



SPECIALIST
PROFESSIONAL
INDEMNITY
INSURANCE



ITIC Guidelines for the Release of Cargoes

RELEASE AGAINST AN ORIGINAL BILL OF LADING

B/L CHECKLIST:

Is it consigned to the order of the shipper or a bank? - has the shipper (or bank) endorsed the b/l over to the party to whom the delivery order is being issued, and has that party also endorsed it?

Is it a sea waybill? - unlike a b/l, a sea waybill is not a document of title and it is not necessary for the consignee to produce and surrender an original. The duty of the ship agent is normally restricted to checking the identity of the named consignee taking delivery. It is, however, a sensible precaution to ask the party claiming delivery to produce either a copy of the sea waybill or the arrival notice.

NB: This is the general rule; but you must check that it is also the case in your country;

Is it a straight/non negotiable/express b/l? - if the b/l is consigned to a named party and is not "to order" then it is non-negotiable (sometimes called a "straight" b/l). In some countries delivery under a "straight" b/l is the same as if it was a sea waybill. Express bills of lading are sometimes issued when the seller wants the cargo to be released without collection of the original bill, for example when cargo is being transferred between branches of the same company. Express bills are usually surrendered at the loadport, and an instruction is then given to the discharge port to release without collection of the original b/l (a "Telex" release – see below)

NB You must check the law in your own country to ascertain if this applies; you must also get your principal's authority as the law governing the b/l may not allow delivery without the original b/l being surrendered;

Did it arrive care of the master in the ship's bag? - great care should be taken to:

- (a) identify the party to whom delivery should be made and
- (b) make sure that the principal's instructions are followed. Do not assume that delivery should be made to the consignee or notify party named on the b/l - obtain written delivery instructions from either the principal or the master. The b/l still needs to be properly endorsed (see above);

Is it an NVOCC/house b/l? - the NVOCC b/l may have been negotiated through a bank, but you must make sure that your principal's/the ocean carrier's b/l has been surrendered and all charges have been paid.

NB. The ocean carrier's b/l could be with the loadport agent awaiting payment of freight and charges.

SURE THAT YOU HAVE AN ORIGINAL B/L? NOW CHECK THE FOLLOWING:

Date and B/L number - do they correspond with the manifest?

Is it signed? - an unsigned b/l is not properly issued and could be an amended copy or a forgery;

Signatures - do they correspond to the authorised signatures on file?

Amendments - what is the effect of the amendments? Have they been authenticated by stamp and authorised signature? If you have reason to suspect the authenticity of any amendment, scan and email a copy of the b/l to the loadport agents and ask them for written confirmation that it is genuine;

Endorsements - do they appear authentic and are they unqualified?

Container number(s)/seal number(s) - do they correspond with the manifest?

Cargo description/number of packages - make sure you are not releasing a container with two cargoes covered by two bills of lading;

One bulk cargo with multi bs/l? - do not issue part delivery orders for exact quantities of bulk cargoes which are susceptible to measurement errors or wastage;

Shipper/consignee/notify party - do they correspond with the manifest?

Are there special instructions? - eg. to deliver against an original NVOC/house b/l only;

Freight or charges - are any due? if so, have they been paid?

Shippers' disbursements to collect? - have they been collected?

CHECK THE MANIFEST BEFORE ISSUING THE DELIVERY ORDER – there may be new instructions not to release, or to release to another party.

When the above checks are finished mark the original b/l "ACCOMPLISHED" in large red letters before issuing the delivery order, and place it in the voyage file, which should be retained for the length of time the principal requires such documents to be retained.

RELEASE OF CARGO WITHOUT SURRENDER OF THE ORIGINAL B/L

There will be situations where the agent is instructed or requested to deliver cargo without taking the original b/l, sometimes without any security at all and sometimes against provision of a Letter of Indemnity (LOI). Great care is needed as there is considerable risk involved in both these practices. Delivery of cargo to a party not holding an original b/l is a breach of the b/l contract and the legal holder of the b/l can sue the shipowner, the carrier, or the party who has wrongfully delivered the cargo.

The legal holder of the b/l could be the shipper, the receiver, a bank, or another party to whom the b/l has been negotiated.

The obtaining of an LOI does not relieve the carrier of liability to the cargo owner, it only provides for compensation from the party or parties issuing the indemnity for amounts which the carrier may have to pay to the holder of the original b/l. If release against an LOI is authorised by the carrier, it is the agent's duty to make sure that it is correctly worded, correctly signed and (if required by the principal) counter-signed by a bank.

