

ELECTRONIC BILLS OF LADING



Bulker preparing to load in South America

The Developments

BIMCO has recently developed and published a charter party clause that specifically addresses the use of electronic bills of lading. Increasing use of electronic documentation, particularly in the dry cargo sector, has resulted in a growing user demand from owners and charterers.

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.

Today there are two platforms at the forefront of developments in electronic bills of lading systems - essDOCS and Bolero - both of which have been approved by the International Group of P&I Clubs ("the International Group") as well as by P&I Clubs outside the group.

Electronic Bills of Lading Clause for Charterparties

The use of electronic bills of lading is said to offer benefits both to charterers and owners in streamlining the documentation process and reducing the risk of fraud. The purpose of BIMCO's new Electronic Bills of Lading Clause is to provide a contractual agreement to permit the use by charterers of the essDOCS and Bolero systems for bills of lading, waybills and delivery orders. The clause effectively confers on electronic bills of lading the same status as paper bills of lading under the terms of the charter party. The full wording of the Electronic Bills of Lading Clause is as follows:

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.

A BIMCO Special Circular containing the full wording of the Electronic Bills of Lading Clause with an accompanying explanatory note can be downloaded [at BIMCO's website](#)ⁱ.

The Position of the P&I Clubs within the International Group with regard to paperless trading

Already from 1998, the Association together with other P&I Clubs in the International Group has reviewed progress on electronic trading systems. Please find Circulars from 11 December 1998 and 5 October 1999 (and subsequent circulars) on our [website](#)ⁱⁱ.

Until February 2010, the Rules of all of the Clubs comprising the International Group specifically excluded liabilities in respect of the carriage of cargo under all electronic trading systems to the extent that the liabilities under such systems would not have arisen under a 'normal' paper system, using transferable paper documentation.

The International Group, after reviewing a number of electronic trading systems, agreed in 2010 that liabilities arising in respect of the carriage of cargo under such systems would be covered from 20 February 2010 provided that the system had first been approved by the International Group.

The Circular can be found on [Skuld's website](#)ⁱⁱⁱ.

Approved Systems

The two systems currently approved by the International Group are the ones administered by

- essDOCS version called DSUA 2013.1 (into effect as of 18 March) and it enables electronic trading both in respect of bills of lading and waybills. This version supersedes the essDOCS previous electronic trading system version DSUA 2009.3, which remains approved for the purposes of Club cover (cf. the [2013 Circular](#)^{iv}) and
- Bolero International Ltd. (the Bolero system - Rulebook/Operating Procedures, September 1999).

Cover Position

Members should be aware that traditional exclusions of cover under Club Rules relating to the carriage of cargo, will of course continue to apply in respect of essDOCS and Bolero in the same way as for paper systems, e.g. discharge at a port or place other than the port or place provided for in the contract of carriage, the issue/creation of an ante- or post-dated electronic document/record, delivery of cargo without the production of the negotiable electronic document/record.

Non-covered Risks

The 2010 and 2013 Circulars also clarify that using an electronic bill of lading may expose members to liabilities which are not of a traditional P&I nature.

This is a reference to the types of liabilities members face when using any electronic system or electronic interface in their office or on their ships, for example the risk of viruses, "hacking", or the accidental release or theft of information.

Further liabilities may include, for example, those which arise under the contractual arrangements, which members have to make directly with the system operator (Bolero or essDOCS or other, non-approved systems), such as obligations to maintain computer links, or the introduction of a virus within the operator's or a user's system.

The user agreements also contain undertakings of confidentiality and could give rise to liabilities, if broken. All of these risks are non-marine risks, and may be covered by members' own business insurances. These are not in the nature of P&I risks. In insurance terms, they may be described as "cyber-risks" or business risks.

Please find further helpful information about paperless trading in the International Group's FAQs dated 6 August 2013^v. In addition, BIMCO has compiled a [list of FAQs](#)^{vi} for its members that answer many of the questions about the use of electronic bills of lading

Feedback requested

Finally, the Association encourages its members who are using either of the two approved electronic trading systems, to report to us that they are doing so and of any benefits or difficulties which they encounter, legal or practical, in the operation of either system. This information would be helpful to the International Group, in monitoring the use and development of the two systems.

Practical Advice on how paperless trading works

We recommend that members consult the websites from those organisations providing the two systems that are approved by the International Group to familiarise themselves with the systems and how paperless trading works.

Please follow the below links to the relevant websites:

<http://www.bolero.net/>

<http://www.essdocs.com/>

More specific information from essDOCS about how their system operates can be found in the [ESS memorandum dated 1 July 2013](#)^{vii}.

CREDITS

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References

ⁱ https://www.bimco.org/~media/Chartering/Special_Circulars/SC2014_03.ashx

ⁱⁱ <http://www.skuld.com/topics/cargo/electronic-trading/>

ⁱⁱⁱ <http://www.skuld.com/topics/circulars/circulars/electronic-paperless-trading-systems/>

^{iv} <http://www.skuld.com/topics/circulars/circulars/electronic-paperless-trading-systems-updated-ess-dsua-version-20131/>

^v <http://www.skuld.com/topics/circulars/circulars/paperless-trading-electronic-bills-of-lading---ig-faqs-6-august-2013/>

^{vi} https://www.bimco.org/Chartering/Bills_of_Lading/Electronic_Bills_of_Lading_FAQs.aspx

^{vii} <http://www.skuld.com/topics/legal/pi/electronic-bills-of-lading/>