

# Endorsement in bill of lading practice based on cases of teledischarge, letter of guarantee and non-endorsement

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**Abstract.** International Trade and international transportation are the origin and derivation. As a link, bill of lading connects trade, transportation and finance, which brings convenience to international trade transactions. Thereinto, the endorsement of bill of lading is one of the cases should be paid attention to. The law endows the bill of lading with three functions. The endorsement of the bill of lading is one of the requirements to realize its functions. According to the records and classification in the consignee column of the bill of lading, it has a more complex business practice to instruct the transfer of endorsement and delivery of the bill of lading. This paper discusses the special situations of "teledischarge", "letter of guarantee" and "non endorsement". According to the analysis, it is clearly pointed out the matters that all parties should pay attention to, which can help practitioners avoid relevant errors. These results shed light on guiding further exploration of endorsement in bill of lading practice.

**Keywords:** Bill of lading, endorsement, telex release, letter of guarantee.

## 1. Introduction

In the practice of foreign trade, Bill of Lading (B/L) is often used as a tool in international cargo transactions to solve problems of cargo handover. In practice, since people are not fully aware of the endorsement of the bill of lading, no one uses the endorsement of the bill of lading as a mean to embarrass the parties concerned in order to solve their own problems. Besides, they seldom hear about disputes arising from the endorsement of the bill of lading [1]. Therefore, it is not surprising that people do not attach importance to the endorsement of bills of lading. The Civil Ruling of the Supreme People's Court (2020) Supreme Fa Min Shen No.6937 points that the carrier (as the shipping company carrying the goods in the contract of carriage) delivers the goods to the holder of the "illegal" bill of lading knowing that the bill of lading in this case has not been legally endorsed (Duly endorsed). As a result, the shipper directly loses the right to control the goods involved in the case, and also deprives the shipper of the opportunity to take remedial measures (e.g., declaring the loss of the bill of lading).

Since the carrier had improperly delivered the goods in question to another person, the shipper loses the possibility of recovering or disposing of the goods under the bill of lading involved in the case [2]. On this basis, it essentially results in the total loss of the value of the goods involved in the case and can be regarded as loss. The carrier shall bear the legal liability for its (agent at the port of destination, which is the shipping agent) lax examination of documents and wrong delivery, and compensate the shipper for the loss of value. It can be ascribed to the endorsement of the bill of lading. Meanwhile, as a retrial case of the Supreme People's Court, this case has gone through the first and second instance. The endorsement of the bill of lading us unaware for professional companies (or business personnel) including the shipping company as the carrier and the shipping agency company as the carrier's agent. With this in mind, this paper discusses the bill of lading and its endorsement used in liner transportation in order to arouse the attention of foreign trade practitioners to this issue. The rest part of the paper is organized as follows. The Sec. 2 will clarify the usage for bill of lading in international cargo transactions. The Sec. 3 will 1. demonstrate the requirements for endorsement of bill of lading. The Sec. 4 will discuss the endorsement of bill of lading under several special circumstances. Eventually, a brief summary will be given in Sec. 5.

## 2. Bill of Lading in International Cargo Transactions

The function of the bill of lading is established on the basis of commercial needs in order to ensure the "credibility" of the bill of lading. In the process of maritime transportation, the shipping company acts as the ship (carrier) and the cargo owner (shipper) serves as the cargo owner. When the cargo is delivered to the ship for transportation, the ship issues a cargo receipt to the cargo owner, indicating that the condition of the goods received by the ship (the name of the goods, number of packages, appearance, etc.). In order to clarify the rights, responsibilities and obligations between the ship and the cargo owner, the ship has recorded the corresponding clauses on the receipt. When the shipper is unable to pick up the goods at the port of discharge himself, the practice of handing over the goods between the ship and the cargo is formed [3]. Such commercial practices result in the final determination by law of the function represented by the document.

