

Messrs.
Comité Maritime International
Standing Committee on Carriage of Goods
Attn: Tomotaka Fujita

VIA EMAIL

Ref: Venezuela reply on SC Marine Insurance:
Electronic Bills of Lading - Questionnaire

Date: 30 September 2022

Dear Tomotaka,

We refer to Evelien Peeters' email dated 17 August 2022, regarding the referenced questionnaire. Please see below in **BLUE** the reply from the Venezuelan Maritime Law Association.

CMI Questionnaire on Domestic Legislation for Electronic Bills of Lading

Standing Committee on Carriage of Goods

Part I: Questions for all jurisdictions.

Part II: Questions for those jurisdictions that already have legislation that regulates electronic bills of lading.

Part III: Questions for those jurisdictions that plan to enact legislation that regulates electronic bills of lading.

Section IV: Questions for those jurisdictions that neither have nor plan to enact legislation that regulates electronic bills of lading.

I

I.1 Are electronic bills of lading already used in practice in your jurisdiction?

No. Port authorities are still requesting the original, physical bills of lading. Also, major shipping lines are also requesting the original, physical bills of lading (MSC, CMA CGM, ZIM).

I.2 If the answer to I.1 is Yes, which platforms are frequently used (BOLERO, essDOCs, WAVE, etc.)?

N/A

I.3 If the answer to I.1 is No, do you think current or future legislation on electronic bills of lading will or would change the situation?



The Venezuelan Maritime Commerce Law (*Ley de Comercio Marítimo*) — published in Official Gazette No. 38.351 on January 5, 2006 — provides in its article 233 that the bill of lading could be signed by electronic means. However, there is no further regulation on the use and issuance of electronic bills of lading in the Venezuelan legislation. We believe, although in practice E-BLs are not used, the Venezuelan legislation allows the use of said electronic bills of lading. In our opinion, the use, or the lack thereof, depends on the current commercial practices.

I.4 Are transport documents other than bills of lading or their electronic version used in practice in your jurisdiction?

No.

1.5 If the answer to I.4 is Yes, what kind of documents (including electronic version) are used?

N/A

1.6 Do you think current or future legislation on electronic bills of lading will or would change the situation? For example, if (paper) bills of lading are currently not often used, would the situation be changed by the possible legislation on electronic bills of lading?

Please see the answer to question I.3 above.

II.

If your jurisdiction already has legislation that enables the use of electronic bills of lading, please answer the following questions.

II.1 Please specify the legislation. (Name of the statute, official or unofficial citations, paragraph or article numbers, year of enactment/implementation, etc.)

Article 233 of the Venezuelan Maritime Commerce Law (*Ley de Comercio Marítimo*) — published in Official Gazette No. 38.351 on January 5, 2006.

II.2 (a) Is the legislation referred to in II.1 based on the UNCITRAL Model Law on Electronic Transferable Records (MLETR)?

(b) If the answer to question (a) is Yes, is it a simple adoption of the MLETR or are there changes or additions to it? If there are changes or additions, please specify them (including the reason for the changes or additions, if possible).

(c) If the answer to question (a) is No, please describe the legislation. Is there any other basis for the legislation? Why did your jurisdiction not follow the MLETR?

N/A

II.3 Does the legislation referred to in II.1 cover only bills of lading (or similar documents of title) or does it also cover other documents?



The Venezuelan Maritime Commerce Law only provides for the possibility of the bill of lading to be signed with a digital signature.

II.4 Does the legislation referred to in II.1 provide the standard of reliability of the system? See Article 12 of the MLETR.

No.

II.5 Does the legislation referred to in II.1 specify the requirements for the use of electronic bills of lading? If yes, please identify those requirements (e.g., consent of the parties).

No.

II.6 Does the legislation referred to in II.1 specify the rights of the holder of electronic bills of lading or the effect of transferring them? If the answer is Yes, do such provisions address specific legal situations or generally declare that the rights or effects are the same as in the case of paper bills of lading?

Venezuelan Law is not specific about these subject matters.

II.7 Does the legislation referred to in II.1 provide the requirements for transferring electronic bills of lading (e.g., the method of electronic “endorsement”, etc.)? If yes, please specify the requirements.

No.

II.8 Does the legislation referred to in II.1 distinguish between paper and electronic bills of lading? If yes, please specify how they are treated differently. See Article 36(2)(d) of the Rotterdam Rules

No distinctions provided under Venezuelan law.

II.9 Does the legislation referred to in I.1 include provisions on scope of application? For example, does it apply to an electronic bill of lading issued by agreement between a carrier and shipper in a foreign jurisdiction that uses a platform specifying foreign law as the governing law?

No mentions on the scope of application.

III.

If your jurisdiction plans to enact legislation that enables the use of electronic bills of lading, please answer the following questions.

N/A

III.1 Please specify the nature of the prospective legislation. For example, does it cover all kinds of electronic documents or digital assets or only electronic bills of lading (or similar documents of

title)?

III.2(a) Is the prospective legislation referred to in III.1 based on the UNCITRAL Model Law on Electronic Transferable Records (MLETR) or the principles thereof?

(b) If the answer to question (a) is Yes, will it be a simple adoption of the MLETR, or will there be changes or additions to it? If there will be changes or additions, please specify them (including the reason for the changes or additions, if possible).

(c) If the answer to question (a) is No, please describe the prospective legislation. Will there be any other basis for the legislation? Why is your jurisdiction not following the MLETR?

III.3 Is the prospective legislation referred to in III.1 expected to cover only bills of lading (or similar documents of title) or also other documents?

III.4 Is the prospective legislation referred to in III.1 expected to provide the standard of reliability of the system? *See Article 12 of the MLETR.*

III.5 Is the prospective legislation referred to in III.1 expected to specify the requirements for the use of electronic bills of lading? If yes, please identify those requirements (e.g., the consent of parties etc.)

III.6 Is the prospective legislation referred to in III.1 expected to specify the rights of the holder of electronic bills of lading or the effect of transferring them? If the answer is Yes, will such provisions address specific legal situations or generally declare that the rights and effects are the same as in the case of paper bills of lading?

III.7 Is the prospective legislation referred to in III.1 expected to specify the requirements for transferring electronic bills of lading (e.g., the method of electronic “endorsement”, etc.)? If yes, please identify the requirements.

III.8 Is the prospective legislation referred to in III.1 expected to distinguish between paper and electronic bills of lading? If yes, please specify how they will be treated differently. *See Article 36(2)(d) of the Rotterdam Rules*

III.9 Is the prospective legislation referred to in III.1 expected to include provisions on scope of application? For example, will it apply to an electronic bill of lading issued by agreement between a carrier and shipper in a foreign jurisdiction that uses a platform specifying foreign law as the governing law?

IV.

If your jurisdiction neither has nor plans to enact legislation that enables the use of electronic bills of lading, please answer the following questions.

IV.1 Would there be any benefit to having legislation that enables the use of electronic bills of lading? Is the use of electronic bills of lading possible even without any legislation?



Venezuela does already have a legislation that enables the use of Electronic Bills of Lading. Please see the previous answers.

IV.2 Is there any obstacle to enacting legislation that enables the use of electronic bills of lading?

Yes. We consider current economic, political and commercial tensions can be obstacles to the use of electronic bills of lading. Also, some would think that OFAC sanctions against the government could be considered obstacles as well.

We trust the above replies assist, and remain at your disposal in case of questions or comments.

Yours truly,

Executive Committee
Asociación Venezolana de Derecho Marítimo (AVDM)