

# CIRCULAR

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## **OUTLINE**

- This circular should be read in conjunction with Circular 15/10 regarding the International Group of P&I Clubs (IG) and BIMCO Himalaya clause for use in bills of lading and other contracts
- A revised Himalaya Clause wording has been produced with the objective of making it clear that the protection afforded under the clause is extended to ship managers.
- A copy of the revised clause is attached to this circular.

## TO THE MEMBERS

Dear Sirs,

### **REVISED HIMALAYA CLAUSE FOR BILLS OF LADING AND OTHER CONTRACTS**

Members were advised by Club circular 15/10 issued in October 2010 of the joint review of the Himalaya clause for use in bills of lading and other contracts undertaken by the International Group of P&I Clubs (IG) and BIMCO, and of the revised BIMCO/IG Himalaya Clause wording recommended for adoption following that review. This further circular should be read in conjunction with the 2010 circular, which set out the key features and intended effects of the 2010 revision of the original Himalaya Clause.

Since publication of the recommended revised wording in 2010, it has been reported that there have been cases in the US where claimants have filed suit against ship managers in order to avoid the COGSA defences/limitations which protect shipowners. US legal advice was therefore obtained on a possible amendment of the current revised clause, which expressly extends to “servant, agent, direct or indirect sub-contractor or any other party employed by or on behalf of the Carrier,” to also expressly include managers.

Most other jurisdictions would be likely to interpret the clause as currently drafted as extending to a manager employed by the owner. On the basis of the advice received, and with the joint agreement of BIMCO, a further revised Himalaya Clause wording has been produced with the objective of making it clear that the protection afforded under the clause is extended to managers. The revised wording is set out in the appendix hereto. Members are recommended to amend their contracts of carriage to incorporate this new clause.

The clause may also be downloaded from the BIMCO website at [www.bimco.org](http://www.bimco.org) and is also available as an additional clause to subscribers of BIMCO’s online charter party editing system, idea.

All clubs in the International Group are issuing a similar circular on this subject.

Yours faithfully

**THE MANAGERS**

### **For more information**

Members requiring further information should contact their usual Club contact.