

Report of Study Group for Digitalizationⁱ of Business Law

—Digitalization of Bills of Lading—

April 2022

Japan Institute of Business Law

(Extracts)

【Translator's notes】

- 1. This is a tentative English translation of extracts from the original Report in Japanese. Translation covers Chapter titles and the draft legislation outline set out in Part IV. Chapters 2. to 1 1. Supplemental explanatory notes therein are all omitted.*
- 2. Readers are reminded that the draft set out in the Report and translated herein is yet only an initial unofficial working draft by the Study Group for further deliberations, which will be made at an official level by the Committee set up in the Legislative Council, Ministry of Justice of the Japanese Government.*
- 3. Footnotes down in some pages (¹, ², ...) are those in the original Report in Japanese (followed by further notes by the translator). But the numbers herein are different from the original ones since the numbering in the Report is made though both in footnotes in the extracted parts translated herein and those in the omitted supplemental explanatory notes.*
- 4. Notes in the last several pages (ⁱ, ⁱⁱ, ...) are those prepared by the translator at his responsibility to clarify issues arising from or in connection with Japanese-English translation, make supplementary explanations about Japanese law to help non-Japanese readers better understand, and/or point out any possible problems and make other comments on the draft legislation outline in the Report. **But please note that these notes are the translator's personal opinions only and in any event not comprehensive.***
- 5. Although the translator was a member of the above Study Group, this translation is his personal work and not at all related to the activities of the Study Group (and of the firm or organization he belongs to). The Study Group (and the firm or organization he belongs to) are not involved in this translation. In addition, these translation and notes are for the readers' general reference purpose only and the translator shall not be liable for any mistakes, errors or omissions remaining in this translation and notes, or for readers' acts or omissions relying upon them.*

I. Survey of the practice of international maritime transportation

1. Use of Bills of Ladingⁱⁱ in international maritime transportation [omitted]
2. Survey of the Usage of Bills of Lading [omitted]

II. Relationship with governing laws and with international treaties

1. Governing laws [omitted]
2. Relationship with international treaties [omitted]

III. Studies of international trends and foreign laws

1. International trends [omitted]
2. Studies of Foreign Laws [omitted]

IV. Consideration of draft legislation outlineⁱⁱⁱ

1. Needs to amend the law [omitted]

2. Ideas about the types of electronic bills of lading records^{iv}

It has been considered in academics that, according to the provisions of the Civil Code on negotiable instruments^v, there can be 4 types of paper bills of lading in theory^{vi}:

- (1) bill in payable-to-order type [*sashizu shoken gata*]^{vii};
- (2) bill in payee-specified-but-payable-to-bearer type [*kimeishiki shojininbarai shoken gata*]^{viii};
- (3) bill in other-payee-specified type (non-endorsable type) [*sonota no kimei shoken gata (uragaki kinshi gata)*]^{ix}; and
- (4) bill in payee-non-specified type [*mukimei shoken gata*]^x.

Having regard to this, basic options for categorizations of electronic bills of lading records¹ in legislation may be considered in the following 3 directions^{xi}:

【Option A】 To consider to provide for only 2 types, non-endorsable type and another, without providing for payable-to-order type;

【Option B】 To consider to maintain 4 types; or

【Option C】 To consider to provide for only 2 types, payable-to-order type and non-endorsable type, without providing for payee-specified-but-payable-to-bearer type and payee-non-specified type.

3. Draft provisions concerning the Issuance of an electronic bill of lading record

1. Issuance of an electronic bill of lading record

- (1) A carrier or master may, with the consent of a shipper or charterer^{xii}, issue an electronic bill of lading record recording the fact of shipping on board or an electronic bill of lading record recording the fact of receipt to the shipper or charterer, instead of delivering^{xiii} a shipped bill of lading or a received bill of lading^{xiv}.
- (2) In case where an electronic bill of lading record recording the fact of receipt was issued instead of issuance of a received bill of lading, an electronic bill of lading record recording the fact of shipping on board may be issued, in exchange for transfer of the control of the said electronic bill of lading record [or deletion or any other measures to prevent use and transfer of the control of

¹ An “electronic bill of lading record” is a tentative naming only. [Translator’s note: This footnote means to say the original Japanese term currently adopted (literally translated as “electromagnetic” bill of lading record) may be misleading but is not intentional. The readers may also think why it is called (electronic or electromagnetic) bill of lading “record” rather than bill of lading. This is perhaps due to an understanding that the original Japanese word for “bill” (“*shoken*”) inevitably implies a paper medium when used in a statute and the so-called electronic bill of lading cannot be a bill of lading as such.]

the said electronic bill of lading].

- (3) When a carrier or master issues an electronic bill of lading record pursuant to the preceding two paragraphs, he/she/it shall be deemed to have delivered a bill of lading.
- (4) The provisions of the preceding three paragraphs shall not apply when a sea waybill is actually delivered in respect of the goods.

2. Matters to be recorded in an electronic bill of lading record

- (1) Matters listed in each item of Article 758, paragraph 1 of the Commercial Code (excluding the matter listed in item (xi) thereof; and in case of an electronic bill of lading record recording the fact of receipt, excluding the matters listed in items (vii) and (viii) thereof) shall be recorded in an electronic bill of lading record.
- (2) In case where an electronic bill of lading record recording the fact of receipt was issued instead of issuance of a received bill of lading, the fact of shipping on board in the said electronic bill of lading record may be recorded in substitution for the issuance of an electronic bill of lading record recording the fact of shipping on board. In this case, matters listed in items (vii) and (viii) of Article 758, paragraph 1 shall also be recorded^{xv}.

