

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?

We suggest that the concept of *use* of bills of lading in this jurisdiction is multi-faceted, and includes the following:

- (i) issue of bills of lading in respect of exports from this jurisdiction;
- (ii) the presentation / surrender of bills of lading in respect of imports into this jurisdiction;
- (iii) the transfer and/or negotiation in this jurisdiction of bills of lading issued elsewhere;
- (iv) the pledge or holding of bills of lading in this jurisdiction as security pursuant to trade finance arrangements;
- (v) the issue of bills of lading in connection with trades not involving this jurisdiction but which are subject to English law and/or jurisdiction.

To what extent do electronic bills of lading feature in the forms of usage identified

above? We take into consideration the following:

- Evidence submitted as part of the consultation leading to the Law Commission's report on electronic trade documents suggested that English law governs a significant percentage of bills of lading.
- Evidence in relation to the issue of electronic bills of lading worldwide appears to be largely anecdotal but has been estimated by the Digital Container Shipping Association to comprise less than 1% of the documentation issued worldwide.
- A number of the electronic bill of lading platforms in existence are subject to user agreements governed by English law and/or are designed to operate as contractual workarounds which are compliant with English law.

In light of the above, we suggest that a proportion of the electronic bills of lading which have been issued worldwide may be used in practice in this jurisdiction in one or more of the ways enumerated above.

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

Given the already anecdotal nature of much of the available evidence, we do not consider that it is possible to answer this question reliably although the platforms identified in the question are understood to operate as contractual workarounds on the basis of the current state of English law.

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 would be logical to assume that when the Electronic Documents Bill is passed, it will enhance the likelihood of electronic bills of lading being used. It should be noted, however, as discussed further below, that there would remain a number of practical hurdles before their use will become commonplace.

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

Waybills, including electronic waybills, are in use in certain trades, such as container transport.

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

See above

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?

See I 3 above

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.

I1.5 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).

I1.6 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?

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.

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

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?

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)?

The overall effect of the Law Commission’s Consultation Bill (the “**Bill**”) is to allow certain documents in electronic form to be recognized in law as possessable, so that they can have the same legal recognition and functionality as their paper counterpart.

In terms of the types of documents covered by the Bill, the Law Commission clarified that the prospective legislation will cover documents in relation to which possession is relevant for a person to claim performance of an obligation. The approach should be sufficiently broad so that any paper document used in trade to which possession is relevant for a person to claim performance of an obligation can have the same effect in electronic form.

On that basis, the scoping provisions of the Bill include:

(1) an “umbrella” provision (Clause 1(1));

- (1) A document is a “paper trade document” for the purposes of this Act if—
- (a) it is in paper form, and
 - (b) possession of the document is required as a matter of law or commercial custom, usage or practice for a person to claim performance of an obligation.

(2) a non-exhaustive list of documents (Clause 1(2))¹; and

- (2) The following are examples of documents that, if they fall within subsection (1), will be paper trade documents—
- (a) a bill of exchange;

¹ The Commission considered whether the Bill should apply to sea waybills and decided that it should not. This is because they considered that while sea waybills are documents used in shipping and trade finance, they do not require possession to fulfil their legal and commercial functions. Sea waybills are not transferable and possession of them is not (either as a matter of law or a matter of commercial practice) relevant to the determination of rights and entitlements. Another reason for not including sea waybills in the Bill’s scope was that sea waybills are already in widespread use in electronic form.

- (b) a promissory note;
- (c) a bill of lading;
- (d) a ship's delivery order;
- (e) a warehouse receipt;
- (f) a mate's receipt;
- (g) a marine insurance policy;
- (h) a cargo insurance certificate.

(3) an exclusion for certain documents (Clause 5(1)-(2)).

- (1) Sections 1 to 4 of this Act do not apply in relation to a document or instrument listed in subsection (2).
- (2) The list is as follows:
 - (a) a bearer bond;
 - (b) an uncertificated unit of a security that is transferable by means of a relevant system in accordance with the Uncertificated Securities Regulations 2001 (S.I. 2001/3755).

The Bill does not cover digital assets as this is dealt with separately by the Law Commission².

