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**Digital trade transactions
Electronic bills of lading
and related legal developments**

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Digital trade transactions - Electronic bills of lading and related legal developments

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Electronic bills of lading: opportunities and challenges

- Increasing use of electronic trade documents, including **electronic bills of lading (e-b/l)** expected to bring a number of **benefits** (e.g. faster transactions, lower costs, potentially reduced fraud risks due to digital authentication)
- Most importantly, use of electronic alternatives to the paper-based bill of lading can help **avoid delay in transmission of documents**, a problem significantly exacerbated during the pandemic, **leading to costly delay and disruption/ related legal disputes** ([UNCTAD, 2023](#); [2022a](#); [2022b](#))
- **Switching away from paper bills of lading estimated to potentially save up to US\$6.5 billion in direct costs for stakeholders** and enable US\$30–40 billion in annual global trade growth ([McKinsey, 2022](#))
- Depending on system used, it **could also improve environmental sustainability and assist in efforts to reduce GHG emissions**, primarily by eliminating the use of paper and **avoid delays at ports** associated with the late arrival of documents
 - **should be encouraged and facilitated where possible**
 - note recent [commitment by major carriers to 100% use of e-b/l by 2030](#)

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Electronic bills of lading: opportunities and challenges

However, **e-equivalents to bills of lading not yet in widespread commercial use:**

- Several e-trading systems recognized by International Group of P&I Clubs (IG)
 - Bolero and EssDOCS (2010), e-titleTM (2015), Global Share S.A. edoxOnline, WAVE-BL98 and CargoX99 (2020), IQAX Ltd and Secro (2022). [TradeLens (2021) but platform has since been discontinued]
- But e-bills of lading **currently account for only 1.2%** of the 45m **bills of lading** issued annually by ocean carriers ([DCSA, 2023](#))

Low usage due in particular to legal uncertainties:

- While **progress has been made with the recognition of electronic documentation used for the carriage of goods by air and road** ([UNCTAD, 2022a](#)), **legal uncertainties persist regarding electronic alternatives to the negotiable marine bill of lading**
- Main remaining legal obstacles relate to the replication of the **'document of title function' of the bill of lading in an electronic environment and the full legal recognition of e-bills of lading** as equivalent to traditional paper-based documents

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What is special about the marine/shipped negotiable bill of lading?

Key document in international trade, used for **carriage of goods by sea**, in particular by containerships (**liner transportation**), as well as for **international sale of commodities (and containerized goods)** on CIF (cost, insurance freight) and FOB (free on board) terms ([UNCTAD, 2023](#))

- Unlike other transport documents, the **negotiable bill of lading** ('bearer' or 'order' bill of lading) is **universally recognized as a 'document of title'**
 - provides any lawful holder of the document with **exclusive right to demand delivery of the goods** from the carrier **in exchange for the original document**
- As such, it provides traders and banks with
 - **independent documentary security**
 - **can be traded along a chain of contracts** (string sales), enabling performance of **sale of goods in transit** (see further [UNCTAD, 2003a](#))
- Although **electronic equivalents** to the **negotiable bill of lading** are increasingly being developed, in many jurisdictions they **do not yet benefit from full legal recognition as equivalent** to traditional paper-based documents

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Electronic bills of lading: important legal developments

- Some jurisdictions have recently adopted legislation; often based on the [UNCITRAL Model Law on Electronic Transferable Records \(MLETR\), 2017](#) (see also [ICC presentation](#); [UNCITRAL](#))
- Most recently, a draft '[Electronic Trade Documents Bill](#)' is being considered for adoption **in the UK**
- Developments in **English law are of particular interest in practice**, as contracts for the international carriage and sale of goods are often subject to English Law, by agreement of the parties
- The proposed UK legislation (broadly based on / compatible with MLETR), would ensure that electronic trade documents are "**possessable**" and enjoy the **same legal recognition and functionality as traditional paper-based documents**. The Bill has recently passed the Special Public Bill Committee of the House of Lords and is going through final stages of consideration by legislators
 - **could provide a significant boost to the use of electronic equivalents to traditional paper bills of lading and reduce problems related to delay in transmission of documents/delay at ports**
 - **could also become a model for other jurisdictions**

