

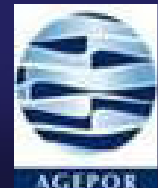
DEBATE & WORKSHOP

CONTRATOS DE TRANSPORTE

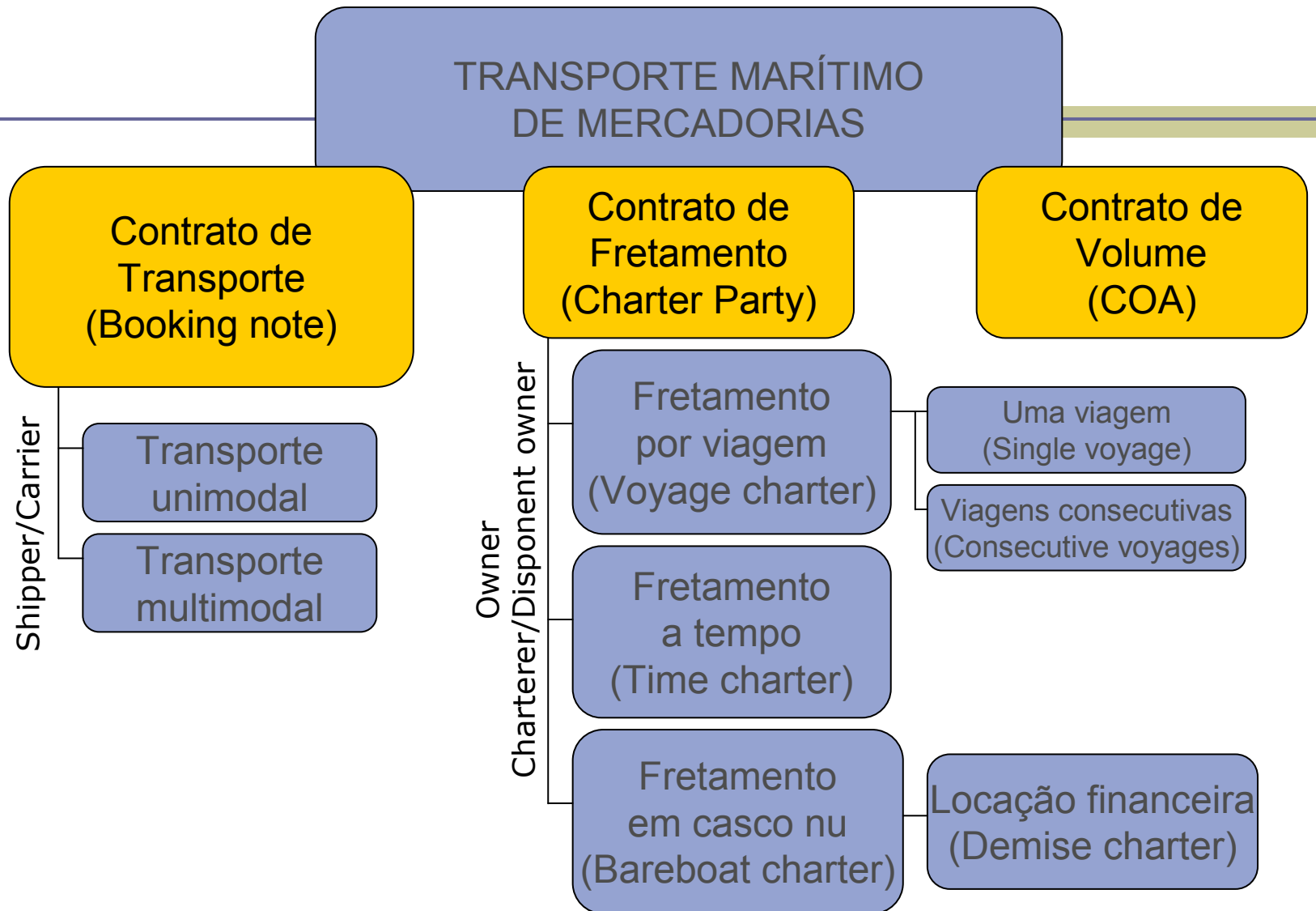
Algumas questões

Sandra Aires
INTERFACE LEGAL

27.SET.2013



1. EM GERAL



Contratos

Documentos de transporte



Transporte
por mar

Bill of lading (B/L)
Sea waybill

Liner Terms

