

The Bolero Electronic Bill of Lading (eBL)

Overview

What is a Bill of Lading?

A Bill of Lading is a document issued by a Contracting Carrier to the Shipper which performs the following three functions:

1. The bill of lading is a receipt from the carrier for the goods described in it. If the carrier does not deliver the goods described in the bill of lading he will face a claim for loss of or damage to the goods.
2. The bill of lading represents the contract of carriage agreed between the shipper and the carrier. In addition to describing the cargo, the bill of lading will also include a number of other important data elements which form part of the agreement for carriage (name of ship, load port/discharge port, date of issue, freight information etc) and pre-printed terms and conditions which form part of the agreement for carriage. When the bill of lading is transferred to another party that subsequent holder of the bill of lading becomes bound to the terms and conditions of the bill.
3. The bill of lading entitles the rightful holder to delivery of the goods when the bill of lading is surrendered to the carrier. It is this function of a Bill of Lading that allows the rights to the cargo to be transferred from one party to another. The expression 'document of title' is often used as a short form for this function of transferring rights to the cargo. Traditionally the transfer is handled by physical transfer of a paper bill of lading, which may or may not require endorsement depending on the circumstances. Clearly, there are limitations to how fast the paper bill of lading can be physically transferred.

What is an electronic Bill of Lading?

The receipt and contract functions of a bill of lading are relatively easy to replicate in an electronic world as these are essentially recording and transmitting data. Whilst it is important to be precise about the consequences of recording (and sending) those elements of data it is relatively simple to achieve. Indeed electronic systems provide far better solutions than traditional paper to the critical integrity of these data elements provided the right levels of access and security are correctly implemented.

The more complicated function to replicate is the ability to transfer rights (both contractual and over the goods) and obligations in the same way as a traditional bill of lading does and to preserve the concept of an original bill of lading which can only have one holder at any one time.

An electronic bill of lading, therefore, requires two fundamental but clearly related components;

1. A legal agreement or Rulebook
2. A technology application or solution which implements the functions of the bill of lading while delivering the legal requirements required by the Rulebook

An electronic bill of lading (eBL) is not simply an electronic version of the paper bill of lading. Rather it is a combination of a legal rulebook and technology which can replicate the functions of a traditional paper bill of lading. The idea of an eBL is not new and has been the subject of a number of initiatives dating back to the 1980s. The Bolero initiative is perhaps the best known, originating with an EU funded research project and an associated broad legal feasibility study gaining cross industry support from the banking and logistics communities.



The Bolero eBL

The Bolero eBL is based on this construct of a legal solution closely integrated with a technology implementation but adds some important and unique elements to both the legal rulebook and the technical solution.

Specifically, the Bolero eBL solution comprises the Bolero Rulebook, the Bolero Title Registry and the Bolero Messaging platform:

- The Bolero Rulebook is a common user (legal) agreement entered into by all Bolero users by way of the enrolment process.
- The Bolero Title Registry is a repository and an application which manages the transfer of title of the eBL
- The Bolero Exchange platform is a common infrastructure for all Bolero solutions and in the case of the Bolero eBL provides two distinct advantages over 'database' solutions:
 - Allows the eBL to replicate the traditional paper process supporting the 'sending' of the eBL from party to party
 - Delivers to the holder the eBL without the need for the holder to interact directly with the application. This also ensures ease of integration by detaching the eBL from the specific technology solution.

Bolero Title Registry

The Title Registry is an application attached to the Bolero Core Messaging Platform which has been designed to execute correctly the eBL rules contained in the Bolero Rulebook.

The Bolero eBL comprises a title registry record and the electronic BL document which contains the receipt and contractual details of the eBL (we refer to this as the eBL text).



The title registry records the current Holder of the eBL and can only be updated by the current Holder (for example the transfer of the eBL to a new Holder). The rights of the Holder are set out in the Bolero Rulebook and are mirrored in the title registry.

For obvious reasons the eBL must be created and remain unique (in paper terms 'Original') and this uniqueness is ensured by the title registry.

The Bolero Rulebook

Introduction

The Bolero Rulebook is a common user agreement entered into between all the parties using the Bolero System. It ensures that all users adhere to a set of common 'rules of the road' so that if you send or receive a Bolero message you understand what that means. As a legally binding agreement the Rulebook deals with the precise language typically seen in contracts as this is required to ensure legal certainty.

Why do we need the Rulebook?

A detailed set of rules and laws has built up over many years dealing with traditional paper based transactions and messages. The origins of these rules and laws are varied (legal precedent, statute, commonly accepted customs and practices). These rules are not standard – there is variation from country to country.

As the world moves quickly into the electronic age the pace of change means that the rules and practices cannot keep pace with that change so it is necessary for the parties to agree what those rules and laws are in a contractual agreement. (This approach is already recognised by international law and rule making bodies – for example the United Nations with the Rotterdam Rules and the International Chamber of Commerce with eUCP).

The guiding principle of the rulebook is 'light touch'. Its objective is to include only those rules that are required to make the electronic messaging work (from a legal point of view) in the same way that paper based transactions do. Current rules and laws are not perfect and there is considerable variation on how certain matters are dealt with in different countries. The rulebook is not designed to address legal standardisation of rules and laws in all contexts, simply those that relate to the media used. Businesses involved in international trade should have freedom to choose how they do business and how they handle the risks of that business.

What does the Rulebook cover?

