

Digitization of Bills of Lading- A Step in the Right Direction

Bills of Lading (“B/L”) are one of the most important documents used by the shipping industry.

According to the United Nations Conference on Trade and Development (“UNCTAD”), a B/L may be described as either a receipt, acknowledging the shipment of goods on a particular vessel, a memorandum of terms and conditions of the contract of carriage or a document of title of goods, enabling a consignee to take delivery of the said goods . Traditional B/Ls consist of paper documentation, duly endorsed by the shipper and usually signed in sets of three originals. The originality of B/Ls are of utmost importance as they are considered as legal documents and often used as security by banks financing the transaction.

With the paradigm shift towards digitization of the shipping industry and the advent of the COVID-19 pandemic, the Indian Ministry of Shipping has initiated, inter alia, the development and adoption of Electronic B/Ls (“e-B/Ls”). These e-B/Ls are said to form a part of India’s Electronic Port Community System which will operate at 19 ports, including major ports, and connect 16,000 corporate stakeholders. The said system aims at facilitating the transfer as well as processing of e-B/Ls . The system intends to use existing service providers such as BOLERO’s cloud based encryption platform and CargoX’s blockchain platform. These platforms have been recognized and accepted by the International Group of Protection & Indemnity Clubs. In essence, these platforms would enable the creation, exchange and storage of original e-B/Ls while also ensuring their confidentiality, auditability and traceability through secure blockchain technology.

The introduction of e-B/Ls to the Indian shipping industry comes at a time of need. At present, traditional paper-based B/Ls are widely used. However, these paper B/Ls come with their own shortfalls. Paper e-B/Ls attract huge administrative costs. According to a United Nations study, the estimated costs for processing trade paperwork was approximately US\$ 420 billion a year. Traditional B/Ls tend to be relatively inconvenient and impractical as they are passed around many hands. According to Maersk and IBM, a shipment of

refrigerated goods from East Africa to Europe involved an exchange between nearly 30 entities, including around 200 interactions. A consequence that flows from this is the need for letters of indemnity to be issued by P&I clubs in favour of the shipowners in order to indemnify them against delivery of goods without a B/L. Moreover, as any other paper instrument, traditional B/Ls are more susceptible to fraud and forgery.

E-B/Ls are expected to overcome the various issues and limitations of traditional B/Ls, facilitating efficient cross-border transactions in the shipping industry. However, an impediment with the present e-B/Ls is that there is no standard in place for the creation, processing and transfer of the same. At present, e-B/Ls largely work on a “club” system. These club systems are based on advance contractual agreements between the parties concerned with all the parties having access to the software being used. A corollary to this is that non-contractual parties have no access to the system and can thus not exchange electronic documents with contractual parties. As a result, paper B/Ls would nonetheless be required to be utilized, negating the very purpose of the e-B/Ls system. Moreover, due to a lack of standard, banks are increasingly hesitant to use e-B/Ls as security, further defeating the purpose of the same.

As a solution, BIMCO has recently announced that it is in the process of developing a standard for e-B/Ls in the liquid and dry bulk sector of the shipping industry. The introduction of a standard for e-B/Ls has many benefits. First and foremost, it will bring about much needed uniformity in the industry. This in turn will provide banks with a sense of comfort, encouraging them to recognize e-B/Ls as security. Moreover, it will ensure that terms and conditions adopted in the e-B/Ls will be clearly defined, promoting easy comprehension and unambiguous communication amongst the parties concerned. As opposed to the club system, in order for a party to be a part of a transaction using the standards need only implement the said standards as seen with DCSA’s e-documentation system. The BIMCO standardized e-B/Ls are proposed to be in tune with UN/CEFACT MultiModal Reference Data Model. As a result, it can be expected that a standard for e-B/Ls will bring about seamless interoperability between various sectors in the industry along with cost and time efficient end-to-end container shipping documentation.

Although at this juncture it is not clear of what BIMCO’s standards for e-B/Ls are and considering BIMCO’s position to introduce a revolutionary standard for e-B/Ls, it is hoped that it adopts the use of Distributed Ledger Technology i.e. the technology on which Blockchains are created. This technology is relatively more robust and offers potential solutions for eliminating the risk of a disastrous attack that could potentially compromise the integrity and uniqueness of an e-B/L. The said technology would also help overcome the issues presently subsisting with the club system.

Since India is now acquainted with e-B/Ls and already has an established platform for the use thereof, it is anticipated that in the near future, India too, would adopt BIMCO's standards for e-B/Ls. Moreover, Indian legislation does not appear to cause any impediments to the use of e-B/Ls. While India has a statute governing B/Ls i.e. the Indian Bills of Lading Act, 1856, the said statute makes no mention of the form in which a B/L is to be transacted with. The said Act merely lays down the rights of the holder of the B/L. Thus, where a B/L meets all essential requirements so as to consider it valid such as being duly endorsed and being an original copy, it can be reasonably inferred that even e-B/Ls will be covered under the said Statute. However, since electronic documentation brings with it its own set of challenges, it is hoped that the Indian government adopts a legislation in consonance with the UNCITRAL Model Law on Electronic Transferable Records to ensure better governance and enforcement of e-B/Ls.

In conclusion, the adoption and utilization of e-B/Ls would allow India to truly reap the benefits of digitization in the shipping sector by offering harmonious cross-border transactions and making it a desirable destination for various stakeholders in the industry to do business.

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- i The Secretariat of UNCTAD, Bills of Lading, UNCTAD, New York, United Nations Publications, 1971.
 - ii The Maritime Executive, "India Launches Digitization of the Bill of Lading and Trade Documents" 11 June 2020. The Maritime Executive, 11 June 2021.
 - iii Ministry of Shipping Letter, D.O. No. PD-14033/38/2016-PD.V, 16th April, 2020.
 - iv Rasmus Nord Jorgensen, "BIMCO Sets Sights on a Global Electronic Bill of Lading Standard", BIMCO 1 June, 2021.
 - v DCSA on "Creating a foundation for paperless trade".