Introduction

Coal Trade Review is a publication in which are reviewed shipping and contractual matters relevant to the international trade with coal, ores and mineral concentrates.

In this issue, the Editor reviews the following topics:

- The Shipping Conditions For Sales Of South African Coal Basis FOBT Richards Bay Coal Terminal

- Who Should Bear The Financial Loss For Cargo Quantity Shortages Occurred Due To Moisture Drainage In The Sea Carriage Of Coal, Iron Ore Fines And Mineral Concentrates

- The Use Of Bills Of Lading As Documents Of Title In Commodity Trade

-Letter Of Credit Requirements For The Issuance And Endorsement Of Insurance Documents

If you have any comments about the matters reviewed in this edition, please address them to **editor@commoditylaw.eu**

Review Of The Shipping Conditions For Sales Of South African Coal Basis FOBT Richards Bay Coal Terminal

by Vlad Cioarec, International Trade Consultant

Laycan Fixation and Vessel Nomination Notice

The buyers shall give to sellers 30 days' notice of the 10 days' laycan spread within which the buyers propose to present the vessel for loading the coal cargo. If the sellers will accept the laycan, then not later than 10 days prior to the first day of the laycan, the buyers shall have to nominate the vessel and declare the quantity of cargo required to be loaded with the 5% contractual tolerance.

Vessel Requirements

The vessel nomination is subject to acceptance by Richards Bay Coal Terminal Shipping Coordinator and hence, subject to the requirements of the terminal operator.

The nominated vessel must be single deck, self-trimming bulk carrier, gearless or geared, but the geared vessels, i.e. Handysize and Handymax vessels, will be accepted at Richards Bay Coal Terminal provided that their cranes will be positioned in such a way so as not to impede the normal operation of the shiploaders and thereby reduce the loading rate.

The vessel must be classed Lloyd's 100A1 or equivalent and be described as “Bulk Carrier” in the Class Certificate.

The nominated vessel must have all the IMO required certificates valid, including a Certificate of Fitness for the Carriage of Solid Bulk Cargoes listing coal as a permitted cargo, a Certificate of Fitness for the Carriage of Dangerous Goods, the Bulk Carrier Booklet endorsed by the Flag State Administration, the International Ship Security Certificate, Maritime Labour Certificate, Safety Management Certificate and the Document of Compliance with the ISM Code.

The nominated vessel must have sufficient deballasting capacity to enable the loading terminal operator to achieve the maximum loading rate applicable to that size of the vessel without the interruption of loading for more than 8 hours.

ETA Notice

If the vessel nomination is accepted by the RBCT Operators, the buyers will charter the vessel and then give the ETA Notice at least 14 days prior to the vessel's ETA at the Richards Bay Coal Terminal.

ETA Updates

The buyers must ensure that the vessel's Master will give through the port agents the ETA notices at 7/5/3/2 days and 24 hours before the vessel's ETA at the pilot station and inform the RBCT operators of any deviation in excess of 24 hours from the initial ETA.

Conditions For The Vessel Substitution

The buyers may substitute the originally nominated vessel provided that:

- they give the vessel substitution notice to RBCT operators at least 5 days before the ETA of the originally nominated vessel;
- the substitute vessel will not arrive earlier than the ETA of the originally nominated vessel;
- the substitute vessel complies with the contract requirements in respect of type, size and de-ballasting capacity to be able to load the cargo quantity ordered by the buyers within the contractual time allowed for loading;
- the vessel's demurrage rate is not higher than that of the originally nominated vessel.

The Submission Of The Vessel's Loading Plan

The buyers must ensure that at least 72 hours prior to the vessel's ETA at the pilot station of the Port of Richards Bay, the vessel's Master shall furnish to the terminal operator the following information:

- the vessel's loading plan;
- the final quantity required to be loaded based on the vessel's loading plan;
- details of previous cargo;
- the quantity of ballast water on board and the estimated time required for deballasting.

If the Master does not provide this information to the terminal operator at least 72 hours prior to the vessel's ETA, the vessel shall not be included in the berthing programme on the ETA date and any time lost thereby shall be solely for the buyers' account.

Conditions For The Vessel Presentation For Loading

The vessels arriving to load coal in bulk at the Richards Bay Coal Terminal must comply with the regulations of South African Maritime Safety Authority (SAMSA) and the shipping regulations of the terminal operators, Richards Bay Coal Terminal Ltd..

The vessel must present for loading with the cargo holds clean, dry, empty, free of waste material and remnants of previous cargo and with the draught marks legible.

The inspection of holds shall be made by a qualified marine surveyor appointed by the sellers. The marine surveyor shall certify the cleanliness of holds by issuing the Hold Cleanliness Certificate. If the vessel has previously carried potential contaminants such as phosphates, sulphur, cement, salt, potash or iron ore, the marine surveyor inspecting the holds must certify that the holds are clean and free of contaminants.