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Related issues: development of a legal instrument on "Negotiable Multimodal Transport Documents"

- Since 2022, work under auspices of [UNCITRAL Working Group VI](#) on preparation of a **new legal instrument on 'Negotiable Multimodal Transport Documents'**
- The instrument aims to **address the expanding needs of financing in international trade by establishing the legal recognition of negotiable multimodal transport documents (and relevant electronic records) as documents of title, similar to marine negotiable bills**
- Prevailing preference in favour of an **international convention**, to ensure high degree of **uniformity**.
- The new instrument would **need to avoid conflicts with existing international conventions governing carriage of goods**
- **All stakeholders are encouraged to take an active role** in the deliberations of UNCITRAL WG VI to make sure their legitimate interests are appropriately reflected and taken into consideration

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Development of a legal instrument on “Negotiable Multimodal Transport Documents”

- Important to also address any **potential implications that may arise in relation to liability issues**: no international mandatory liability regime in force for multimodal transport to protect the rights of cargo claimants (see also [UNCTAD, 2003a](#))
- If, as intended, the new legal instrument would ensure full legal recognition of multimodal transport documents (and electronic equivalents) as negotiable documents of title, **these documents could be traded and used for sale of goods in transit under a string of contracts, similar to negotiable bills of lading, with the buyer bearing the risk of loss of or damage to the goods in transit** and left to seek redress, if any, from the carrier
- Against this background, **important to ensure that a final consignee in any cargo claim against the multimodal transport operator would be protected by mandatory minimum standards of carrier liability**, as is already the case for claims under negotiable bills of lading that are covered by one of the mandatory sea-carriage conventions which are in force internationally (Hague Rules 1924, Hague-Visby Rules 1968/1979, and Hamburg Rules 1978)
- However, at present, it is not envisaged that liability issues will be addressed as part of the new legal instrument

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Key takeaways

- **Advantages of using electronic equivalents to traditional paper-based documents were highlighted during the COVID-19 pandemic**, when traders across jurisdictions experienced extensive legal problems and costs due to delays in the transmission and presentation of paper documents
- To address this issue and **avoid the incidence and costly resolution of related legal disputes, especially at times of supply-chain disruptions**, the widespread use of **electronic alternatives** to paper documentation could play a major role
- However, any **remaining legal and regulatory obstacles** to the use of electronic documents in international trade **need to be removed**
- To **promote and facilitate the widespread use of electronic bills of lading**, policymakers are encouraged to take note of legal developments and - as **appropriate, review national legislation** to ensure full legal recognition of electronic bill of lading equivalents
- **At the same time, all stakeholders will also have to effectively manage any associated cyber-risks**; an issue likely to demand greater attention given the **increasingly rapid pace of evolving technology**

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Key takeaways

- All stakeholders are encouraged to take an active interest in the work under the auspices of UNCITRAL WG VI to ensure the legal instrument on negotiable multimodal transport document currently being developed will be fit for purpose and commercially acceptable
- From perspective of cargo interests, particularly SMEs in developing countries, **important to ensure** that a final consignee in any cargo claim against the multimodal transport operator would be protected by **mandatory minimum standards of carrier liability**
- In the meantime, **negotiable bills of lading in traditional paper format** should only be used when a document of title is required, i.e. when **sale of goods in transit** is envisaged or **independent documentary security** is needed
- In other cases, contracting parties should consider **opting for non-negotiable alternatives**, such as **seawaybills** (in paper or electronic form), which do not need to be presented ([UNCTAD, 2003b](#))

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COVID-19: key international commercial law implications – UNCTAD Research and Analysis, Training and Capacity Building:



COVID-19 implications for commercial contracts: International sale of goods on CIF and FOB terms



COVID-19 implications for commercial contracts: Carriage of goods by sea and related cargo claims



Contracts for the carriage of goods by s and multimodal transport



COVID-19 and International Sale of Goods: **Contractual devices for commercial risk allocation and loss prevention**

4 Training courses on **'Implications of the COVID-19 pandemic for commercial contracts - International Sale of Goods on Shipment Terms and Carriage of Goods by Sea'** (2022)

Available at <https://unctad.org/ttl/legal>; <https://unttc.org/stream/key-international-commercial-law-implications>

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Thank you!