



## Third party requests for verification of bills of lading and other shipping documents

Gard Members and clients are often contacted by third parties trying to investigate the validity of shipping documents. It can be confusing or worrying for a vessel owner to receive such questions by email without warning. This Insight gives some guidance on how to approach such requests.

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Requests for verificationSome of the requests Gard has seen are sent by lawyers that are advising parties in the trade finance chain, but most come from the International Maritime Bureau (IMB). The IMB is a division of the International Chamber of Commerce (ICC). It was established to help fight maritime crime and malpractice, and one of its services is to authenticate trade finance documentation for ICC member banks.<sup>1</sup> The IMB also investigates and reports on various frauds, including documentary credit fraud, charter party fraud and cargo theft.

Sometimes a request is made because there is a specific concern about a particular document, but more often it is as a result of a due diligence program, where financial institutions randomly check documents submitted under letters of credit.

The requests are normally sent to a vessel owner by an email attaching a copy of the relevant document (generally a bill of lading), and asking if particular details are true. There may also be other questions, such as what the total loaded quantity was, or if original documents can be inspected.

Responding to requests for verificationVessel owners have no obligation to respond to a request, or to provide the information requested. However, Gard generally supports the ICC's efforts to combat commercial crime, so Members and clients are encouraged to assist to the extent they feel able to do so and on appropriate terms.

There are a number of points to bear in mind when responding to a verification request:

**\*(a) Make sure the request is genuine\***BIMCO frequently report on attempts to defraud shipowners through fake invoices for services not requested/received.<sup>2</sup> If you receive an unexpected email requesting information or assistance, satisfy yourself that it is genuine before responding. If there are any doubts at all, use the internet to find a telephone number for the purported sender, and check with them directly before replying. The party making the request will understand your caution and they should be prepared to explain their position.

**\*(b) Do not breach obligations of confidentiality\***An owner can be under a duty to keep bill of lading information confidential. The duty can arise from the incorporation of a charterparty that contains an express confidentiality clause; by an implied contractual agreement; or (under English law) as a result of the nature of the relationship between the parties. Bills of lading can also be commercially sensitive documents. Providing bill of lading information to an unidentified third party therefore risks breaching an owner's duty of confidentiality. One way to avoid this is to first obtain consent from the parties to the bill of lading – but that is likely to be difficult in practice.

Our suggestion is to limit any response to confirming/denying the information that the requesting party already has – for example, by confirming that the copy bill of lading provided is correct/incorrect. Confining an answer to information already available reduces the risk of a breach of confidentiality. For this reason, think carefully about responding to a party who requests information about a document that they do not appear possess.

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**\*(c) Consider how the information may be used\***Verification requests do not normally identify the party (i.e. the bank) that will ultimately rely on the information.

*It is therefore impossible to know exactly who will use the information – or how.*

Although most information is requested by random selection for due diligence programs, some can be sought to help resolve a dispute. In either case, the unidentified party will probably rely on the information provided – for example they may make a payment under a letter of credit, or perhaps reject a claim under a credit insurance policy. It is easy to see that this could lead to complaints or claims against a shipowners. It is therefore important that any responses are accurate to the best of the owners' knowledge and drafted in appropriate terms – e.g. “without guarantee”.

## **Summary**

- There is no obligation to respond to a request for bill of lading verification, but Gard generally encourages Members and clients to assist to the extent they feel able to do so.
- If there is any concern whether a request is genuine, verify it independently.
- Check if the party making the request is a member of the IMB, if they are - ask that they direct their question through the IMB.
- Try to restrict responses to the information that is already available to the party making the request, e.g.: “The information you have matches the information available to owners.”
- Make sure responses are within an owner's actual knowledge. If the owner never saw or received an original bill of lading, then state this, but give what information you can, e.g. that the copy provided appears the same as the electronic scanned copy that the owner has.
- State that the response is made in good faith, but with no guarantee as to accuracy.

Please direct any questions to your usual point of contact at Gard.

## **Footnotes**

1. See:

<https://icc-ccs.org/icc/imb/services/due-diligence/trade-finance-documents-authentication>

2. See:

[https://www.bimco.org/Operations/Company\\_information/Fraud\\_and\\_Extortion.aspx](https://www.bimco.org/Operations/Company_information/Fraud_and_Extortion.aspx)

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