If the vessel is an OBO (Ore/Bulk/Oil) Combination Carrier which has previously carried petroleum products, the Master must advise the loading terminal operator of this fact at least 24 hours before the vessel's ETA at the pilot station. In such case the vessel will be called to berth only after the cargo holds had been declared clean and gas-free by a local marine chemist. All expenses and time incurred for making the holds gas-free and obtaining the Gas Free Certificate will be for the buyers' account.

NOR And Commencement Of Laytime

The vessel's Master shall tender NOR upon the vessel's arrival at the outer anchorage or pilot station of the Port of Richards Bay at any time, day or night, including Saturdays, Sundays and Holidays.

The 18 hours' Notice time shall start to count from the time of acceptance of NOR by the Richards Bay Coal Terminal operator provided that the vessel has arrived within the agreed laycan not prior to the expiry of the 14 days' ETA pre-advice period and is in all respects ready to load the coal cargo.

The vessel shall be considered ready in all respects for loading if:

- she has obtained the ISPS clearance prior to the NOR tendering;
- she is not subject to an arrest order;
- she presents for loading in a seaworthy condition;
- she passes the holds' inspection after berthing.

If the Master tenders NOR before obtaining the ISPS clearance, the NOR shall be invalid and the Master will have to tender a new NOR upon receiving the ISPS clearance.

If the vessel is arrested or attached at berth prior to the commencement of loading, the NOR shall be deemed invalid and the Master will have to tender a new NOR only after the issuance of the release warrant by the Court.

If, after berthing, the vessel is found by the port authorities not ready in all respects to load the coal cargo, the vessel's NOR shall be invalid and the Master will have to tender a new NOR after the vessel is in fact ready all respects for loading.

If the marine surveyor appointed by the contracting parties rejects the holds, the NOR tendered at anchorage shall be deemed invalid and the Master will have to tender a new NOR after he obtains the Hold Cleanliness Certificate from the marine surveyor. The Shipping Regulations of Richards Bay Coal Terminal provide that in such case the laytime will start to count at 18 hours after the new NOR has been received by the Richards Bay Coal Terminal operator, unless Richards Bay Coal Terminal operator commences loading sooner in which case the laytime will start to count from the time of commencement of loading. This requirement has been adopted by the Richards Bay Coal Terminal operator to avoid disputes like in the English law case **Cobelfret N.V. v. Cyclades Shipping Co. Ltd. (The "Linardos")**[1].
In that case, the loading berth was occupied at the time of the vessel's arrival at the Port of Richards Bay. The vessel's Master tendered NOR upon arrival at the customary waiting place at 16:50 hours on 4 October 1991.
Two days later the vessel was called to berth but upon berthing on 7 October the vessel failed to pass the holds' inspection. After further cleaning the vessel passed the holds' inspection on the following day at 06:30 hours on 8 October.
The case was a charter party dispute as to whether the Notice time and laytime should have counted for the two days between the time of tendering the NOR on 4 October and berthing on 7 October.
The dispute concerned the interpretation of the second paragraph of the Clause 4 of Richards Bay Coal Charter Party form which has the following provisions:

"Time commencing, subject always to the undermentioned provisos, 18 hours after Notice of Readiness has been given by the Master, certifying that the vessel has arrived and is in all respects ready to load, whether in berth or not; [...]
…
Any time lost subsequently by vessel not fulfilling requirements for Free Pratique or readiness to load in all respects, including Marine Surveyor's Certificate and acceptable gas-free Certificate for OBO-carriers, or for any other reason for which the vessel is responsible, shall NOT count as Notice time, or as time allowed for loading."

The English Commercial Court held that these provisions do not mean that a valid NOR cannot be given unless and until the vessel's holds are accepted as ready for loading by the marine surveyor but that if the vessel is obliged to wait for an available berth, it can tender NOR and the Notice time will begin to run notwithstanding that the vessel's holds are not ready for loading.

"*[B]ut if and to the extent that the vessel's unreadiness delayed cargo operations when a berth became available, the running of time would be interrupted until the vessel was accepted as ready. The rejection of the holds after the vessel got into berth would not in such a case deprive owners of the benefit of time lost at the anchorage, but merely of subsequent loss of time at the berth."*

It would have been useful for the Association of Ship Brokers & Agents to amend the Clause 4 of Richards Bay Coal Charter Party form to include provisions similar with the current provisions of the Shipping Regulations of Richards Bay Coal Terminal, but it did not make any changes to date and the FOB buyers facing similar situations will have to pay demurrage to shipowners under charter party without the possibility to recover from the sellers.
The commencement of laytime shall depend not only on the time when the buyers' vessel tenders valid NOR but also on the buyers' compliance with other contract requirements.
One of the contract requirements that may affect the commencement of laytime is the requirement to present the vessel ready in all respects for loading within the agreed laycan, after the expiry of the ETA pre-advice period.