DO:

REFER ANY request to deliver without original bs/l (either with or without an LOI) to a director or senior manager of your company - who should approve the release in writing;

ALWAYS GET AUTHORITY IN WRITING from the correct principal to release the cargo without b/l - agents must never take the decision whether or not to release cargo without surrender of the original b/l, or to release against an LOI. In addition particular care must be taken to identify the true principal (or principals) from whom the agent needs to receive authoritative instructions. It is possible to be the agent for two parties (eg. the shipowner and the charterer or an NVOCC). An instruction from the charterer or NVOCC to release cargo without an original b/l, could prejudice the shipowner, who would then have the right to claim any loss from the agent;

MAKE sure the authority specifies IN WRITING that cargo can be released WITHOUT SURRENDER OF ORIGINAL B/L, and whether a LOI should be obtained - ITIC members have received e-mails authorising them to release cargo, which they erroneously understood to be an authority to release without the original b/l, when it was not. The authority must be clear and unambiguous. If it is not, then ask for clarification.

GET authority in writing from the cargo owner (either direct or through the principal) to deliver the goods to the party claiming them without surrender of the original b/l (or in exchange for a Letter of Indemnity if that is required);
NB. The cargo owner could be the party to whom the b/l has been endorsed.

CHECK the authenticity of any authorisation or instruction to release cargo without taking the original b/l - ITIC has seen forged emailed release instructions which purported to come from the loadport agent or from the shipper or from the principal;

ENSURE that the notify party has been notified - if the b/l does not identify the notify party, the agent should request this information from the principal (or from the carrier, if the carrier is not his principal);

LETTERS OF INDEMNITY

OBTAIN the express written authority of the principal as to the wording/ duration/amount/security (eg counter- signature by bank) of the LOI - the principal's agency manual may contain instructions and the wording to be used, or alternatively ITIC can provide the wording recommended by the International Group of P & I Clubs;

CHECK that the LOI is genuine – cargoes are valuable and forgeries are not unusual. This would include checking with the counter-signing bank that they have indeed counter-signed the letter of indemnity;

CHECK the particulars of the goods shown in the LOI and ensure that they correspond to those shown in the b/l/manifest;

ENSURE that the LOI indemnifies all parties who might be prejudiced by delivery without bills of lading - this includes the principal (who could be a shipping line or an NVOCC), the agent himself, and the owner or charterer of the ship, and all their agents [In some countries, the agent himself will have responsibility independent from that of his principal and this should be reflected in the wording of the guarantee]. Similarly, the LOI should not be limited to claims arising under contract but should also cover claims which may arise under the general law;

KEEP LOIs in a safe place, keep a record of them and make reasonable efforts to obtain the original bs/l from the receiver - if the b/l has not been produced within, say, one month, notify the principal and ask for instructions;

DO NOT:

ACCEPT scanned or photocopied bills of lading or LOIs - they are not evidence that the receiver has the originals in his possession. LOIs can be falsified. ITIC has been notified of release against scanned and photocopied LOIs, where bank stamps and signatures have been cut and pasted from another document and fraudulently appended;

ACCEPT instructions from the loadport agent to release without original bs/l – always confirm with your principal unless the principal has granted a standing authority to do so;

SUCCUMB to commercial pressure from good customers to release cargo without original bs/l - delivery of cargo without the original b/l to the most reputable company can still result in the carrier and his agent becoming involved in disputes between shipper and receiver. If the receiver manages to obtain delivery without paying for goods which turn out to be defective, he is unlikely to pay for them (or may even take the opportunity to offset the value of the goods against another dispute with the shipper), leaving the carrier and its agent to deal with the unpaid shipper. In addition this deliberate commercial risk will not be insured, either by the carrier's insurers or by your insurers

RELEASE cargo against a LOI in the knowledge that the party offering the letter of indemnity is not entitled to the cargo - this might amount to a fraud on the party entitled to delivery of the goods under the b/l or to a party, such as a financing bank, having rights over the bill or the goods. The indemnity obtained could then be unenforceable;

REMEMBER - AN INDEMNITY IS ONLY AS GOOD AS THE PARTY ISSUING IT!

PLEASE NOTE THAT YOUR PRINCIPAL HAS NO INSURANCE FOR THE CONSEQUENCES OF DELIVERY OF CARGO WITHOUT TAKING THE ORIGINAL B/L IN EXCHANGE, AND YOUR OWN INSURANCE COULD BE PREJUDICED.

TELEX RELEASE

By "Telex Release" we mean the industry term for the surrender of the original b/l at one port (usually the load port) and release of the cargo at another port. The shipper, or a forwarder, or an NVOCC may choose (for one reason or another) to surrender the bills of lading to the carrier's agent in a port other than the discharge port. The carrier has a duty to collect the original bs/l before releasing cargo and the bs/l are normally surrendered to the discharge port agent, but it is not necessary for this to be the case. However, collection of the original b/l by one agent and release by another does need to be handled carefully. Carelessness in dealing with Telex Releases has resulted, and continues to result, in numerous claims for misrelease of cargo.