² Digital assets are assets that are represented digitally or electronically, including cryptoassets. There are many different types of digital assets, not all of which will be capable of attracting personal property rights. They are dealt with separately because the Law Commissions considers that while the concept of possession justifiably can be extended to electronic trade documents, it may be that an alternative approach is preferable for other digital assets. This is primarily because other digital assets generally do not seek to replicate the legal functionality of a specific and idiosyncratic form of tangible personal property in the way that electronic trade documents attempt to replicate exactly the legal functionality of paper trade documents. In fact, cryptoassets were intentionally created to avoid replicating certain of these features. As a result of

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?**
- (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?**

The Bill is largely based on the MLETR and the principles thereof. The Law Commission regarded the MLETR sound in principle and sought alignment with it insofar as possible. However, their recommendations are tailored specifically to the law of England and Wales. For that reason, the Bill is not a simple adoption of the MLETR. We have set out below any changes or additions, together with the reason behind them, where known. We have also pointed out where the Bill provisions align with the MLETR.

1. Scope of the Bill

One of the first considerations in the two legislative instruments is the type of documents they cover.

- Article 2 of MLETR defines “*Transferable document or instrument*” as “*a document or instrument issued on paper that **entitles** the holder to claim the performance of the obligation indicated in the document or instrument and to transfer the right to performance of the obligation indicated in the document or instrument through the transfer of that document or instrument*”.
- The equivalent Bill provision (**Clause 1(1)**), defines “*paper trade documents*”

this, cryptoassets and certain other digital assets have idiosyncratic features that make drawing wholly-applicable analogies with existing categories of personal property particularly difficult.

as:

- 1) A document is a paper trade document for the purposes of this Act if-
 - a) it is in paper form, and
 - b) possession of the document is required as a matter of law or commercial custom, usage or practice for a person to claim performance of an obligation.
- The Bill’s definition deliberately avoids the use of the word “*entitles*” because it is intended to include not just documents possession of which is significant as a matter of law, but also documents which are not documents of title for all legal purposes. The word “entitle” might narrow the definition unnecessarily by suggesting that the document must be a document of title or negotiable instrument for all legal purposes in order to be included.

2. Meaning of “document”

- **Clause 1(3)** of the Bill sets out:

“Where information in electronic form is information that, if contained in a document in paper form, would lead to the document being a paper trade document, that information, together with any other information with which it is logically associated that is also in electronic form, constitutes a “qualifying electronic document” for the purposes of this Act”.
- This provision reflects two important requirements that a trade document in electronic form must satisfy in order to be considered capable of performing the same functions as their paper counterparts:
 - a) a document in electronic form must contain the same information as would be required to be contained in the paper equivalent.
 - b) where a trade document in electronic form comprises separate, but linked elements – a data structure consisting of functional code, and a human readable part which contains or specifies certain rights – these elements together should comprise “the document”.

The above two points are consistent with the MLETR approach under:

- **Article 10**, which provides that an electronic record must contain the information that would be required to be contained in a transferable document or instrument; and
- **Article 2**, which defines “*electronic record*” as “*information generated, communicated, received or stored by electronic means, including, where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not;*”

3. Reliability of the electronic trade document system

The reliability of the electronic trade document system was an important consideration for the Law Commission. Both MLETR and the Bill include a requirement that an electronic trade document system be reliable.

- **Clause 2(4)** of the Bill provides a list of factors which may be considered to establish reliability of a system.
- This list is based on the list in **Article 12(a)** of the MLETR.
- MLETR contains a “safe harbour” provision in **Article 12(b)** such that, where the method has in fact achieved the function for which it was adopted, the enquiry as to the method’s reliability need not be undertaken.
- This is not contained in the draft Bill. The reason for this is that the Law Commission believed that including such a provision could produce an unintended result in that, where the system could be shown to have done what is required in a particular case, the system’s reliability would not need to be assessed. Given that the Bill requires a system to be reliable in order for the document in electronic form to qualify as an electronic trade document, it was suggested that an assessment of the system’s reliability should not be excluded in such cases.

4. Integrity of the electronic trade document

The two legislative instruments include a requirement that a trade document in electronic form must retain its integrity and must therefore be protected from unauthorised alteration or amendment.

- This is contained in **Clause 2(1)(b)** of the Bill and **Article 10(2)** of the MLETR.

5. Exclusive control

The Law Commission considered that amenability to exclusive control should be a necessary criterion for a trade document in electronic form to qualify as an electronic trade document.