1 [1994] 1 Lloyd's Rep. 28

The Richards Bay Coal Terminal operator schedule the coal shipments in function of the vessel's laycan and ETA at the port of Richards Bay. Therefore, the commencement of laytime will depend not only upon the time when the vessel is ready in all respects to load and tenders valid NOR, but also on whether the NOR is tendered within the laycan and after the expiry of the ETA pre-advice period.

If the vessel arrives at the loading port and tenders valid NOR within the agreed laycan after the expiry of the 14 days' ETA pre-advice period, the laytime will commence to run at 18 hours after the terminal operator's acceptance of the NOR, unless the terminal operator commences loading sooner in which case the laytime will commence to run from the time of commencement of loading.

If the vessel arrives at the loading port and tenders valid NOR before the first day of the agreed laycan, the NOR shall not become effective before 00:00 hours on the first day of the agreed laycan and the 18 hours' Notice time shall commence to run from 00:01 hours on the first day of the laycan period.

If the vessel arrives at the loading port and tenders valid NOR before the expiry of the 14 days' ETA pre-advice period, the NOR shall not become effective before 00:00 hours on the fourteenth day after the day of nomination and the 18 hours' Notice time shall commence to run from 00:01 hours on the fourteenth day after the day of nomination.

If for any reason, including the vessel's late arrival or failure to pass the holds' inspection, the vessel does not tender valid NOR before the end of the cancelling day (the last day of the laycan period), the berthing of vessel after the laycan shall be subject to the consent of the terminal operator and the laytime will commence to run when the loading starts.

The commencement of laytime will also be in function of the Master's compliance with the deadline imposed in the Shipping Regulations of Richards Bay Coal Terminal for the submission of the vessel's loading plan. If the Master fails to provide the vessel's loading plan to the terminal operator at least 72 hours prior to the vessel's ETA, the vessel shall not be included in the berthing programme on the expected readiness date and the 18 hours' Notice time shall not commence to run before the 72 hours' time limit from the submission of the vessel's loading plan has elapsed.

In case of the vessel substitution, the commencement of laytime will also be in function of the buyers' compliance with the 5 days' time limit imposed in the Shipping Regulations of Richards Bay Coal Terminal for the submission of substitution notice. If the substitute vessel arrives and tenders NOR before the expiry of the 5 days' notice period, the NOR shall not become effective before 00:00 hours on the fifth day after the day of substitution and the 18 hours' Notice time shall not commence to run before 00:01 hours on the fifth day after the substitution notice date.

The laytime shall cease to count at the time when the loading, trimming and final draft survey have been completed or when the cargo documents required to effect the Customs clearance are on board, whichever is the later.

Loading Conditions

The coal cargo shall be delivered free on board the vessel spout trimmed. Any extra trimming (beyond spout trimming) necessary due to the vessel's construction shall be for the buyers' account and any time lost thereby shall not count.

Cargo Weight Determination

The weight figure used for invoicing and issuance of Bills of Lading shall be determined by the marine surveyor appointed by the sellers based on the vessel's draft survey before and after loading.

Who Should Bear The Financial Loss For Cargo Quantity Shortages Occurred Due To Moisture Drainage In The Sea Carriage Of Coal, Iron Ore Fines And Mineral Concentrates

by Vlad Cioarec, International Trade Consultant

The In-Transit Loss Resulting From Moisture Drainage From Coal Cargoes

The total moisture of a coal cargo is usually in the range of 8-10%[1]. Of this, the inherent moisture is 2-3% and the balance is free moisture. The inherent moisture is bound to the coal but the free moisture is not and may drain from the cargo[2] into the hold bilges.

Therefore, the bilges must be sounded daily to check the volume of water accumulated into the bilges and when they are sounded full, the free water resulted from the moisture drainage must be pumped out of the vessel to prevent the flooding of cargo holds and corrosion of the ship's steel structures[3].

The statistical data collected over the last decades indicate that in case of moisture content of 10% or more and a voyage of 40 days or more involving significant climatic changes, the coal moisture drainage can be in the order of 1% of the shipped weight[4]. In case of moisture content of 6% or 7% and a voyage of 15-20 days with similar climatic conditions from loading to discharge port, the statistical data indicate that the coal moisture drainage is within the limit of 0.5% of the shipped weight[5].

These figures are usually accepted in the coal importing countries as inherent losses in the sea carriage of coal cargoes[6] but the shipowners and charterers should give instructions to the Master to record the soundings of hold bilges and the quantities of water pumped out of the bilges.

