A switch bill of lading refers to a bill that is issued as a substitute for an earlier bill of lading which has already been issued in respect of a cargo loaded on a ship, but which is not identical in all respects to the bill that it is replacing.

Provided all the parties to the contract of carriage consent and provided there is no fraudulent purpose behind the request, there is no legal objection (at least not under English law) to the request for switching earlier bills of lading.

It is to be remembered that a bill of lading not only acts as a receipt (and therefore needs to contain correct information as to the quantity and apparent condition of the goods at the time of shipment) but is also a document of title to the goods and (unless issued ‘straight’) is a negotiable instrument. Thus the ultimate buyer of the goods often is not present at the time of loading but instead has to rely on the information contained within the bill. Very often, an original bill of lading also forms an important part of a credit arrangement and represents a bank’s security in respect of any credit advanced to a buyer.

Carriers need to be vigilant against any attempt in a switch bill of lading to manipulate this information. Not only would compliance with such requests potentially prejudice a member’s P&I cover, but any letter of indemnity issued by the requestor could potentially be legally unenforceable.

There are legitimate commercial reasons why a trader, charterer or shipper may ask a carrier to switch bills. For example, a sale contract may have fallen through, or been varied with mutual agreement, and thus the cargo should be delivered to a different consignee and/or to a different discharge port. In these circumstances it is all the more important that the shipper is properly identified in relation to the contract of carriage and correctly stated on the face of the bill of lading. Alternatively, the cargo may have been loaded in batches/ consignments from differing suppliers and the buyer then wishes to consolidate and trade them as a single cargo.

If a carrier decides to agree to a request to switch bills then it is of paramount importance that all the originals from the set of bills of lading already in circulation be surrendered and cancelled before the switch bills are released. It is suggested that the carrier makes absolutely sure this happens before any new bills of lading are released and does not leave this for local agents to complete.

By ensuring all the originals are surrendered and cancelled, the carrier can be forced to comply with a request to switch bills without a specific contractual agreement, reached in advance. In general, most charterparties do not give any express contractual right to charterers in relation to switching bills of lading. The charterparty will generally provide that the master is to sign bills of lading ‘as presented’ and it may, in addition, provide that the charterers have the right to issue and sign bills of lading on behalf of the master in strict conformity with the mate’s receipt. These provisions do not, in themselves, allow charterers to place switch bills of lading into circulation or require an owner to do so.

The need for vigilance

With this in mind, in every case, the carrier needs to carefully consider the difference(s) between the bill of lading already issued and the proposed switch bill of lading. Could any feature of the proposed switch bill of lading mislead a third party about the subject cargo’s origin, date of loading, description etc?

Contractual obligations

Whilst much depends on the terms of the contract between the requesting party and the carrier, it is unlikely that the carrier can be forced to comply with a request to switch bills without a specific contractual agreement, reached in advance. In general, most charterparties do not give any express contractual right to charterers in relation to switching bills of lading. The charterparty will generally provide that the master is to sign bills of lading ‘as presented’ and it may, in addition, provide that the charterers have the right to issue and sign bills of lading on behalf of the master in strict conformity with the mate’s receipt. These provisions do not, in themselves, allow charterers to place switch bills of lading into circulation or require an owner to do so.
Summary
If a member, as carrier, receives a request to switch bills of lading then it should ask itself the following questions:

1. Who is the requestor in relation to this contract of carriage? Are they entitled to make the request and is the member (as carrier) obliged to comply with the same?
2. What differences are there between the bill already issued and the proposed replacement bill?
3. Could any of the changes being requested potentially mislead an outside third party about the date of loading or the subject cargo’s quantity or apparent condition?
4. If so, will any of the changes on the switched bill of lading prejudice P&I cover?
5. Is the member satisfied that there is a clear and legitimate reason for the switch?
6. Does the requestor have possession/control of all the original bill(s) of lading already issued, ready for surrender and cancellation?
7. Is the requestor offering a letter of indemnity in return for the switching of bills? Does the requestor have sufficient assets to enforce a judgment against?

This article intends to provide general guidance on the issues arising as a matter of English law on switch bills of lading. It is not intended to provide legal advice in relation to any specific query. Instead its aim is to assist the club’s members in identifying the issues requiring consideration when asked to switch bills of lading and to decide what further enquiries and/or advice should be sought before doing so. The law on bills of lading is also not static and if in doubt, The Standard Club is always on hand to assist.