- **Clause 2(2)(a)** of the Bill provides that a person exercises control of a trade document in electronic form when the person uses, transfers or otherwise disposes of the document (regardless of whether they have the legal right to do so).
- **Clause 2(3)** of the Bill explains that reading or viewing the document will not amount to use of the document.
- In contrast, the MLETR does not define control.
- However, the Law Commission insisted on including a concept of control for the purposes of the Bill. This is because, given that the concept of control is used in different ways in the law of England and Wales, explaining what is meant by control is necessary to ensure that stakeholders are clear as to what requirements must be met for an electronic trade document.

6. Identification of the document

Many existing systems allow users to retain access to copies of documents for their records. The Law Commission found that holding a copy would not constitute an exercise of control for the purposes of the Bill. However, it was thought necessary to include a requirement in the Bill that a trade document in electronic form is identifiable so that it can be distinguished from any copies.

- **Clause 2(1)(a)** of the Bill sets out this requirement.
- The same provision can be found in **Article 10(1)(b)(i)** of MLETR.

7. Foreign issued electronic documents

- **Article 19(1)** of MLETR clarifies that foreign issued electronic trade documents are not to be denied effect solely on the grounds that they are issued abroad.
- The Law Commission did not adopt a similar approach because there is no rule to suggest that the law of England and Wales would deny recognition of a document simply because it was issued abroad.

8. Change of form or medium

It might be necessary in some situations to convert an electronic trade document into a paper trade document.

- **Articles 17 and 18** of the MLETR, which cover change of medium, provide that a replaced document becomes inoperative and ceases to have legal effect upon the issuing of the replacement.
- **Clause 4** of the Bill deals with change of form and similarly provides that a replaced document ceases to have effect.
- Like the MLETR, **Clause 4** of the Bill provides that the rights and liabilities relating to the replaced document shall continue to have effect in relation to the replacement document.

Statement indicating a change of medium

Both legislative instruments contain a requirement that the replacement document contains a statement that it is a replacement (**Clause 4(1)(a)** of the Bill and **Articles 17(2) and 18(2)** of the MLETR).

However, the Explanatory Note to the MLETR indicates that the legal consequence of non-compliance with this requirement is two-fold. It results in both “the invalidity of the

change of medium *and, consequently, of the electronic transferable record*". This means that a failure to include a statement on the document in its new medium results in both an invalid change of medium, and invalidity of the document in its new form. The Bill adopts a different approach; while non-compliance with the replacement statement requirement would result in an invalid change of medium for the purposes of the Bill, the document created as a result of the purported conversion may nonetheless constitute a newly issued trade document in its own right, with its own date and place of issue. While the Law Commission acknowledged the benefit of the MLETR approach (that is, of reducing the risk of having the old and new forms of the document both valid and in circulation simultaneously should the statement not be included) they suggested that their approach is preferable for two reasons:

- First, it avoids the consequence that if the old form of the document were removed from circulation but no statement were included on the document in its new form, there would be no valid trade document at all.
- Second, it is consistent with the least interventionist principle and stays true to the primary purpose of the Bill, which is to remove the legal blocker to electronic trade documents being possessed.

9. Formalities

- ***In writing***
 - **Article 8** of MLETR makes specific provision for an "*in writing*" requirement for electronic transferable records.
 - The Law Commission explained that all of the documents that fall within the scope of their provisional proposals have a requirement that they must be in writing. They did not consider there to be a need to introduce an express statutory provision on writing in electronic trade documents in the Bill, because domestic law already considers electronic displays to be capable of constituting "*writing*".
- ***Signature***
 - **Article 9** of MLETR makes specific provision to provide for the signing of electronic documents.

- The law of England and Wales is already sufficiently flexible to accommodate electronic signatures. They can be used to sign electronic trade documents without the need for an express statutory provision.
 - The Law Commission considered that introducing an explicit provision on signing in the Bill is unnecessary and may have an adverse impact on the confidence of parties in relation to other legislation. This is because courts have continued to recognise electronic signatures for the purposes of legislation that is silent on the status of electronic signatures.
 - There is also nothing in the Bill, or in the common law relating to trade documents, that would require the use of an eIDAS compliant signature. Individual parties may seek this in order to satisfy their own security checks, but this would not be required as a matter of domestic law.
 - What is important is not the form of signature (unless this is prescribed by law), but whether it was applied in a manner which indicates the parties' intention to authenticate the document.
- ***Indorsement***
 - The Law Commission thought it was necessary to include an express provision in the Bill covering indorsement of electronic trade documents to ensure that they would be regarded as capable of indorsement even if it is not possible to indorse them on their "back". This is covered in **Clause 3(1)** of the Bill.
 - The MLETR does not address this point.

