

TELEX RELEASES FOR CARGO

The use of telex releases in lieu of original bills of lading for the release of cargo to consignees

by Lee Wei Yung & T Dinesh



The prevalent use of telex releases as opposed to original bills of lading for release of cargo to the consignee has come about as a matter of convenience with the increased pace of transactions and speed of carriage of goods by sea. The use of telex releases has not come without risks which are briefly addressed in the article.

By convention in carriage of goods by sea, goods are generally released by the carrier to the consignee against original bills of lading (“OBL”) furnished by the consignee at the port of discharge (“POD”).

Telex releases (“Telex Release”) are regularly utilised for the release of cargo to the consignee, in lieu of an OBL to meet the demands of increasingly short timelines for commercial transactions and delivery of cargo. This article briefly discusses the use of Telex Release.

WHAT IS A TELEX RELEASE?

In the ordinary course of dealings, the carrier issues the OBL to the shipper of the goods when the shipment is laden or loaded on board the vessel. The shipper then sends the OBL to the consignee by courier. A Telex Release dispenses with a need to do the latter.

A Telex Release is essentially an electronic message transmitted from an agent or shipping line at the port of loading to the consignee at the POD.

The shipper would, by instructing the carrier to issue a Telex Release, have surrendered all the OBLs for that particular cargo to the carrier.

Where Telex Releases are involved, it is common for carriers to issue straight bills of lading. Those straight bills of lading are non-negotiable documents.



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WHY USE A TELEX RELEASE?

Telex Releases provide a quick and convenient method of providing the consignee a way of receiving goods at the POD without the need to wait and be in receipt of OBLs. Telex Releases are often used in liner shipment of cargo.

In the present age where transactions take place rapidly and vessels travel faster, there is a potential risk that goods are delivered to the POD before the consignee receives the OBL thus leading to the situation where the cargo cannot be cleared before the expiry of "free days".

In the event of the latter, the cargo interest can potentially face claims for demurrage or detention, especially in the age of wide spread use of containers in the transport of cargo. A Telex Release dispenses with the need for the production of OBL resulting in the faster release of cargo to consignees.

Another benefit of Telex Releases is that the carrier can ship the freight without the OBL thus minimizing the risk of such documents being lost or stolen. A shipment requiring third-party transportation services may be delayed if the OBLs are not readily available.

A Telex Release may also be required where there are problems in the documentation of the OBLs. In the event that the OBLs are lost, stolen or otherwise inaccessible, the shipper would be left with no option but to require a Telex Release from the carriers. Such a process is time consuming and usually results in additional freight storage charges.

NVOCC [Non-Vessel-Operating Common Carrier] operators may also require shipping lines to use Telex Releases for the NVOCC to issue its own house bill of lading to their customers.

Telex Releases are not a complete panacea for expedited discharge of goods to consignees. There are issues of delays caused by the administrative work and increased costs generated by the use of Telex Release. Telex Releases are not a complete replacement for OBLs. Instead, the Telex Release is merely a convenient option for shippers who do not require original documents for their accounts and legal records.



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WHAT ARE THE RISKS OF USING TELEX RELEASES?

The convenience afforded by Telex Release, however, does not negate the risk that comes with the release of cargo without production of the OBL by the consignee. Nor does it abrogate such an obligation, in so far as the carrier's legal liabilities and insurance coverage are concerned, in the event of theft or fraud through release of cargo against fake or forged Telex Releases.

To prevent theft of cargo on board the vessels, the OBL should accompany the cargo throughout its transit. The OBLs act as a part of the carrier's internal control to ensure that goods are discharged to the correct consignee.

The prevailing case laws are against carriers releasing cargo without OBLs from consignees even if it was customary to do so. This is especially so when a bill of lading is a regular order bill. In *The "Star Quest" and other matters* [2016] SGHC 100, the Honourable Steven Chong J (as he was then) held that:

*The difficulty which the respondents face with this defence is that once the Vopak bills of lading are construed as regular order bills, **it follows that delivery can only be lawfully done against production of the Vopak bills. Any other interpretation would necessarily be "repugnant" to the legal effect of the Vopak bills of lading qua documents of title.***
[At paragraph 60]

There is also the further peril on the part of the carrier for being in breach of its bailment obligations as bailee if the cargo is released to a fraudulent consignee without production of OBLs. The potential consequence of such a release of cargo is the repudiation of cover to carriers by Protection and Indemnity insurers.

There is also the possibility of confusion when Telex Releases sent by electronic mail may contain ambiguous instructions regarding the POD. An example of such a situation involved a container sent by a Singapore shipper to the United Kingdom ("UK") agent.

The Singapore shipper had sent an e-mail Telex Release to the UK agent meant for cargo to be shipped to Durban which stated: "Shipper has confirmed COD [COD means Cash On Delivery] charges and bills are now surrendered. Please kindly go ahead, thanks.". The UK agent misinterpreted the "go ahead" to mean that the high value cargo be released to the original UK consignee who had not paid for the cargo! [Article from "Telex release by e-mail - precautions and pitfalls" 02/09/07]

WHAT CARRIERS DO TO HEDGE AGAINST SUCH RISKS

The reality is that the use of Telex Releases is here to stay until a better alternative is available.

To lessen the risk associated with the use of Telex Releases, some shipping companies provide shippers, importers and exporters request for Telex Release through their own integrated online platforms. Other carriers require payment of all fees before the Telex Release is released to the receiving agent.

Some carriers hedge against the various risks associated with the use of Telex Releases by requiring a letter of indemnity or banker's guarantee from the shipper. Many shipping lines hedge against unauthorised releases from wire fraud fake Telex Releases by requiring written confirmation from the shipper before the cargo is released without an OBL.

CONCLUSION

There is, to date, no guaranteed way of providing errorless shipping. The extent of use of Telex Releases by carriers or shipping lines is ultimately a commercial decision. It is for the carrier or shipping liner to weigh the benefits of using Telex Releases against the risks and losses (including a potential loss of insurance cover) which may be incurred as a result of the release of cargo against a fake Telex Release.

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