

PAPERLESS TRADING (ELECTRONIC BILLS OF LADING) 6 AUGUST 2013

Frequently asked questions (“FAQs”)

1. **What is the position of the P&I Clubs within the International Group with regard to paperless trading?**

The position is set out in a 2013 circular, sent out by each Club, entitled “Electronic (Paperless) Trading Systems – Electronic Shipping Solutions and Bolero International Ltd – updated ESSDSUA Version 2013.1”. A copy is attached to these FAQs.

The circular reflects the concern of the P&I Clubs that some systems which use electronic bills of lading may not be universally recognised as satisfactorily performing the three functions of a bill of lading which customarily underpin P&I cover, namely: as a receipt, as a document of title, and as a contract of carriage which incorporates the Hague or Hague-Visby Rules.

2. **In the light of this circular, do I have P&I cover in general for liabilities arising under any electronic bills of lading?**

(a) Yes, cover is available for typical P&I liabilities arising under any electronic bills of lading to the extent these liabilities would also have arisen under paper bills of lading.

(b) To the extent these liabilities would have arisen because an electronic bill of lading has been used instead of a paper bill of lading, cover is discretionary unless the electronic trading system has been approved by the International Group.

3. **Have any systems been approved by the Club/International Group?**

The two systems approved are those set out in the circular:

(a) Electronic Shipping Solutions DSUA 2009.3 and DSUA 2013.1 (“ESS”) and

(b) Bolero International Ltd Rulebook/Operating Procedure 1999 (“Bolero”).

It is always advisable to check that the system preferred bears the correct designation and is the approved version.

4. **Is my position better when using one of these approved systems, than another electronic system which has not been approved?**

Yes. You will have Club cover for all normal P&I liabilities arising out of the use of one of the approved systems (though not for liabilities which are of a non-traditional P&I nature – see Q6 below) and thereby avoid exposure to the risks connected with the use of non-approved systems as described in Q5 below.

However It is important to note that all exceptions and exclusions under the Club Rules continue to apply (as they would with a paper bill of lading). This includes the traditional exclusions of cover relating to the carriage of goods, such as:

- *The issue or creation of an electronic document/record with a description of the cargo or its condition known to be incorrect;*

- *Short delivery where an electronic document/record is issued or created for an amount of cargo greater than that known to have been loaded;*
- *Discharge at a port or place other than the port or place provided for in the contract of carriage;*
- *The issue or creation of an ante or post-dated electronic document/record; and*
- *Delivery of the cargo without production of the negotiable electronic document/record.*

5. What might the risks be if I use an unapproved electronic system?

The risk is the one set out in the answer to question 1 above i.e. that the electronic system is not recognised as performing all the functions that a paper bill of lading would have performed. One example could be that an unapproved system is found, when challenged legally, not to transfer rights in goods in the manner that the creators of the system intended. This may give rise to a dispute about ownership and mis-delivery of the cargo. Another example could be if the Hague or Hague-Visby Rules have not been effectively incorporated into the electronic bill of lading. If it is found that in each case the liability has arisen because of the use of the electronic system, then that will not be covered within normal P&I cover. It may be covered at the discretion of Club Boards.

6. The circular also says that using an electronic bill of lading may expose me to “liabilities which are not of a traditional P&I nature”. What does this mean?

This is a reference to the kind of liabilities you face when using any electronic system or electronic interface in your office or on your ships, for example the risk of viruses, "hacking", or the accidental release or theft of information. Simply put it is the risk of using computers. In this context, such liabilities may include, for example, those which arise under the contractual arrangements which you have to make directly with the system operator (Bolero or ESS 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.

7. Is there an insurance which can cover me for these obligations?

These are non-marine risks, and may be covered by your own business insurances. This is something which you can check with your non-marine business insurance broker. These are not in the nature of P&I risks. In insurance terms, they may be described as "cyber-risks" or business risks.

8. What if I check with my brokers and I can find no such cover?

The answer may lie with Bolero or ESS (or other non-approved systems) who may have dealt with similar enquiries on previous occasions.

9. If I am considering using one of the approved systems and I wish to look into the Bolero Rule Book or ESS User Agreement, how can I obtain a copy?