The UN-ECE Draught Survey Code recommends that the quantity of bilge water discharged to be recorded in the ship's log to justify the cargo quantity difference at destination[7]. Furthermore, the UN-ECE Draught Survey Code stipulates that any differences between the shipped weight figure stated in the Bills of Lading and the out-turn weight figure should be equal to the quantity of bilge water discharged recorded in the ship's log and the quantity difference resulted from the comparison of moisture content level of cargo samples taken at loading and the moisture content level of cargo samples taken at the time of discharge[8].

1 Higher in Indonesian Thermal Coal.

2 Particularly in case of coal cargoes with high proportions of fines.

3 The free moisture that drains from the high-sulphur coal cargoes may contain corrosive impurities leached from the coal, such as chlorine and pyritic sulphur. The cargo hold's tank top plating and bilges are the most exposed to the risk of corrosion in case of accumulation of free water drained from the coal cargo. The IMSBC Code provides that the ships carrying coal cargoes should have on board instruments to measure the pH value (a measure of acidity) of bilge water samples. A higher pH value reading indicates the likelihood of increased corrosion.

4 See page 14 of UN Code of Uniform Standards And Procedures For The Performance Of Draught Surveys Of Coal Cargoes – UN-ECE Draught Survey Code.

5 See page 14 of UN Code of Uniform Standards And Procedures For The Performance Of Draught Surveys Of Coal Cargoes – UN-ECE Draught Survey Code.

6 See UK P&I Club's LP Bulletin 741/02/11 – Trade allowances – Italy.

7 See page 13 of UN Code of Uniform Standards And Procedures For The Performance Of Draught Surveys Of Coal Cargoes – UN-ECE Draught Survey Code.

8 See page 13 of UN Code of Uniform Standards And Procedures For The Performance Of Draught Surveys Of Coal Cargoes – UN-ECE Draught Survey Code.

The In-Transit Loss Resulting From Moisture Drainage From Iron Ore Fines And Iron Concentrate Cargoes

Some of the Brazilian iron ore fines have characteristics that allow moisture to drain from the top layer of the cargo to the bottom layer of the cargo[9]. The free water resulted from the moisture drainage goes by gravity down to the bilges wherefrom it must be pumped out of the vessel to prevent the flooding of cargo holds.

The bilge pumping data collected for Brazilian iron ore fines cargoes showed that the quantity of water pumped out of the bilges during a voyage is in the range of 0.1 to 1% of the cargo moisture content[10].

The Brazilian shippers' cargo declaration state that their cargoes are likely to exude free water and contain instructions for pumping off the bilges and recording the water discharged in the ship's log[11].

Canadian and Brazilian sinter feed (iron concentrate) cargoes have similar characteristics to the Brazilian iron ore fines. They too lose part of their moisture content when carried in bulk carriers across long distances. The 2015 booklet "Notice To Ships Boud For Sept-Iles" published by Iron Ore Company of Canada contains the following instructions:

"Iron Ore Concentrate contains an average moisture content from 2.5% to 4.5%. The character of this ore is SELF DRAINING. It will retain moisture up to about 2.5%, but all moisture over and above that will drain on compaction of the material, also, if the ore is left for long periods in stockpile or in the hold of the ship, this drainage of moisture could generate water accumulation in the hold of the ship, and could cause some inconvenience when discharging the cargo. For this reason, all bilge Wells should be sounded regularly and pumped out at regular intervals, so as to minimise possible water accumulation between vessel's tank top & the cargo[12]."

In Britannia Steam Ship Insurance Association's publication "RISK WATCH" Volume 22, No. 3/December 2015[13], it is presented a case with a sinter feed cargo transported in a bulk carrier from the port of Sept-Îles, in Canada to China. The charterers gave instructions to the Master to sound the bilges daily and send regular reports about the quantities of water pumped out of the vessel. The bilges were sounded twice daily and indeed significant quantities of water were found. The quantities of water pumped overboard were recorded in a "water drainage log".

At the port of discharge, a discrepancy of about 2.5% was found between the Bill of Lading weight figure and delivered weight figure. The water drainage log summary prepared by the Master and Chief Officer showed that the quantity difference corresponded exactly to the amount of water pumped from the hold bilge wells during the voyage.

In Assuranceforeningen Gard publication "INSIGHT" from 24 July 2015, it was presented a case with a sinter feed cargo of 166,379 WMT shipped from Brazil to China on board a bulk carrier. The cargo's moisture content was stated in two certificates: in the quality certificate provided to the buyers the cargo's moisture content was stated to be 7.3%, while in the certificate given to the Master the cargo's moisture content was stated to be 7.82%.

At the port of discharge, CIQ found a weight of 164,633 WMT and a moisture content of 7.37%.

The value of gross quantity difference was 1,746 WMT. The quantity of free water pumped off the bilges recorded in the ship's bilge pumping log was 1,753.20 WMT.

