

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.

In 2000, COSCO, China's largest shipping enterprise at that time, became the founding user of BOLERO.¹

In 2007, the first case involving the use of electronic bill of lading in China was reported.² Up to now, more than 100 cases involving the use of electronic bill of lading in China have been reported officially.³

In 2012, the first Industry Standard for electronic bill of lading was issued by the Ministry of Commerce.⁴

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

BOLERO and essDOCs are the two most well-known electronic bill of lading platforms in

¹ See official website of Bolero.

² China Shipping Container Lines (Hong Kong) Co. Limit. V. Rich Shipping Company Limited. (2007) Shanghai Maritime Court, No. 246.

³ <https://wenshu.court.gov.cn/>

⁴ Standard of Format of Electronic Bill of Lading, SB/T 10798-2012.

China. Both platforms have dozens of Chinese users, including large state-owned enterprises such as COSCO Shipping, Minmetals and Bank of China.⁵

In 2021, Sinotrans Corporation signed the first blockchain electronic bill of lading online through Sinotrans's public logistics e-commerce platform, "Yunyitong" (y2t.com).

In September 2022, COSCO Shipping Lines Co. Ltd. and OOCL began to issue electronic bill of lading through IQAX platform.⁶

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?

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?

Seawaybills are most frequently used in place of bills of lading.

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?

Yes.

Although electronic bill of lading has been used in China, the use of electronic bill of lading in international trade is very limited. According to statistics, the usage of electronic bill of lading is less than 2% of the total usage of transport documents. This situation has much to do with the uncertainty of the legal status of electronic bill of lading. In judicial practice, different courts have expressed different views on the validity of electronic bill of lading. Although some courts have ruled that the validity of electronic bill of lading cannot be denied on the sole ground that it is in electronic form,⁷ this view has not been generally adopted by other courts. To clarify the legal status of electronic bill of lading by legislation will enhance the confidence of the industry in electronic bill of lading and promote its use in business practice. In many cases, sea waybills are used to make up for the slow circulation of bills of lading. If electronic bills of lading can be

⁵ See official website of BOLERO and essDocs.

⁶ https://www.coscoshipping.com/art/2022/9/6/art_6864_280645.html

⁷ See for example, [2021] Yue 01 Civil Final No.23424.

widely used, it can be predicted that in more cases, bills of lading will be used instead of sea waybills.

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.)

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.

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)?

There is no specific bill of lading law in China. The provisions on bills of lading are stipulated in Chapter IV of Chinese Maritime Code (CMC).

In 2008, a proposal to enact the Electronic Bill of Lading Law was put forward by some delegates to the first session of the Eleventh National People's Congress (NPC), but was not accepted. It was decided by the NPC Standing Committee that more research should be done on this issue and the legislative process will begin when conditions are ripe.⁸

In 2018, NPC decided to amend the CMC. The latest draft released by the Ministry of Transport (hereinafter referred to as the Draft) introduces the concept of "electronic transport document", which includes electronic bill of lading.⁹

There is no prospective legislation covering all kinds of electronic documents. The amendment of CMC only covers electronic bill of lading. There is also a proposal to enact a Warehouse Receipt Act, and the proposed Act is suggested to include provisions on electronic warehouse receipt (which is also a document of title under Chinese law).

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?

⁸ <http://www.npc.gov.cn/npc/c12491/200810/82ba28d88f6b4fb99e809127e4075d2d.shtml>

⁹ <http://www.weiislaw.com/service/263579/>

(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?

No. The provisions on electronic bill of lading in the Draft are based on the Rotterdam Rules. One of the important reasons why the Draft didn't follow the MLETR is that at the time of drafting, there was a lack of extensive understanding and in-depth research on MLETR in China. In fact, with more and more understanding of the MLETR, some Chinese scholars have already turned to call for drafting relevant regulations on the basis of the MLETR.¹⁰

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?

The concept of "electronic transport record" in the Draft includes both transferable and non-transferable electronic transport document. Transferable electronic transport document is basically another term for electronic bill of lading.

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.

No.

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. It is provided in Art.82 of the Draft that a carrier shall issue a transport document or electronic transport document upon the requirement of shipper or actual shipper.

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

¹⁰ See for example, Guo Yu, *Legislation on Electronic Transferable Record: Problem and Solution*, Peking University Press, 2019. Zhu wenjin & Meng Guobi, *On the Rules of the Electronic Transport Record in the Amended Chinese Maritime Code*, *Chinese Maritime Law Research*, 2021, Issue 1.

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?

Art.88 of the Draft provides that the rights and liabilities between the carrier and the holder of the transport document or electronic transport document shall be determined according to the clauses of the transport document or electronic transport document.

Article 91 of the draft stipulates that the carrier shall deliver the cargo to the holder of the electronic transport document.

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. But very simple. Art.90 of the Draft provides that “to order” or blank electronic transport record is transferred by the procedure for transferring the electronic transport record. A bill of lading or an electronic transport record with the word "non-negotiable" may not be transferred.

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*

Yes.

Article 83 of the Draft provides that the time and place of issuance of the transport document or electronic transport record and the number of the originals of the bill of lading shall be recorded on the transport document or electronic transport record. This is almost the same as Art. 36(2)(d) of the Rotterdam Rules. In Art.91 of the Draft, it is provided that the carrier shall deliver the goods to the holder of the electronic transport record. It is different from the paper bills of lading, since the deliver under the paper bills of lading is divided into three situations depending on whether the bill of lading is a named, to order or bearer bill 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?

No.

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?