



ELECTRONIC BILLS OF LADING CLAUSE 2014

- CLAUSE
- TIME CHARTER
- BILLS OF LADING
- VOYAGE CHARTER

BIMCO Electronic Bills of Lading Clause 2014

- (a) At the Charterers' option, bills of lading, waybills and delivery orders referred to in this Charter Party shall be issued, signed and transmitted in electronic form with the same effect as their paper equivalent.
- (b) For the purpose of Sub-clause (a) the Owners shall subscribe to and use Electronic (Paperless) Trading Systems as directed by the Charterers, provided such systems are approved by the International Group of P&I Clubs. Any fees incurred in subscribing to or for using such systems shall be for the Charterers' account.
- (c) The Charterers agree to hold the Owners harmless in respect of any additional liability arising from the use of the systems referred to in Sub-clause (b), to the extent that such liability does not arise from Owners' negligence.

EXPLANATORY NOTES

Background

BIMCO has for many years fully supported the concept of electronic bills of lading as a means of providing a more efficient and secure method of dealing with bills of lading, waybills and delivery orders. As of 2010, liabilities arising in respect of carriage of cargo under electronic (paperless) systems are now covered by P&I Clubs provided that the system had been approved by the International Group of P&I Clubs (IG). Systems administered by Bolero International Ltd (Bolero) and Electronic Shipping Solutions (essDOCS) are two such systems currently approved by the IG.

Increasing use of electronic documentation, particularly in the dry cargo sector where it is actively promoted by a number of major charterers, has resulted in a growing user demand from owners and charterers alike for BIMCO to develop a specialist provision. In response to this demand, BIMCO brought together a group of charterers and owners to develop a new clause for charter parties that specifically addresses the use of electronic bills of lading (paperless trading) systems. Bills of lading produced in electronic format are designed to replicate the purposes and processes (such as endorsements or reservations) of their paper equivalent so as to offer "functional equivalence". Electronic bills can, if required by parties in the trading chain, be replaced by paper bills of lading at any point. In practical terms, while electronic bill of lading systems do not entirely eliminate the problem of cargoes arriving at discharge ports before bills of lading, their use should result in a significant reduction in the number, and associated risks, of LOIs voluntarily issued by owners.

BIMCO is grateful to the valuable contribution and co-operation of owners and charterers and other industry representatives who assisted in the development of the Electronic Bills of Lading Clause. Owners were represented by Cetrappa, Klaveness and Hadley Shipping while charterers were represented by Cargill, BHP Billiton and Rio Tinto. Additional assistance was provided by the UK P&I Club and electronic systems providers, essDOCS and Bolero.

Content

The provisions of the Electronic Bills of Lading Clause are set out in three paragraphs.

Sub-clause (a) provides that the decision to use bills of lading, waybills and delivery orders in an electronic format is in the charterers' option and that their use will be in the same manner under the charter party as their paper equivalent. It should be noted that it's possible that a charterer may elect to use more than one system during the period of a charter party. The words "issued, signed and transmitted in electronic form" describe the process of paperless trading. The closing phrase "with the same effect as their paper equivalent" establishes the equal status of electronic and paper documents.

NOTE: It is important that charterers, their sub-charterers and others in a charter party chain fully understand the need to sign-up to the chosen system or systems if they want to benefit from paperless trading procedures. They cannot participate without registration.

Sub-clause (b) requires the owners to subscribe to and use the charterers' chosen electronic bill of lading "platform". The choice of systems is conditional upon them having been approved by the International Group. At present neither of the two approved solution providers, Bolero and essDOCS, charges owners to register for or use their system. Both systems are accessed via a web browser in much the same manner as commonly used electronic banking systems and do not require the purchase of or use of special hardware or software. However, just in case fees or charges are introduced in the future, Sub-clause (b) provides for the costs to subscribe to and/or use these systems to be for the charterers' account. The registration process establishes a contractual relationship with the system provider for user authorisation and data access

essential to the functioning of electronic documentation procedures.

NOTE: Owners do not need to advise their P&I Clubs prior to using an electronic paperless trading system if the system is already approved by the International Group.

Sub-clause (c) provides an indemnity for any “additional” liabilities that are not the result of the owners’ negligence. While Clubs provide the same degree and scope of cover to paper and approved systems of paperless trading, the indemnity is provided in response to owner concerns that unanticipated liabilities might nevertheless arise with electronic systems. However, these “additional” liabilities are not readily identifiable as those involved in the use of electronic bills of lading have concluded that the use of such systems will not result in unanticipated liabilities arising.

It should be noted that Club cover applies to all normal P&I liabilities when using an International Group approved system. However, risks for the use of computer systems, such as viruses, “hacking”, or theft of information are not of a traditional P&I nature and any party wishing to protect against such risks must seek cover in the commercial markets.

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BIMCO has produced a COVID-19 Crew Change Clause for Time Charter Parties in response to the extraordinary circumstances faced by many owners whose crew have had to remain on board during the COVID-19 "lockdown" for periods often extending beyond their contracts of employment.

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The subcommittee set up by BIMCO and the Association of Ship Brokers & Agents (U.S.A.), Inc. (ASBA) to develop a new gas tanker voyage charter party (ASBAGASVOY) has agreed on a final draft which will be presented for adoption by the BIMCO Documentary Committee at its next meeting on 22 September.

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New BIMCO Law & Arbitration Clause under way

15 May 2020

BIMCO has started work to develop a new Law & Arbitration Clause. The new clause will provide a short and "one size fits all" approach to dispute resolution, while adding Hong Kong as the fourth named arbitration venue. The addition of Hong Kong reflects its increased popularity as a centre for dispute resolution and that it is currently ranked among the top maritime arbitration centres in the world.

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