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9 See page 11 of Annex to the IMO document DSC 18/6/14 at IMODOCS.

10 See The Marine Report submitted in April 2013 to the IMO by the Iron Ore Technical Working Group.

11 See IMO documents DSC 16/INF.4 and DSC 17/INF.11 at IMODOCS.

12 See Section VIII of the booklet at www.ironore.ca

13 See the article "Bilges again: proper monitoring is essential" in the publication "Risk Watch" Volume 22, Number 3/December 2015 published by The Britannia Steam Ship Insurance Association Limited on their web site britanniapandi.com

The cargo insurer sought to recover the value of the net quantity difference, 1,618.542 DMT (1746 WMT less 7.3% moisture content. The Shanghai Higher People's Court held that since the quantity of free water recorded in the ship's bilge pumping log was almost equal to the gross quantity difference, there was no cargo shortage.

In these two cases, the cargo insurers sought to recover the value of quantity difference from the shipowners bringing claims in Chinese Courts. The claim for Brazilian cargo was dismissed, but the claim for Canadian cargo had to be settled out of Court due to the fact that the Chinese judge expressed doubts about the veracity of the bilge sounding records that showed the same quantity in each bilge well of all nine holds.

Who Should Bear The Loss Resulting From Moisture Drainage

The question who should bear the loss resulted from moisture drainage should be addressed in the charter party and sale contract.

The buyers procuring the commodities on FOB terms can avoid the financial loss due to moisture drainage by negotiating with shipowners to settle the freight based on the delivered weight figure.

The FOB prices are calculated by deducting the ocean freight adjusted for moisture content from the market price on the shipment date, typically Platts index price “IODEX 62% Fe CFR China” which is quoted in dry metric tonnes.

When the commodities are bought on CFR terms, the Bill of Lading weight figure used for the calculation of freight and CFR price should be adjusted to compensate the buyer for the amount of freight corresponding to the amount of moisture drained from the cargo that the CFR buyer has to pay under the sale contract, unless the settlement of final payment is based on the delivered dry quantity.

The Use Of Bills Of Lading As Documents Of Title In Commodity Trade

by Vlad Cioarec, International Trade Consultant

The Transfer Of Rights Under The Bills Of Lading

The way the rights under the Bills of Lading are transferred is in function of whether the Bill of Lading is in negotiable form or in non-negotiable form.
A Bill of Lading is in negotiable form when it is made out to order or to the order of consignee[1].
A Bill of Lading is in non-negotiable form when it is not made out to order.
If the Bill of Lading is made out to order, the shipper is the original lawful holder of Bill of Lading. In order to transfer the rights under the Bill of Lading, the shipper can endorse the Bill of Lading either in blank or in full.
If the shipper's endorsement is in blank, the next holder(s) of Bill of Lading may further transfer the rights thereunder in any of the following ways:
(a) by delivery of the Bill of Lading alone without filling up the blank and without endorsement[2];
(b) by re-endorsing the Bill of Lading in blank or to some other person; If re-endorsed in blank, the Bill of Lading will again function like a bearer Bill of Lading and can be transferred simply by delivering the Bill of Lading without any further endorsement. The holder of a blank endorsed Bill of Lading is deemed to be the lawful holder provided that he obtained the Bill of Lading in good faith. If the Bill of Lading is endorsed to a specified person, the endorsee must, if he wishes to further transfer the Bill of Lading, endorse it either specially or in blank[3].
(c) by filling in the blank endorsement his own name or the name of some other person. If the holder fills in the blank endorsement the name of other person, such person becomes the lawful holder and only such person may further transfer the Bill of Lading by endorsement. In **Keppel TatLee Bank v. Bandung Shipping Pte Ltd.[4],** the negotiating bank filled in the name of collecting bank onto the shipper's endorsement in blank. However, the buyer of goods did not pay and the collecting bank returned the Bills of Lading to negotiating bank without making any endorsements. Upon the receipt of the Bills of Lading, the negotiating bank cancelled the shipper's endorsement in the Bills of Lading. The trial judge said that *"only in plain and obvious cases … the power of striking out should be invoked"*. What the Singapore Courts did not say in that case was that in negotiable instruments law, the holder of bill cannot cancel an endorsement made by another person. Nor the holder can strike out the name of endorsee to turn an endorsement in full into an endorsement in blank, unless such modification was made with the consent of endorser.
If the shipper's endorsement is in full, the endorsee must, if he wishes to further transfer the Bill of Lading, endorse it either specially or in blank. If this second endorsement is in blank, then thereupon the transfer of Bill of Lading can be made by delivery alone. If the second and following endorsements are in full[5], then the ultimate holder of Bill of Lading is deemed to be the lawful

