

Ref : DMA/AIFI/98/C 1063
Date: 05/10/2019

Dear Captain
Good Day,

Kindly find attached informative document issued as "*Differentiation between LOI, LOU & BLG*" for your kind attention and necessary precaution measures.

You are requested to confirm receipt, discuss the contents in the next consolidated meeting on board & keep a copy in the file DA-11 .

Best Regards,

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(Note: This e-mail has been sent as BCC <blind carbon copy to : All R.O.D.-SMC Vessels, to eliminate the lengthy list that would result if this e-mail is printed)

Loss Prevention Circular QITAPI-LP-19-2019
(Differentiation between LOI, LOU & BLG)

► Introduction:

Dealing with liability claims in shipping; we will often come across terminology unfamiliar to those not working with claims on a regular basis. These abbreviations are typical examples often causing confusion and misunderstandings. They are often regarded as names for documents needed when things go wrong, but many have no idea what they contain or which effect they have. It is also often the case that the content of such documents can be legalistic and detailed. This Circular is aimed to explain what these documents are for and the kind of information they should contain in order to protect one's interests.

► LOI – Letter of Indemnity:

When one party wants the other to deviate from a normal or regulated practice, it may be necessary to provide an indemnity. A Letter of Indemnity is a document which purports to give a party a right of recovery against the LOI issuer for any liabilities, losses, costs or expenses arising from following the specific requests/orders contained within the LOI.

A typical shipping example is a charterer's order to a carrier to discharge cargo at a discharge port without the receiver providing an original bill of lading in exchange for the goods being delivered. In these circumstances, the carrier's consequential liability for following such an order is excluded from its P&I insurance. The International Group of P&I Clubs has, however, drafted a standard form LOI, under which an indemnity is created in favour of the carrier.

The issue of insurance cover remains unchanged but the LOI gives the carrier an express right of recourse against the charterer.

A Letter of Indemnity should normally include:

- 1. Reason for issue with a description of the circumstances,***
- 2. Indemnity for a list of specific risks,***
- 3. Agreement to provide funds to defend claims,***
- 4. Agreement to provide security if vessel or assets are arrested,***
- 5. Full list of parties jointly liable under the LOI,***
- 6. Law and jurisdiction of the LOI.***

It is important to remember that LOIs are not a fix-all solution for any kind of problem. Equally important, some LOIs are unenforceable at law, for example an LOI received in return for issuing a clean on board bill of lading despite the fact that the document was known to contain an incorrect description of the cargo or its quantity or its condition. Furthermore, any LOI is only as good as the party providing it. Hence, accepting an LOI does mean a risk of incurring an uninsured loss.

Proclaiming that our expertise have taken utmost care for the authenticity of the information in this document & provision of guidelines as well as notices; whilst permitting the use of the promulgated info & data in training, familiarization and any other possible and legitimate loss prevention activities; QITA Mutual Insurance accepts no liabilities or claims whatsoever arising from or related to the inadequate and inappropriate use or incorrect construing of the furnished knowledge and thus advises all recipients to exert all necessary practices & Due Diligence in carrying out their management & operational activities upon and through which QITA Mutual Insurance is providing professional support & assistance.

► **LOU – Letter of Undertaking:**

While the LOI is a document whereby the provider promises the receiver of it to reimburse his/her financial loss for carrying out certain actions, a Letter of Undertaking is a document whereby the provider promises the receiver of it to reimburse financial loss incurred as a result of a shipping incident.

An LOU is a guarantee often issued by a P&I Club on behalf of its Member to a claimant who allegedly has suffered a loss for which the Member is liable and covered under its P&I insurance. In most cases, a Club LOU is issued on the threat of arrest or detention of a vessel. The term Club LOU will include that, once accepted by the receiver as security for the claim, he/she must release the ship from arrest or detention and promise not to re-arrest the ship or take any action on other assets to obtain security for the same claim.

The main advantages of a Club LOU from the Member's and Club's perspective lie in its ease of issue and flexibility regarding content. Once a security demand is put forward, a Club LOU can be issued as soon as its terms have been agreed, formulated and signed, then faxed or e-mailed across the globe in minutes. The main advantage of a Club LOU from the claimant's perspective is that it obtains a right to recover his claim directly from the Club. It is important that a Club LOU balances the respective interests, i.e. securing the claim without jeopardizing the defendant's rights and defences.

A Club LOU should normally include:

- 1. Identity of parties,***
- 2. Details of the claim,***
- 3. Reason for issue,***
- 4. Reference to the contract or circumstances under which it is given,***
- 5. Maximum amount of security,***
- 6. Triggers for payment,***
- 7. Provision preserving Member's rights and defences,***
- 8. Law and jurisdiction for the claim and for any enforcement of the LOU.***

Normally, the trigger for payment under a Club LOU is a settlement agreement between the parties or a final and enforceable court judgment or arbitration award.

Important limitations to keep in mind: P&I Clubs have no obligation to provide LOUs, they are purely discretionary; Club LOUs may not be accepted in some jurisdictions or by the claimant; the claim may be outside P&I cover.

► **BLG – Bank Letter of Guarantee:**

Bank Guarantees have a long tradition for securing claims. As with any form of security, it is important that the terms included are in line with recommendations for Club LOUs. Due to the costs and time involved in issuing Bank Guarantees, especially where more than one bank is involved, there are many advantages in having a Club LOU issued rather than a Bank Guarantees where possible. It should also be remembered that banks are not immune from financial failure and that a Bank Guarantee is not necessarily a “better” security.

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