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Delivery without the original bill of lading: LOIs and bank guarantees

The cargo has arrived but the original bill is still in transit. What does the carrier ask for, what does the receiver sign, and who carries the risk?

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Online interactive version: **https://ozgurkonakci.com/en/guide/delivery-without-original-bl/**

SHORT ANSWER

A carrier normally delivers cargo only to the party presenting the original bill of lading. If delivery is requested without it, the carrier usually asks the receiver for a letter of indemnity (LOI): an undertaking to cover all the carrier's losses if it delivers to the wrong party, often countersigned by a first-class bank. Because liability for misdelivery is not covered by P&I insurance, carriers approach such requests with caution.

The problem: the cargo is here, the document is not

A bill of lading does three things: it is a **receipt** for the goods, **evidence** of the contract of carriage and a **document of title** that decides who takes delivery. Because of the third function, a carrier delivers only to the party who **presents the original bill**.

On short transits, or while documents move between banks, the cargo can arrive before the original bill. The receiver wants the goods; the carrier does not want the risk of delivering to the wrong party. The tool that bridges this gap is the **letter of indemnity (LOI)**.

Why is the risk so large for the carrier?

If the true holder of the bill appears after the cargo has been released without it, the carrier is liable to that holder. According to the UK P&I Club:

- Liability from misdelivery is **not covered by P&I insurance**, and taking an LOI does not restore that cover.
- If the claim is brought in tort rather than contract, the carrier may lose the defences and limits in the bill of lading; the claim may even exceed the value of the cargo.

This is why many carriers accept delivery against an LOI only on strict terms, and some refuse it outright.

What does an LOI promise?

An LOI is a written undertaking from the party taking delivery without the original bill to the carrier. Under the standard **Form A** recommended by the International Group of P&I Clubs, the requesting party agrees to:

1. **Indemnify** the carrier against any loss and expense caused by the delivery
2. **Fund** the defence of any proceedings on demand
3. **Provide security** on demand if the ship or other property is arrested
4. **Hand over** the original bills to the carrier as soon as it obtains them

The standard forms are governed by English law. Form A covers delivery without production of the bill, Form B delivery at a port other than the one in the bill, and Form C both situations.

Bank countersignature

P&I clubs recommend that the LOI be countersigned by a **first-class bank**, because the security is only as good as the party giving it. In practice:

- Under the standard forms, the requestor and the bank are **jointly and severally** liable.
- Some carriers' forms cap the bank's liability at **200% of the CIF invoice value**, with the guarantee running for **30 months** from the date of the bill and extendable if needed.
- The receiver's bank usually provides this as a **bank guarantee**; ICC's URDG 758 rules are widely used for bank guarantees.

A bank guarantee costs the receiver money and uses its credit line. Preventing the problem is usually cheaper than giving an LOI afterwards.

Choose the right route

Situation	What happens?
Normal delivery	The original bill is presented to the agent at destination in exchange for a delivery order. This is the safest route; check the endorsement chain.
Telex release (surrender)	The shipper surrenders the originals to the carrier at origin; the carrier instructs the destination agent to release without originals. No LOI is needed.
Delivery against a bank-countersigned LOI	The carrier usually asks for the International Group standard form (Form A) countersigned by a first-class bank. Some carriers' forms cap the bank's liability at 200% of the CIF invoice value. The originals must be handed to the carrier as soon as they are obtained.
LOI signed by the consignee only	Security is only as good as the party giving it. The risk to the carrier is high; liability for misdelivery is not covered by P&I insurance. Carriers usually require a bank countersignature.

Situation	What happens?
Waiting for the originals	The cargo waits at the port or terminal until the originals arrive. Storage, demurrage and detention accrue. Speed up the document flow and plan seawaybill or telex release next time.

Preventing the problem

- Where the goods **will not be sold in transit and payment does not depend on the document**, have a **sea waybill** issued from the start.
- If the shipper holds the originals and payment is complete, ask for a **telex release**.
- Under a letter of credit, add the time documents spend at the banks to the shipment plan; on short-transit routes, talk to the bank in advance about speeding up the document flow.
- Keep track of who holds the **full set** of originals (usually 3/3).

Test yourself

1. After taking an LOI, can the carrier claim from its P&I insurance for misdelivery? *(Answer: No; that liability is outside P&I cover and the LOI does not restore it.)*
2. Under the standard Form A, what must the requesting party do once it obtains the original bills? *(Answer: Hand them to the carrier immediately.)*
3. When is an LOI not needed at all? *(Answer: When a sea waybill is used, or the originals are surrendered at origin for a telex release.)*

Frequently asked questions

What is a letter of indemnity (LOI)?

An LOI is a written undertaking by the party taking delivery without the original bill of lading to cover any loss, cost and legal expense the carrier suffers because of that delivery. The originals are handed to the carrier once obtained.

Why is a bank countersignature requested?

Security is only as good as the party giving it. A misdelivery claim can exceed the cargo value, so P&I clubs recommend that the LOI be countersigned by a first-class bank. Some carriers' forms cap the bank's liability at 200% of the CIF invoice value.

Is the carrier insured when delivering against an LOI?

No. P&I clubs exclude liability arising from delivery without production of the original bill, and taking an LOI does not restore that cover. The carrier's only protection is the LOI itself.

How can the need for an LOI be avoided?

Where the goods will not be sold in transit and payment security does not depend on the document, a sea waybill or telex release can be used. In both cases the cargo is delivered to the named consignee without an original bill.

SOURCES

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