1 Article 1(15) of Rotterdam Rules stipulates that ""Negotiable transport document" means a transport document that indicates, by wording such as "to order" or "negotiable" or other appropriate wording recognized as having the same effect by the law applicable to the document, that *the goods have been consigned to the order of the shipper*, *to the order of the consignee*, or to bearer, and is not explicitly stated as being "non-negotiable" or "not negotiable".
2 See the provisions of Article 57(1)(b) of Rotterdam Rules.
3 See Keppel TatLee Bank v. Bandung Shipping Pte Ltd. [2003] 1 SLR 295; [2002] SGCA 46; [2003] 1 Lloyd's Rep. 619.
4 [2003] 1 SLR 295; [2002] SGCA 46; [2003] 1 Lloyd's Rep. 619. The case actually involved a sight collection where the bank that negotiated the documents endorsed the Bills of Lading specially to presenting bank as a safety precaution against the loss of Bills of Lading in transit to presenting bank.
5 When an endorsement in blank is followed by another endorsement, the person who signed this last endorsement is

holder of Bill of Lading if there is an uninterrupted chain of endorsements, starting with the endorsement written by the shipper and ending with the endorsement made in favour of the ultimate holder[6]. An uninterrupted chain of endorsements means that each endorsement to be signed as endorser by the person named as endorsee in the previous endorsement. If one of the endorsements is signed by a different person than that named as endorsee in the previous endorsement, the chain of endorsements is deemed interrupted. This is so even if both names belong to the same person, e.g. a company that changed its name. The proof that despite the different names stated in the Bill of Lading the person that made the respective endorsement is the same as the endorsee named in the previous endorsement is not admissible. Less significant differences do not affect the validity of endorsements. For example, a person signs an endorsement with the name in full and surnames in initials, while in the previous endorsement he is named as endorsee with the name and surnames in full. In case of an interrupted chain of endorsements, the lawful holder is the person named as endorsee in the last valid endorsement preceding the interruption.
In case of a Bill of Lading made out to the order of the consignee, the transfer of rights can be made by delivery alone, without the need of shipper's endorsement in favour of the consignee[7]. In practice, however, the shippers often endorse the Bills of Lading in favour of the named consignees.

When An Endorsement Can Be Cancelled And By Whom

An endorser can cancel his endorsement when made in the view of a commercial transaction that is no longer made or when the endorser wishes to correct an error as to the name of endorsee. An endorsement becomes irrevocable only after the Bill of Lading reached into the possession of other person. Until then the endorser can cancel it.
In **Aegean Sea Traders Corporation v. Repsol Petroleo S.A. (The "Aegean Sea")**[8], the English Commercial Court held that an endorsement can also be cancelled by endorser when the Bill of Lading has been endorsed by mistake to the wrong person and the latter returned the Bill of Lading to the endorser. In that case a parcel of crude oil shipped at Sullom Voe was sold on FOB terms by Sun Oil Great Britain Ltd. to Louis Dreyfus Energy Ltd., then by Louis Dreyfus Energy Ltd. to ROIL (Repsol Oil International Ltd.) which sold the parcel on DES terms to Repsol Petroleo S.A.. The Bill of Lading issued for the parcel of oil was initially endorsed by the shipper Sun Oil Great Britain Ltd. to Louis Dreyfus Energy Ltd. and delivered to Louis Dreyfus Energy Ltd. in New York, a point at which Louis Dreyfus Energy Ltd. became the lawful holder of Bill of Lading.
Although it sold the cargo to ROIL, Louis Dreyfus Energy Ltd. endorsed by mistake the Bill of Lading to Repsol Petroleo S.A. instead of ROIL. Repsol Petroleo S.A. which bought the cargo on DES terms was to pay for it based on the certificates of quantity and quality determined at the time of delivery at the port of discharge. The Bills of Lading are used to transfer the title to the goods in FOB, CFR and CIF sale contracts, not in ex ship sales. The mistake was discovered by the crude oil operations manager of Repsol when he received the shipping documents from ROIL to settle the

deemed to have acquired the Bill of Lading by way of blank endorsement.

6 The chains of endorsements in full can be found in the Bills of Lading for crude oil and LPG cargoes sold along a chain of sellers and buyers. In Aegean Sea Traders Corporation v. Repsol Petroleo S.A. (The "Aegean Sea") [1998] 2 Lloyd's Rep. 39, a parcel of crude oil shipped on board the vessel at Sullom Voe was sold by Mobil North Sea Oil to J. Aron and Co., then by J. Aron and Co. to Bear Stearns N.Y. Inc. and ultimately, by Bear Stearns N.Y. Inc. to ROIL. Thus, each party in the chain, i.e. J. Aron and Co., Bear Stearns N.Y. Inc. and ROIL, when it received the Bills of Lading held them as an endorsee from the preceding holder. Similarly, in Borealis AB v. Stargas Limited and Others and Bergesen D.Y. A/S (The "Berge Sisar") [2001] UKHL 17. In that case a cargo of propane was sold by Saudi Aramco to Stargas Ltd., then by Stargas Ltd. to Statoil Petrokemi AB (i.e. thereafter called Borealis AB) and ultimately, by Statoil Petrokemi AB to Dow Europe. The Bills of Lading for propane were endorsed by each party in the chain to the next: first by the shipper Saudi Aramco to Stargas Ltd., then by Stargas Ltd. to Statoil Petrokemi AB and ultimately, by Statoil Petrokemi AB to Dow Europe.

