

Letter of Guarantee for Absence of Bill of Lading: A Practical Mechanism with Legal Alternatives

خطاب الضمان لغياب سند الشحن: آلية عملية ببدائل قانونية

ماستر 2 قانون بحري وقانون النقل

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Introduction -

بعد إبرام عقد النقل البحري يصدر الناقل سند شحن لإثبات العقد ذاته وإثبات واقعة شحن البضاعة الموصوفة من قبل الناحش إلا أن من أهم مميزات سند الشحن البحري العملية تمثيله للبضاعة بحيث لم تعد طول فترة النقل البحري عائقا لتداول البضائع وذلك بواسطة تداول سند الشحن بالطرق التجارية مما يسمح بنقل ملكية البضاعة من شخص إلى آخر أثناء تواجدها في حراسة الناقل، شرط أن يكون السند إذنيا أو لحامله.

إذ يقوم تسليم السند للمشتري مقام تسليم البضاعة ذاتها، بحيث تندمج البضاعة في سند الشحن، ويعتبر حامله بمثابة حائز للبضاعة. ذلك أن السند يعبر بوضوح عن البضاعة بما يحتويه من بيانات خاصة.

After concluding the maritime transport contract, the carrier issues a bill of lading to prove the contract itself and to prove the fact of shipping the goods as described by the shipper. However, one of the most important practical features of the maritime bill of lading is its representation of the goods, so that the length of the maritime transport period is no longer an obstacle to trading goods through the circulation of the bill of lading by commercial means, which allows the transfer of ownership of goods from one

person to another while they are in the carrier's custody, provided that the document is to order or to bearer.

The delivery of the document to the buyer substitutes for the delivery of the goods themselves, so that the goods merge into the bill of lading, and its holder is considered as possessing the goods. This is because the document clearly expresses the goods through the specific data it contains.