3. Transfer of the control of an electronic bill of lading record

The control of an electronic bill of lading record may be transferred to another person.

4. Technical Requirements for an electronic bill of lading record

1. An electronic bill of lading record

An “electronic bill of lading record” means a record issued pursuant to the provision in 3. 1. in an electronic, magnetic^{xvi} or any other form not perceivable by human senses, to be used for information processing by computers, being the one as set forth by the Ministry of Justice Ordinance^{xvii} [Note 1].

[Note 1] It is expected that the Ministry of Justice Ordinance will provide for the following substances:

The one as set forth by the Ministry of Justice Ordinance as provided for in Article ●, paragraph 1 of the Commercial Code shall be the one recording the record in a file prepared in a magnetic disk or any other object capable of securely recording certain information or by similar equivalent means, satisfying all of the following items^{xviii}:

- (i) The one as identified as the only authentic record to prove the right concerning an electronic bill of lading record;
- (ii) The one in which an electronic bill of lading record provided for by Article ● of the Commercial Code can be controlled and the only

person who has the control thereof can be identified;

- (iii) the one in which the control of an electronic bill of lading record provided for by Article ● of the Commercial Code can be transferred; and
- (iv) the one in which the recorded information can be preserved, except in case lawfully altered.

2. The control of an electronic bill of lading record

The “control of an electronic bill of lading record” means the state of being able to freely use the electronic bill of lading record or to transfer the right concerning the electronic bill of lading record with the intention to do for one’s own behalf.

3. Issuance of an electronic bill of lading record

“Issuance of an electronic bill of lading record” means the measure to prepare an electronic bill of lading record and to cause the control of the said electronic bill of lading record to be vested with a shipper or charterer in accordance with the method as set forth by the Ministry of Justice Ordinance. [Note 2]

[Note 2] It is expected that the Ministry of Justice Ordinance will provide for the following substances:

- 1. Method as set forth by the Ministry of Justice Ordinance as provided for in Article ●, paragraph 3 of the Commercial Code means the method that satisfies the requirements in both of the following items:
 - (i) that it is the method using electronic data processing system or any other information and communications technology; and
 - (ii) that it is the method in which an electronic signature shall be put by a person who issues of an electronic bill of lading record.
- 2. “Electronic signature” provided for in item (ii) of the preceding paragraph means a measure implemented in relation to information recorded in an electronic bill of lading record, which satisfies the requirements in both of the following items:
 - (i) that it is for indicating that the said information was prepared by the person who implemented the said measure; and
 - (ii) that it is possible to confirm whether or not an alteration has been made in relation to the said information.

4. Transfer of the control of an electronic bill of lading record

“Transfer of the control of an electronic bill of lading record” means the measure to transfer the control of an electronic bill of lading record to another party in accordance with the method as set forth by the Ministry of Justice Ordinance [Note 3], whereby the person who has transferred the control of the said electronic bill of lading record shall lose his/her/its control of the said electronic bill of lading record at the time when the control of the said electronic bill of lading record was

transferred to the said another party.

[Note 3] It is expected that the Ministry of Justice Ordinance will provide for the following substances:

Method as set forth by the Ministry of Justice Ordinance as provided for in Article ● of the Commercial Code means the method using electronic data processing system or any other information and communications technology.

5. Additional record

In the cases listed in the following items, record of matters set forth in each item shall be recorded in accordance with the method as set forth by the Ministry of Justice Ordinance [Note 4].

- (i) In case where a person who has issued an electronic bill of lading record recording the fact of receipt will record the fact of shipping on board and matters listed in items (vii) and (viii) of Article 758, paragraph 1 of the Commercial Code in the said electronic bill of lading record: the fact of shipping on board and matters listed in items (vii) and (viii) of Article 758, paragraph 1 of the Commercial Code^{xix}; and
- (ii) In case where a person who has the control of an electronic bill of lading record² transfers the control of the said electronic bill of lading record to another party, and when he/she/it records the name of the person transferring the control of the said electronic bill of lading record and the person receiving the transfer: name of the person transferring the control of the said electronic bill of lading record and the person receiving the transfer^{xx}

[Note 4] It is expected that the Ministry of Justice Ordinance will provide for the following substances:

1. Method as set forth by the Ministry of Justice Ordinance as provided for in Article ●, paragraph 5 of the Commercial Code means the method that satisfies the requirements in both of the following items:
 - (i) that it is the method using electronic data processing system or any other information and communications technology; and
 - (ii) that it is the method in which an electronic signature shall be put by a person who records the matters set forth in each item of

² It is intended to be applicable only to a payable-to-order type electronic bill of lading record. [Translator's note: Since this part intends to deal with how to make endorsement (how to record the names of endorsing and endorsed parties) in an electronic bill, it follows to only apply to an endorsable electronic bill (*i.e.* type (1) in 2.) and not applicable to bills in other types – types (2) and (4) can be transferred by simple transfer of control (possession) without endorsement whilst type (3) can be transferred only pursuant to rules under the Civil Code. See provisions in 7. 1.(3) and 8. 1.(1). This is what this note means to say. And the main text just effectively says endorsement in an electronic bill must be made with an electronic signature.]

Article ●, paragraph 1 of the Commercial Code.

2. “Electronic signature” provided for in item (ii) of the preceding paragraph means a measure implemented in relation to information in respect of matters as set forth in each item of Article ●, paragraph 1 of the Commercial Code recorded in the electronic bill of lading record, which satisfies the requirements in both of the following items:
 - (i) that it is for indicating that the said information was prepared by the person who implemented the said measure; and
 - (ii) that it is possible to confirm whether or not an alteration has been made in relation to the said information.

