

BRAZILIAN 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?

Yes, there is a limited use of true electronic bills of lading in our jurisdiction, but only in the Brazilian export trade of a few commodities only. Due to the lack of customs legislation or regulations on true electronic bills of lading, these cannot be used in import trade.

We are referring above to “true” electronic bills of lading because of a terminological confusion in Brazilian legal framework that is in fact misleading. For customs purposes in international trade and for tax purposes in cabotage two different digital documents have been confusingly labelled in minor regulations as “electronic bills of lading”. The former document is simply a scanned copy of the paper bill of lading that must be inserted in Brazilian customs system and in the latter case the so-called “electronic bill of lading” is a type of digital domestic invoice imposed by tax authorities, whose format is quite similar to a paper bill of lading. But in neither case these two documents are true electronic bills of lading, instruments of title acting as substitutes for paper bills of lading

and thus endowed with the attributes of possession/ownership, documentary evidence and transferability/endorsement.

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

EssDocs has been the platform that has been used.

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?

Yes.

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

Yes.

I.5 If the answer to I.4 is Yes, what kind of documents (including electronic version) are used?

Airway bills in air transportation.

I.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?

Not applicable.

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.)

Not applicable.

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

Not applicable.

(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).

Not applicable.

(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?

Not applicable.

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?

Not applicable.

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

Not applicable.

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).

Not applicable.

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?

Not applicable.

I1.7 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.

Not applicable.

I1.8 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*

Not applicable.

I1.9 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?

Not applicable.

III.

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

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)?

Not applicable.

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?

Not applicable.

(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).

Not applicable.

(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?

Not applicable.

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?

Not applicable.

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.*

Not applicable.

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.)

Not applicable.

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?

Not applicable.

I1I.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.

Not applicable.

I1I.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*

Not applicable.

I1I.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?

Not applicable.

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?

The use of electronic bills of lading in the Brazilian import trade (see answer to I.1 above) without any legislation seems impossible.

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

No, there is no such obstacle.