Transporte multimodal
com parte marítima

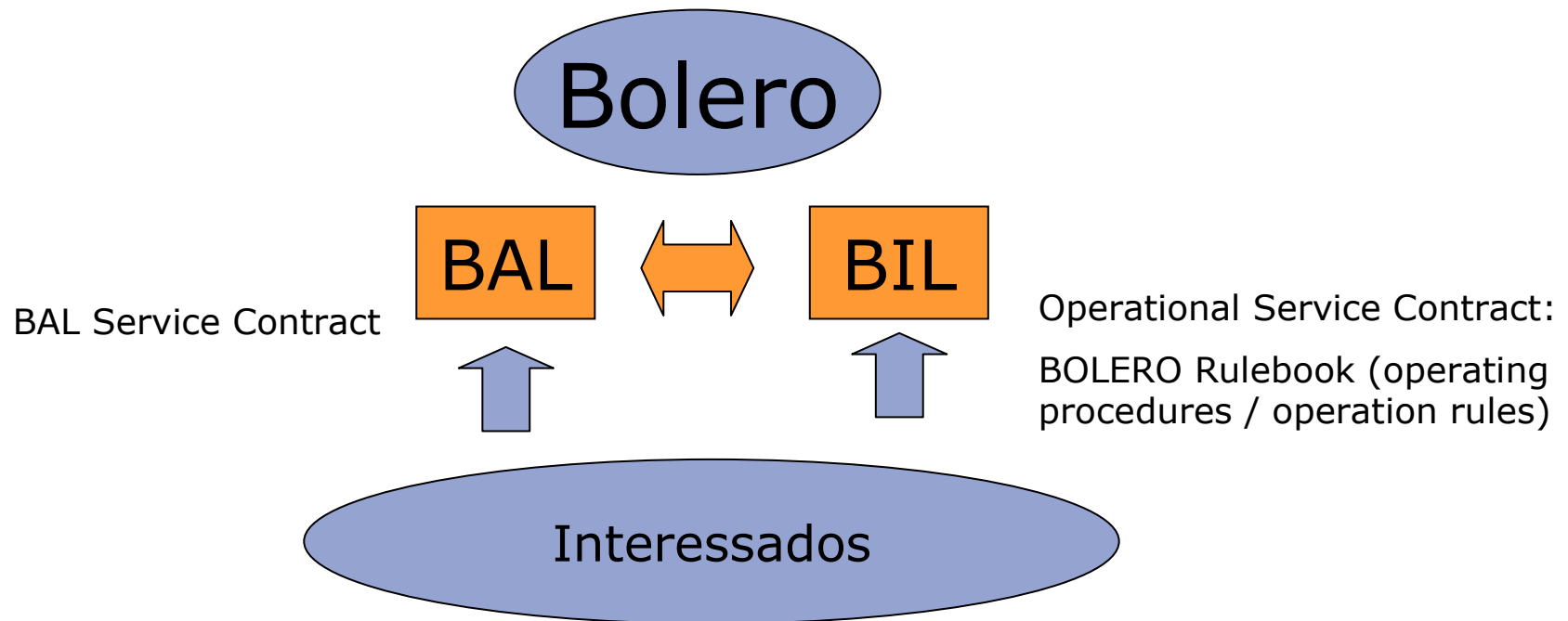
FBL
FWB
Combiconbill
Combiconwaybill
Multidoc 95
Multiwaybill 95

Uma questão tecnológica: Documentos de transporte electrónicos

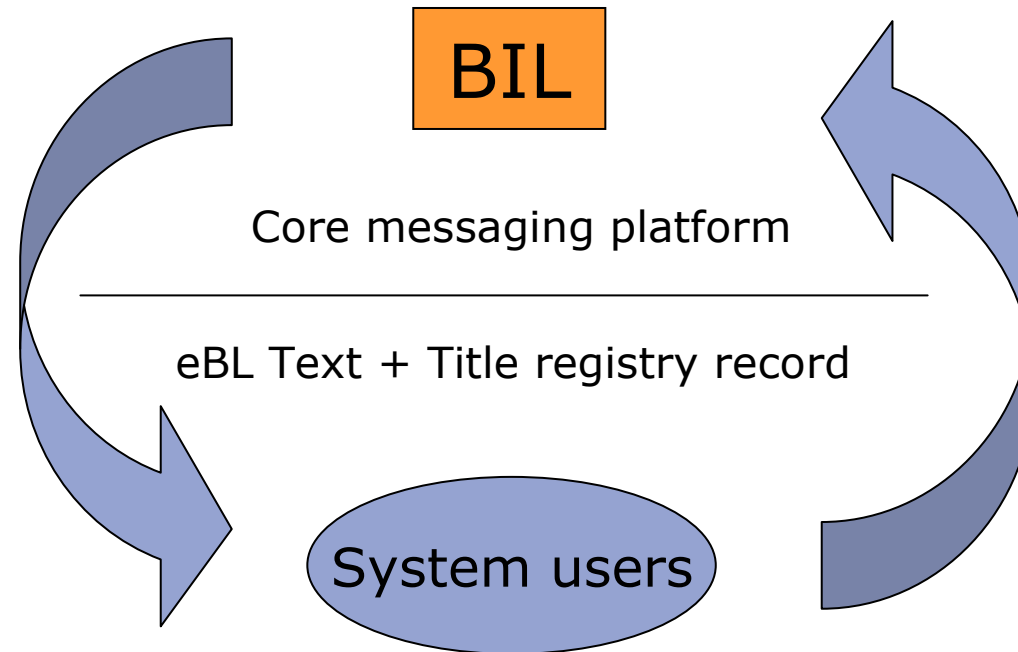
What bill of lading
is appropriate
for your trade?