5. Conversions between an electronic bill of lading record and a bill of lading

1. Conversion from a bill of lading into an electronic bill of lading record

- (1) In case where a bill of lading was delivered, the carrier or master who delivered the said bill of lading can issue an electronic bill of lading record in exchange for the said bill of lading (if more than one set of a bill of lading was delivered, all of them), with the consent of the bearer of the said bill of lading (who shall also be lawfully entitled to the right under^{xxi} the said bill of lading^{xxii}). In this case, the said electronic bill of lading record shall record the same contents as those in the said bill of lading with respect to the matters listed in each item of Article 758, paragraph 1 of the Commercial Code and the fact that it was issued in exchange for the said bill of lading.
- (2) For the purpose of application of the provision corresponding to Article 520-4 of the Civil Code in case where an electronic bill of lading record has been issued pursuant to the provisions of the preceding paragraph, the person who has the control of the said electronic bill of lading record shall be deemed to have proved that the persons to whom the said electronic bill of lading record was issued received successive transfers of the control by records in the said electronic bill of lading record^{xxiii}.

2. Conversion from an electronic bill of lading record into a bill of lading

【Option X】

- (1) In case where an electronic bill of lading record was issued, the carrier or master who issued the said electronic bill of lading record can deliver one or more sets of an bill of lading in exchange for transfer of the control of the said electronic bill of lading record [or deletion or other measures to prevent the use and transfer of the control of the said electronic bill of lading record], with the consent of the person who has the control of the said electronic bill of lading record (who shall also be a person lawfully entitled to the right concerning the said electronic bill of lading record). In this case, the said bill of lading shall describe the same contents as those in the said electronic bill of lading record with respect to the matters listed in each item of Article 758, paragraph 1 of the Commercial Code and the fact that it was delivered in exchange for the said

electronic bill of lading record.

- (2) For the purpose of application of the provision corresponding to Article 520-4 of the Civil Code in case where a bill of lading has been delivered pursuant to the provisions of the preceding paragraph, the bearer of the said bill of lading shall be deemed to have proved that the persons to whom the said bill of lading was delivered acquired the right thereunder by means of an uninterrupted series of endorsements^{xxiv}.

【Option Y】

- (1) A person who has the control of an electronic bill of lading record (who shall also be a person lawfully entitled to the right concerning the said electronic bill of lading record) may demand the carrier or master who issued the said electronic bill of lading record to deliver one or more sets of a bill of lading in exchange for transfer of the control of the said electronic bill of lading record [or deletion or other measures to prevent the use and transfer of the control of the said electronic bill of lading record]. In this case, the said bill of lading shall describe the same contents as those in the said electronic bill of lading record with respect to the matters listed in each item of Article 758, paragraph 1 of the Commercial Code and the fact that it was delivered in exchange for the said electronic bill of lading record.
- (2) For the purpose of application of provision corresponding to Article 520-4 of the Civil Code in case where a bill of lading has been delivered pursuant to the provisions of the preceding paragraph, the bearer of the said bill of lading shall be deemed to have proved that the persons to whom the said bill of lading was delivered acquired the right thereunder by means of an uninterrupted series of endorsements.

6. How to draft provisions concerning the effects of an electronic bill of lading record

As for how to draft provisions concerning the effects of an electronic bill of lading record, it may be considered in the following directions. Deliberations are required:

【Option [1]】 To consider in the direction to give an electronic bill of lading record the effect corresponding to a paper bill of lading, *inter alia*, by giving an electronic bill of lading the same effects as a paper bill of lading

【Option [2]】 To consider in the direction to create the legal relationship corresponding to the one in case where a paper bill of lading was issued, *inter alia*, by making transfer of the control of an electronic bill of lading record be a legal requirement for effectiveness and perfection for assigning the claim related to delivery of the goods.

**7. Provisions concerning the effects of an electronic bill of lading record
(Based on Option [1])^{xxv}**

1. Basic Effects

(1) Provisions on the effects

An electronic bill of lading record shall have the same effects as a bill of lading.

[(2) Provisions for fictitious applications

- a. A carrier or master shall be deemed to have prepared and delivered a bill of lading when he/she/it issued an electronic bill of lading record.
- b. Records in an electronic bill of lading record, the control of an electronic bill of lading record, and a person who has the control of an electronic bill of lading record shall respectively be deemed to be descriptions on a bill of lading, possession of a bill of lading, and a bearer of a bill of lading^{xxvi}.
- c. A person who has transferred the control of an electronic bill of lading record shall be deemed to have delivered, passed or returned^{xxvii} a bill of lading.
- d. A person who has the control of electronic bill of lading record shall be deemed to have surrendered a bill of lading when he/she/it presents something that indicates the matters^{xxviii} recorded on the said electronic bill of lading record in accordance with the method as set forth by the Ministry of Justice Ordinance.]

(3) Assignment of the right concerning an electronic bill of lading record

a. Other types than non-endorsable type^{xxix}

【If Option A is adopted】

Assignment or pledge of the right concerning an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record^{xxx}) shall become effective upon transfer of the control of the electronic bill of lading record.

【If Option B is adopted】

Assignment or pledge of the right concerning an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record) listed in each of the following items shall become effective upon doing the act as set forth in the relevant items.

