

## Bill of Lading

A Bill of Lading's prime function is as a receipt issued for **Goods received for shipment** either by a carrier or a freight forwarder pending shipment on a vessel. **Goods shipped on board** the carrying vessel.

A B/L states the **quantity** and **apparent order / condition of the goods when received** into the carrier's care and is normally printed with wording such as "Received in good order and condition unless otherwise stated..." OR "shipped in good order and condition unless otherwise stated....".

If the cargo loaded does not warrant such statement then appropriate remarks should be made on the face of the B / L. Any shortage / damage to the goods occurring before acceptance by the carrier should be stated on the face of the B / L.

### Note:

1. If the B / L is not claused by the carrier despite the goods received being in a defective condition or deficient in quantity the consignee has a right to expect to receive his goods in good order and condition. Any loss / damage on delivery will therefore be attributable to the carrier's negligence unless the same can be shown to be caused by one of the excepted perils as specified in the contract of carriage.
2. Where a MR (mate's receipt) is issued the description of the quantity and condition of the goods in the B / L is copied from the description in the MR. It is of utmost importance that the MR reflects the actual quantity and condition of the goods at the time of loading where this is other than "in good order or condition" or differs in quantity from that stated in the shipping note.

## B/L as Evidence of Contract between Shipper and Carrier

The conditions on which goods are accepted for shipment constitute the terms of the contract of carriage between the shipper and the carrier except when the shipper is also a charterer. There are three possible scenarios:-

- Where there is no C / P
- Where there is a C / P and the charterer is also the shipper.
- Where there is a C / P but the charterer is not the shipper.

## Where there is no C / P

This is applicable in containerised cargo when the same is loaded on a container vessel in the shipowner's **own liner service** and who issues to the shipper his own B / L containing the company's terms and conditions of carriage. (Some liner operators issue a booking note containing their contract terms which, when signed by both parties, becomes the contract of carriage).

## Where there is a C / P and the charterer is also the shipper

This applies when the charterer is the shipper of his own goods. In this case

- The contract of carriage is contained in the C / P. If the C / P requires the ship to issue a B / L on shipment of cargo, the charterer is in effect issuing himself with a B / L which in effect functions as a **receipt for the goods shipped** and as a **document of title** (should the charterer decide to sell the cargo by endorsement and transfer of the B / L).
- The B / L does not contain the contract terms and will usually be a "short form" bill, bearing only a few important printed clauses such as a Clause Paramount, Both-to-Blame Collision Clause and New Jason Clause.
- Since the B / L may be transferred to a third party, there should be a statement that "all terms and conditions of the C / P (dated as shown) are deemed to be contained herein." Any terms on the B / L must be consistent with those in the C / P unless there is an express provision to the contrary in the latter.

## Where the Charterer is not the Shipper

This applies where a carrier is time-chartering a vessel and operating her in his own liner

services.

The **contract of hire** between the carrier and the shipowner is contained in the time C/ P.

The **contract of carriage** between the carrier and a shipper is evidenced by the **B / L** issued to the shipper.

If the B / L contains no reference to the existence of a C / P, the shipper's contract of carriage will be with the shipowner. However, if the B / L contains a reference to a C / P the shipper's contract will be with the time charterer.

## Bill of Lading as a Document of Title

### Document of Title

It is a document embodying the undertaking of a bailee to hold the goods for whoever is the current holder of the document and to deliver them to that person in exchange for the document.

### Possession of Original B / L

The possession of an original B / L means the **right to possession of the goods** described therein and entitles the holder to obtain delivery of the goods at the discharge port by production of such an original B / L.

### Negotiable Document of Title

After the shipment has taken place the title of the goods can be transferred / negotiated to a third party. Any B / L so made out is called a negotiable document of title and requires the words "**To Order**" or " ...**Company or their order**" in the space allocated for the consignee's name.

### Transfer of title on B / L:

This is done by the shipper by any one of these 3 methods:

- **Blank Endorsement:** The shipper signs and then stamps the back of each original B / L with his company's stamp but does not insert the transferee's name. This is a

blank-endorsed B / L (one made out "to order"). The ship must deliver the goods to whoever presents any one of the original Bs / L (unless fraud is suspected). Though like a bearer cheque it can become a dangerous document it is commonly used to help out traders who take money from banks against documents.

- **Specific Endorsement:** In this case, the shipper signs and then stamps the back of each original bill with his company's **stamp clearly** mentioning the endorsee's / transferee's name "Deliver to ...Ltd".
- **Shipper's Delivery Instructions:** A Delivery Order from the shipper to the consignee on the shipper's stationery.

Once a B / L has been negotiated, the endorsee becomes subject to the same liabilities and has the same rights against the carrier as if the contract of carriage had originally been made with the endorsee. To protect the endorsee the contract terms must be clear and unambiguous, and where some term in the original contract is not included in the bill of lading terms, it will not be binding on the endorsee.