The production of the bill of lading facilitates the delivery of goods in transportation, and the bill of lading has become a symbol of goods in the process of trade on account of the credibility given by law. Trade in goods can be achieved by buying and selling bills of lading. Because the bill of lading can be used as a "document of title" and a financial document, it is often used in bank contracts (letters of credit). Therefore, bill of lading is a tool in transportation, trade and finance. Generally, in the practice of China-Europe freight trains, some people also hope to have a bill of lading, because the bill of lading has the function of "document of title", which can bring the effect of incremental goods.

As a means of contract of carriage, the bill of lading records the type, quantity and mark of the goods received. The condition of the goods as recorded in the bill of lading in the course of carriage is an indication of the state, in which the goods were received by the carrier who issued the bill of lading (and in practice would be its agent). In container liner shipping, since the bill of lading is issued on the basis of a yard receipt (mate's receipt is used in general cargo liner transportation), the bill of lading also has the function of a cargo receipt. The evidential effect of the bill of lading as a receipt for the goods is prima facie evidence between the carrier and the consignor and final evidence between the carrier and a third party, including the consignee.

Bill of lading, as a tool of trade contract, indicates the time when the seller delivers the goods and fulfills the obligation of delivery. Therefore, in practice, the occurrence of backdated bills of lading, advance bills of lading and concurrent bills of lading are to meet the requirements of trade contracts. Apparently, the goods and freight recorded in the bill of lading are also matters of concern to both buyers and sellers.

The bill of lading is a tool in the financial contract. When the beneficiary collects the specified documents including the bill of lading and presents them to the bank, it indicates that the beneficiary has fulfilled his obligations under the bank contract (letter of credit) and can obtain the payment according to the contract [4]. After the bank obtains the bill of lading and other documents, the applicant can pay for the bill. If the bill of lading is regarded as "negotiable securities", the bill of lading should have the attribute of "returnable securities", i.e., only when the holder of the Bill of Lading returns the Bill of Lading to the carrier, can he take delivery of the goods recorded under the B/L. When a bill of lading is issued in the course of transportation, the holder of the bill of lading needs to meet the "three conditions" when one wants to obtain the right to take delivery of the goods., i.e., return of the bill of lading (original bill of lading), payment of the charges due (e.g., freight to collect, recorded on the bill of lading) and correct endorsement. The first two conditions are the issues that everyone will pay attention to, while the third "endorsement" condition is the issue that everyone ignores. In this case, it reminds us to pay attention to the problem of "endorsement".

## 3. Requirements for endorsement of bill of lading

In practice, the endorsement of a bill of lading is the act of the endorser's signature, which can usually be understood as the endorser's writing (instructions) on the back and signing. Bills of lading may be classified into straight bills of lading, bearer bills of lading and order bills of lading according to the consignee column. The endorsement of the bill of lading is stipulated in the consignee column

of the bill of lading. A straight bill of lading is a bill of lading in which the name of the consignee is clearly stated in the consignee column, e.g., ABC CO., LTD. China's Maritime Code stipulates that the straight bill of lading at this time is not negotiable. At the time of delivery, the carrier confirms the identity of the person taking delivery of the goods as shown on the straight bill of lading by the consignee and delivers the goods by affixing his signature [5]. A bearer bill of lading does not contain any entry in the consignee column. At this point, the carrier delivers the goods to the holder of the bill of lading, and the holder's signature means that the goods can be taken delivery of. The bearer bill of lading does not need to be endorsed, and delivery is a transfer.

Order bill of lading is to record the order of the shipper/to order/ to order of shipper in the consignee column of the bill of lading. On this occasion, it is necessary to specify who is the first endorser, and then the correct endorsement should be continuous. The consecutive endorsement of an order bill of lading means that in the process of its transfer, the endorser of the transferred bill of lading and the endorsee of the transferred bill of lading are connected in turn. If the endorsement is not continuous, the transferee (drawee) of the bill of lading may refuse to pay the transferor (holder), otherwise the transferee (drawee) of the bill of lading is liable on its own. The continuous endorsement of the bill of lading mainly means that the endorsement is continuous in form. If the endorsement is not continuous in essence (e.g., forged signature), the transferee (payer) of the bill of lading shall still pay the transferor (holder) of the bill. However, the transferee of a bill of lading cannot pay knowing that the holder of the bill of lading is not the true obligee of the bill of lading [4]. Endorsement is an important way and means to transfer the rights of bill of lading, and the continuity of endorsement is an important factor for the obligee to prove rights. There are two main ways to endorse the bill of lading:

