

Documentary risk up close: anatomy of a bill of lading

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The bill of lading deserves particular attention, so heavily does it concentrate the risks of trade finance. Issued by the sea carrier or its agent, it serves three functions: a receipt for the goods taken in charge, with their description and apparent condition; evidence of the contract of carriage; and finally a document of title to the goods, possession of which confers the right to take delivery at destination. This third function makes it an instrument of security: the bank that holds the bill of lading to its order controls the goods.¹

This function rests on the reliability of the document. A bill of lading issued for non-existent goods, or issued in several originals handed to different financiers, destroys the security. The practices of maritime transport, in which bills of lading circulate in several originals and goods are sometimes delivered against letters of indemnity without presentation of the bill of lading, weaken the instrument. The frauds of 2020, which the following chapter describes, exploited these weaknesses extensively.

Electronic bills of lading, whose use is growing, make it possible to guarantee the uniqueness of the document of title and to trace its transfers, which reduces the risk of multiple presentation.² Their general adoption depends on take-up by carriers, traders, banks, insurers and port authorities, and on legal recognition of their effect in the various countries. Geneva, which brings these players together, is a testing ground.

1 Notes

1. Art. 902 para. 1 of the Swiss Civil Code (CC; droit-bilingue.ch): “The pledge of securities representing goods confers a lien on the goods themselves”; para. 2: “Where a special pledge certificate (warrant) has been created independently of the document representing the goods,

the pledging of the warrant is equivalent to the pledging of the goods”; Art. 1153 et seq. of the Code of Obligations (CO; documents of title to goods); UNCITRAL, Model Law on Electronic Transferable Records, adopted on 13 July 2017: documents covered “bills of lading, bills of exchange, promissory notes and warehouse receipts”. ↩

2. UNCITRAL, “UNCITRAL Model Law on Electronic Transferable Records (2017)” (uncitral.un.org): model law adopted on 13 July 2017, based on non-discrimination against electronic means, functional equivalence and technological neutrality, requiring “a reliable method” to establish exclusive control of the record; Kennedys, “The Electronic Trade Documents Act 2023”, 20 July 2023: Royal Assent of the UK statute recognising electronic trade documents, “anything which may be done with a paper document may be done with an electronic document”, criteria for a reliable system in section 2(5); UK P&I Club, “UK Electronic Trade Documents Act 2023 comes into force” (September 2023): legal recognition of electronic bills of lading under English law, ten systems approved by the International Group since 2010. ↩

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