7 See Article 57(1)(b)(ii) of Rotterdam Rules.

8 [1998] 2 Lloyd's Rep. 39

claim for loss of cargo with the cargo insurers. He pointed out the mistake to the manager of Louis Dreyfus Energy Ltd. who acknowledged that they had made a mistake and it was agreed that the original Bills of Lading would be returned to Louis Dreyfus Energy Ltd. in New York in order to cancel the endorsement in favour of Repsol Petroleo S.A. and re-endorse them to ROIL. The Bills of Lading were returned to Louis Dreyfus Energy Ltd. who cancelled the endorsement in favour of Repsol Petroleo S.A. and endorsed the Bills of Lading in favour of ROIL. Louis Dreyfus Energy Ltd. then returned the Bills of Lading to ROIL pursuant to the terms of sale contract.
The question before the English Commercial Court was whether Repsol Petroleo S.A. became the lawful holder of Bill of Lading as a result of endorsement made by Louis Dreyfus Energy Ltd. in its favour.
The shipowner argued that since Louis Dreyfus Energy Ltd. had endorsed the Bill of Lading to Repsol Petroleo S.A., then the proper course would have been for Repsol Petroleo S.A. to re-endorse the Bill of Lading back to Louis Dreyfus Energy Ltd., otherwise Louis Dreyfus Energy Ltd. could not re-endorse the Bill of Lading to ROIL. The English Commercial Court held that:

"It is clear that there was no endorsement back by Repsol to Louis Dreyfus, but that was no doubt because Repsol never regarded themselves as entitled to endorse the bill as it had been endorsed to them in error. ….. It cannot have been intended by the draftsman of the Act that a person to whom a bill of lading is endorsed and sent in error has then to act as if he was a person entitled to endorse the bill of lading as a precondition of the person who made the mistake being enabled to rectify his error by re-endorsing and delivering it to the correct party; the person to whom it was sent was not the lawful holder and not therefore entitled to endorse it."

Negotiability Of Bills Of Lading

The negotiability of Bills of Lading is relevant in the international trade with bulk commodities sold along a chain of sale contracts. The typical case is when a bulk commodity is shipped on FOB terms and then sold on CIF terms while under carriage.
The section 19(2) of the Sale of Goods Act 1979 of the United Kingdom stipulates that:

"where goods are shipped, and by the bill of lading, the goods are deliverable to the order of the seller or his agent, the seller is prima facie to be taken to reserve the right of disposal."

When the cargo is delivered free on board a ship chartered by the FOB buyer, the right to possession of goods remains to the shipper (i.e. FOB seller) until the delivery of endorsed Bill of Lading to the FOB buyer in exchange for payment[9]. However, when the FOB seller delivers the endorsed Bill of Lading to the FOB buyer and the latter then transfers the Bill of Lading to a bona fide purchaser (e.g. CIF buyer) for value, the FOB seller's right of stoppage in transit[10] is lost.
In this regard the Sub-sections § 80105 (b) and § 80104 (b) of US Federal Bills of Lading Act have the following provisions:

"When a negotiable bill of lading is negotiated to a person for value in good faith, that person's right to the goods for which the bill was issued is superior to a seller's lien or to a right to stop the transportation of the goods."

"The validity of a negotiation of a bill of lading is not affected by the negotiation having been a breach of duty by the person making the negotiation, or by the owner of the bill having been

9 See The "Cherry" and Others, [2003] 1 SLR 471; [2002] SGCA 49.
10 Under the UK's Sale of Goods Act 1979, an unpaid seller has a right of lien on the goods, a right of stoppage in transit and a right of resale.

deprived of possession by fraud, accident, mistake, duress, loss, theft, or conversion, if the person to whom the bill is negotiated, or a person to whom the bill is subsequently negotiated, gives value for the bill in good faith and without notice of the breach of duty, fraud, accident, mistake, duress, loss, theft, or conversion."