The first approach is Qualifying Indorsement. Instruct the endorser of the bill of lading to specify the transferee of the bill of lading in the case of a qualified indorsement. In this case, the endorser signs on the back of the bill of lading, stating "*DELIVER TO XXX*". As a consequence, the transferee can only use the bill of lading to take delivery of the goods, and no longer has the right to transfer the bill of lading. The transferee of the bill of lading wants to transfer the goods recorded under the bill of lading, usually directly after taking delivery of the goods. When an order bill of lading is endorsed to order, it becomes an order bill of lading with the nature of a straight bill of lading.

In addition, Qualifying Indication Endorsement is another path. An indorser of a bill of lading, in the case of a restrictive indorsement, provides that the indorsee of the bill of lading may designate the transferee. Under such circumstance, the endorser shall sign (seal) on the back of the bill of lading, indicating "*DELIVER TO THE ORDER OF XXX*". In other words, this indorsement to order is the endorsement on the back of the bill of lading of the endorsee who has the right to negotiate the bill of lading and the endorser's own signature. The transferee of the bill of lading can use the bill of lading to take delivery of the goods, which also has the right to continue to transfer the bill [6]. If the transferee of the order bill of lading wants to transfer the goods described in the bill of lading, it may endorse and pay several times in succession. In other words, Multiple transfers, or even unlimited transfers in the market will be implemented, until the goods are taken. Based on the analysis, the endorsement of the order bill of lading is related to the ownership of the goods (or the right to take delivery of the goods under the bill of lading).

#### **4. Endorsement of Bill of Lading under Special Circumstances**

Under normal circumstances, the endorsement of the bill of lading does not cause any problems, so it has not attracted any special attention. This article enumerates three kinds of special situations and draws the attention of practitioners.

##### **4.1 Electric discharge**

With the development of reformation and opening up, China's foreign trade developed rapidly in the early 1990s, and the international liner shipping, as a complementary derivative demand, also

developed rapidly. Nevertheless, some new business activities have emerged in response to practical needs. "Telex release" is a business model adopted by shipping companies and their agents according to market demand. It has been used for 30 years. This method is still similar to the endorsement of bills of lading, and some people do not know its principle. In fact, it is one of the special practices for carriers, shippers and consignees to deliver goods in the case of bills of lading [7]. However, it is different from the normal delivery of goods by bill of lading. This is a situation where the carrier does not collect the bill of lading at the port of discharge. Since the bill of lading is not withdrawn at the port of discharge, the situation that the carrier changes the port of discharge to deliver the goods can be used for reference. Therefore, the carrier must withdraw the full set of (original) bills of lading that have been issued, i.e., no holder of (original) bills of lading will come to the port to claim the goods. For the shipper (usually the seller in the sales contract) and the consignee (usually the buyer in the sales contract) in the contract of carriage, the seller should generally be concerned about whether one can guarantee to receive the payment in the case of "telex release", the buyer should generally be concerned about whether he can mention the goods in the case of payment, and the carrier should be concerned about not delivering the wrong goods. Generally, after the carrier has delivered the goods correctly, the shipper can no longer give the carrier the right to give instructions as a result of a change in the carriage of the goods.

"Telex release" is a procedure for handing over goods in the case of using bills of lading, so it is also necessary to issue bills of lading in practice. There is no problem in using "telex release" in straight bill of lading when necessary [8], since the consignee column of the bill of lading records a clear consignee. The practice of bearer bills of lading is hardly used and there is no doubt about it. Nevertheless, in practice, it is often asked whether an order bill of lading can be used for this case, as an order bill of lading is usually transferable by endorsement and delivery. Through the way of order bill of lading endorsement discussed above, we can know that the order bill of lading can be Duly endorsed by the endorser, hence it is clear that the endorsee (or the transferee of the bill of lading). The bill of lading is then returned to the carrier. The carrier may deliver the goods described in the bill of lading by withdrawing the bill of lading. However, the consignee, as the transferee of the bill, takes delivery of the goods at the port of discharge, so the consignee needs to show that it takes delivery of the goods. Therefore, in practice, there is a "telex guarantee" where the consignee who does not need to issue a guarantee assumes the responsibility of fulfilling the release guarantee.