## Contents of a B / L

A B/L typically contains about 30 printed and numbered clauses. The majority of such clauses are common to the Bs / L of most major carriers though the wording may differ. Carriers to address the special features of their particular trades add additional clauses. A bill of lading will usually contain the following details:

1. Reference number
2. Name and address of the shipper / his agent;
3. Name and address of the consignee OR "to order", OR "to the order of (consignee's name inserted)"
4. Name and address of any notify party (a receiver taking delivery of the goods for the consignee)
5. Ports of loading and discharge

6. Name of the carrying vessel
7. Any leading marks for identification of the goods (as stated by the shipper)
8. The number and kind of packages or pieces (as stated by the shipper)
9. Description of the goods (as stated by the shipper)
10. Gross weight / Measurement (as stated by the shipper)
11. The order and condition of the goods if not in "apparent good order and condition" on receipt
12. The place where freight is payable, if freight has not been paid.
13. The number of original Bs / L forming the "set" (so that the consignee / transferee, such as a bank, can determine whether all original documents in the set have been delivered, in case of fraud or mistake)
14. The date of receipt of the goods for shipment or, on a "shipped" bill of lading, the date of shipment
15. The place and date of issue
16. The signature of the carrier, master or carrier's agent
17. The carrier's standard terms and conditions (on the back).

## Terms and Conditions of a B / L

### Containers:

The following standard terms and conditions of the carrier are usually incorporated on the back of a B/L:-

1. Definitions
2. Carrier's tariff
3. Warranty

4. Sub-contracting and indemnity
5. Carrier's responsibility – port-to-port shipment
6. Carrier's responsibility – combined transport
7. Sundry liability provisions
8. Shipper-packed containers
9. Inspection of goods
10. Carriage affected by condition of goods
11. Description of goods
12. Shipper's/merchant's responsibilities
13. Freight
14. Lien
15. Optional stowage and deck cargo
16. Live animals
17. Methods and routes of carriage
18. Matters affecting performance
19. Dangerous goods
20. Notification and delivery
21. FCL multiple bills of lading
22. General average and salvage
23. Variations of the contract
24. Law and jurisdiction

25. Validity
26. Limitation of liability
27. USA clause paramount.

## C / P Bill of Lading

On the obverse they will usually contain a clause to the effect that all terms and conditions of the C / P identified in the bill of lading are incorporated in the bill.

The "CONGENBILL" charter party bill of lading (1994 edition) is normally used and incorporates clauses numbered and named as follows: -

1. Unnamed \*\*
2. General Paramount Clause
3. General Average
4. New Jason Clause
5. Both to Blame Collision Clause.

\*\* CONGENBILL" Clause 1 states as follows: "All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, are herewith incorporated. The Carrier shall in no case be responsible for loss of or damage to cargo arisen prior to loading and after discharging."

### Note:

- The carrier's exceptions from liability are contained in the Hague / Hague-Visby Rules, which are normally applied to the contract by the Clause Paramount.
- Stamped / hand-written clauses "CLEAN ON BOARD" and "FREIGHT PREPAID", may be endorsed on a B / L and will override any printed clauses.
- A bill of lading that has been surrendered at the discharge port may be endorsed by

the carrier's agent with the word "ACCOMPLISHED".)

## Types of Bills of Lading

B / L forms are produced in many styles by shipping companies, shippers, charterers, freight forwarders and organisations such as BIMCO. Several types are used for different purposes as follows:-

- 1. Long-Form B / L:** It has spaces or boxes on its front for typed details and numerous printed conditions of carriage on its back. Most liner shipping companies print their own long-form B / L with their company conditions of carriage on the back.
- 2. Short Form B / L:** It has only a few standard terms printed on it, avoiding the need for shippers to hold stocks of bills of lading for every carrier they use, so that they can prepare the bill of lading with the required details before presentation for signature. A short form bill of lading made out for cargo loaded aboard a voyage-chartered ship will usually indicate that the terms and conditions of the relevant charter party are deemed to be incorporated in the bill of lading. This allows any party to whom the bill of lading is transferred to see where the contract of carriage actually is.
- 3. Direct B / L:** It is issued when the goods are carried from one port to another. Transshipment is not anticipated although there may be a clause giving the carrier liberty to tranship (in which case the goods may lie at the merchant's risk whilst in the transshipment port). This type of B / L has printed clauses on the reverse and is used in liner services.
- 4. Combined Transport (C T) B / L:** It covers carriage from door-to-door by several modes of transport, which is common in many liner services. The "combined transport operator" (CTO) takes responsibility for the goods throughout the entire journey and issues the CT B / L at its start.
- 5. Through B / L:** It is issued when the carriage of goods involve both sea and



other transport modes, but different carriers will be involved at each stage - a railway company, a shipping company, a road haulier. The B / L is issued by the sea carrier but he states on it that he only accepts responsibility for the goods during the sea passage.

- 6. Received / Received for Shipment B / L:** It is issued for goods received at a freight depot or some other place before loading on the ship. This type of bill of lading may be issued by a freight forwarder and covers the goods while they are in his care. When the goods are eventually shipped the "received" bill of lading must be replaced by a "shipped" bill of lading.
- 7. On board / Shipped B / L:** It is issued by the carrier after the goods are loaded on the carrying ship.
- 8. A Straight B / L:** It is an American term for a nonnegotiable bill of lading.

## Signing Bs / L

Where a master has to sign and issue original Bs / L great care must be taken to see that all potential contractual pitfalls are covered.

Shipped Bs / L are signed on behalf of the carrier by or for the master of the carrying ship. A full set of original bills will be signed, then returned (via the agent) to the shipper. Freight may be payable before signing bills, depending on the carrier's terms.

Where a mate's receipt was issued to the shipper on shipment of cargo, this is required to be surrendered in exchange for the "shipped" bills of lading.

