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Block-Chain: Bills of Lading & Official Documents



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Asia, Middle East and Europe

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Carriers, charterers, traders and shippers commonly experience the issue of original bills of lading arriving late at a port of discharge, thereby depriving the lawful holder or consignee of timely taking delivery of the cargo. This may delay cargo operations, lead to incurrence of demurrage or detention fees, directly or indirectly contribute to port congestion and/or the incurrence of port costs and expenses.

Over the years, the shipping industry has developed ways of addressing this issue. In particular, the consignee and/or charterers can issue a Letter of Indemnity (“LOI”) for the benefit of the carrier for the purpose of procuring the early release of the cargo without the need to tender an original bill of lading. The effect of this is to provide the carrier with a form of security against claims it may face as a consequence of releasing the cargo without insisting on the provision of original bills of lading.

The LOI is a commercially useful method for breaking the deadlock and avoiding the consequences of delay (both under the sale contract and underlying contract of carriage). Increasingly, we see more charterparties and contracts of affreightment incorporating provisions expressly mandating the owner carrier to accept a LOI from the charterer according to a particular form of wording in certain situations, i.e., where the original bills have not arrived in time or where the tendered bills are defective in some way.

This practice comes with its drawbacks, particularly from a balance sheet perspective. From the carrier’s perspective, the strength of a LOI is only as good as the financial health or creditworthiness of the issuer (not to mention the issuer’s willingness to honour its obligations under the LOI). Moreover, releasing the cargo against a LOI will likely prejudice a carriers’ P&I cover such that the carrier may potentially have to foot the bill for all foreseeable losses arising as a consequence of the release.

Likewise, for a charterer, issuing a LOI could create a significant liability on its balance sheet as the potential risk of a mis-delivery inevitably rises, leaving charterers potentially exposed to significant indemnity claims brought against it by the carrier. If the issuance of LOIs are a regular occurrence for charterers which operate large fleets, this exposure, at any one time, could be monumental in total and may therefore adversely affect the operation of a charterer’s (or cargo operator’s) business banking facilities, its ability to raise and/or spend capital. Depending on the scope of the issued LOI, a charterer’s liability may not be confined to potential mis-delivery claims; it may also include other heads of loss, such as for delay or for costs of transshipment or storage and so on.

The Corona virus pandemic has undoubtedly plunged further under the spot light the practical limitations for transporting original paper bills of lading. Given the disruption to supply chains and transport systems generally, delay to transportation of vital cargo documentation is also prevalent, hindering the smooth execution of international shipping and trade processes¹.

What is Blockchain Technology?

Put simply, blockchain is a form of decentralized electronic ledger, providing for the flow of almost instantaneous time stamped information benefiting from both data integrity and identity authentication. It has three powerful innovative components:

1. New data can only be built on existing data in the sense that all data is stored in a cryptographically secured data chain that ensures the consistency of data blocks, the timeline of transactions and data validity.
2. The data is immutable in that it purportedly cannot be tampered with.

¹ See hyperlink to the recent International Chamber of Commerce (ICC) memo stating its concern about the impact of the **COVID-19** pandemic on the functioning of the global trade finance market: [here](#)

*“As a consequence of necessary public-health interventions to tackle the pandemic, banks are facing increased difficulties processing trade finance transactions. These operations typically require significant levels of in-person staffing to review hard-copy paper documentation, which is required as a matter of national law in many jurisdictions. While ICC and banks are taking rapid—and unprecedented—steps to limit potential disruption to the processing of trade transactions, **only effective government intervention to enable an immediate transition to paperless trading will fully mitigate the potential implications of COVID-19 related workplace restrictions on the financing of trade**”.*

3. When new data is processed in accordance with the in-built blockchain system, the ledger tracks and makes clear what changes have been made.

Blockchain Digital Revolution

Given the approval granted to certain blockchain platforms by the International Group of P&I Clubs, blockchain technology is arguably on its way now to driving the complete digital transformation of the shipping industry.

This not only goes to creating a more dynamic market for the sale of goods (permitting traders to effect multiple real time transactions in respect of a particular cargo moving in any part of the world over short or long distances), but it should also allow for ports to plan strategically and optimally manage cargo operations limiting congestion (port and shore side). This will also likely prove beneficial to the cargo storage segment of the logistics chain, potentially providing further costs savings to interested stakeholders. Carriers should also be able to trade their vessels more efficiently, benefiting from time and costs savings and this should prove a win-win outcome for the ardent environmentalists.

In conjunction with electronic document management, international maritime hubs digitalizing service output will ultimately, we believe, usher in the age of full inter-connectivity. We expect this will include the administration of AI capabilities integrating smart port technologies as well as smart container technologies in the container/liner trade.

Official Documents

In order to achieve the level of efficiency optimisation contemplated above, it will be necessary for cargo documents, other than bills of lading, to enjoy near instant transportation. This has reportedly been catered for with particular documents (for example, Certificates of Origin) remaining attached to the blockchain bill at all stages of its electronic voyage.

The technology would not stop there. Some platforms are apparently negotiating with certain governmental authorities to add the service of creating and issuing official customs related documents. The possibilities here are endless and could result in a more streamlined cargo import and export process increasingly rendering redundant the need for shipping agent middlemen presenting further costs savings.

Credit must be given to UNCITRAL, which has increased the pace of this digital revolution having laid the foundational framework with its Model Law on Electronic Transferable Records adopted by resolution of the UN General Assembly in December 2017. This was undoubtedly the determined forerunner event for member states to consider updating their legislation, underpinning the national recognition of the possibility for electronic transfer of documents facilitating international trade and shipping. The march goes on.

If you are interested in a visual demonstration of how blockchain technology in the context of bills of lading works, please feel free to get in touch with the author who would be happy to arrange for an online viewing.

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