

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?

A/ There have been some attempts to use in practice the electronic bills particularly during the pandemic. However, it seems that, for those interacting in the industry, could be difficult to understand that an electronic B/L is not simply a scanned copy (.pdf) of a regular bill.

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

A/ After some consultations to local industry representatives, it seems that a proper electronic B/L is not yet being used in the country.

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?

A/ The current Colombian legislation, namely Law 527 of 1999, is based on the UNCITRAL Model Law on Electronic Commerce (MLEC). It clarifies that when the law requires to have an action “in writing” or “in paper” such requirement is to be met by having one or more “data message(s)”. It should be highlighted that it has specific provisions for the contract of carriage of goods (arts. 26 .27). However, what an “electronic” signature could be is still subject to discussion.

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

A/ Yes there are. As mentioned before, as per Law 527 of 1999 a contractual document used in land carriage (i.e. a non-negotiable document) such as the “*remesa terrestre de carga*” could be enacted in an electronic manner. Moreover, currently the best example of the use of electronic documents in transportation at the domestic level is the “*cargo manifest*” that could be enacted as an electronic document following par. 1 of article 2.2.1.7.5.2 of Decree 1079 of 2015, which stated that: “*The original cargo manifest sent by electronic, optical or similar means, such as Electronic Data Interchange, EDI, Internet, email, telex or telefax, may be carried by the driver during the journey and has the effects of the original*” (emphasis added).

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

A/ Please do see answer to question No. 1.4

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?

A/ In addition to what has been mentioned, there is currently a project called “Draft Colombian Maritime Code” of the National Maritime Authority (DIMAR) which expressly refers to the possibility of using electronic “documents of transport” in the maritime carriage of goods (i.e. including bills of lading). Different provisions of the current draft (v. 6) make reference to electronic documents, as follows:

A/ Art. 171 establishes the principle of no formality in contracts. It makes express reference to the fact that, when the Code requires evidence to be presented “*in writing*”, such evidence could be presented using either a physical or electronic document (i.e. contract).

Art. 173 also states that “*When the parties refer to internationally recognized standard and accepted forms/contracts, it will be understood that the terms of the contract correspond to the clauses of said forms, except for the modifications or additions agreed upon by the parties and expressed in any physical or electronic means*” (free translation).

Art. 193 also refers to the subject in the ambit of charterparty contracts by making clear that such a contract should be provided “*in writing*” either by a using a physical or an electronic document.

Art. 197, which contains certain definitions that are supposed to be used specifically to interpret the section of the “contract for the carriage of goods by sea”, defines “document of transport” as “*any document, in physical or electronic means, that contains a contract for the carriage of goods by sea, which [could be] negotiable or not*” (free translation, emphasis added).

I

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.)

A/ As mentioned before, Law 527 of 1999, August 18, published on Diario Oficial No. 43.673, de 21 de agosto de 1999; (specific reference to arts. 6, 7, 8, 26 and 27). Said regulation is based upon the UNCITRAL MLEC and refers to electronic documents in transport (which could be understood then to apply to a bill of lading). Please refer to the answer provided to previous questions.

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

A/ No.

(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).

A/ N.A.

(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?

A/ Law 527 of 1999 is the general legislation for the recognition of data messages and the meeting formal requirements (writing, signed, original). As it follows UNCITRAL MLEC, it includes two

articles regarding carriage of goods and transport documents. Please see our answer to question No. II.1.

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?

A/ Please see our answer to question No. II.1.

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

A/ It could be said that our current legislation (Law 527 of 1999) provides for the “functional equivalence” of the electronic bill of lading.

Art. 27 of Law 527 para. 3 (mirroring what is contained in Art. 13 par. C MLEC) states that “*If a right is to be granted to, or an obligation is to be acquired by, one person and no other person, and if the law requires that, in order to effect this, the right or obligation must be conveyed to that person by the transfer, or use of, a paper document, that requirement is met if the right or obligation is conveyed by using one or more data messages, **provided that a reliable method is used to render such data message or messages unique***” (highlighted is ours). In that regard, it could be said that it also contains a “guarantee of singularity” as it is the case in the UNCITRAL model law on electronic commerce¹.

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).

A/ Law 527 of 1999 does not make reference specifically to bills of lading. However, provisions of such law are intended to apply to the electronic bill of lading following what was considered when drafting UNCITRAL’s MLEC. Other substantial requirements may apply (Commercial Code, arts. 1635 y ss).

II.6 Does the legislation referred to in II.1 specify the rights of the holder of electronic bills of

¹ See Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce (1996) p. 61. Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-04970_ebook.pdf

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?

A/ The implication of the law already enacted in the country is that the rights of the holder of an electronic bill of lading (whenever the requirements of Law 527 of 1999 are fulfilled) would be the same of those invested to the person having a paper base bill of lading. Law 527 of 1999 includes general obligations for retention of data messages and conservation of data files (arts. 12 y 13).

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.

A/ Please see answer to question II.4

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

A/ The purpose of Law 527 of 1999 is to recognize functional equivalence to the electronic documents. Thus, the idea is to confer the same rights on such documents. The Commercial Code includes some dispositions for paper bill of landing (arts. 767, 1635, 1637 y ss.)

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?

A/ Please see answer to II.8. Please do also note that the Commercial Code (art 646) states that *“titles created abroad will be considered as securities² if they meet the minimum requirements established in the law [that was applicable] to its creation”* (free translation).

² The expression used by the law is “títulos valores”, which are negotiable documents that have specific legal implications in our jurisdiction.

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)?

A/ Please see answer to question I.6. Additionally, it could be said that at a local level the adoption of the UNCITRAL MLETR is being studied by academics, scholars and different organizations.

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?

A/ The idea of the proposed legislation is to recognize that documents specifically used as “transport documents” in the ambit of maritime carriage of goods could be used in an electronic form. Additionally, please see the initiative referred to in our previous answer.

(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 yet considered.

(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?

A/ Please see answer to question I.6. and III.1 Additionally, there had been some unsuccessful proposed bills for electronic securities (i.e. not adopted by the Congress). The debate has been whether it would be better to adopt a model based on digital signature or a model based on electronic signature. So far there seems to be no agreement in this regard.

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?

A/ Please see answer to questions I.6, III.1 and III.2

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.*

A/ Please see answer to questions I.6, III.1 and III.2

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.)

A/ The dispositions in the “Draft Colombian Maritime Code” is not intended to specify the requirements for the use of electronic bills of lading. Please see answer to questions I.6, III.1 and III.2

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?

A/ The combined effect of Law 527 of 1999 and the “Draft Maritime Code” would probably be to make completely clear that a document of transport in the ambit of maritime carriage of goods (including, but not limited to bills of lading) could be used in an electronic form and that the rights invested in a “paper” based bill of lading would be exactly the same if such document is to be used in an electronic manner. Please see answer to questions I.6 , III.1 and III.2.

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.

A/ The “Draft Colombian Maritime Code” does not directly deal with this (see answer to question I.6). However par. 3 of Art. 27 of Law 527 of 1999 expressly refers to the transfer of rights (following what was intended with UNCITRAL MLEC). Please see answer to questions I.6 and III.2.

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

A/ Please see answer to questions I.6, III.1 and III.2

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?

A/ N/A.

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.

N.A.

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?

A/ N.A.

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

A/ N.A.