

To: Transport Industry Operators

## As agent for the Carrier?

More and more junior staff of the banks insist all the Bills of Lading to be signed and issued with the above remark "As agent for the Carrier". This is of course right if the concerned Carrier does not have its own office in the place of issuing the Bill of Lading and therefore instruct its agent there to issue the Carrier's Bill of Lading.

However, the above remark would be wrong if the Carrier signs and issues its Bill of Lading by itself. The correct procedure should be the Carrier signs and issues its Bill of Lading "as the Carrier" instead of "as agent for the Carrier". The simple reason is the Carrier cannot be the agent for itself.

Some banks' junior staff even go further by demanding Non-Vessel Owning Carrier (NVO) to sign and issue its Bill of Lading "as agent for the Carrier: XXX Shipping Company". This is not right. The NVO in fact has no authority from the Shipping Company to name the latter as the Carrier under the NVO's Bill of Lading. The Shipping Company will not be bound by such remark in the NVO's Bill of Lading. The NVO itself is in fact the Carrier under its own Bill of Lading. If the banks insist to force the NVO to the wrong role of "as agent for the Carrier: XXX Shipping Company", then there would probably be no Carrier under the NVO's Bill of Lading. Such remark is also a deliberate misrepresentation. We have come across some cases which the Shipping Companies actually took legal action against the NVOs for loss, damages and liability resulted from wrongly naming the Shipping Companies as the Carriers under the NVOs' Bills of Lading without authority. Furthermore, it is arguable that such remark would deprive the NVO of its Carrier status under its own Bill of Lading and that the NVO even could not rely on its own Bill of Lading terms to protect its position.

Bill of Lading is the best evidence of the contract of carriage. The Carrier under the Bill of Lading undertakes the responsibility of carrying the goods. The identity of the Carrier is therefore very important and has to be correct. In fact, according to Articles 23, 26 and 30 of ICC Uniform Customs and Practice for Documentary Credits (UCP 500), it is perfectly acceptable to the banks that the Bill of Lading (including those issued by Shipping company and NVO) shows on its face to indicate the name of the Carrier and that the Bill of Lading is signed by the Carrier itself (including Shipping Company and NVO). There is no such requirement in UCP 500 that all Bills of Lading must bear the remark "as agent for the Carrier". UCP 500 actually allows the Bill of Lading to be issued by the Carrier itself (including Shipping Company and NVO).

We hope the transport industry will take up this issue with the banking industry to rectify the problem of insisting "as agent for the Carrier" as soon as possible.

Please feel free to contact us if you have any questions.

Simon Chan and Richard Chan

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Freight forwarders, NVOs, CTO, MTOs trading to the USA are often referred to as **Ocean Transportation Intermediary (OTI)** under Section 19, Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998. They are required to file with the Federal Maritime Commission an OTI Bond, often called **FMC bond**, for an amount of USD150,000.

As transport risk manager, we could assist you in obtaining the FMC Bond. Feel free to call Simon and Richard for details.