

PRACTICAL GUIDE

BILLS OF LADING

Negotiable bills of lading

Executive summary

- Negotiable bills of lading are generally marked with 'order' or 'to order'.
- Endorsing a bill of lading is when a bill of lading is stamped and/or signed to pass possession and the right to take delivery of the cargo to a third party.
- Endorsement in blank is when the bill of lading is not endorsed to a named party.
- Endorsement in full is when the bill of lading is endorsed to a named party.
- Multiple endorsements can be made – thereby facilitating many sales and purchases of the cargo.

A. Who is this guide intended for?

This guide is written with the member, Master, carrier or local agent in mind, or whoever else is involved in issuing bills of lading and delivering cargo.

Some of the legal issues are discussed in the Club's publication '*In Focus: Negotiable bills of lading*' and we recommend that the two be read and considered together.

B. What do we mean by a negotiable bill of lading?

A negotiable bill of lading can be transferred to someone other than the original shipper or named consignee, thereby transferring to that other person the right to take delivery of the cargo.

The transfer of the bill of lading is generally done by endorsement of the bill of lading and its delivery to the endorsee, but bearer bills are transferable without endorsement.

C. Why are bills of lading endorsed?

Endorsements:

- a. Enable the negotiation or transfer of the bill of lading (and with it rights to take delivery of the cargo) to another party.
- b. Allow the cargo to be bought and sold whilst the vessel is on its way to the discharge port.
- c. Ease the bill of lading's ability to act as a valuable security mechanism to banks offering trade finance under, for example, Letters of Credit.

D. What do we mean by endorsement?

'Endorsement' refers to the signature and/or stamping of an original bill of lading by someone other than the issuer of the bill of lading as part of the process of delivering a bill of lading to someone else.

An original bill of lading presented at the discharge port may look slightly different from the non-negotiable copy retained on board because stamps and signatures – endorsements – have been added to the document since it was issued.

Usually, endorsements are on the reverse side of the bill of lading – and are mostly undated.

E. Different Forms of Endorsement

(i) Bearer bills of lading

- Often has the words 'to bearer' in the consignee box.
- Can also be that the consignee box is left blank.
- The cargo is to be delivered to whoever has physical possession of the original bill of lading (i.e. the bearer) without the necessity for signature.

CODE NAME: "CONGENBILL" EDITION 1994		BILL OF LADING	B/L No:
Shipper Shipper A		TO BE USED WITH CHARTER-PARTIES	
Consignee		Reference No:	
Notify address X company		CLEAN ON BOARD	
Vessel	Flag	Port of Loading	
Port of discharge			
Shipper's description of goods		Gross weight	

Figure 1. - bearer bill of lading

Here the name of the consignee is left blank. This means that the bill is a bearer bill. The only party that is entitled to delivery of the cargo is the party with physical possession of the bill.

(ii) 'To order' bills of lading

- Has the words 'to order' in the consignee box.
- The endorsement is carried out by the shipper signing and/or stamping the bill of lading and delivering the original bill of lading to the endorsee.

CODE NAME: "CONGENBILL" EDITION 1994		BILL OF LADING	B/L No:
Shipper Shipper A		TO BE USED WITH CHARTER-PARTIES	
Consignee To Order		Reference No:	
Notify address X company		CLEAN ON BOARD	
Vessel	Flag	Port of Loading	
Port of discharge			
Shipper's description of goods		Gross weight	

Figure 2. - 'to order' bill of lading

Here the consignee box states 'To order'. This means that delivery is to be made to the party to whom the shipper endorses and then transfers the bill of lading. If the shipper named 'shipper A' endorses and transfers the bill of lading to 'B Bank', then B Bank has the right to take delivery of the cargo.

(iii) To order of a named party

- Common insertions in the consignee box are
a) 'To order of' named party, or 'Named party or order'. This identifies the party to whom the order is – e.g. a) 'to order of B Bank' or b) 'B Bank or order'.
- No signature by the shipper is needed.
- Once the bill of lading has been transferred by the shipper to the named consignee – here, B Bank – the named consignee can sign and/or stamp the bill of lading – and transfer the bill of lading to another party (known as the endorsee).