- (i) An electronic bill of lading record in which nomination of the consignee is recorded but additionally stating that the goods is to be delivered to a person who has the control thereof^{xxxi}; transfer of the control of the said electronic bill of lading record

- (ii) An electronic bill of lading record in which nomination of the consignee is not recorded^{xxxii}: transfer of the control of the said electronic bill of lading record
- (iii) An electronic bill of lading record not falling under electronic bills of lading records listed in the preceding two items^{xxxiii}: transfer of the control of the said electronic bill of lading record, and recording the names^{xxxiv} of the person who transfers the control of the said electronic bill of lading record and of the person who receives the transfer in the said electronic bill of lading record

【If Option C is adopted】

Assignment or pledge of the right concerning an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record) shall become effective upon transfer of the control thereof, and recording of the names of the person who transfers the control and the person who receives the transfer in the said electronic bill of lading record.

b. Non-endorsable type

Assignment or pledge of the right concerning an electronic bill of lading record (which shall be the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record) shall be done only in compliance with the formalities and effects concerning the assignment or pledge of the claim in general^{xxxv}.

(4) Act corresponding to blank endorsement

【applicable only if Options B or C is adopted】 ^{xxxvi}

- a. Recording in an electronic bill of lading record provided in (3) a. may be done without recording the name of a person who receives the transfer of the control of the said electronic bill of lading record.
- b. In the case provided in (3) a., a person who received the transfer of the control of the said electronic bill of lading record without his/her/its name recorded therein may assign or pledge the right concerning the said electronic bill of lading record by transferring the control of the said electronic bill of lading record.

2. Provisions corresponding to the provisions of the Commercial and Civil Codes^{xxxvii}

(1) Provision corresponding to Article 759 of the Commercial Code

- a. In case where a carrier or master issues an electronic bill of lading record and if notice is given in writing or by electronic^{xxxviii} means by a shipper or charterer with regard to the items listed in items (i) and (ii) of Article 758, paragraph 1 of the Commercial Code, he/she/it shall record those items according to the said notice.

- b. The provisions of the preceding paragraph do not apply if there are reasonable grounds to believe that the notice referred to in that paragraph is incorrect, or if there is no appropriate method to confirm the correctness of the said notice. They also do not apply if the goods, or the containers or packages thereof, do not have marks that will remain legible until the end of the voyage.
- c. A shipper or charterer shall be liable to compensate for loss or damage arising from the incorrectness of the notice referred to in paragraph 1.

(2) Provision corresponding to Article 760 of the Commercial Code

A carrier may not assert the falsity of the information recorded in an electronic bill of lading record against a person who has the control thereof in good faith.

(3) Provision corresponding to Article 761 of the Commercial Code^{xxxix}

If an electronic bill of lading record is issued, disposal of the goods shall be made through the electronic bill of lading record.

(4) Provision corresponding to Article 763 of the Commercial Code

If the control of an electronic bill of lading record is transferred to a person who is entitled to receive the goods in accordance with the electronic bill of lading record, the transfer thereof has the same effects as the delivery of the goods with regard to the acquisition of the right to be exercisable for the goods.

(5) Provision corresponding to Article 764 of the Commercial Code

If an electronic bill of lading record is issued, the delivery of the goods may not be demanded unless the said demand is in exchange for transfer of the control of the said electronic bill of lading record (or deletion or other measures to prevent the use and transfer of the control of the said electronic bill of lading record).

(6) Provision corresponding to Article 768 of the Commercial Code

For the purpose of the application of the provisions of Chapter VIII, Section 2 of the preceding Book in case where an electronic bill of lading record is issued, the term “shipper” in Article 580 is deemed to be replaced with “person who has the control of an electronic bill of lading record”, and the provisions of Article 581, Article 582, paragraph 2, and the proviso to Article 587 do not apply^{xl}.

(7) Provision corresponding to Articles 520-4 and 520-14 of the Civil Code^{xli}

【If Option A is adopted】

A person who has the control of an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record) is presumed to lawfully have the right concerning the said electronic bill of lading record.

【If Option B is adopted】

If an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right under the said electronic bill of lading record; hereinafter the same applies in this Article) listed in the following items is issued, a person as set forth respectively in these items is presumed to lawfully have the right concerning the said electronic bill of lading record:

- (i) An electronic bill of lading record in which nomination of the consignee is recorded but additionally stating that the goods is to be delivered to a person who has the control thereof: the person who has the control of the said electronic bill of lading record
- (ii) An electronic bill of lading record in which nomination of the consignee is not recorded: the person who has the control of the said electronic bill of lading record
- (iii) An electronic bill of lading record that does not fall under the electronic bills of lading records listed in the preceding two items: the person who has the control of the said electronic bill of lading record which proves successive receipts of transfers of the control thereof by records in the said electronic bill of lading record

【If Option C is adopted】

If a person who has the control of an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record) proves successive receipts of transfers of the control thereof by records in the said electronic bill of lading record, the person who has the control thereof is presumed to lawfully have the right concerning said electronic bill of lading record.

- (8) Provision corresponding to Articles 520-5 and 520-15 of the Civil Code^{xlii}
 - a. A person who loses the control of an electronic bill of lading record (except the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record; hereinafter the same applies in this Article) for any reason may demand the person who has the control thereof to transfer the control of the said electronic bill of lading record to him/her/it.
 - b. Notwithstanding the provisions of the preceding paragraph, in case where a person loses the control of an electronic bill of lading record for any reason and if the person who has the control thereof proves his/her/its right pursuant to the provisions of the preceding Article, the person who has the control thereof is not obliged to transfer the control of the said electronic bill of lading record; provided, however, that the same does not apply if the person who has the control thereof has received the transfer of the control in bad faith or gross negligence.

