



Guest Column

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ROLE OF P&I CLUBS IN SECURING CLAIMS

Amongst the most popular facilities afforded to members by the P&I associations is their assistance in putting up security. Claims, especially cargo claims can lead to huge losses for the ship owner. A party that has suffered a loss or damage following an incident that is likely to lead to a claim will request a guarantee to secure its claim until the matter is resolved in court or settled amicably. It may be that the vessel is arrested by the charterer/ vendor/crew or any other claimant. The member may then seek the assistance of the P&I Club where his ship is entered, to provide security so that his ship is released.

The P&I Club may provide security in the following ways:

1. Undertaking: This is merely an undertaking by the Club that simply states that the association is responsible for payment if the claim is genuine and is covered under the Club rules as also covered under the members terms of entry with the association. This form of security is barely a guarantee and may be difficult to find acceptance.

2. Club letter of Undertaking (LOU): Club LOU is seen to be gaining acceptance in places where formally only bank guarantee were accepted. This form of security is considered to be the most convenient as it ensures speedy assistance and avoids delay which can cause considerable loss to the ship owner. Main advantage of a Club LOU from the members' perspective and that of the Club, is 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. The amount of security specified in the Club LOU is generally the limitation figure or the value of the res or in the event of a dispute as to the amount of security, the figure as determined by the Court. Most of the P&I associations have a standard LOU which provides that in consideration of the claimant releasing from arrest and/or refraining from arresting the vessel, the Club will undertake to pay, on demand, such sums as may be awarded to the claimant in proceedings before a court of competent jurisdiction up to a specified maximum amount. The Clubs have adopted certain rules in order to safeguard themselves from having this facility abused and Clubs are very clear in that LOU's are provided only in appropriate cases. Having said that it is to be noted that there is no obligation upon the Clubs to provide security rather it is purely discretionary.

3. Insurance bond: This form of security is normally provided when a Court demands a form of security. The court will stipulate the amount and the defendant must deposit this into the

courts specified account. This form of security is not much popular except in certain jurisdictions like the US.

4. Bank Guarantee: Sometimes Club LOU is not acceptable and in that case a bank guarantee is most relied upon. Bank Guarantee involves costs and time especially as in most cases more than one bank is involved. A bank guarantee often bears a commission rate of 0.25% to 1% annually on the assured amount. Additionally many banks have a minimum commission charge and various fees such as amendment fee, set up fees and administrative charges. Such fees can be relatively significant in all claims especially large claims that can take several years to conclude. Besides its time consuming and procedural.

5. Payment directly from P&I underwriters: In very urgent cases, the assured can request the P&I Club to pay directly to the claimant. In this case the amount of the applicable deductible is reimbursed by the assured to the Club within a specified period. This form of security is considered only in very exceptional cases and at the discretion of the Club.

Clubs in exercising their discretion to decide whether or not to accede to the ship owners request for providing security may take various factors into consideration.

- All premiums should have been fully paid up by the member.
- The claim must be of a P&I nature.
- The risk must be covered under the members' terms of entry with the Club.
- The level of deductible is checked. If the claim itself falls below the applicable deductible, a guarantee from the Club may not be available.
- The amount or quantum of the required security must be accepted.
- The incident in respect of which the vessel is arrested or is likely to be must give rise to a true liability against the member.

When a P&I Club provides security, it is important to understand that the Club has not accepted any liability for the claim either with respect to the ship owner or the claimant. The P&I Club is merely a guarantor on behalf of the ship owner. Clubs under any circumstances do not provide unconditional guarantees. The payment is limited either in accordance with an agreement reached between the parties or a final order of an arbitral Tribunal or the courts.