The party inviting you to use this system should provide this for you, or put you in touch with Bolero or ESS.

10. Do I need to ask you to check and approve the Rule Book or User Agreement of an approved system?

No. The International Group has approved these documents (as long as they are unamended and match the titles set out in the circular) as acceptable.

11. If I am considering using an unapproved system will the Club review the documents?

It is for you to satisfy yourself as to the manner in which the system operates. The Club cannot currently "approve" systems other than through the IG mechanism for doing so. Unapproved system operators can of course approach the IG Secretariat for approval, and the matter would then be considered by the appropriate sub-committee comprised of Club representatives, but this is not a quick or immediate procedure.

12. Electronic systems are based on specific contractual terms rather than statutes and treaties. Is there a risk when using an approved system that the contract of carriage will not be subject to the Hague or Hague-Visby Rules and that I might therefore be deprived of my P&I cover?

No, the contractual terms for both approved systems make clear that any convention, treaty or national law that would have been applicable to carriage under a paper bill of lading will equally govern the carriage using an electronic document or record. Thus, so long as the carriage is subject to Hague or Hague Visby Rules by reference to the terms and conditions incorporated into the electronic document/record and/or by application of convention or national law as if a paper bill of lading had been issued then there will be no problem with Club cover.

If the carriage is compulsorily subject to another liability regime like the Hamburg Rules then again Club cover will remain in place as it would if the carriage were under a paper bill of lading.

TEXT OF MARCH 2013 CIRCULAR

CIRCULATED TO ALL MEMBERS, BROKERS AND DIRECTORS

This Circular confirms approval by International Group of P&I Clubs (the Group) of an updated version of Electronic Shipping Solutions (ESS)'s electronic trading system. This version is called DSUA 2013.1 and it enables electronic trading both in respect of bills of lading and waybills. It supersedes ESS's previous electronic trading system DSUA 2009.3 which remains approved for the purposes of Club cover. DSUA 2013.1 came into effect on 18 March 2013.

Members will recall as reported in our Circular dated, 13 September 2010 (Ref: 2010/026) - [Electronic \(Paperless\) Trading Systems - Bolero International Limited and Electronic Shipping Solutions](#) that until February 2010 the Rules of all of the Clubs comprising the International Group of P&I Clubs (the Group) specifically excluded liabilities in respect of the carriage of cargo under all electronic, that is paperless, trading systems to the extent that the liabilities under such systems would not have arisen under a 'normal' paper system, that is one using transferable paper documentation.

The Group, after reviewing a number of electronic trading systems, agreed 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 Group. The two systems approved by the Group in their versions current at the date of our Circular (Ref: 2010/026) - [Electronic \(Paperless\) Trading Systems - Bolero International Limited and Electronic Shipping Solutions](#) were that administered by Electronic Shipping Solutions (the ESS system - version DSUA 2009.3) and that administered by Bolero International Ltd (the Bolero system - Rulebook/Operating Procedures September 1999). Both those two systems continue to be approved. The websites of the two entities are <http://www.essdocs.com/> and <http://www.bolero.net/>.

The legal documentation associated with the use and operation of the two systems is reviewed by the Group and its legal advisers if and when amended by either of the organisations, to ensure that any modifications introduced by them meet the Group's requirements.

Traditional exclusions of cover under Club Rules relating to the carriage of cargo, will of course continue to apply in respect of ESS 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.

Members should also be aware that participation in an electronic trading system may expose them to certain liabilities which are not of a traditional P&I nature. These may arise through shipowners or charterers who wish to participate in either the ESS or Bolero systems being required to be party to particular contractual arrangements under which they assume obligations necessary for the system to operate. Examples of such liabilities may be for breach of confidentiality undertakings or of obligations to maintain computer links. Members should be aware that, in so far as such risks are not of a traditional P&I nature, other insurance arrangements may be required.

Finally it would be helpful to the Group, in monitoring the use and development of the two systems, if Members who are using either of them would advise their Club that they are doing so and of any benefits or difficulties which they encounter, legal or practical, in the operation of either system.

All Clubs in the International Group of P&I Clubs have issued similar circulars.