Inter-Club New York Produce Exchange Agreement 2011 (as amended July 2025)

The Interclub Agreement (ICA) constitutes a well-established and widely accepted mechanism for the allocation of liability in respect of cargo claims as between owners and charterers under the NYPE and ASBATIME charterparties. Owing to the practical and effective solutions it provides in resolving such disputes, the ICA has subsequently been incorporated by express reference into other forms of time charterparties. Where incorporated into the charterparty by agreement of the parties, the ICA forms an integral part of the contract and facilitates the uniform and efficient handling of cargo claims.

The Interclub Agreement was initially formulated in 1970 by the P&I Clubs within the International Group, but has since been amended in response to practical needs arising from its application. Revisions were made in 1984, 1996, and 2011, with the most recent amendment having entered into force on 14 July 2025.

The amendments introduced to the ICA in 2025 aim to reduce the legal uncertainty — which was also evident in the case of *Grand Amanda* [2025] — as well as subsequent disputes concerning the ICA's apportionment mechanisms.

New wording has been incorporated into clauses 3(c) and 4(c) of the ICA 2011 (as amended in July 2025), as follows:

Clause 3

...

c) ..all legal, Club correspondents' and experts' costs reasonably incurred in the defence of or in the settlement of the claim made by the original person, ***even if the claim is successfully defended, withdrawn or otherwise not pursued*** *but shall not*

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include any costs of whatsoever nature incurred in making a claim under this Agreement or in seeking an indemnity under the charterparty.

With the inclusion of this new wording, it is now expressly clarified under clause 3(c) that reasonable costs incurred in respect of legal advice, Club correspondents, and expert opinions are recoverable, even where the claim is successfully defended, withdrawn, or not pursued. This clarification is a welcome development, as it aims to reduce further disputes relating to the recovery of such costs.

Clause 4

...

c) ...*the claim has been properly settled or compromised and paid.* ***Settled includes but is not limited to, claims adjudicated by any court or tribunal, or those resolved through an amicable settlement between the parties.***

The rationale behind the amendment to clause 4(c) is to clarify the ambiguity surrounding the requirement that, for apportionment under the ICA to apply, a claim must have been "properly settled or compromised and paid". The original intent of the term “settled” was to encompass not only amicable settlements but also claims resolved by way of court judgments and arbitral awards. However, in practice, certain parties sought to construe this wording more narrowly, thereby attempting to limit the scope of clause 4(c), which gave rise to uncertainty.

In response, the newly added wording to clause 4(c) clarifies the meaning of “settled” by expressly confirming that claims resolved by court judgments and arbitral awards fall within its scope. In addition, it reaffirms that claims resolved by way of amicable settlement are also covered. This amendment significantly reduces the uncertainty as to when a claim may be regarded as “settled” for the purposes of the ICA.

This uncertainty most recently manifested in the *Grand Amanda* [2025] case earlier this year. In brief, the case concerned the following:

- On 1 April 2014, the owners and the charterers entered into a time charterparty based on the NYPE 1946 form, as amended.
- The vessel was chartered to carry "lawful and harmless cargoes" from the East Coast of South America (Montevideo, Uruguay & Bahia Blanca, Argentina) to China.

- The cargo loaded at Montevideo later exhibited characteristics of inherent vice, such as self-heating and mould development, and damage became apparent upon discharge in China.
- Chinese courts held the owners liable for the damage, and the owners were required to compensate the cargo interests.
- The owners sought indemnity from the charterers on the basis of implied indemnity, arguing that the damage arose due to the inherent vice of the cargo.
- In addition, the allocation of liability under the Interclub Agreement (ICA), which was incorporated into the charterparty by way of an addendum, became a point of contention. However, reliance on clause 4(c) of the ICA — which requires that a claim be "properly settled or compromised and paid" — led to the conclusion that the owners' claim did not fall within the scope of the ICA. This was because the claim had been resolved by a Chinese court judgment rather than by way of settlement or compromise.
- While the tribunal accepted that the owners were entitled to recover their loss under the doctrine of implied indemnity, it held that the unamended wording of clause 4(c) did not extend to claims resolved by way of court proceedings, as it only referred to those settled or compromised.
- As mentioned above, the 2025 amendment to clause 4(c) now expressly provides that the term "settled" includes not only claims resolved amicably between the parties but also those determined by binding adjudications such as court judgments and arbitral awards.

The new ICA 2025 will take effect as of 14 July 2025 and will apply to all NYPE and ASBATIME charterparties entered into on or after that date which incorporate a reference to the ICA. Such reference may be worded as follows:

(i) "ICA 2011 (as amended in July 2025)"; or,

(ii) "ICA 1996 or as amended".

However, in respect of charterparties entered into prior to 14 July 2025 that contain a reference such as "ICA 1996 or as amended", the position is somewhat less clear. In such cases, the parties must assess the proper construction of the charterparty to determine:

Whether the phrase “as amended” refers to:

• the amendments in force at the time the charterparty was concluded (in which case the 2025 amendments would not apply); or
• the amendments in force at the time the cargo claim arises (in which case the 2025 amendments may apply).

It is recommended that our insureds review their charterparty forms and, where appropriate, update them to incorporate an express reference to ICA 2025.
Consideration should also be given to incorporating the updated wording into existing contracts, where necessary, by way of an addendum.
Operational personnel and claims handling teams should be made aware of the updated provisions to ensure proper implementation and understanding.