The master or his authorised deputy should always check the following when signing a B / L:-

1. That the goods have actually been shipped (determined from the ship's copy of MR issued)
2. The date of shipment is correct as stated on the MR or standard shipping note.
3. That the B / L is not marked "freight paid" / freight prepaid" if not true

4. That any clausing of the MR is also contained in the B / L
5. That reference is made to the C / P where one exists
6. That any C / P terms do not conflict with the B / L
7. That the number of original bills in the set is stated. (Every original in the set must be signed.)

## Delivery of Goods

- The carrier, carrier's agent / master is legally obliged to deliver the goods to the first person presenting a signed original B / L at the discharge port together with proofs of identity and that freight and other charges due have been paid.
- Once the goods are released to a receiver any carrier's lien for unpaid freight will be lost.
- If the B / L has been transferred by the original consignee, the endorsements on it should be checked before delivery.
- If on sighting the B / L it appears to be in order then the master / agent should sign and date it. It is then said to be "accomplished" and stamped accordingly. The goods can then be released to the receiver.
- A Delivery Order (DO) is then issued by the agent to the receiver.

## Negotiable and Non- Negotiable Bs / L

The original B / L is negotiable and is issued in set of three originals for the following reasons:-

- If a single B / L was made and it got lost then a duplicate would be required before possession can be claimed.
- The carrier would need to be indemnified before the goods could be released into a warehouse till such time the duplicate B / L was made available.

- These procedures are time consuming and costly.

It is for this reason that the dispatch of original Bs / L must be staggered with one being sent immediately after shipment and the remaining after a few days.

Several non-negotiable / copy bills of lading are made for filing and official purposes. This includes the "CAPTAIN'S COPY" which remains with the Master.

## B / L as a Receipt for Freight

- If the B / L is endorsed with words FREIGHT PAID / FREIGHT PREPAID then once it is signed it becomes prima facie a receipt for the freight.
- If the freight has not actually been paid, but the receipted B / L is endorsed to a third party, the carrier will probably lose his right to recover the freight, i.e. the statement becomes conclusive evidence that freight has been paid. It is important, therefore, to verify before signing such a bill of lading that freight has in fact been paid. (In practice the agent normally does this.)

## Clean B / L and LOI

- A clean B / L is one which contains no remarks about the defective condition / shortage of goods while at the same time stating that the goods have been received "in apparent good order and condition". On the contrary a **dirty / claused / foul B / L** is one which describes the actual and true condition of the cargo with remarks like "rusty coils", "bags received in wet and torn condition" etc.
- The fuss for a Clean B / L: To fulfil the financial conditions related to the cargo, banks of both sides – shippers and receivers - are involved. The receiver's bank will release money to the shipper's bank only on confirmation that cargo has been shipped and it is in good order / clean. In case the Bs / L are claused then the flow of payments is hindered and gives rise to a host of problems. To avoid this the shippers insist, at times pressurise, on getting clean Bs / L even where this is not justified by the actual condition or quantity of the goods. At best of times the shippers are prepared to give a Letter of Indemnity (LOI) promising to indemnify the

Master / carrier against any loss or liability as a consequence of signing a clean B/L.

- Legal standing of LOI
  1. This type of LOI has no legal standing in English law and the shipper cannot be sued if he /she refuses to honour the promise of indemnity at a later date.
  2. Acceptance of this LOI and issuing clean B s / L makes the Master / carrier a party to deception and personal criminal liability for fraud on banks, consignee / buyer and insurers since it is an attempt to obtain payment for goods knowing them to be deficient and unsound.
  3. The shipowner can suffer heavy financial liability.
  4. If faced with such a situation a Master should consult his owners and their P&I club but should never accept a LOI without the written orders of his owners.

### B / L in a Third Party Hands

- At common law, a B / L is only **prima facie evidence** regarding the quantity, weight and condition of goods shipped. If it is signed for a quantity of cargo greater than is actually shipped then it may be possible for the carrier to refute the statements on it as long as the B / L is not endorsed to a third party.
- However, once the B / L is endorsed to a third party, it becomes **conclusive evidence** of the shipment and the carrier is bound by the B / L terms and conditions irrespective whether the goods were shipped or not.
- A **Conclusive Evidence Clause** is inserted in some Bs / L stating that the contents of the bill will be conclusive evidence against the contracting parties. It therefore becomes binding on the carrier to deliver cargo as per B / L unless a fraud on the part of the shipper can be proved. When such a clause is inserted it is all the more reason for the ship to ensure that the entries in the B / L are correct.

### Himalaya Clause

- It is a clause, found in some Bs / L and in other forms of contract including the

terms of a passenger ticket that **extends** to specified third parties - servants and agents of the carrier, and independent contractors (stevedores and terminal operators) employed by the carrier - the benefit of the carrier's bill of lading exemptions, limitations, defences and immunities.

- The name of the clause is derived from the Court of Appeal decision in *Adler v. Dickson* (1954) in which the Master and Bosun of the P&O liner Himalaya were successfully sued in tort by a passenger who had been injured in falling from an improperly positioned gangway. P&O's passenger ticket contained an exclusion clause, freeing the carrier from any liability for death or injury, howsoever caused, and limiting the amount recoverable from the carrier, and the passenger therefore sought to make up the balance by suing in tort individual servants of the carrier, including the Master and Bosun. The Court of Appeal held that, despite the carrier's exemptions, she could do so. Since that judgement many carriers insert in their contracts a **Himalaya Clause** to protect their employees, contractors and agents. In some jurisdictions, however, these clauses are ineffective.