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 Bill is expected to cover documents wider than bills of lading and similar documents of title. The approach taken by the Law Commission to the Bill is to:

- (a) include an umbrella provision setting out the criteria a document must have in order to be an "electronic trade document" within the meaning of the Bill (section 1(1)),
- (b) provide a non-exhaustive list of documents meeting that criteria (section 1(2)), and

- (c) exclude certain types of documents (section 5(1) & (2)). Excluded documents are: (i) those where an intention that section 3 (dealing with control, endorsement and effect) of the Bill should not apply appears in or can be inferred from the document, in which case section 3 and 4 do not apply), and (ii) instruments which are entered under a "relevant system" under the Uncertificated Securities Regulations 2001.

The Bill also provides that the Secretary of State has the power to amend the excluded documents by way of secondary legislation (section 5(3)).

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 Bill largely follows the MLETR in this respect. In order to qualify as an "electronic trade document" within the meaning of the Bill, a reliable system must be used to ensure that there is functionality to ensure that the document replicates the important features of a paper trade document. These features of a reliable system are set out at Section 2(2) of the Bill, which is more prescriptive than the MLETR, and requires that the reliable system:

- (a) identify the document so that it can be distinguished from any copies,
- (b) protect the document against unauthorised alteration,
- (c) secure that it is not possible for more than one person to exercise control of the document at any one time,
- (d) allow any person who is able to exercise control of the document to demonstrate that the person is able to do so,
- (e) secure that a transfer of the document has effect to deprive any person who was able to exercise control of the document immediately before the transfer of the ability to do so (unless the person is able to exercise control by virtue of being a transferee).

The Bill then adopts Article 12 (a) of the MLETR as a non-exhaustive list of matters that may be taken into account in determining the reliability the system (section 2(5)). The Bill does not adopt the "safe harbour" provision found at Article 12 (b) of the MLETR.

II1.5 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.)

Despite the relatively small number of clauses, the Electronic Trade Documents Bill does impose several requirements which must be met in order for the document in question to constitute as being an “electronic trade document” for the purposes of the Bill, and which can therefore be used as such. These can be found in section 2 of the Bill and includes the standard of reliability of system that could be used as referred to in the previous question. There is no reference to the manner of transfer or issuance otherwise, as the Bill in question does not only cover electronic bills of lading.

Section 4 also outlines the requirements to be met should the parties wish to convert a paper trade document into an electronic trade document (and vice versa). Consent is not explicitly referred to when a document is changed to an electronic trade document, however, the Bill allows for instances where this is required by noting that “any contractual or other requirements relating to the conversion of the document [must be] complied with.”

II1.6 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, insofar as it advises under section 3:

(1) A person may possess, indorse and part with possession of an electronic trade document. (2) An electronic trade document has the same effect as the equivalent paper trade document. (3) Anything done in relation to an electronic trade document that corresponds to anything that could be done in relation to the equivalent paper trade document has the same effect in relation to the electronic trade document as it would have in relation to the paper trade document.

The intention of the Bill is not to address specific legal situations but generally declares that the rights and effects of an electronic trade document is the same as its paper counterpart.”

11.7 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.

Clause 3(1) of the prospective legislation provides that a person may possess, indorse and part with possession of an electronic trade document:

“Possession, indorsement and effect of electronic trade documents

- (1) *A person may possess, indorse and part with possession of an electronic trade document.*
- (2) *An electronic trade document has the same effect as the equivalent paper trade document.*
- (3) *Anything done in relation to an electronic trade document that corresponds to anything that could be done in relation to the equivalent paper trade document has the same effect in relation to the electronic trade document as it would have in relation to the paper trade document.”*

However, it does not provide for what amounts to the transfer of possession/endorsement. What constitutes possession is a matter of common law (as a matter of common law, establishing possession as a matter of fact depends on factual control and intention)..