#### **4.2 Delivery of goods against letter of guarantee**

The situation in which the consignee is required to assume the responsibility of discharging the guarantee is the situation in which the consignee takes delivery of the goods against the guarantee. As far as the shipping company is concerned, the delivery of the goods is subject to the collection of the bill of lading as the carrier. If the carrier does not deliver the goods against the bill of lading, it will be what we usually call delivery of goods without bill of lading [9]. Whereas, delivery of goods without bill of lading may occur, because the consignee is unable to obtain the bill of lading in time for some reason, and the goods have arrived at the port of discharge, and the consignee hopes to take delivery of the goods in time. Although the carrier needs to deliver the goods against the bill of lading, when the consignee has the ability to compensate the carrier for the "delivery of goods without bill of lading". It is possible for the carrier to release the goods under a "letter of guarantee". At this time, the guarantor is the person who has the ability to pay off the debt, usually the bank (especially the issuing bank). When the consignee obtains the bill of lading after taking delivery of the goods, he will return the (original) bill of lading to the carrier in exchange for the letter of guarantee, which is the "discharge of guarantee liability". When the consignee returns the bill of lading to the carrier. Both parties must understand that "Duly Endorsed" is still required for the bill of lading. In practice, people do not pay attention to the problem of endorsement at this time. The reasons can be because the bank usually notifies the applicant (consignee) to redeem the bill of lading, and the consignee will rush to the shipping company (or its agent) to perform the release of security and return the bill of

lading. Therefore, the bill will not be correctly endorsed. This problem requires special attention from the shipping company (or its agent) to avoid subsequent endorsement problems.

Nevertheless, since there may be problems in trade between the buyer and the seller, there are also problems in whether the bill of lading obtained at this time has been “*DULY ENDORSED*”. This may be the case with the Civil Ruling of the Supreme People's Court (2020) Supreme Fa Min Shen No.6937 mentioned at the beginning of this article.

#### 4.3 Transfer of trade problems to transportation

The absence of “*DULY ENDORSED*” in an instruction bill of lading may be owing to the fact that the endorser himself does not know how the endorsement should be made, which is often seen in practice. For example, the letter of credit stipulates that the bill of lading shall be made into an order bill of lading and endorsed by the shipper in blank. On this occasion, the bank staff may not know how to check the endorsement of the bill of lading. Consequently, if the shipper does not endorse it, banks usually don't check for endorsement problems. In the case mentioned at the beginning of this article, many assumptions can be proposed. Among them, one of the more extreme assumptions is that the two sides of the trade unite to pit the shipping company, thus shipping company (its agent) is sentenced to bear the liability for compensation [10].

As a carrier, the shipping company (or its shipping agent) should also pay attention to the endorsement of the bill of lading. This example explains how the parties should deal with it correctly in practice. Specifically, in the case of the shipper as the first endorser, they ought to perform their endorsement obligations in accordance with the agreement of each contract. The carrier should check the bill of lading for endorsements, and when the shipper advises a specimen of an authorized endorsement. The correctness of the endorsement should be checked. When the consignee redeems the bill, he should check the endorsement and pay the bill. The bank should also check the endorsement of the bill of lading and fulfill the obligation of examination. The loss at the beginning of this article would not have arisen if all parties had understood the endorsement requirements and exercised their duty of care.

### 5. Conclusions

In summary, this paper investigates endorsement in bill of lading practice from the perspectives of three specific cases. According to the analysis, reducing errors in practice will lead to the reduction of transaction costs in trade. Based on the analysis of the three cases all involve endorsements (i.e., teledischarge, letter of guarantee and non-endorsement), which are always related to the bill of lading itself. At the same time, the business activities e.g., "telegraphic release" involved in these three cases also involve other issues, which also need to be paid attention to. Overall, these results offer a guideline for researches focusing on endorsement in bill.

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