## Damaged / Defective Cargo Presented for Loading

Where shippers offer damaged or defective goods for shipment - not in the "apparent good order and condition" the Master has two options:-

- Reject the goods (with the advice/assistance of an independent cargo surveyor)
- Accept the goods on condition that he will clause the B / L stating the nature of deficiency.

Since some remarks may not be effective in protecting the carrier against claims by third parties, the master should contact the owner's P&I club correspondent before making any remarks of which he is uncertain. Where the damaged / defective cargo is **steel** in any form, the P&I club correspondent should always be consulted before any remarks are made on the B / L since claims will inevitably arise. Certain clauses will be recommended by the club, while the use of others will not be approved of.

Charterer's B / L to be used where a C / P requires the Master to sign Bs / L as presented

by the charterer, the master should first verify that the Bs / L incorporate the terms of the Hague or Hague-Visby Rules (will generally be stated in the Clause Paramount). If there is no reference in the charterer's B / L to the incorporation of these Rules, the P&I club correspondent should be contacted. (P&I clubs usually restrict cover to contracts incorporating terms at least as favourable as those given by the Hague Rules or Hague-Visby Rules).

Where a contractual lien for demurrage is given by the C / P terms and demurrage though due at the loading port but not paid, the master should clause the B / L to that effect so that the lien can be exercised if necessary at the discharge port.

Number of Original Bs/L shown on the Bill not same as Negotiable Bs/ L Held

The number of original Bs / L in the set should be entered in a space provided on the face of each bill before signing the originals. There may be several other "non-negotiable copy" bills, each of which should be clearly marked as such.

Where the Master is to sign Bs / L and the number of original bills presented for signature is not the same as the number indicated on the face of the bill, he should:

- Ascertain the reason for the difference
- Inform the owners and charterers
- Call the P&I club correspondent
- Refuse to sign the bills until the correct number is inserted

## **Master signing Blank / Partially completed Bs/L**

This is only permissible in tanker trades where Early Departure Procedure is being followed. Under other circumstances the Master should refuse to sign blank / partially-completed Bs /L.

## **Early Departure Procedure**

- Some oil terminals and tanker companies resort to this practice when the ship's time

is at a premium. (It should be discouraged otherwise). As per this procedure tankers are allowed to sail on completion of cargo operations without having to wait for cargo figures to be prepared and documents produced.

- The Bs / L are prepared by the agent and presented to the Master before completion of loading for signature without any mention of cargo quantity. The master retains his copy (non-negotiable) and copies of the bill for consignees along with other cargo documents.
- In case of any Letter of Protest is to be given regarding the order or condition of the cargo the same is done by the Master and investigation, if any, completed before departure.
- Soon after the ship's departure the agent communicates the shipper's final loading figures to the master who if in agreement enters them on the B / L copies with him and the agent completes the original Bs / L and signs them on behalf of the master.
- In case of any discrepancy he informs the agent, who writes a Letter of Protest to the shipper on the master's behalf and completes and signs the bills of lading under protest.
- The agent releases all original documents to the shipper, who sends them to the consignee.

## Re-issuing / Amending a B / L

- A ship's master may be asked to re-issue / amend a previously issued B / L, which he should never agree to without the advice from his owners, and P&I club.
- The latter will like to satisfy themselves that before a second set is issued, all Bs / L in the first set are returned and cancelled / destroyed.
- The number of original bills returned should tally with the number of originals issued earlier as stated on the face of each bill.
- The bills in the new set should be claused as follows:

This is a replacement Bill of Lading issued at...on the ...day of..... (month/year) on cancellation of an original Bill issued at .....on the ... day of ..... (month/year) to .....for (show reason for re-issuing bills of lading).

## **Delivery of Cargo without Presentation of Relevant B / L**

In the tanker trades, cargoes are commonly bought and sold many times during a voyage, causing delays in the arrival of the Bs / L and the problem commonly arises that the cargo arrives at the discharge port before a copy of an original B / L can be produced.

In other cases, the B / L may be missing for a variety of reasons. The receiver may claim that the bills have been lost, stolen or delayed. In such cases, there is there is the possibility of misdelivery and a serious risk of fraud.

If the master negligently delivers cargo to the wrong party without first requiring production of an original B / L the carrier will be held wholly liable for the consequences and will receive no backing from his P&I club or courts. Wrongful delivery may even result in the arrest and sale of the ship to recover the cargo's value for the rightful owner.

If it is likely that the B / L has merely been delayed, the goods may be delivered - with the shipowner's and the P&I club's agreement - after the receiver signs an acceptable Letter of Indemnity which

- Promises to indemnify the shipowner against all consequences and liabilities of delivery to the wrong person
- Is phrased in terms acceptable to the owner's P&I club
- Is countersigned by a first class bank or cargo insurance underwriter, i.e. one able to meet any claim.

If an acceptable Letter of Indemnity cannot be offered, the cargo should not be delivered.



## Cargo Delivery Requested against Presentation of Original B / L Carried on Board

In some cases an original B / L may be sent to the consignee on board the carrying vessel.