(9) Provision corresponding to Articles 520-6 and 520-16 of the Civil Code

A carrier may not assert against a person who has the control of an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record; hereinafter the same applies in this Article) in good faith any grounds which could have been asserted against the person who had the control before the transfer of the control of the electronic bill of lading record, except for matters recorded in the electronic bill of lading record and any result which necessarily arises from the nature of the electronic bill of lading record.

(10) Provision corresponding to Article 520-9 of the Civil Code

Even if a due date is specified for the performance of the obligation of a carrier, he/she/it shall be responsible for delay only after the time when the person who has the control of an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record; hereinafter the same applies in this Article^{xliii}) demands the performance thereof with presentation of something that indicates the matters recorded in the electronic bill of lading record in the manner prescribed by the Ministry of Justice Ordinance.

(11) Provision corresponding to Article 520-10 of the Civil Code

A carrier has the right, but does not owe the obligation, to examine the identity of the person who has the control of an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record) and the electronic signature therein; provided, however, that the obligation of the carrier is not validly discharged if he/she/it acts in bad faith or is grossly negligent.

**8. Provisions concerning the effects of an electronic bill of lading record
(Based on Option [2])^{xliv}**

1. Basic Effects

(1) Transfer of the claim related to delivery of the goods

a. Other types than non-endorsable type

【If Option A is adopted】

In case where an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record³) is issued,

³ If Option [2] is adopted, the phrase other than “the assignment of the right concerning an electronic bill of lading record” may be considered to be adopted (*e.g.* “transfer of the control of an electronic record”). The same applies hereinafter. [Translator’s note: This perhaps means to say that, since a phrase “the claim related to delivery of the goods” is consistently used in other places in Chapter 8. to avoid another phrase “the right concerning an/the electronic bill of lading record” used in Chapter 7., the latter may also have

transfer^{xlv} or pledge of the claim related to delivery of the goods^{xlvi} shall not become effective until and unless^{xlvii} the person who has the control thereof transfers the control of the said electronic bill of lading record.

【If Option B is adopted】

In case where an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record) listed in each of the following items is issued, transfer or pledge of the claim related to delivery of the goods shall not become effective until and unless the act as set forth in the relevant items is done.

- (i) An electronic bill of lading record in which nomination of the consignee is recorded but additionally stating that the goods is to be delivered to a person who has the control thereof: transfer of the control of the said electronic bill of lading record
- (ii) An electronic bill of lading record in which nomination of the consignee is not recorded: transfer of the control of the said electronic bill of lading record
- (iii) An electronic bill of lading record not falling under electronic bills of lading records listed in the preceding two items: transfer of the control of the said electronic bill of lading record, and recording the names of the person who transfers the control of the said electronic bill of lading record and of the person who receives the transfer in the said electronic bill of lading record

【If Option C is adopted】

In case where an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record) is issued, transfer or pledge of the claim related to delivery of the goods shall not become effective until and unless the control thereof is transferred and the names of the person who transfers the control and the person who receives the transfer is recorded in the said electronic bill of lading record.

b. Non-endorsable type

No provision required^{xlviii}

(2) Presumption of Assignment of the claim

- a. In case as set forth in (1) a., if the acts as set forth in the said provision is done, the person who had the control of an electronic bill of lading record is presumed to have assigned or pledged^{xlix} the claim related to delivery of the goods to the person who receives the control thereof.

to be avoided here.]

- b. Assignment or pledge of the claim related to delivery of the goods as provided for in the preceding paragraph is deemed to have completed the right to assert against the third party as provided for in Articles 364 and 467 of the Civil Code.
- (3) Act corresponding to blank endorsement
【applicable only if Options B or C is adopted】
- a. Recording in an electronic bill of lading record provided in (1) a. may be done without recording the name of a person who receives transfer of the control of the said electronic bill of lading record.
 - b. In the case provided in (1) a., a person who received transfer of the control of the said electronic bill of lading record without his/her/its name recorded in the said electronic bill of lading record may assign or pledge the claim related to delivery of the goods by transferring the control of the said electronic bill of lading record.
 - c. In the case provided in (1) a., if a person who received the transfer of the control of the said electronic bill of lading record without his/her/its name recorded in the said electronic bill of lading record have further transferred the control of the said electronic bill of lading record, he/she/it is presumed to have assigned or pledged the claim related to delivery of the goods to the said person.
 - d. Assignment or pledge of the claim related to delivery of the goods as provided for in the preceding paragraph is deemed to have completed the right to assert against the third party as provided for in Articles 364 and 467 of the Civil Code.
2. Provisions corresponding to the provisions of the Commercial and Civil Codes
- (1) Provision corresponding to Article 759 of the Commercial Code
- a. In case where a carrier or master issues an electronic bill of lading record and if notice is given in writing or by electronic means by a shipper or charterer with regard to the items listed in items (i) and (ii) of Article 758, paragraph 1 of the Commercial Code, he/she/it shall record those items according to the said notice.
 - b. The provisions of the preceding paragraph do not apply if there are reasonable grounds to believe that the notice referred to in that paragraph is incorrect, or if there is no appropriate method to confirm the correctness of the said notice. They also do not apply if the goods, or the containers or packages thereof, do not have marks that will remain legible until the end of the voyage.
 - c. A shipper or charterer shall be liable to compensate for loss or damage arising from the incorrectness of the notice referred to in paragraph 1.

(2) Provision corresponding to Article 760 of the Commercial Code¹

- a. If an electronic bill of lading record is issued, a carrier shall deliver the goods in accordance with the description in the electronic bill of lading record.
- b. A carrier may not assert the falsity of the information recorded in an electronic bill of lading record against a person who has the control thereof in good faith.