Diagram 1: Legal Maritime Delivery Process with Bill of Lading

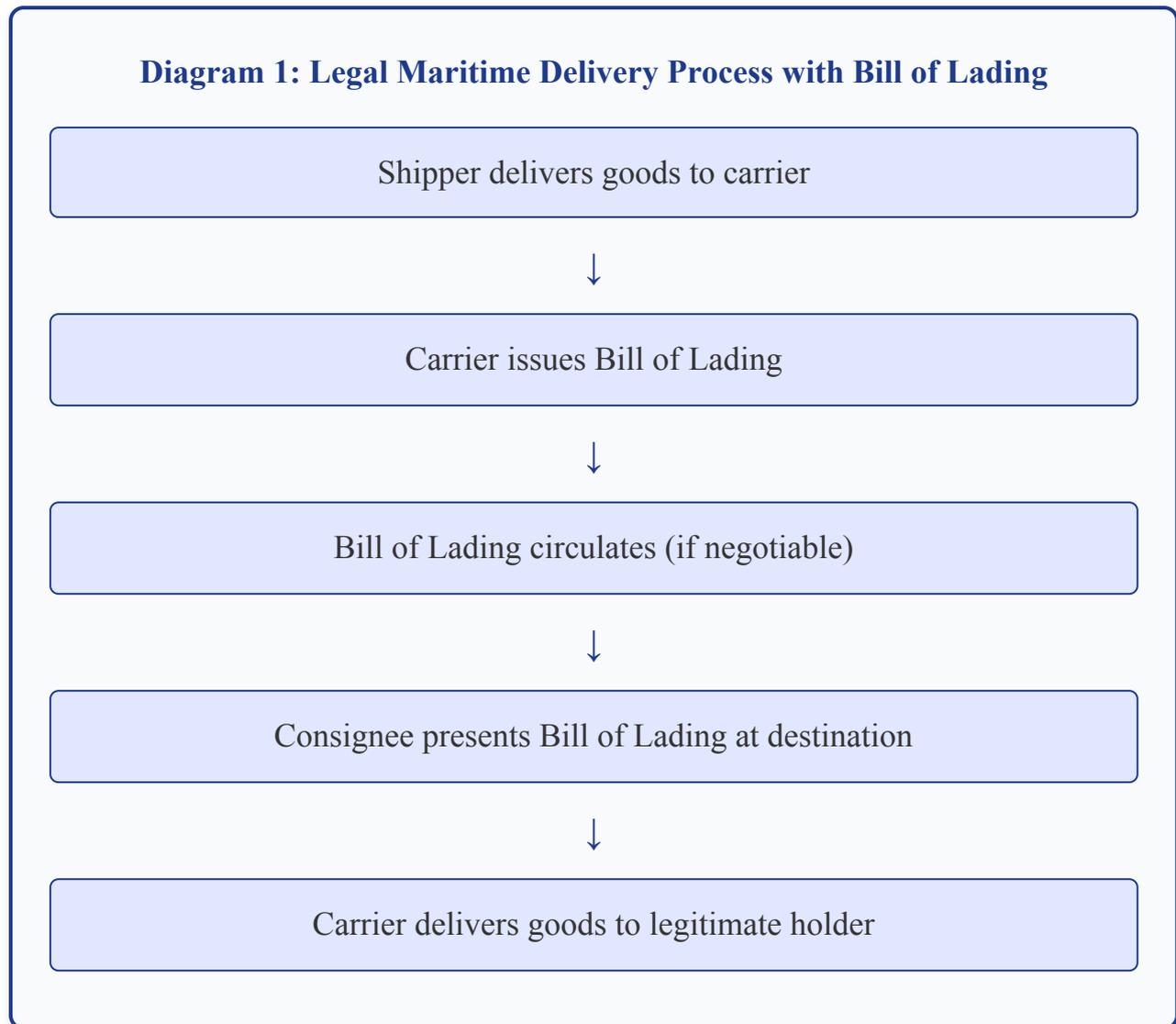


Diagram 2: Comparison - Delivery WITH vs WITHOUT Bill of Lading

WITH Bill of Lading

- Legal delivery
- Risk transfer occurs
- Carrier liability discharged
- Clear title transfer

WITHOUT Bill of Lading

- Illegal delivery
- No risk transfer
- Carrier remains liable

- No compensation claims

- Potential title disputes
- Compensation exposure

First Requirement: Legal Delivery in Maritime Transport Contract

المطلب الأول: التسليم القانوني في عقد النقل البحري

First Section: Bill of Lading as a Legal Condition for Valid Delivery

الفرع الأول: سند الشحن شرط قانوني لصحة التسليم

Legal delivery that terminates the contract consists of several stages: first, placing the goods at the disposal of the consignee; second, the consignee's verification of the goods or enabling them to do so; then the consignee's presentation of the bill of lading to the maritime carrier as evidence of delivery; after that, the physical taking of the goods.

The bill of lading is what indicates who has the right to receive the goods. Therefore, the carrier does not allow any person to receive the goods from them unless they present the bill of lading as its legitimate holder and owner of the goods.

