

**REPLY FROM KOREA MARITIME LAW ASSOCIATION (SOUTH KOREA)
REGARDING CMI QUESTIONNAIRE ON DOMESTIC LEGISLATION FOR
ELECTRONIC BILLS OF LADING. (2022.09.30)**

Part I: Questions for All Jurisdictions

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

While there is a legislation which accommodates the use of electronic bills of lading in South Korea, we understand the market hardly uses electronic bills of lading. The reasons for not using electronic bills of lading could be several but include followings.

- The market is still unsure about risks involved with bills of lading and merchants are simply so used with the current practices even though those involve problems.
- The legislation in South Korea is restricted to the system recognized by Korean Government which is impractical in import shipments where bills of lading are issued in a foreign country and the system is not recognize by the Government.
- For meaningful change, we understand some market leaders need to move first and set a market standard with sufficient technology.

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

While the market hardly uses electronic bills of lading, to be effective under the legislation, such electronic bills of lading need to be registered in a system recognized by the Government. Only system which has been recognized by the Government is KTNET which is provided by a local IT service provider promoted by the Government in respect of international trading business.

<https://www.ktnet.com/index.do?sso=ok>

For reference, one of the major global liner operators in South Korea, HMM, has recently tested electronic bills of lading in practice with Bolero system.

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?

Legislation is one of several things which are required in the change. see above reply at I.1.

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?

Seaway bill is used in practice. In addition, so called “surrender bills of lading” is more common in South Korea. Surrender bills of lading mean that the carrier simply provides copy of bills of lading to shipper of which consignee is named so that the cargo can be delivered to the named consignee without exchange of bills of lading. This involves some problem when carrier defend cargo claim from receivers who do not have the original bill of lading and especially when only front page of the bills of lading copy are passed to receiver.

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?

We consider a legislation would accommodate or assist the market change toward more common use of electronic bill of lading but the legislation itself is not sufficient to change the practice. For reference, the legislation regarding electronic bill of lading was in fact enacted about in South Korea about 14 years ago in South Korea but the market still hardly uses electronic bill of lading.

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.)

The Commercial Act as amended on 3 Aug. 2007, and
The Regulation on Implementation of the Provisions of the Commercial Act regarding Electronic Bills of Lading [Enforcement Date 23. Mar, 2013.] [Presidential Decree No.24415, 23. Mar, 2013., Amendment by Other Act]

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

Transferable Records (MLETR)?

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).

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?

South Korea's legislation on electronic bills of lading mostly adopted the CMI model of "Uniform Rules for Electronic Bills of Lading". This is because MLETR which was published in 2017 did not exist when South Korea legislated the law on electronic bill of lading.

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 Commercial Act covers Electronic Bills of Lading in the same Section (the Section 6) with Bills of Lading and Seaway Bill.

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

Yes

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).

Yes, the legislation specifies certain requirements. It requires the agreement of a shipper as to the issuance of electronic bills of lading. In addition, the carrier needs to sign the bills of lading and deliver the bills of lading to the shipper within the recognized system. Please refer to the relevant Article of the Act.

Article 862 (Electronic Bills of Lading)

(1) A carrier may issue an electronic bill of lading by means of registration with the registry agency designated by the Minister of Justice with the consent of a consignor or charterer in lieu

of issuance of a bill of lading referred to in Article 852 or 855. In such cases, an electronic bill of lading shall have the same legal effect as a bill of lading referred to in Articles 852 and 855.

(2) Information required under the subparagraphs of Article 853 (1) shall be included in an electronic bill of lading, and it shall come into effect when a carrier has transmitted with his or her electronic signature thereon and a charterer or consignor has received it.

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?

Yes, the Act specifies rights of the holder of electronic bills of lading and the effect of transferring. In particular, it provides the effect of transferring electronic bills of lading is same as usual bills of lading.

Article 862 (Electronic Bills of Lading)

(4) If the other party has received an electronic document in which the intention of endorsement is stated according to the method prescribed in paragraph (3), it has the same effect as delivery of a bill of lading under Articles 852 and 855 with endorsement, and a holder of a right who has received an electronic document under paragraphs (2) and (3) shall acquire the same right as a holder who has received a bill of lading under Articles 852 and 855.

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.

Yes, the Act provides the requirement for transferring electronic bills of lading by way of drawing up an electronic document stating his intention of endorsement, attaches the relevant bills of lading and transmit them to a third party through the designated registry agency.

Article 862 (Electronic Bills of Lading)

(3) A holder of a right of an electronic bill of lading may transfer such right in a way that he or she draws up an electronic document stating his or her intention of endorsement, attaches an electronic bill of lading thereto, and transmits them to the other party through the designated registry agency.

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, the Act provides electronic bills of lading have same legal effect with usual bills of lading.

Article 862 (Electronic Bills of Lading)

(1) A carrier may issue an electronic bill of lading by means of registration with the registry agency designated by the Minister of Justice with the consent of a consignor or charterer in lieu of issuance of a bill of lading referred to in Article 852 or 855. In such cases, an electronic bill of lading shall have the same legal effect as a bill of lading referred to in Articles 852 and 855.

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?

Although there is no specific provision on the scope of application, electronic bills of lading are recognized and effective only if such bills of lading are registered in an agency which is recognized by the Minister of Justice. Therefore, if the system which bills of lading are registered is not recognized by the Minister of Justice the effect of electronic bills of lading is uncertain.

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)?

N/A

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?

N/A

(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).

N/A

(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?

N/A

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.

N/A

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.)

N/A

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?

N/A

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.

N/A

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*

N/A

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?

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?

N/A

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

N/A