(3) Provision corresponding to Article 761 of the Commercial Code

If an electronic bill of lading record is issued, disposal of the goods shall be made through the electronic bill of lading record.

(4) Provision corresponding to Article 763 of the Commercial Code

If the control of an electronic bill of lading record is transferred to a person who is entitled to receive the goods in accordance with the electronic bill of lading record, the transfer thereof has the same effects as the delivery of the goods with regard to the acquisition of the right to be exercisable for the goods.

(5) Provision corresponding to Article 764 of the Commercial Code

If an electronic bill of lading record is issued, the delivery of the goods may not be demanded unless the said demand is in exchange for transfer of the control of the said electronic bill of lading record (or deletion or other measures to prevent the use and transfer of the control of the said electronic bill of lading record).

(6) Provision corresponding to Article 768 of the Commercial Code

For the purpose of the application of the provisions of Chapter VIII, Section 2 of the preceding Book in case where an electronic bill of lading record is issued, the term “shipper” in Article 580 is deemed to be replaced with “person who has the control of an electronic bill of lading record”, and the provisions of Article 581, Article 582, paragraph 2, and the proviso to Article 587 do not apply.

(7) Provision corresponding to Articles 520-4 and 520-14 of the Civil Code

【If Option A is adopted】

A person who has the control of an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record) is presumed to lawfully have or be pledged with the claim related to delivery of the goods.

【If Option B is adopted】

If an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right under the said

electronic bill of lading record; hereinafter the same applies in this Article) listed in the following items is issued, a person as set forth respectively in these items is presumed to lawfully have or be pledged with the claim related to delivery of the goods:

- (i) An electronic bill of lading record in which nomination of the consignee is recorded but additionally stating that the goods is to be delivered to a person who has the control thereof: the person who has the control of the said electronic bill of lading record
- (ii) An electronic bill of lading record in which nomination of the consignee is not recorded: the person who has the control of the said electronic bill of lading record
- (iii) An electronic bill of lading record that does not fall under the electronic bills of lading records listed in the preceding two items: the person who has the control of the said electronic bill of lading record which proves successive receipts of transfers of the control thereof by records in the said electronic bill of lading record

【If Option C is adopted】

If a person who has the control of an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record) proves successive receipts of transfers of the control thereof by records in the said electronic bill of lading record, the person who has the control thereof is presumed to lawfully have or be pledged with the claim related to delivery of the goods.

- (8) Provision corresponding to Articles 520-5 and 520-15 of the Civil Code
 - a. A person who loses the control of an electronic bill of lading record (except the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record; hereinafter the same applies in this Article) for any reason may demand the person who has the control thereof to transfer the control of the said electronic bill of lading record to him/her/it.
 - b. Notwithstanding the provisions of the preceding paragraph, in case where a person loses the control of an electronic bill of lading record for any reason and if the person who has the control thereof proves his/her/its right pursuant to the provisions of the preceding Article, the person who has the control thereof is not obliged to transfer the control of the said electronic bill of lading record; provided, however, that the same does not apply if the person who has the control thereof has received the transfer of the control in bad faith or gross negligence.

- (9) Provision corresponding to Articles 520-6 and 520-16 of the Civil Code

A carrier may not assert against a person who has the control of the electronic bill of lading record (except for the one recording nomination of the consignee

and prohibition of the assignment of the right concerning the said electronic bill of lading record; hereinafter the same applies in this Article) in good faith any grounds which could have been asserted against the person who had the claim related to delivery of the goods before the transfer of the control of the electronic bill of lading record, except for matters recorded in the electronic bill of lading record and any result which necessarily arises from the nature of the electronic bill of lading record.

(10) Provision corresponding to Article 520-9 of the Civil Code

Even if a due date is specified for the performance of the obligation of a carrier, he/she/it shall be responsible for delay only after the time when the person who has the control of an electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record; hereinafter the same applies in this Article) demands the performance thereof with presentation of something that indicates the matters recorded in the electronic bill of lading record in the manner prescribed by the Ministry of Justice Ordinance.

(11) Provision corresponding to Article 520-10 of the Civil Code

A carrier has the right, but does not owe the obligation, to examine the identity of the person who has the control of the electronic bill of lading record (except for the one recording nomination of the consignee and prohibition of the assignment of the right concerning the said electronic bill of lading record) and the electronic signature therein; provided, however, that the obligation of the carrier is not validly discharged if he/she/it acts in bad faith or is grossly negligent.

9. Provisions of a multimodal transport bill of lading

1. A carrier or master may, with the consent of a shipper, issue an electronic multimodal transport bill of lading record recording the fact of shipping on board or an electronic multimodal transport bill of lading record recording the fact of receipt, instead of delivering a multimodal transport bill of lading stating the fact of shipping on board or a multimodal transport bill of lading stating the fact of receipt.
2. The provisions in Chapters 3. through 5., 7. and 8. shall apply *mutates mutandis* to an electronic multimodal transport bill of lading record. In this case, the phrase “(excluding …)” in 3. 2. (1) is deemed to be replaced with “(excluding…), as well as the place of receipt and the place of destination”.

10. Provisions of a sea waybill

Is there anything to be amended regarding the provision of Article 770 of the Commercial Code concerning a sea waybill?