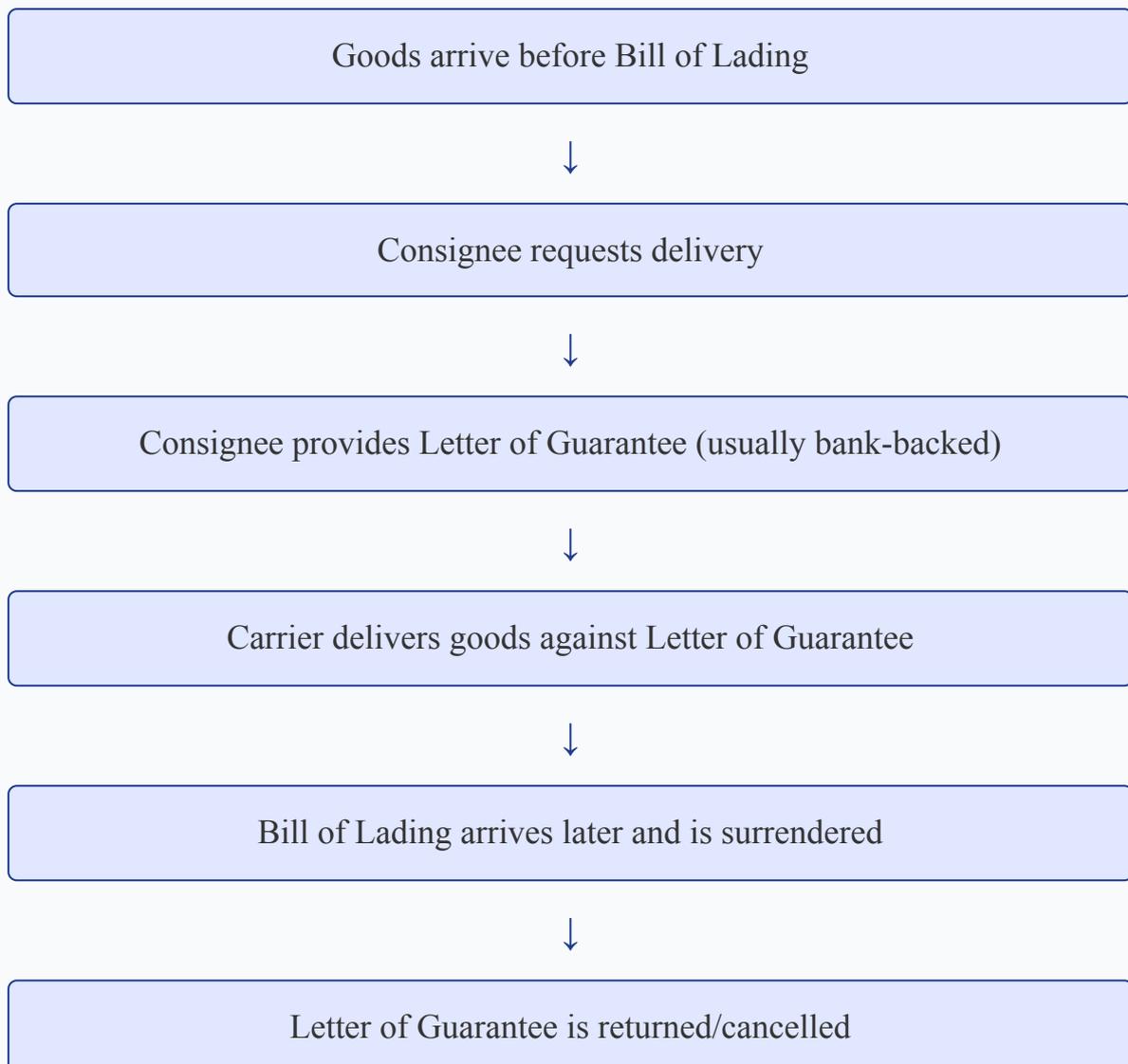
يتكون التسليم القانوني الذي ينهي العقد من عدة مراحل أولى وضع البضائع تحت تصرف المرسل إليه، تحقق هذا الأخير من البضاعة أو تمكينه من ذلك في مرحلة ثانية، ثم تقديم المرسل إليه سند الشحن إلى الناقل البحري بما يفيد التسليم، بعد ذلك يتم أخذ البضائع مادياً.

Second Section: Authorization for Delivery Without Bill of Lading

الفرع الثاني: الترخيص بالتسليم بدون سند الشحن

As an exception to the legal rule, French jurisprudence authorized by the decision dated June 19, 2007 - in addition to other rulings - for the carrier to deliver goods without receiving the bill of lading, if this delivery was made in execution of an agreement between the carrier and shipper, such that the latter accepts it.

Diagram 3: Letter of Guarantee Upon Arrival Mechanism



Second Requirement: Letter of Guarantee Upon Arrival as a Remedy for Illegal Delivery

المطلب الثاني: خطاب الضمان عند الوصول كعلاج للتسليم غير القانوني

First Section: Validity of Letter of Guarantee Upon Arrival

الفرع الأول: مدى صحة خطاب الضمان عند الوصول

Under the letter of guarantee upon arrival, the consignee undertakes that they are the rightful recipient of the goods and also undertakes to deliver the bill of lading to the carrier as soon as it arrives in exchange for retrieving the letter. Although the letter of guarantee is issued, the carrier's obligations remain fixed.

بموجب خطاب الضمان عند الوصول يتعهد المرسل إليه أنه صاحب الحق في استلام البضاعة كما يتعهد بتسليم سند الشحن للناقل فور وصوله إليه مقابل استرداد الخطاب.

Second Section: Legal Nature of Letter of Guarantee Upon Arrival

الفرع الثاني: الطبيعة القانونية لخطاب الضمان عند الوصول

Usually, the consignee presents to the carrier a bank guarantee letter for the value of the imported goods or without specifying the value, in exchange for the carrier delivering the goods without receiving the bill of lading, based on the bank's undertaking to pay upon first demand without stopping at any other procedures.

