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# **Letters of Indemnity in International Trade**

Presentation given by Bernard Vischer at the Propeller Club Port of Geneva  
Conference on 27 January 2005, at UBS Geneva



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# Introduction

1. What do Traders' LOI cover



2. How much do Traders' LOI cover



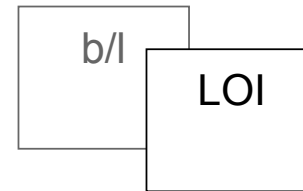
3. How long do Traders' LOI cover



4. Risk mitigation



# 1. Functions of Traders' LOI



1. **Functions of Traders' LOI**
2. Extent of Indemnity
3. Duration
4. Risk Mitigation

Obtain payment without production of the documents

Substitute for document of title function:

- Warranty of title to the goods

Substitute for receipt function:

- Indemnity for all losses resulting from failure to deliver the documents in accordance with the contract



# Scope of the Warranty



1. **Functions of Traders' LOI**
2. Extent of Indemnity
3. Duration
4. Risk Mitigation

“We hereby warrant to you that:

- at the time of loading we had the right to sell the said cargo to you, and that
- title in the said cargo has been passed as provided in the contract to you free from any and all liens, charges and encumbrances of any nature whatsoever.”



# Risks covered by Traders' LOI



1. **Functions of Traders' LOI**
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## 1. Receipt function:

- risk that cargo does not exist
- risk that cargo has not been loaded
- risk that the documents are not conform
- risk that rights cannot be exercised without the documents

## 2. Warranty of title function:

- legal risk that shipper or trader does not have title to the goods or that their title be challenged after LOI is issued



## 2. Extent of Indemnity under an LOI



1. Functions of Traders' LOI
2. **Extent of Indemnity under an LOI**
3. Duration
4. Risk Mitigation

“We hereby undertake to indemnify you and hold you harmless against any claims made against you by anyone and all losses costs, damages and expenses which you may suffer, incur or be put to as a result of:

- a breach of our warranties and/or
- our failure to deliver the documents or any of them in accordance with the contract”



# Unlimited Liability



1. Functions of Traders' LOI
2. **Extent of Indemnity under an LOI**
3. Duration
4. Risk Mitigation

No maximum amount

Covers especially:

- purchase price paid by buyer/beneficiary of LOI
- loss due to the non-conformity of the documents
- loss of profit of the buyer
- loss under an LOI issued in reliance on the LOI received (cost and loss of profit of all traders down the chain)
- carrier's costs (demurrage, security, legal costs) caused by unloading delay or attachment of cargo or vessel (due to missing bill of lading or due to title or misdelivery dispute)



# The Banks' Rights / Liabilities



1. Functions of Traders' LOI
2. **Extent of Indemnity under an LOI**
3. Duration
4. Risk Mitigation

## As issuer of an LOI

- Joint and several liability with seller (« We join... »; « We, as principal, irrevocably and unconditionally, join in... »; « We are jointly and severally liable... »; « We guarantee payment under this LOI... »)
- Credit risk on seller/client: need for counter-indemnity

## As recipient of an LOI

- Security limited to a contractual claim under LOI (no pledge on the b/l)
- If LOI is issued in favour of the client, need for an assignment of the LOI



## 3. Duration



1. Functions of Traders' LOI
2. Extent of Indemnity
3. **Duration**
4. Risk Mitigation

LOIs have no time limitation but terminate on actual delivery of the missing documents.

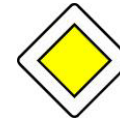
- No expiry if the documents presented are not in conformity with the contract
- Statute of limitation:
  - Swiss law: ten years as from day claim arose
  - English law: six years as from the cause of action
- Practical considerations:
  - one year time limitation for any claim against the carrier as from delivery or day when cargo should have been delivered
  - if any, problems will pop up soon (journeys usually not much more than 10 days; payment terms usually short)



4.



## **Risk-Mitigation**



1. Functions of Traders' LOI
2. Extent of Indemnity
3. Duration
4. **Risk Mitigation**

1. Ascertain that cargo is loaded and track it until unloaded
2. Ascertain that charter party allows for discharge against LOI
3. Locate documents and assess distance and time needed for them to reach you
4. Assess credit risk of counterparty
5. Endeavour to obtain documents after LOI is issued



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