Uma questão tecnológica: Documentos de transporte electrónicos

Bills of Lading Electronic Registry Organization

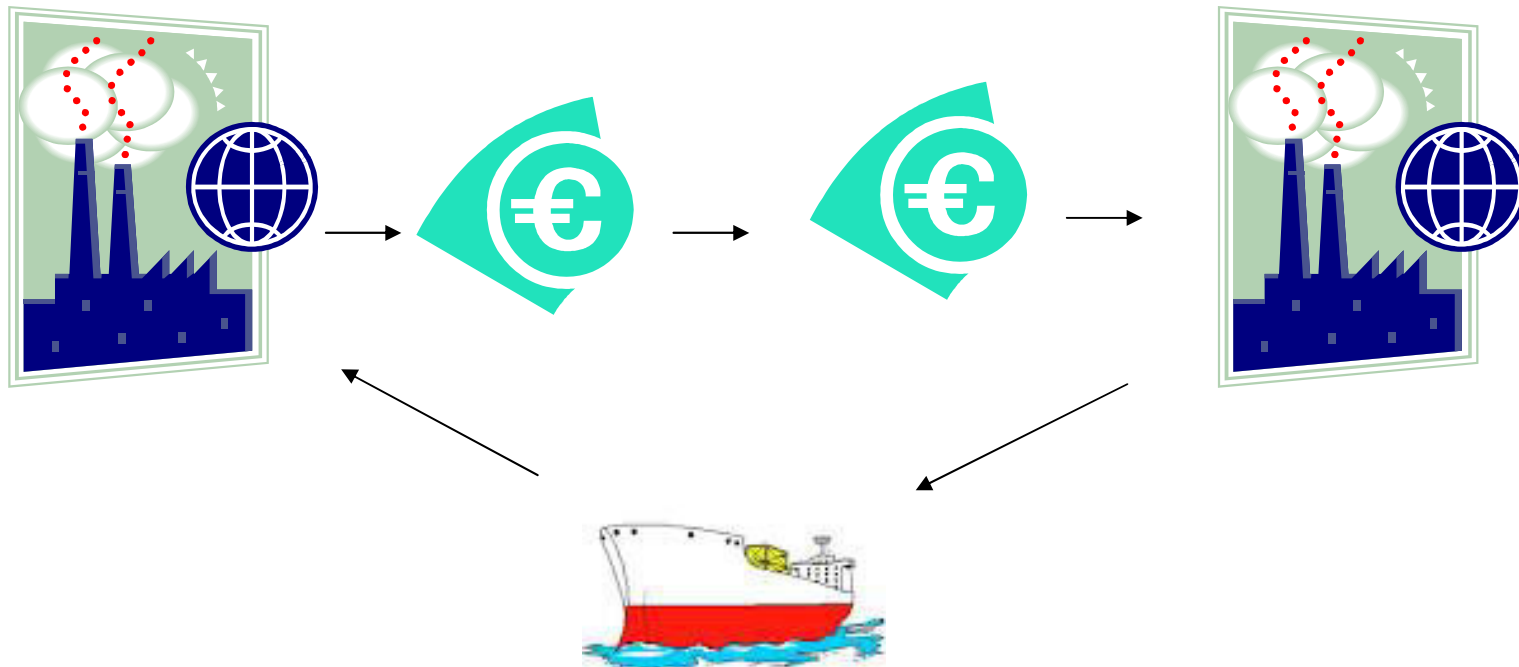


Uma questão tecnológica: Documentos de transporte electrónicos



Uma questão tecnológica: Documentos de transporte electrónicos

End-to-end Document ePresentation



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Uma questão tecnológica: Documentos de transporte electrónicos

BOLERO customers



...and their critical marine logistics partners.

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Uma questão tecnológica: Documentos de transporte electrónicos

Case study

Introdução da apresentação electrónica de documentos relativos a carregamentos de minério de manganês da Austrália (porto de Perth) para a China (porto de Shangai).