Under such circumstances the master

- Should issue a receipt to the shipper or his representative.
- Should not accept to carry original Bs / L made out **"to order"**, or where there is **no named destination / destination is qualified** e.g. " Singapore for orders / intention Hong Kong".
- Should not accept original Bs / L for carriage if the shipper refuses to sign the receipt, or if no party is named as receiver in the B / L.
- Should not discharge against an original B / L carried on board if the discharge port is different from the destination shown in the B / L.
- On arrival at the discharge port the master should hand the B / L to the party named in the receipt, if his identity can be confirmed.

## Original Bs / L Presented by Two Parties

The Master should immediately inform the owners, charterers, and the P&I Club.

The Bs / L may be left with a court of law to settle the dispute.

In the meantime, the goods should be landed to a warehouse/tank, etc., where they should be held until the dispute has been settled and freight and charges have been paid.

## Goods Unclaimed at the Discharge Port

The master is

- Required not to deliver goods to a receiver until one original B / L is presented
- Not required to retain unclaimed goods on board

- Not to detain his ship in port beyond her laytime and make the charterer liable for demurrage

At common law, if goods are not claimed within a reasonable time the same may be landed and warehoused. The warehouseman thereafter becomes a common agent of both the carrier and consignee and should release the goods only on payment of all outstanding charges (freight and demurrage).

Warehousing expenses will be for account of the receiver of the goods.

If the goods remain unclaimed, they may be sold by the carrier after a reasonable time as per local law and after advertising for the consignee in the national press.

Carriers often insert a clause known as a **London Clause** (which overrides the common law position) in their Bs / L giving them the right to land goods on arrival.

## Sea waybills

The carrier using a similar procedure as for issuing Bs / L. issues sea waybills. A substantial proportion of international liner trade consignments is now shipped under sea waybills, normally in circumstances where the goods are not the subject of a sale contract and where the shipper retains the right to nominate the identity of the receiver.

### Functions of a Sea waybill

- It is a receipt for goods shipped on board
- It is good evidence of the existence and terms of a contract between the shipper and carrier, but is not a contract itself.
- It identifies the person to whom delivery of the goods is to be made by the carrier in accordance with the contract of carriage
- It should be used when it is clear that a negotiable document of title will not be required, i.e. When the goods will not be sold to a third party while in transit and Credit will not be raised on the security of the goods, e.g. on a bank's documentary credit terms.

## Benefits of Using Sea waybills

The benefits of using sea waybills instead of Bs / L are that:

- They can be carried on board the carrying vessel, since they do not need to be produced by the receiving party in order to claim delivery of the goods
- They are not subject to any documentary formalities other than a reasonable check by the carrier or his agent of the identity of the person claiming delivery of the goods
- They are not documents of title and hence less likely to be used fraudulently. Money cannot be raised against a sea waybill as it can against negotiable original B / L

## Contrast with a B / L

In contrast with a B / L a sea waybill:

- Always bears the consignee's name and address in the appropriate box on its face
- Is non-negotiable. Sea waybills usually bear the words "NON-NEGOTIABLE" on their face. The conditions of carriage may also bear a statement such as: "This Waybill is not a bill of lading and no bill of lading will be issued", or "This Waybill, which is not a document of title to the cargo...."
- Is not a document of title
- May be a receipt for freight, if endorsed to indicate that freight has been paid
- May contain the full conditions of carriage, which will usually be similar to the carrier's B / L conditions (Liner waybills tend to have the full terms on their reverse, whereas other waybills, such as gas tank waybills, do not.)
- May be subject to the Hague Rules / Hague-Visby Rules, and if so may contain a Clause Paramount.

## Bills of Lading and Related Documents

### Basic Documentary Procedures

The following procedure covering the documentary credit system used in international trade needs to be well understood for better comprehension of the B / L and related documents:

#### 1. Sales Contract

- Seller / Shipper (Country A) and Buyer (Country B) negotiate a sales contract, specifying payment by documentary credit
- Buyer instructs his bank in his country to open a **Letter of Credit (LC)** in favour of Seller's bank
- Buyer's bank verifies buyer's credit-worthiness and issues a **LC** containing terms of the Credit (stringent requirements regarding use of CIF terms, documents, time of loading, etc. Buyer's bank sends LOC to Seller's bank
- Seller's bank checks LOC requirements and sends LOC to Seller

#### 2. Ship

A ship is voyage / trip chartered and arrives at the loading port / berth.

#### 3. Shipping Note

A shipping note containing details of goods is handed over by the shipper to the ship's Chief Officer

#### 4. Cargo Loading

Goods are then loaded on the ship and accounted for by tallying (break bulk goods) or weight / quantity measurement (bulk cargoes)

#### 5. Mate's Receipt

On completion of cargo loading the Chief Officer prepares the MR specifying the accurate

details of quantity and condition of cargo loaded ("apparent order and condition" with reference to any shortage / damage etc.)

## 6. Bills of Lading

- Shipper fills out the details as per MR on a set of the carrier's blank Bs / L or CONGEN B / L
- A set of B / L comprises of 3 originals marked "Negotiable" and with several copies marked "Copy – Non Negotiable"
- All such Bs / L as above are given to the ship's Master / Port Agent to be signed on behalf of the carrier where the details inserted by the shipper are carefully checked and after stamping / writing required endorsements the Bills of Lading are signed
- The full set of signed original bills together with copies as required is thereafter given to the shipper. One copy of B / L is retained on board as "Captain's Copy".