In addition to the eBL, the Rulebook covers matters concerning the sending and receiving of messages. For example a user is responsible for messages sent that have been signed using that user's digital signature and that all users agree that they will not contest the validity of a message on the grounds that it is sent in electronic form. Other important rules deal with the presumption of

sending and receiving a message and these are closely linked to Bolero's technology. The non-eBL terms of the Rulebook are not unusual and closely resemble the types of clauses seen in individual bilateral agreements covering the use of electronic document communication. The close relationship between the Bolero Rulebook and the Bolero technology provides a more robust and universally applicable rulebook eliminating the need for individual bilateral agreements between parties.

Origin of the Rulebook

In 1996/1997 the early Bolero company commissioned a significant number of leading law firms to carry out what still remains the most comprehensive study into the use of electronic documents in global trade across multiple jurisdictions. The results from this large and extensive study became the basis for the Bolero (legal) Rulebook which coupled with its technical implementation, forms the Bolero service.

The study covered the major legal systems in common use (English Common Law, US Common Law, German/Dutch Law and Napoleonic Law) as well as Mixed Jurisprudence systems (combination of legal systems) such as Japan and Emerging Jurisdictions such as China. The legal feasibility, and therefore the Bolero rulebook, was tested specifically for the following major Jurisdictions:

<i>England</i>	<i>Hong Kong</i>	<i>Ireland</i>
<i>Malaysia</i>	<i>Singapore</i>	<i>USA</i>
<i>Germany</i>	<i>Indonesia</i>	<i>Netherlands</i>
<i>Belgium</i>	<i>France</i>	<i>Phillippines</i>
<i>Japan</i>	<i>South Korea</i>	<i>Taiwan</i>
<i>Thailand</i>	<i>China</i>	<i>United Arab Emirates</i>

The specific testing in these jurisdictions together with the unique structure of the Bolero Rulebook provide applicability on a broad and general basis (i.e. not limited to these jurisdictions).

How does the Bolero eBL work?

The Bolero eBL is the electronic equivalent of a paper bill of lading. The eBL is a combination of the title registry record and an attached document that contains the eBL data (image of the bill of lading).

- A Bolero eBL can only have one holder at any one time
- There must be a holder at all times
- The title registry records who is the holder
- Holdership is the electronic equivalent of possession of the physical paper bill of lading

The three key functions of the bill of lading are provided as follows:

Functions of the eBL - Receipt

The receipt function is easily replicated in the electronic world. The quality of, and therefore the ability to rely on the data confirmed is linked with the quality of the security in the electronic system used. Put simply, are there sufficient measures in place to ensure the identity of the issuer (the carrier) and the authenticity of the data. The right to rely on this receipt is established because the carrier as issuer has provided an undertaking to that effect.

Functions of the eBL – Contract of Carriage

The contract function is also easily replicated in the electronic world. As we have seen, there are two elements to the bill of lading contract – the data specific to that carriage (port of loading/date of shipment etc) and data setting out the terms and conditions of carriage. As between the carrier and the shipper this is no different to the receipt function. It gets a bit more complicated when the eBL is transferred to a new holder. There is no universal law relating to how the rights and obligations in a traditional bill of lading contract are transferred, this varies from jurisdiction to jurisdiction. The Rulebook establishes the legal method by which this happens for a Bolero ebBL. Transferring the eBL means that the new holder becomes a party to the eBL. The new holder takes the rights in the eBL on transfer subject to the obligations/limitations in the contract – the most well known limitation being the carrier's ability to limit liability for loss of or damage to the goods.

Functions of the eBL – Document of Title

This function is the most difficult to reproduce in an electronic format. The answer again is found in the Rulebook that characterises precisely the nature of the rights that the new holder gets when it receives the transfer of the eBL. At the moment of transfer, the right of control over the goods passes to the new holder. The new holder becomes the only party entitled to give instructions to the carrier. This is known as constructive possession and this unique right drives the ability to use the eBL for letters of credit and documentary collections. Included in this is the sole right to demand delivery of the cargo from the carrier.

Switching from eBL to Paper Bill of Lading

The Rulebook is only binding on those parties who have agreed to be bound to it. If the holder wishes to transfer an eBL to a party who isn't party to the Rulebook there is an obvious legal (as well as technical) problem. This is overcome by requesting the carrier to replace the eBL with a traditional paper equivalent. As with other replacement processes this will require the original to be returned to the carrier before the carrier will issue a new bill of lading. Unlike the paper world (where bills of lading take time to move through the chain or have been lost or misplaced in transit) this is quick and easy in the electronic world.

A common misnomer is that moving from electronic to paper defeats the purpose of using an eBL in the first place. The speed, accuracy and integrity of an eBL will benefit users up to the point at which a replacement is sought. For example, the eventual holder may require a traditional bill of lading but that doesn't mean that earlier holders cannot benefit from the benefits of an eBL prior to that final transfer.

Another common misnomer is that the replacement will only be from eBL to traditional paper bill of lading. It is relatively easy to see a situation where a party in receipt of a paper bill seeks the replacement of that paper bill with an eBL (if a letter of credit either requires an eBL (under eUCP for example) or an option for either an eBL or a traditional bill of lading). The quicker the documents are presented, the quicker the beneficiary can get paid and/or the goods can be delivered. In this instance the carrier will require the return of the paper bill of lading before issuing a replacement eBL.