Causas:

- costs of processing the supporting paper documents were accounting for 3-5% of the overall cost of the trade (high operational overheads associated with processing physical documents in support of Letter of Credit Transactions);

- arrival of shipping and financial documentation to the relevant parties in a transaction was often delayed (inefficient delivery process) and took up to 21 days, even where no documents were lost or discrepant;

- use of Letters of Indemnity (LOI), to complete the discharge of goods.

Uma questão tecnológica: Documentos de transporte electrónicos

Solução: migration of documents such as the BL, to an electronic format in a way that preserved their original legal characteristics as documents of title.

Dificuldade: this could only be achieved by using a solution that is sanctioned by the banks, ports, custom's authorities, ocean carriers and their P&I Clubs.

Intervenientes neste caso:

- Issuing Bank: China Citic Bank / Advising Bank: ANZ Bank
- Carrier: K Line Pte Ltd.
- Shipper: BHP Billiton / Consignee: Sichuan Emei Ferroalloy I/E Co, Ltd.

Uma questão tecnológica: Documentos de transporte electrónicos

Exporter benefited from:

- accelerated cycle time – end to end transaction completed in 2 days with working capital benefits;
- significant reduction in Letters of Indemnity (LOI);
- no paper documents to process, manage, track, send and archive;
- reduced exposure to market movement and volatility;
- electronic bill of lading (eBL) with full legal title and originality status.

Uma questão tecnológica: Documentos de transporte electrónicos

Importer benefited from:

- early arrival of electronic paperwork ensuring clean discharge of goods;
- visibility of transaction to help inventory planning;
- removal of need to use LOI to achieve discharge of Goods;
- no demurrage costs.

Uma questão tecnológica: Documentos de transporte electrónicos

Advising and Issuing Banks benefited from:

- new trade service to offer corporate customers;
- early receipt of presentation reducing pressure on checking for acceptance deadlines;
- removal of need to maintain a physical presence adjacent to clients, purely to support delivery of paper documentation;
- ability to accept presentations outside of working hours.

Uma questão tecnológica: Documentos de transporte electrónicos

Carrier benefited from:

- removal of LOI;
- ability to support electronic bills of lading – an increasingly common requirement from their customers;
- no fees to support their customer – entirely free of charge for the carrier to use;
- simple adoption – browser based works at port and remote locations

Uma questão contratual: Incorporação da CP no BL

Cláusulas de incorporação da carta-partida no conhecimento de embarque

“all terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause/Dispute Resolution Clause, are herewith incorporated” (Congenbill 2007 - cláusula 1);

“under conditions as per charterparty”.

Uma questão contratual: Incorporação da CP no BL

Cláusulas de incorporação da carta-partida no conhecimento de embarque

Aspectos a realçar:

- determinação de quem deve fazer a **descarga** no porto de destino e suportar o respectivo custo;
- vinculação de terceiros ao período de **sobrestadia** (laytime) acordado.

Uma questão contratual: Incorporação da CP no BL

INCOTERMS ARE NOT SHIPPING TERMS

Incoterms®2010: Condições CIF/CFR - Cláusulas A6 (b)

“O vendedor deve pagar o frete e quaisquer outros custos resultantes de A3 a), incluindo os custos incorridos com o carregamento da mercadoria a bordo e quaisquer encargos com a descarga no porto de desembarque acordado, se elas forem por conta do vendedor **nos termos do contrato de transporte**”.

Cláusulas do contrato de transporte: “Liner terms” (FIO(S) / LIFO / FILO), “landed” e “ex ship’s hold”

Uma questão contratual: Incorporação da CP no BL

When negotiating a transaction,
the buyer and the seller should reach an agreement on:

time of shipment;

port of shipment and port of destination;

transshipment;

unloading the goods at discharge port;

dispatch and demurrage, etc.

and specify them **in the contract of sale**.

Uma questão contratual: Incorporação da CP no BL

Clear stipulation of shipment clause
is an important condition for the smooth
execution
of the contract of sale.

Uma questão contratual: Incorporação da CP no BL

Posição da doutrina anglo-saxónica:

The shipper and original holder of the BL must be taken to have had access to the terms of the charterparty when entering into the BL contract, but the consignee is not party to a charterparty and is normally not involved in the preparation and completion of the BL.

The holder has no bargaining power when receiving the bill of lading from the previous holder.

Uma questão contratual: Incorporação da CP no BL

However, where it is clearly stated in the BL that the consignee should look at the charterparty the consignee is obliged to do so.

Where parties expressly incorporate terms into a contract, the incorporated terms must be construed as if they had been written out in full in the contract.

Uma questão contratual: Incorporação da CP no BL

Without an incorporation clause, the carrier cannot rely on any of the exceptions and rights provided in a charterparty which would not have formed part of the contract contained in the BL if the reference had not been made.

The words of incorporation were designed to give the ship owners a lien on the cargo for freight or demurrage.

OBRIGADA!



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