## 7. Departure of Ship

On completion of loading and completion of departure formalities, the ship sails from loading port for discharge port<sup>4</sup>.

## 8. Payment for Goods Shipped

- After the goods have been dispatched the seller / shipper presents all the required documents -invoice, insurance certificate, and **full set of "clean on board" bills of lading** made "to order"- to his bank for payment towards the goods dispatched
- The seller's bank checks documents against LC requirements and on satisfaction that they comply with the Sales Contract sends the documents to buyer's bank
- Buyer's bank checks documents against LC. If they comply the documents are released to the buyer against payment and the seller's bank reimbursed accordingly for payment to seller

## 9. Bill of Lading to Consignee

Buyer receives documents (B / L) which will enable him to obtain release of goods from ship.

## 10. Ship's Arrival at Discharge Port

- On ship's arrival at discharge port the consignee / receiver proves his identity to port agent and presents one original bill of lading duly endorsed to him. Freight, demurrage or other charges payable to the carrier are paid to agent
- Agent stamps "ACCOMPLISHED" on the presented B / L and issues a Delivery Order (DO) to the consignee / receiver to enable collection of goods from the ship or wherever they have been landed / discharged.

## 11. Delivery of Goods

On presentation of the DO the goods are released into possession of consignee / receiver and become legally delivered.

### Note:

The Bs / L must be made out in such a way that each bank involved has a good legal title in the goods represented by the B / L.

A major problem arises when the bank is instructed in the LC to pay on production of a full set of clean on board bills of lading but the same have been **clauséd** due to goods being defective / short loaded.

Other LC problems include incorrect ship's name, loading or discharge port, or loading date outside the range of dates allowed by the LC.

Banks refuse payment if any details on the bill of lading do not match the requirements of the LO.

### Basic Liner Shipping Procedure

Once goods are packed into a container, shippers expect the Bs / L and invoices to be given quickly by the carrier. To facilitate this the carrier needs accurate shipping documentation from the shipper and on their own part have computerised their B/L issuing systems. Overall, the modern liner shipping documentary procedures have been simplified wherever possible.

### Liner Procedure

The system basically used by most liner operators / carriers is as follows:

1. The exporter/shipper contacts the carrier's office at the load port and makes a telephone booking for the cargo to be shipped to the required destination
2. Carrier confirms booking and sends an Export Cargo Shipping Instruction (ECSI) form to the shipper on which the shipper provides information about the goods, their route to final destination, any transport requirements, customs information, names of document recipients and allocation of costs
3. On receipt the carrier feeds the information into their computer system
4. The shipper sends the goods to the carrier's depot along with 6-part Standard Shipping Note (SSN), containing necessary information for handling of the goods. In case the goods are dangerous goods / marine pollutants, a Dangerous Goods / Marine Pollutants Note with Container Vehicle Packing Certificate is used instead of the SSN
5. The carrier then issues a **Received B / L** to the shipper.
6. The carrier then stuffs the said goods into a container and sends it to the load port for shipping it to the destination
7. The same is thereafter loaded onto the carrier's ship when she arrives
8. On payment of advance freight by the shipper the carrier issues a set of **"Shipped" B / L** which replaces the Received B / L.

9. The shipper sends all original Bs / L and other documents in accordance with Letter of Credit instructions to his bank, in order to receive payment of the invoiced price
10. Procedure thereafter is as with tramp shipping

## **Bolero System**

It is a system owned by the world's logistics and banking communities, in which paper Bs / L and other trade documentation are replaced by electronic messages sent via the Internet. Bolero (see Link) is designed for all parties in the trade process viz. importers, exporters, freight forwarders, port authorities, inspection agencies, carriers, ship's agents, customs agencies and financial institutions.

The Bolero technological environment is supported by a legal framework based on a Bolero Rule Book which establishes a contractually binding set of rules which all users of the Bolero System are required to sign.

The backbone of the Bolero System is the Core Messaging Platform, which enables users to exchange electronic trade documents via the Internet. The system is secure, is underpinned by a unique legal structure, and is maintained by a trusted third party. All messages between users are validated. All messages are acknowledged, and notifications are provided as requested. Additional messages determine whether the recipient accepts or refuses the stated offer.

Another major feature is the Title Registry application, which allows for the ownership of goods to be exchanged online.

## **BOLERO**

An international sales transaction typically consumes large quantities of paper since voluminous documents supporting such transactions are required to be maintained and shuttled across the world to be processed through the banking channels. One such document is the Bill of Lading.



There have been a number of attempts to digitalise international trade and replace the tradition Bill of Lading with an electronic version to bring in something different and cost effective.

“Bolero” is one such effort which has introduced paperless trading between buyers, sellers, and their logistics service and bank partners. The solutions provided integrate the physical and financial supply chains, providing visibility, predictability, accuracy and security thereby bringing improvements in operational efficiencies and reductions in working capital.

## **The Bolero System:**

It is jointly owned by the Through Transport Mutual Insurance Association (TT Club) and the Society for Worldwide Inter Bank Financial Telecommunications (SWIFT). This kind of ownership between insurance and financial concerns ensure that the tasks of processing international sale payments and insuring the carrier’s risks arising out of such transactions are well represented and taken care of by the system. The system consists of two separate companies owned by separate organisations but which work closely together - Bolero Association Limited (BAL) and Bolero International Limited (BIL).