If, however, there is evidence of bad faith (mala fide) on the part of endorsee, that he knew of the breach of duty, fraud, mistake, duress, loss or theft, the negotiation of the Bill of Lading may be deem invalid by a Court and the endorsement void. If in case of CIF on-sale of cargo by a middleman who bought the cargo on FOB terms, the third party purchaser (i.e. CIF buyer) knew that the middleman was insolvent and took the Bills of Lading with the purpose of defeating the shipper's right to stop the goods in transit and thus defrauding the shipper, the shipper can preserve the right to stop the goods in transit.

Letter Of Credit Requirements For The Issuance And Endorsement Of Insurance Documents

by Vlad Cioarec, International Trade Consultant

The insurance document must be endorsed by the party to whose order claims are payable.
An insurance document can state that the claims are payable to order, to the order of the Assured (L/C Beneficiary) or to the order of L/C issuing bank. If the insurance document does not state to whose order claims are payable or that the claims are payable to order, the insurance document must be endorsed by the Assured, if named.
If the letter of credit is silent as to the insured party and the insurance document does not name the Assured, it can be endorsed by the L/C Beneficiary as the lawful holder.
ISBP paragraph K21(a) stipulates that:

"When a credit is silent as to the insured party, an insurance document is not to evidence that claims are payable to the order of, or in favour of, the beneficiary or any entity other than the issuing bank or applicant, unless it is endorsed by the beneficiary or that entity in blank or in favour of the issuing bank or applicant."

In the English law case **Kredietbank Antwerp v. Midland Bank Plc**[1], the letter of credit required the presentation of an *"original insurance policy or certificate in negotiable form blank endorsed for gross invoice value plus 10 percent ..."*. Amongst the documents tendered for payment to the negotiating bank by the L/C Beneficiary were the original and a duplicate of an insurance policy that stated the Assured "To Order". Both the original and duplicate of the insurance policy were endorsed in blank by the L/C Beneficiary.
The negotiating bank, Kredietbank Antwerp paid the proceeds to an assignee of the L/C Beneficiary and then sent the documents to the issuing bank, Midland Bank. The issuing bank rejected the documents on the grounds that the insurance policy did not state the name of the Assured and therefore were not in negotiable form. The issuing bank contended that:

"unless the L/C beneficiary is named in the insurance policy, there is no assurance that the endorsement is valid and that the bank will be able to assert the rights of the holder against the insurer. [...] As with bills of lading, the person to whom the policy is issued must be named in it, so that subsequent holders will know that the blank endorsement was made by the person entitled to do so."

The negotiating bank brought a claim for wrongful dishonor against the issuing bank. The claim was upheld by the English Commercial Court and English Court of Appeal.
The English Court of Appeal held that:

"the objection fails because it seeks to introduce a requirement that was not stated in the credit; namely, that the assured should be named in the policy. Being made out "To Order", it was in negotiable form and it was blank endorsed. There is no authority in law and no support in practice for any suggestion that its failure to name the assured rendered the policy invalid or unenforceable against the insurers. If [the applicant of L/C] required a safeguard against the risk [that the endorsement will not be made by the Assured and thereby the applicant will not be able to assert the rights of the holder against the cargo insurer], then it could and should have included a suitable

1 [1999] 1 Lloyd's Rep. 219

provision in its instructions to Midland [issuing bank][2].”

The letters of credit that are silent as to the insured party are required to be issued in back-to-back sales where commodity traders procure the goods from suppliers for on-sale to the final buyers and want to conceal the identity of suppliers to the final buyers. Such letters of credit are issued either as transferable letters of credit or as back-to-back letters of credit and provide that the certificates of origin, quality and quantity and insurance documents should be issued “For The Account Of Whom It May Concern” or “To Whom It May Concern” without mentioning the name of suppliers.
The insurance documents are made out “To Order” or “For The Account Of Whom It May Concern” on the basis that the Assured must have an insurable interest in the subject-matter insured at the time of the loss even though he may not be interested when the insurance is effected.
In the US law case **Atlas Assurance Company Ltd. v. Harper Robinson Shipping Co.**[3], the insurance certificates tendered for payment under letter of credit had the following provisions:

“Assured: Sterling International (CIF Seller)
For account of whom it may concern
Loss, if any, payable to the Assured or order.”

The insurance certificates were endorsed in blank by Sterling International, L/C Beneficiary.
Based on a previous US Supreme Court decision, the US Court of Appeals for the 9th Circuit held that the meaning of the words “For the account of whom it may concern” is that:

“it is not necessary that at the time of effecting the insurance the person taking it out should intend it for the benefit of some then known and particular individual, but that it would cover the case of one having an insurable interest at the time of the happening of the loss and who was intended to be protected at the time the party took out the insurance.”

2 To avoid this kind of disputes, the CIF buyers could ask the issuing banks to include in the letter of credit conditions the requirement that the insurance policy or certificate be *“made out to Beneficiary's order and blank endorsed”*.

3 508 F.2d 1381 (9th Circuit 1975)