

PAPERLESS TRADING (ELECTRONIC BILLS OF LADING)

Frequently Asked Questions (“FAQs”)

These FAQs should be read in conjunction with the attached Circular. They respond to queries received by the Club regarding the use of paperless trading systems and electronic bills of lading and any potential consequences for P&I cover.

Members requiring further information on electronic bills of lading should direct them to their usual contact at the Club.

1. What is the position of the International Group of P&I Clubs with regard to paperless trading?

The position is set out in the attached Circular dated 22 October 2015, Electronic (Paperless) Trading Systems – Electronic Shipping Solutions, Bolero International Ltd and E-title.

In considering the use of a trading system that features electronic bills of lading, the Clubs wish to ensure that such a system ensures performance of the three functions of a bill of lading which customarily underpin P&I cover, namely: as a receipt, as a document of title, and as a contract of carriage which incorporates the Hague or Hague-Visby Rules.

2. In the light of this circular, do I have P&I cover for liabilities arising under any electronic bills of lading?

- (a) Yes, cover is available for P&I liabilities arising under any electronic bills of lading to the extent these liabilities would also have arisen under paper bills of lading.
- (b) To the extent these liabilities would have arisen because an electronic bill of lading has been used instead of a paper bill of lading, cover is discretionary unless the electronic trading system has been approved by the International Group.

3. Have any systems been approved by the Club/International Group?

The three systems approved by the International Group are those set out in the attached circular and paragraph 1 above:

- (a) Electronic Shipping Solutions DSUA 2009.3 and DSUA 2013.1 (“ESS”);
- (b) Bolero International Ltd Rulebook/Operating Procedure 1999 (“Bolero”); and
- (c) E-title (The Electronic Title User Agreement (version 1.2))

It is always advisable to check that the system preferred bears the correct designation and is the approved version.

4. Is my position in respect of cover better protected when using one of these approved systems, than another electronic system which has not been approved?

Yes. You will have Club cover for P&I liabilities arising out of the use of one of the approved systems and thereby avoid exposure to the risks connected with the use of non-approved systems as described in Q5 below. However it is important to note that all exceptions and exclusions under the Club Rules continue to apply (as they would with a paper bill of lading). This includes exclusions of cover relating to the carriage of goods, such as:

- The issue or creation of an electronic document/record with a description of the cargo or its condition known to be incorrect;
- Short delivery where an electronic document/record is issued or created for an amount of cargo greater than that known to have been loaded;
- Discharge at a port or place other than the port or place provided for in the contract of carriage;
- The issue or creation of an ante or post-dated electronic document/record; and
- Delivery of the cargo without production of the negotiable electronic document/record.

5. What might the risks be if I use an unapproved electronic system?

The risk is the one set out in the answer to question 1 above i.e. that the electronic system is not recognised as performing all the functions that a paper bill of lading would have performed. One example could be that an unapproved system is found, when challenged legally, not to transfer rights in goods in the manner that the creators of the system intended. This may give rise to a dispute about ownership and mis-delivery of the cargo. Another example could be if the Hague or Hague-Visby Rules have not been effectively incorporated into the electronic bill of lading. If it is found that in each case the liability has arisen because of the use of the electronic system, then that will not be covered within normal P&I cover. However, it may be covered at the discretion of Club Boards.

6. Are there any other liabilities I could incur in using electronic bills of lading?

Members should be aware that participation in an electronic trading system may require entering into a contract with the system operator (ESS, Bolero or E-title or a non-approved system provider), which contract can include obligations to maintain minimum IT standards to access and use the electronic system and to use the electronic system only as permitted by the user agreements. The user agreements usually also contain undertakings of confidentiality. If broken these obligations could give rise to contractual liabilities under the user agreement to other users and the operator of the electronic bill of lading system. These liabilities are no different to those contained in for instance, software agreement or other IT application agreements and would fall outside P&I cover.

7. Is there an insurance which can cover me for these obligations?

These are non-marine risks for which may be covered by your own business insurances. This is something which you can check with your non-marine business insurance broker. These risks, in insurance terms, may be described as "cyber-risks" or business risks.

8. If I am considering using one of the three approved systems and I wish to look into the Bolero Rule Book ESS User Agreement or E-title User Agreement, how can I obtain a copy?

The party inviting you to use this system should provide this for you, or put you in touch with ESS, Bolero or E-title.

9. Do I need to ask you to check and approve the Rule Book or User Agreement of an approved system?

No. The International Group has approved these documents (as long as they are unamended and match the titles set out in the circular) as acceptable.

10. If I am considering using an unapproved system will the Club review the documents?

It is for you to satisfy yourself as to the manner in which the system operates. The Club cannot currently "approve" systems other than through the IG mechanism for doing so. Unapproved system operators can of course approach the IG Secretariat for approval, and the matter would then be considered by the appropriate sub-committee comprised of Club representatives, but this is not a quick or immediate procedure.

11. Electronic systems are based on specific contractual terms rather than statutes and treaties. Is there a risk when using an approved system that the contract of carriage will not be subject to the Hague or Hague-Visby Rules and that I might therefore be deprived of my P&I cover?

No, the contractual terms for the three approved systems make clear that any convention, treaty or national law that would have been applicable to carriage under a paper bill of lading will equally govern the carriage using an electronic document or record. Thus, so long as the carriage is subject to Hague or Hague Visby Rules by reference to the terms and conditions incorporated into the electronic document/record and/or by application of convention or national law as if a paper bill of lading had been issued then there should be no problem with Club cover.

If the carriage is compulsorily subject to another liability regime like the Hamburg Rules then again Club cover will remain in place as it would if the carriage were under a paper bill of lading.

12. Are there any standard wordings governing the use of electronic bills of lading?

BIMCO has published a standard clause for use in charter parties governing the use of electronic bills of lading. This clause was drafted by a committee of representatives from owners, charterers and the International Group. See wording below:

BIMCO Electronic Bills of Lading Clause

- (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.