BAL, owned by its members, was formed in 1995 and includes all Bolero.net users as well as other crossindustry bodies which support Bolero’s goal of creating an electronic alternative to paper based trade. BIL is the joint venture between SWIFT and the TT Club, and is responsible for the operation of the Bolero net service.

## **Using the Services of BAL and BIL:**

A company wishing to use the services of BIL must first join BAL whereby he enters into an agreement with them to appoint BAL as its agent for the purpose of entering into contracts with other users. The agreement is an English law agreement giving jurisdiction to the English courts in the event of disputes. The contracts are as per the Rule Book.

## **The Rule Book**

This Book constitutes an agreement between users, and between each user and BAL acting both on its own behalf, and on behalf of all other users from time to time. It is a lengthy

and comprehensive document with the main provision that Bolero users agree to accept digital Bolero messages as if they were in writing, and not to challenge the validity of a Bolero digital signature. It further provides the method how companies will use the system for issuing electronic bills of lading, amongst other things. These rules are subject to English law giving jurisdiction to English Courts to settle any disputes that may so arise.

### **Digital Signature**

In the Bolero system the users place great reliance on the authenticity of messages generated stemming from the adoption of a digital signature created by each user using their unique private key. This corresponds to the public key listed in a certificate issued to the user by Bolero International Ltd. A digital signature associates a message with a particular private key. Verification of that digital signature indicates which private key was used to create it, and a certificate indicates which user holds that private key. The message can therefore be attributed to its sender. The Bolero Rule Book holds users responsible to each other for their digital signatures. All messages sent in the Bolero system must be digitally signed. On receipt of a message, Bolero verifies the digital signature, and the rules require every user to themselves verify Bolero's own digital signature on every message they receive from it.

### **Smart Cards**

Private keys being in very large numbers are stored in smart cards for easy remembrance. For better security and to avoid impersonation a smart card must be kept exclusively in the possession of the person authorised by the user to use the private key for signing.

### **The B / L and the Bolero System:**

The Bolero system has a central electronic database relating to Bolero Bs / L and under the Rule Book Agreement each carrier agrees that any message sent by him as a Bolero B / L shall include an acknowledgement by the carrier of the receipt of goods shipped on board the vessel (or received for shipment) **and** contain / evidence the terms of the contract of carriage.

## The Bolero B / L:

- The Bolero B / L used between users of the Bolero system has exactly the same effect and creates the same obligations as would a paper B / L. A carrier's statements with reference to leading marks, number, quantity, weight, or apparent order and condition of the goods in the Bolero bill is binding on the parties to the contract of carriage to the same extent and circumstances as a paper bill of lading.
- The B / L created by the carrier is sent to Bolero who after verifying the carrier's digital signature forwards the document to the shipper.
- Transfer of Title on B / L: Each B / L holder gives the Bolero registry an electronic instruction by use of its unique digital signature. The registry thereafter acts by cancelling the title of the first holder / seller and transfers it to the next holder / buyer. This being an electronic process it falls outside the legal regimes which regulate the transfer of paper Bs / L. Therefore it is necessary to achieve the transfer of obligations by means of agreement (first between the seller and the carrier and then between the carrier and the buyer to cancel the obligations of the seller and carrier in relation to that cargo, and to transfer those obligations to bind the carrier and the buyer.) by the concept of novation and attornment - an established feature of English law.
- The holder of the Bolero bill informs the carrier, via the Bolero messaging system, that he has transferred the bill to a new holder. Upon receipt of such notification, the carrier acknowledges that he now holds the goods described in the B / L to the order of the new holder.
- The new holder must accept that he is a new party to the contract of carriage. If he fails to do so within 24 hours, no such transfer between the old holder and new holder will take place and all rights and obligations under the contract of carriage between the previous holder and the carrier shall remain vested in the previous holder as if no attempt to novate the contract had been made.
- If, however, during that 24 hour period the new holder represents that it accepts the novation, or attempts to exercise any rights to the goods (by taking delivery

or commencing any proceedings against the carrier for loss / damage), it shall be deemed that he has accepted the novation, and any subsequent refusal shall be void.

- Upon acceptance by the new holder, a contract of carriage arises between the carrier and the new holder on the terms as contained in the Bolero bill. Thereafter the immediately preceding holder's rights and liabilities under its contract of carriage with the carrier immediately cease.
- On completion of the voyage when the bill is surrendered, the Bolero system places the B / L in end status.
- On arrival at the discharge port, the carrier discharges the cargo to the holder of the B/ L. Before that the holder of the Bolero B / L completes a message to the title registry via the Bolero messaging system comprising a title registry instruction to surrender the bill.
- The carrier, however, will want to satisfy himself that he is delivering to the correct party. The Bolero Rule Book does not prescribe the steps that the carrier and surrendering user should follow. From the Notice to the Carrier resulting from surrender of the Bolero bill, it should be clear to the carrier which user is to take delivery. Identifying the correct individual on the quayside, however, is left to the carrier and user to sort out between them.
- Surrender of the bill is effective as soon as the title registry is updated. The title registry record of the surrendered bill, showing all operations affecting that bill, remains in the title registry and is available to permitted users for a specified period of time. Likewise the message containing the instruction to effect the surrender is also recorded in the chronological log of message flow, which log is itself retained for a specified period of time.

