



## **Gard Alert: Nigeria – developments on Letter of Comfort wording and charterers' LOIs**

The Nigerian National Petroleum Corporation has issued a revised “Letter of Comfort” wording.

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Following the publication of our Gard Alerts of [18 September 2015](#) and [5 October 2015](#) addressing the Nigerian ban of crude oil tankers, Nigeria's national oil company, the Nigerian National Petroleum Corporation (NNPC), has issued a revised "Letter of Comfort" wording.

### The revised Letter of Comfort

On the face of it, the revised template wording for the Letters of Comfort addresses some earlier concerns, however, problems remain:

- There is confusion over who is required to sign a Letter of Comfort.
- The Letters of Comfort may go well beyond what Nigerian law would otherwise impose.
- It is unclear exactly what activity would be considered a breach of a Letter of Comfort.
- The Letters of Comfort confirm that if it is breached the vessel will be sanctioned under the Nigerian laws, but it is far from clear what sanctions could be imposed or if the Letter of Comfort enables more onerous sanctions to be imposed.

Some charterers have requested that tanker owners sign the revised Letter of Comfort, either addressed to the charterers, or directly to the NNPC. Sometimes a letter of indemnity (LOI) has been offered by the charterers in return.

As far as is known, the provision of a Letter of Comfort has not been made mandatory under the Nigerian law, and other parties are able to tender one if the vessel owner does not do so. In the absence of an express contractual provision, it is therefore unlikely that a charterer's order that a vessel provide a Letter of Comfort would constitute a valid employment order under a standard form tanker charterparty.

Before refusing a charterer's request, owners should seek legal advice and review all the conditions and terms in the charterparties so as to ascertain their rights and obligations under the governing charterparty.

If a charterer offers an LOI in return for the owner signing a Letter of Comfort, owners should think through carefully before making the commercial decision to accept:

- If possible, avoid limits on when claims can be brought, or monetary limits.
- Check carefully to ensure the LOI does not reduce, rather than increase, the indemnities that are otherwise given to the owners under the charterparty.
- Some charterers are referring to “Club-approved” Letters of Comfort and/or LOI wordings. Gard has not “approved” any such wordings, especially given the insurance complications mentioned in the Gard Alert of 18 September 2015. Gard is providing advice to Members, on a case by case basis, on how they might best protect themselves. The advice given does not put the Member in any better position as far as cover is concerned.
- Even with an LOI, confirmation of cover cannot be provided, not least because the Letters of Comfort concern “illegal activities” and the potential scope for liability is difficult to envisage.

## Recommendations

Despite the improvements in the revised template wording for the Letters of Comfort, problems remain, and we recommend that:

- The grounds for the earlier ban and what the tank owners in the list of banned vessels need to do to remove his ship from the list still remains unclear. Owners of previously banned tankers should be extremely cautious about those vessels calling to Nigeria or sailing to the Nigerian Exclusive Economic Zone.
- Owners should not sign Letters of Comfort addressed to the NNPC and refer any requests for such Letters to charterers.
- Consider using INTERTANKO’s Nigeria Trade Clause under which charterers are to comply with such documentary requirements. INTERTANKO’s Nigeria Trade Clause can be found in the members’ section of their website.
- If a charterer insists on receiving a Letter of Comfort, consider using the INTERTANKO model wording as set out in our Gard Alert of 5 October 2015.
- There is no standard form LOI wording for these scenarios, so check carefully what you are being offered before accepting one.
- Be particularly vigilant in dealing with and reporting to all local authorities if loading in Nigeria.
- Continue to take great care with bill of lading figures.
- Provide outturn figures and documents if required by the NNPC or other Nigerian government entities. INTERTANKO’s Nigeria Trade Clause allocates responsibility to charterers for the outturn verification at the discharge port.

We are not currently aware of any Letters of Comfort having been issued by Members directly to the NNPC. Nor are we aware of any fines, penalties, prosecutions or detentions in relation to NNPC directives.

Further developments will be advised when available.

Please direct any questions to your usual Defence cover point of contact.