Third Section: Characteristics of Letter of Guarantee

الفرع الثالث: خصائص خطاب الضمان

In addition to its urgent necessity, the practical and judicial acceptance that the letter of guarantee has known is explained by its distinctive characteristics that have led to heavy obligations for its issuer, particularly represented in the independence of the letter of guarantee from the maritime transport contract.

Diagram 4: Legal Alternatives to Traditional Bill of Lading

Sea Waybill

- Non-negotiable
- Named consignee
- No document required for delivery
- Identity verification sufficient

Electronic Bill of Lading

- EDI system
- Instant transmission
- BOLERO platform
- Secure digital transfer

Third Requirement: Legal Alternatives to Bills of Lading

المطلب الثالث: البدائل القانونية لسندات الشحن

First Section: Sea Waybill

الفرع الأول: خطاب النقل البحري

The sea waybill or non-negotiable bill of lading is considered an important alternative to eliminate the delivery problem in case of absence of the bill of lading. It refers to that document which does not perform the economic function of bills of lading, namely representing the goods, as it is issued for a specific transport operation to serve as a receipt for receiving the goods and evidence proving the transport contract.

يعد خطاب النقل البحري أو سند الشحن غير القابل للتداول بديلا مهما للقضاء على إشكالية التسليم في حالة غياب سند الشحن والمقصود به ذلك السند الذي لا يقوم بالوظيفة الاقتصادية لسندات الشحن وهي تمثيل البضاعة.

Second Section: Electronic Bill of Lading

الفرع الثاني: سند الشحن الإلكتروني

The electronic maritime bill of lading falls under the Electronic Data Interchange (EDI) system, which has imposed itself in the field of trade and transport. The use of email in transmitting information and data by transferring bill of lading data via the internet as an electronic document, and due to the instantaneous speed of arrival, effectively ends the problem of delayed arrival of paper documents.

يندرج سند الشحن البحري الإلكتروني تحت نظام تبادل البيانات الكترونيا "EDI" وهو نظام فرض نفسه في ميدان التجارة والنقل. ذلك أن استخدام البريد الإلكتروني في نقل المعلومات والبيانات

بنقل معطيات سند الشحن عبر الانترنت كسند الكتروني، ونظرا للسرعة اللحظية في وصولها، فهي فعليا مشكلة تأخير وصول المستندات الورقية.

جدول - Bilingual Terminology Table

المصطلحات الثنائية اللغة

English Term	Arabic Term	المصطلح بالعربية
Bill of Lading	سند الشحن	Bill of Lading
Maritime Transport Contract	عقد النقل البحري	Maritime Transport Contract
Letter of Guarantee	خطاب الضمان	Letter of Guarantee
Consignee	المرسل إليه	Consignee
Shipper	الناحش	Shipper
Carrier	الناقل	Carrier
Delivery	التسليم	Delivery
Sea Waybill	خطاب النقل البحري	Sea Waybill
Electronic Bill of Lading	سند الشحن الإلكتروني	Electronic Bill of Lading
Endorsement	التظهير	Endorsement
Order Bill of Lading	سند الشحن لأمر	Order Bill of Lading
Bearer Bill of Lading	سند الشحن للحامل	Bearer Bill of Lading
Straight Bill of Lading	سند الشحن الإسمي	Straight Bill of Lading
Documentary Credit	الاعتماد المستندي	Documentary Credit
Bank Guarantee	الضمان المصرفي	Bank Guarantee
Negotiability	قابلية التداول	Negotiability

English Term	Arabic Term	المصطلح بالعربية
Cargo/Goods	البضاعة/السلع	Cargo/Goods
Port of Arrival	ميناء الوصول	Port of Arrival

References - المراجع

Primary Source: Al-Diyar, Q. L. Letter of Guarantee for Absence of Bill of Lading: A Practical Mechanism with Legal Alternatives. *Algerian Journal of Maritime Law and Transport*, Issue Six.

Legal References:

Algerian Maritime Law, Article 759 (paragraph C) and Article 782

French Decree No. 66-1078 regulating charter and maritime transport contracts, Article 50

UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules 2008)

French Jurisprudence Decision, June 19, 2007

International Systems and Organizations:

BOLERO (Bill of Lading Electronic Registry Organization) - established 1999

SWIFT (Society for Worldwide Interbank Financial Telecommunications)

TT Club (Through Transport Mutual Insurance Association)

EDI (Electronic Data Interchange) system