## **Facility to Switch to Paper B / L:**

- For the process of the Bolero B / L to be effective all parties involved must be members of the Bolero Association. In case somebody is not then the scheme

enables users to “switch to paper” at any stage during the transactional progress.

- If the current holder wishes to sell the cargo to a party who is not a member of Bolero, the current holder will direct the carrier to switch to paper. This has two results. First, the title registry will place the bill in **end status**, thereby ensuring no further transfers of title under the Bolero system. Secondly, **the carrier will produce and release a paper B/zL** which will include all the information contained on the electronic record, and also a statement to the effect that the document originated as a Bolero bill, the date on which it was issued in paper format, and a record issued by Bolero of the chain of users up to the date on which the switch to paper occurred.
- Once the switch to paper has taken place, there is no reverse process available to the parties whereby a paper bill can re-enter the Bolero system. Neither is there a mechanism whereby a bill which starts life in paper format can be converted into a Bolero bill mid-voyage.

## Advantage of the Bolero System:

- Absence of the long chains of sale and purchase contracts frequently seen in commodity transactions.
- Shortening of the trade cycle, with the resulting freeing of working capital, savings on courier and storage costs
- Reduction in the risk of fraud – (Fraud reduces if all concerned with a particular transaction are members of Bolero. Whenever switching to paper B / L opportunity for fraud arises.)

## Bolero and Legal Issues at Stake:

### User's Risk Exposure:

The role of Bolero is critical to the smooth running of the project which

- Administers and maintains the computer systems needed to operate the system

- Provides the digital signatures to individual users and upon which the whole system relies for security and authenticity.

If the system, however, breaks down / penetrated by a third party then the users are likely to suffer and under normal circumstances would look to Bolero for compensation. The agreement between Bolero and each individual user, however, is that no member can make any claim against Bolero for any alleged breach of contract / acts / omissions of Bolero in providing services under the operational services contract. Even if a member of the system makes a claim Bolero has the benefit of various exclusions, defences and limitations in the operational service contract limiting itself to US\$ 100,000 per incident. This puts the entire risk on the user of the service.

### **Agreement System:**

One of the fundamental principals of the Bolero system is “agreement” between parties concerned under which the users of the system agree with each other that electronic messages transmitted via the Bolero system and digitally signed by a user shall have the same effect in law as if the message existed in a manually signed form. Any weakness of this principal will jeopardise the system.

Although an English Court would recognise the obligations this agreement places on the parties, and also uphold the undertaking made between the users of the Bolero system not to contest the validity of any transaction, on the grounds that it was made in electronic form instead of paper, the question remains whether such a stand would be adopted by a non English court.

### **Contract of Carriage:**

In the Bolero system the “contract of carriage does not fit in. Accordingly the Bolero documents are bereft of the rights and duties of the parties in relation to the contract of carriage and leave any dispute regarding carriage of cargoes to be determined with reference to the underlying contract. This exposes the parties involved to a risk in as far as a non English court, notwithstanding the English law provisions of the Bolero contract, will accept either the admissibility of Bolero documents or their validity.

International Conventions and domestic statutes further compound problems in that they insist on documents “in writing”. Therefore there will always be this lurking fear whether digital information will be acceptable in arbitration or not. Domestic statutes, whether incorporating International Conventions or otherwise, likewise may not apply to digital information and in their view an electronic document is not a relevant document.

## Acceptance of E Commerce

Many countries already accept that their domestic law needs to be updated to take into account e-commerce. The UN, in the shape of UNCITRAL, has produced and adopted a model law on electronic commerce in 1996 which however does not extend to bills of lading. So far only a handful of nations have or are considering the adoption of the model law in respect of their domestic legislation. This illustrates the time lag between the development of e-commerce and the updating of legislation. The Bolero system which is one step ahead of the model law having incorporated the bills of lading in its structure can at this stage cause more problems than solutions.

## Digital Signature

Further problems may be encountered with the digital signature. There can be little doubt that an electronic digital signature can achieve great authenticity due to the uniqueness of the method used. The integrity or authenticity of that signature, however, need not necessarily be the same as the acceptance of that signature by a Court. Traditionally, the English Courts require a signature to be a personal act of authentication and therefore, in the absence of a statutory amendment, an electronic signature will not, as a matter of English law, be treated in the same way as a manual signature.

This is unlikely to be a problem in the UK, because in the Bolero agreements, users agree with each other to recognise the validity of the electronic signatures. It may, however, be a problem in other jurisdictions.

## Switch to paper B / L:

The provision to switch to a paper B / L when required may it self cause particular problems.

The paper bill which is produced when the switch to paper takes place will be transferred to a party who not being a member of Bolero is not bound by the Bolero Agreement. This raises the question whether such a transferee will have a right of suit against the carrier under the bill since, on the face of it, there will have been no chain of endorsements or transfers from the original shipper to the party now seeking to sue. The fact that the paper bill produced after switch to paper will specify that it started life as a Bolero bill may not be sufficient to overcome this particular problem.

To succeed in the global marketplace, the Bolero System must achieve the paradox of on the one hand, offering sufficient protection to encourage traders and carriers to participate whilst, on the other hand, proving there is no real need for such protection.