What should agents do when asked to perform a "Telex Release"?

The first thing any agent should do is to obtain written authority from the principal. Shipping lines often include Telex Release procedures in their Agency Manuals, which authorise telex release and set out standard procedures to be followed by the Authorising Agent (the agent to whom the original bills of lading are surrendered) and the Releasing Agent (who issues the delivery orders). These procedures must be followed strictly by both agents. If the principal does not have standard Telex Release procedures, then the Releasing Agent must in every case obtain written authority from the principal before releasing cargo in this way. If the principal has other requirements (such as LOIs from shippers/receivers or to be notified of all Telex Releases) then these requirements must be followed by both agents.

The "Authorising Agent" (to whom the original bills of lading are surrendered) must:

OBTAIN full set of original bills of lading, properly endorsed (if appropriate);

COLLECT all outstanding freight and charges payable at his port (as appropriate);

OBTAIN written instruction from shipper (or valid endorsee) that cargo can be released at Releasing Agent's port (to be specified) against surrender of original bs/l to the Authorising Agent. The shipper or endorsee should be asked to provide in writing details of consignee or other party to whom cargo should be released (full style, name, address, phone, fax, e-mail);

SEND clear and unambiguous instructions to Releasing Agent that include:

- a) confirmation that full set of original bs/l properly endorsed (if appropriate) have been surrendered and that cargo can be released at Releasing Agent's port;
- b) confirmation that all charges (such as freight and other charges payable at load port) have been collected;
- c) full details of the cargo to be released (i.e. b/l number/date/place of issue, container number and cargo details);
- d) full name, style, address, telephone, fax and e-mail address of consignee, or valid endorsee, to whom cargo should be released;

ASK Releasing Agent to confirm once cargo has been released, at which time the bs/l should be stamped "ACCOMPLISHED" and placed on the voyage file, which should be retained for the length of time the principal requires such documents to be retained.

Releasing Agent must:

CHECK WORDING of "Telex Release" carefully. The Releasing Agent should double-check with the Authorising Agent if the email does not clearly contain the following:

- a) confirmation that the full set of properly endorsed (if appropriate) original bills of lading have been collected by them and that cargo can be released;
AND
- b) that freight and other charges payable at the load port have been collected,
AND
- c) full details of the cargo, container number, name, address etc. of consignee or party to whom delivery should be given.

FINALLY AND MOST IMPORTANTLY - Releasing Agents MUST NOT ACCEPT EMAILS PURPORTING TO BE "TELEX RELEASES" AT FACE VALUE. In every case the Releasing Agents should send an e-mail to the Authorising Agent (not by pressing the "Reply" button to respond to the purported Telex Release but by finding, checking and using the genuine e-mail address of the Authorising Agent). The "Telex Release" as received should be copied and pasted into the e-mail to the Authorising Agent, who should be asked to confirm that the message originated with him.

ONLY THEN SHOULD THE RELEASING AGENT ISSUE THE DELIVERY ORDER.

GENERAL INSTRUCTIONS

MANIFEST

Update the manifest with any amendments IMMEDIATELY - the manifest issued by the carrier or his agent at the loadport (regardless of whether a paper or electronic copy is used) should be kept up to date at all times;

Notify the import clerk immediately of any instructions received regarding the release of cargo - eg. a change from freight prepaid to freight collect or an instruction to withhold delivery or a change in the receiver. Any delay can result in important instructions arriving at the import desk after the cargo has been delivered.

IF THE FOLLOWING PROBLEMS OCCUR - SEEK ADVICE FROM MANAGEMENT OR ITIC

More than one party claiming the same cargo - bills of lading are usually issued in a set of three originals and more than one party could therefore be in possession of an original b/l;

Request from shipper not to release to consignee under a sea waybill, or when the consignee has produced an original b/l - an unpaid shipper may instruct the carrier not to release even though the cargo is covered by a sea waybill or an original negotiable b/l is in the hands of the receiver - the carrier and his agent cannot ignore this instruction.

In both the above situations it may be necessary for the courts to decide who is entitled to the cargo;

Freight owed by same receiver for another cargo - the right to lien cargo for unpaid freight and other costs normally only applies to charges on the cargo itself. Any attempt to hold cargo for freight debts on other cargo may be illegal.

IF IN DOUBT ALWAYS REFER TO MANAGEMENT. THE STAFF OF ITIC ARE ALWAYS READY TO ASSIST WITH ADVICE.