

## **The Inter-Club Agreement: Amendments relating to Security come into force on 1 September 2011**

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The Inter-Club Agreement, which was last amended in 1996 (the "1996 Agreement"), has been further amended to incorporate a new provision dealing with the entitlement to security for cargo claims.

### **The position under the 1996 Agreement**

Clause 4(c) of the 1996 Agreement provides:

"Apportionment under this Agreement shall only be applied to Cargo Claims where ... the claim has been properly settled or compromised and paid."

This provision makes the payment of a cargo claim a condition precedent to any right of indemnity under the 1996 Agreement. The result has been, to date, that if the claim has not been paid, the party sued in respect of a cargo claim has generally been unable to establish a claim upon which to enforce a request to the other party to the relevant charterparty to provide security.

While security could sometimes be obtained, it was often an expensive and time-consuming process. In one case which Reed Smith dealt with recently, a vessel was arrested as security for a claim under the 1996 Agreement. The arrest was strongly challenged in court proceedings, with the result that detailed legal opinions had to be obtained.

It is issues relating to the time and costs required to deal with demands for security under the 1996 Agreement, which have encouraged International Group of P&I Clubs (the "International Group") to resolve the unsatisfactory position under the 1996 Agreement in relation to security.

### **Amendments to the 1996 Agreement**

The principal amendment is a new provision at clause 9 which reads as follows:

9. If a party to the charterparty provides security to a person making a Cargo Claim, that party shall be entitled upon demand to acceptable security for an equivalent amount in respect of that Cargo Claim from the other party to the charterparty, regardless of whether a right of apportionment between the parties to the charterparty has arisen under this Agreement, provided that:

(a) written notification of the Cargo Claim has been given by the party demanding security to the other party to the charterparty within the relevant period specified in clause (6); and

(b) the party demanding security reciprocates by providing acceptable security for an equivalent amount to the other party to the charterparty in respect of the Cargo Claim if requested to do so.

This new clause confers a contractual entitlement to security provided that reciprocal security is given to the other party. That security can be demanded even if a right of apportionment has not arisen. It is simply necessary for the claim to fall within the definition of a "Cargo Claim" as set out in clause 3 of the 1996 Agreement, and for the notice period in clause 6 to have been complied with.

## **Application of the 2011 amendments**

The 1996 Agreement as amended will be referred to as the "Inter-Club New York Produce Exchange Agreement 1996 (as amended September 2011)" (the "2011 Agreement"), and will take effect from 1 September 2011. The 2011 Agreement will apply to charterparties entered into on or after 1 September 2011, where the charterparty refers to either "the ICA 1996 (as amended September 2011)" or "the ICA 1996 or any amendments thereto", or wording to that effect.

The 2011 Agreement will not apply to charterparties which were entered into prior to 1 September 2011, nor to any claims arising under such charterparties, whether those claims arise before or after 1 September 2011. Parties can, however, choose expressly to incorporate the 2011 Agreement into charterparties entered into before that date, and to apply it to claims arising under such charterparties.

The International Group has recommended that its members specifically incorporate the 2011 Agreement into all charterparties on NYPE and Asbatime forms entered into on or after 1



September 2011. Based on previous experience of attempting to obtain security for cargo claims, the amendments to the 1996 Agreement are welcome as they will significantly reduce the time and costs involved in dealing with security issues.

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