For a document to qualify as an “electronic trade document” for the purpose of the Act, a *“reliable system is used to:...(c) secure that it is not possible for more than one person to exercise control of the document at any one time, (d) allow any person who is able to exercise control of the document to demonstrate that the person is able to do so, and (e) secure that a transfer of the document has effect to deprive any person who was able to exercise control of the document immediately before the transfer of the ability to do so (except to the extent that the person is able to exercise control by virtue of being a transferee).”* (Section 2(1))

11.8 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.

The proposed legislation does not distinguish between paper and electronic bills of

lading.

Clauses 3(2)(3) of the prospective legislation provide:

- “(2) An electronic trade document has the same effect as the equivalent paper trade document.
- (3) Anything done in relation to an electronic trade document that corresponds to anything that could be done in relation to the equivalent paper trade document has the same effect in relation to the electronic trade document as it would have in relation to the paper trade document.”

111.9 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?

The draft Act contains only very limited express provisions as to the scope of its application.

It provides in section 7 (1) that it extends to *“England and Wales only”*. However, this does no more than make clear that it does not apply to the other constituent parts of the United Kingdom.

The definition of *“qualifying electronic document”* in sections 1 and 2 draws no distinction between: (i) electronic bills of lading issued in England and Wales, (ii) electronic bills of lading issued outside of England and Wales which are expressly agreed to be subject to English law, and (iii) electronic bills of lading issued on a platform outside of England & Wales which are expressly governed by the law of another jurisdiction.

The Law Commission’s report explains that issues such as the determination of the governing law applicable to electronic trade documents will be resolved in the same manner as is currently the case with respect to their paper-based equivalents – i.e. through the application of the rules of private international law as they currently stand.

The Law Commission’s proposal is that any difficulties posed by the application of orthodox private international law principles when they fall to be applied to electronic trade documents be dealt with as part of a separate project concerning the application

of private international law to digital assets generally.

However, the Law Commission has been careful to emphasise that this ought not to limit the draft Act's effectiveness in the interim. Its Report stressed that:

“[t]he purpose of the Bill is to enable electronic trade documents that fall within the scope of the Bill to be possessable under the law of England and Wales. We think this purpose can be achieved without addressing private international law issues. In the meantime, however, we anticipate that courts will continue to deal with novel questions pertaining to electronic trade documents and private international law on a case-by-case basis, applying the existing rules.” [8.109]

The Commission also highlighted that the draft Act's silence as to whether or not it applies to electronic bills of lading issued in jurisdictions outside England and Wales did not mean that such bills of lading would not fall within the scope of the Act – at least where these were expressly subject to English law, but was also careful to point out that equally the Act would not apply mandatorily irrespective of the parties' (or platform's) express choice of the law of a different jurisdiction:

“The Bill is intended to apply whenever the status or effect of electronic trade documents falls to be determined as a matter of English law. However, this does not mean that where the dispute in question falls within the scope of a valid foreign choice of law clause, or within the scope of a foreign governing law, that an English court would disregard that choice or that governing law. On the contrary, the Bill is not intended to operate as a set of mandatory provisions that apply regardless of the parties' choice of law.” [8.113]

The Commission's reasoning for the draft Bill's relative silence on the scope of its application to bills of lading and other electronic trade documents issued outside of England and Wales was explained on the following basis:

“We did not think it is necessary to include a provision in the Bill clarifying that foreign issued electronic trade documents are not to be denied effect solely on the grounds that they are issued outside England and Wales. We are aware that the MLETR and the Singapore Act both contain a provision to similar effect. However, we have not adopted a similar approach because there is no rule that we are aware of to suggest that the law of England and Wales would deny recognition of a document simply because it was issued abroad.” [8.116]

What can therefore be said with (relative) certainty is that the intention of the authors of the draft Act is that it ought, in most cases, to apply to any electronic bill of lading, irrespective of whether it is issued using a platform based in England and Wales or in a different jurisdiction, where the parties or the platform in question expressly provide for English law to govern the parties' rights and obligations under that electronic bill of lading.

Once enacted, the Act will likely also apply to electronic bills of lading, irrespective of where they are issued, where the application of the ordinary rules of private international law as they currently stand yields the result that English law is the governing law.

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?