

诺亚【2011】08-01 号通函  
中国船东互保协会通函  
——推荐《无正本提单提货担保函标准格式》修订

尊敬的客户：

您好！中国船东互保协会于近日就推荐《无正本提单提货担保函标准格式》的修订，发布了中船保赔字[2011]10号通函，请详见附件：

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国际保赔协会集团(IG)曾于2001年2月修订了无正本提单提货担保函标准格式。我协会也将此作为本协会推荐《无正本提单提货担保函标准格式》登载于协会保险条款及通代名录之附录中，各会员公司可从协会网站和有关刊物上得到该标准格式。

鉴于英国高等法院对Farenco shipping Co Ltd vs. Daebo shipping Co Ltd (LLR(2009) Vol 1 81) (the Bremen Max)一案的判决。协会建议会员在选择接受无正本提单提货担保函时，应当采取下述两项预防措施来规避可能产生的法律风险：

1. 在无正本提单提货担保函标准格式中增加关于识别无单提货人身份的文字。

建议：在上述无正本提单提货担保函标准格式的首段中，有若干需要在签发担保函时填写在括号里的内容，用来明确托运人、收货人、提单指示方、提单中载明的卸货港、担保函出具方、无单提货人、实际放货地点等相关信息。其中，在填写无单提货人的具体名称时，协会建议会员还应当要求增加下述文字：

X[无单提货人的具体名称]或者贵司确信是无单提货人或者可以代表无单提货人或者为无单提货人利益行事的人。

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.

原因：如果仅仅在无单提货担保函中写明无单提货人的名称，那么承运人很可能要承担识别无单提货人身份的责任。如果承运人错误识别了无单提货人的身份，没有将货物交给保函中指定的提货人，那么承运人无权根据保函得到赔偿，因为他没有满足保函上约定的前提条件，也就是没有把货物交给保函指定的提货人。上述措辞的目的在于，如果承运人确信把货物实际交付给了保函上指定的无单提货人或者为无单提货人利益行事的人，则承运人可依赖该保函得到赔偿。

2. 把握要求出具担保函的时间。

如果会员在收取无正本提单提货担保函而无单放货后遭到正本提单持有人的相关索赔和担保要求，会员应当立即通知保函的出具方：

- (1) 已发生相关索赔；
- (2) 索赔人要求会员提供担保；
- (3) 根据保函标准格式第3条的规定，会员要求保函的出具方向其提供相应担保。

在会员向索赔人提供担保之前，做到上述三点十分重要。

原因：如果会员在得到保函出具方向其提供的担保之前就向索赔人提供担保，那么会员的利益很可能受到损害。

特此通函。

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以上，请知悉。

诺亚保险经纪有限公司客户服务中心  
二零一一年七月十日



CHINA SHIPOWNERS  
MUTUAL ASSURANCE ASSOCIATION

10/05/2011

Circular: No. 04E/2011/Claims

**TO THE MEMBERS**

**THE REVISED STANDARD FORM LETTERS OF INDEMNITY**

**Delivery of cargo without production of Bills of Lading**

Dear Sirs,

The International Group of P&I Clubs (IG) revised the International Group Standard Form Letters of Indemnity on Delivery of Cargo without Production of Bills of Lading in February, 2001. This Association also take the same wording as the Club's recommended Standard Form Letters of Indemnity which have been incorporated into the Appendix of its current "Rule Book" and "List of Correspondents". The relevant Standard Form Letters of Indemnity can also be downloaded from the Club website at [www.cpiweb.org](http://www.cpiweb.org) and the aforesaid publications.

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

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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.

**Yours Faithfully**

**For China Shipowners Mutual Assurance Association**