11. Compulsory execution^{li} against the person who has the control of an electronic

bill of lading record

【Option Ko】

1. When compulsory execution, administrative order for delinquent taxpayer or other injunctive order to restrict disposal of the right in respect of the claim related to delivery of the goods is implemented, [an electronic bill of lading record shall cease to be effective (in case of Option [1]) / provisions in Chapter 8. do not apply thereafter (in case of Option [2])].
2. When compulsory execution, administrative order for delinquent taxpayer or other injunctive order to restrict disposal of the right in respect of the claim related to delivery of the goods is implemented and if a carrier and a person who has the control of electronic bill of lading record becomes aware of the said fact, they shall record the said fact in the electronic bill of lading record⁴.

【Option Otsu】 (not applicable if Option X in Chapter 5. 2. main text is adopted)^{lii}

1. For the purpose of application of provisions of the Civil Execution Act and the Civil Provisional Remedied Act in respect of compulsory execution or civil provisional remedy for the claim related to delivery of the goods in case where an electronic bill of lading record is issued, a negotiable instrument subject to execution against movables shall be deemed to have been issued.
2. A creditor of a person who has the control of an electronic bill of lading record may exercise, by subrogation, the right of the person who has the control of the electronic bill of lading record to the carrier to demand the conversion into a bill of lading (demand to deliver one or more sets of a bill of lading by recording the fact of surrender in the said electronic bill of lading record)^{liii}.

【Option Hei】

No provision

1 2. Other individual issues

1. Issuance of more than one set of an electronic bill of lading record [omitted]
2. The right of retention and pledge [omitted]
3. Procedure in case of the loss^{liv} [omitted]
4. Relationship with an electronic bill of lading record issued under contractual rule arrangements [omitted]
5. Discussions of legal issues in case where a problem takes place by the disappearance of an electronic bill of lading record^{lv} [omitted]

⁴ It may also be possible to provide that it is sufficient to record it in the electronic record that can be viewed in connection with the electronic bill of lading record in the system, not necessarily recording it within the electronic bill of lading record itself. [Translator's Note: The Report further explains, if the system cannot allow such entries of records, the recording would not be compulsory.]

The following notes are those prepared by the translator and reflect his personal understandings and/or opinions only:

i Literal translation of the original Japanese (“*denshi ka*”) would be “electronification”.

ii Literal translation of the original Japanese (“*funani shoken to*”) would be “bill of lading, *etc.*” In Japanese legal documents, the word “*to*” herein, meaning “*etc.*”, is quite often (possibly too often) used to create a new technical term defined to include or cover affiliated or similar contents in addition to the main substance. This usage is similar to the use of “*inter alia*” or “and others” and create a newly defined technical term in the context by using the word with Capitals. Here, “bills of lading, *etc.*” is perhaps intended to include or cover multimodal bills of lading or sea waybills, in addition to bills of lading in a proper sense. The similar usage of “*etc.*” is quite often found in other parts of the Report too but they are not specifically reflected in translation in principle.

iii Literal translation of the original Japanese would be “concrete design of system”.

iv Literal translation of the original Japanese (“*denjiteki funani shoken kiroku*”) would be “‘electromagnetic’ (or ‘electronic or magnetic’) bill of lading record”. However, ‘electromagnetic’ (or ‘electronic or magnetic’) is perhaps only reflecting the terminology commonly used in Japanese statutes and it is at least not consciously intended that “magnetic” system may also be adopted in digitalized bill of lading. The more general term “electronic” will thus be more appropriate to avoid misunderstanding.

v The original Japanese here is “*yuka shoken*”, which is understood to have derived from a German concept “*Wertpapier*”. Strictly speaking it is inaccurate to translate this word into “negotiable instrument” in English as this concept covers non-negotiable instrument. Another candidates are “securities” and “documents of title” but they would also have problems respectively.

vi These 4 types of negotiable instruments [*yuka shoken*] are provided for in Articles 520-2 to 520-20 of the Civil Code, being the provisions to regulate negotiable instruments in general. It is generally accepted in Japan that a bill of lading is one kind(type) of a negotiable instrument and therefore, these provisions shall also apply to a bill of lading. It follows that if 4 types are recognized in negotiable instruments under the Civil Code, then the said 4 types (as explained below) must also be recognized in bills of lading. This is the implied basis of discussions here. Surely this is generally accepted by academics. But the problem is that we suppose nobody in practice has ever encountered with a bill of lading in (2) payee-specified-but-payable-to-bearer type [*kimeishiki shojininbarai shoken gata*] and that in (4) payee-non-specified type [*mukimei shoken gata*]. In particular, although the type (4) can be understood to mean a bearer bill of lading, though it is quite rare if not existent, the type (2) is even difficult to imagine in practice. (It is said that a negotiable instrument in the type (2) can be found in case of a cheque for payment.)

vii It is understood that this refers to an order bill of lading in which a consignee is described as to order of shipper or other party plus a straight bill of lading without indication of “non-negotiable”. As to the reason for including latter, see the next-next Footnote.

viii It is understood that this refers to a bill of lading in which a consignee is specifically nominated but nevertheless delivery (*i.e.* performance of the issuer’s/carrier’s obligation) may and shall be made to any bearer, whether he/she/it be a nominated consignee (*i.e.* creditor or claimant) or not. Put it another way, this refers to a bill of lading looking like a straight bill but with the indication that it is also a bearer bill. This is a product of logical application of the relevant provision of the Civil Code and we suppose nobody in practice has ever encountered a bill of lading in the said type.

ix It is understood that this refers to a straight bill of lading in which a consignee is specifically nominated with indication of “non-negotiable”. Under Japanese law, even a straight bill of lading can be transferred from a consignee by his/her/its endorsements, unless there is express indication of prohibition of endorsement (*e.g.* the indication of “non-negotiable” in practice). The footnote in the supplementary note of the Report refers to an opinion that if a straight bill of lading does not have such an indication thus can be endorsed, its nature will be regarded to fall within the type (1).

x It is understood that this refers to a bearer bill of lading in which a consignee is stated as bearer or remains in blank and which is thereby transferrable without endorsement. If an order bill of lading is endorsed in blank, subsequent holder of a bill can transfer the bill without any further endorsement and thus operates as if a bearer bill. But what is mentioned here is not such a bill but a bill that can be transferrable without endorsement from the very beginning from the shipper or initial holder.

xi It is submitted that these options are about which types of electronic bills of lading records shall be expressly recognized in the legislation and it does not mean a service provider for electronic bills of lading

records shall actually be prepared to offer readiness for the issuance of all types respectively mentioned therein. The supplementary explanatory notes also refer to a skeptical opinion expressed in the Study Group about making a clear choice from one of these options in the legislation.