CODE NAME: "CONGENBILL" EDITION 1994		BILL OF LADING	B/L No:
Shipper A Shipper		TO BE USED WITH CHARTER-PARTIES	
Consignee To Order of B Bank		Reference No:	
Notify address C company		CLEAN ON BOARD	
Vessel	Flag	Port of Loading	
Port of discharge			
Shipper's description of goods		Gross weight	

Figure 3. - to order of a named party

(iv) Endorsement 'in blank'

Endorsement 'in blank' is where the endorsee is not named by the party carrying out the endorsement.

Example: Endorsement in blank

Bank B endorses the bill of lading by stamping and signing 'B Bank' on the reverse side of the bill of lading.

Bank B does not specify to whom the bill of lading is being endorsed (it merely stamps and signs the bill of lading in the name of Bank B).

The bill of lading is then transferred by Bank B to the endorsee.

(iv) Endorsement in full: Endorsement to a named endorsee

The name of the party to whom the bill of lading is being transferred (the endorsee) will be inserted next to the endorsement.

Example: Endorsement in full

a. Bank B endorses the bill of lading by stamping and signing 'B Bank' on the reverse side of the bill of lading – and underneath writes 'endorsed to 'Metal Receiver'."

b. Bank B does specify to whom the bill of lading is being endorsed (in this case Metal Receiver).

c. Since the bill of lading has been endorsed by specifying to whom the bill of lading has been endorsed, the endorsement has been made in full – and the party to whom the bill has been endorsed is Metal Receiver.

(v) Multiple endorsements

A bill of lading can be endorsed multiple times. Each endorsement must state 'to order of' or 'or order' – or words to that effect.

Example: Endorsement in full

Bank B endorses the bill of lading by stamping and signing 'B Bank' on the reverse side of the bill of lading – and underneath writes 'endorsed to 'order of Metal Receiver'."

Since the bill of lading has been endorsed by specifying a) to whom the bill of lading has been endorsed and b) that the endorsement is 'to order' – the bill of lading has been endorsed in full – and it can therefore be endorsed again.

Metal Receiver now has a choice. Firstly, Metal Receiver can choose to take delivery of the cargo – or – secondly, Metal Receiver can choose to endorse the bill of lading to another party.

If Metal Receiver chooses to endorse the bill of lading to another party, it must stamp and/or sign the bill of lading with its name. Metal Receiver can choose to endorse the bill of lading to a named consignee and write 'to order' next to the new consignee.

If Metal Receiver endorses the bill of lading to 'to order of Steel Yard', then Steel Yard has title to the cargo. Steel Yard can then choose to endorse the bill of lading again (since the endorsement stated 'to order').

In this way a bill of lading can be endorsed multiple times.

E. How to spot a negotiable bill of lading

Being able to spot the difference between a negotiable and non-negotiable bill of lading is important for a shipowner/the Master.

The key word to look for is 'order'.

If the copy held on board the ship is a bearer or order bill of lading, then - before delivery of the cargo - the Master should check as follows:

- Is an original bill of lading being presented to take delivery of the cargo? If no original bill of lading is available, the Master should inform the Owners and request instructions. There are serious risks associated with delivering cargo without production of an original bill of lading. These include claims from the rightful owners of the cargo, and loss of P&I cover.
- It is important to compare the original bill of lading being presented against the copy held on board to check that it is genuine.

If the consignee appears as 'to order' or 'to the order of X' then - in addition to the above points the Master/discharge port agent can expect that when an original bill of lading is presented it will contain one or more endorsements. It is good practice to check, if possible, whether the original bill is being presented by the last endorsee.

It is important to remember that the key issue is that the carrier is usually obliged to deliver against presentation of an original bill of lading - and it is generally not for the carrier to question whether or not the holder is a lawful holder or to verify the identity of the presenting party.

If the copy on board simply contains the name of a consignee, then it is likely to be a non-negotiable (or 'straight') bill of lading - or a waybill. The word 'waybill' will generally be found on the face of the latter. In these cases, before delivery of the cargo the Master should check as follows:

a. In the case of a 'straight' bill - is an original bill of lading being presented to take delivery of the cargo? Best practice remains only to deliver the cargo against production of an original bill of lading.

b. In the case of a waybill, the original document is less important for delivery than identifying the consignee. The printed terms in the waybill will very often specify how delivery is to be carried out. For example, the BIMCO Liner Waybill provides for delivery to the party named as consignee or their agent on production of proof of identity, rather than the waybill.