

**Response of Japanese Maritime Law Association to
The 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?

Although there is no reliable statistic, electronic bills of lading do not seem to be frequently used in Japan so far.

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?

It is not certain whether current or future legislation would have positive impact for the use of electronic bills of lading.

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

Yes.

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

Although there is no reliable statistic, sea waybills and “surrendered bills of lading” are sometimes used in Japan. These documents are sometimes used in electronic form such as PDF format.

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?

It is not certain whether current or future legislation would have positive impact for the use of bills of lading either in paper or electronic form.

II.

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

N/A

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

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?

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?

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

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).

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?

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.

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

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?

III.

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

N.B. New legislation is currently under deliberation at the Working Group in the Legislative Council of Ministry of Justice. The discussion is still at the early stage and the Interim Draft of the Outline for the Proposed Revision will be published in several months. The following replies reflect the current stage of the discussion at the Working Group as of the date September 30, 2022 and may possibly be changed by future deliberations at the Working Group.

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)?

New provisions will be added in the Commercial Code which cover electronic bills of lading. The legislation may also cover warehouse receipt but it will not expand to all kinds of electronic documents or digital assets.

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?

The new legislation intends to be based on MLETR as much as possible.

A Ministerial Declaration was adopted at the G7 Digital Ministers' meeting on 11 May 2022. Annex 2 of the Declaration ("G7 Digital Ministers' Track: Principles for domestic legal frameworks to promote the use of electronic transferable records) includes the following paragraph: "We value the work of the United Nations Commission on International Trade Law (UNCITRAL) on ETRs. We support the principles proposed by our experts, as laid out below, which complement and are consistent with this work. The principles should serve as guidance for the adoption or review of domestic legal frameworks to promote the use of ETRs. They aim to ensure that legal frameworks remain easily applicable as technology develops and do not require early adjustment. We support the adoption of domestic legal frameworks that are consistent with the UNCITRAL Model Law on Electronic Transferable Records (MLETR) and with these principles." As Japan being a member of G7 countries, the future legislation is expected to be consistent with the MLETR.

(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).

A simple adoption of the MLETR would not work under Japanese legal system. The Civil Code and the Commercial Code provides detailed rules for the transferability, form and the effect of bills of lading and it would not be certain how these rules are applied to electronic bills of lading if we simply "adopt" MLETR. It is thought more appropriate to clarify the points which might cause ambiguity and confusion by explicit text.

The legislation is likely to provide detailed provisions for the types of bills of lading ("document to order", "non-negotiable" or "bearer" etc.), the methods for electronic endorsement and the

effects of their transfer. The legislation may also recognize the difference between paper bills of lading and electronic in certain aspects. For example, it may not refer to the possibility of the issuance of multiple originals like the Rotterdam Rules. See also the answers to Questions III.6-8.

(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?

N.A

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?

No. The legislation may also cover warehouse receipt but it will not expand to all kinds of electronic documents or digital assets.

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.

The reliability required in MLETR will be incorporated in substance.

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.)

Yes. The consent of the carrier and the shipper will be required. The reference to the consent of other relevant parties (see UNCITRAL Explanatory Note to the UNCITRAL Model Law on Electronic Transferable Records, para.63 [“The requirement of consent to the use of an electronic transferable record is a general one and applies to all instances where an electronic transferable record is used under the Model Law and to all parties involved in the life cycle of the electronic transferable record.”]) may be discussed in future deliberation.

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?

Yes. It is intensively discussed how the new legislation address the rights of the holder of electronic bills of lading and the effect of transferring them. It is likely that the legislation will specifically identify the rights and effect. The legislation is also likely to include a generic provision which declares that the issuance, exclusive control and transfer of electronic bills of lading have the same effect as the issuance, possession and transfer 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.

Yes. The mirroring provisions regarding the requirement for transfer of electronic bills of lading is likely to be included corresponding with the type of electronic bills of lading (“document to order”, “non-negotiable” or “bearer” etc.). As a result, the same methods for transfer can be chosen for electronic bills of lading as the paper ones.

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

In certain aspects, the legislation may recognize the difference between paper bills of lading and electronic. For example, it may not refer to the possibility of the issuance of multiple originals like the Rotterdam Rules. Possessory lien may not be recognized on electronic bills of lading under the new legislation since there is no “possession” of electronic bills of lading. The procedure for compulsory execution for electronic bills of lading may also be different from that for paper bills of lading.

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?

Although this question has not been discussed so far, the new legislation is not likely to include provisions on scope of application. In the absence of such provisions, an electronic bill of lading issued by agreement between a carrier and shipper in a foreign jurisdiction will be covered by the new legislation if the choice of law rules decide Japanese law as applicable for the legal issue

in question. It should be noted that the law specified in the agreement for a platform would not govern all the issues regarding validity or effect of electronic bills of lading.

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?

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