits of such a choice of law provision.
4. Insertion of "dry bulk cargo terminal" in paragraph 4 to expressly include that where bulk cargoes are intermingled with other product, discharge or delivery shall be deemed to have occurred.
5. Insertion of text boxes advising users of the LOI to satisfy themselves of the issuer's financial capacity, and of the signer's identity and authority to issue the LOI.
6. No substantive amendments made to the LOIs that require a bank countersignature.

For more information, please contact the author(s) of this alert



JEAN KOH

Partner, London

T +44 (0)20 7264 8227

E jean.koh@hfw.com



TOM MORRISON

Senior Associate, London

T +44 (0)20 7264 8097

E tom.morrison@hfw.com

hfw.com

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