^{xii} This simply reflects the current legal position in the Commercial Code that a paper bill of lading shall be issued to a shipper or charterer by a carrier or master.

^{xiii} This “deliver/delivery” is a literal translation of the original Japanese “*kofu*”. The reader may think “issue” would be better. But this word shall be used for translation of the original Japanese “*hakko*”. This word “*kofu*” (as translated to “deliver/delivery”) of a bill of lading is used in the context of both initial issue by a carrier to a shipper and subsequent transfer of possession from him/her/it (*i.e.* the initial holder) to the subsequent holder. This terminology may well be confusing but apparently it is reflecting the terminology of the current Commercial Code in respect of paper bills of lading.

^{xiv} In this Report, a “bill of lading” without any qualification simply means a traditional paper bill of lading. For the purpose of more illustrative translation, it may be better to put the word “paper” when one wants to indicate it. Similarly, it may be better to put the phrase like “as the case may be” in the last for better understanding. But the original Japanese does not contain the said word or phrase.

^{xv} This provides for the method corresponding to the so-called “onboard notation” in case of a paper bill. Matters mentioned here (listed in items (vii) and (viii) of Article 758, paragraph 1) are the name of a ship and the port/date of shipping (loading) on board the ship.

^{xvi} The reference to “magnetic” here and to “magnetic disk” in the following Note 1 may sound strange. But it is perhaps only reflecting the phrase commonly used in prevailing Japanese statutes and it is not consciously intended that “magnetic” system (in particular the system using the physical magnetic disks (like floppy disks) shall also be recognized in the context of digitalized bill of lading.

^{xvii} What is stipulated here obviously reads a certain type of a “record” by definition. But if we read the following suggested Ordinance in [Note 1], we may be confused as it is unclear whether the Ordinance is still dealing with the “record” as such or rather a “system” or “medium” that may record or preserve the record. The Ordinance (except item (i) thereof) may rather read to intend to deal with the latter, whilst the item (i) may read to still mean the former. English translation here is prepared on this basis. In fact, the original Japanese text is quite vague. This is due to the use of a convenient-but-vague Japanese word “*mono*”, which generally means “one”, “thing”, or “object”, or indicates “what” or “that” as relative pronouns. The context may well require us to understand it as the system or medium rather than the record therein, or to the contrary. The translator presumes the draftsmen may possibly want to say we are dealing with the record in the Ordinance too, which is recorded in a certain type of system or medium and thus inevitably carries certain characteristics of the system or medium but not dealing with the system or medium as such. But frankly it seems difficult to so translate.

^{xviii} Apart from the problem discussed in the preceding note, there may be another problem in the text of Note 1. The preceding main text requires an electronic bill to be issued “in an electronic, magnetic or any other form not perceivable by human senses, to be used for information processing by computers”. In addition, the Ordinance further requires it (or the system or medium in which it is recorded) to be “in a file prepared in a magnetic disk or any other object capable of securely recording certain information or by similar equivalent means”. It is difficult to conclude whether these double requirements at different levels (in the Act and the Ordinance) are reasonable and consistent.

^{xix} This sounds redundant. This in reality simply means the measure taken corresponding to the so-called “onboard notation” in case of a paper bill, as referred to in 3. 2 (2) herein shall be made with electronic signature by the carrier.

^{xx} This again sounds redundant. It just means the measure taken corresponding to an endorsement by the current holder in case of a paper bill shall be made with electronic signature by such holder.

^{xxi} It is noted that “the right *under* a bill of lading” is referred to here, whilst “the right *concerning* an electronic bill of lading record” is referred to in the next paragraph. This reflects different words in the original Japanese but it remains to be seen if this different use of words is intended to have substantively different meanings, apart from for linguistic reasons.

^{xxii} This limitation in bracket implies that the law distinguishes two notions: (i) a simple bearer or holder of a bill and (ii) a person who is lawfully entitled to the *substantive* right under the bill, *i.e.* the substantive right, *inter alia*, to claim the goods against the carrier. Here the simple holder cannot demand conversion unless he/she/it also lawfully has the right.

^{xxiii} Article 520-4 of the Civil Code provides that a holder of an order bill (of lading) is *presumed* to be

lawfully entitled to the right under the bill if he/she/it *proves* his/her/its right by uninterrupted series of endorsements. Put it another way, a holder of a bill of lading with uninterrupted series of endorsements addressed to him/her/it (including blank endorsements) is *presumed* to be lawfully entitled to the *substantive* right under the bill, *i.e.* the substantive right, *inter alia*, to claim the goods against the carrier. In case of an electronic bill of lading record, corresponding provisions are found in 7. 2. (7) or 8. 2. (7). Now the background of this provision is to rectify the situation that the holder of an electronic bill after conversion from a paper bill in the course of circulation cannot simply rely on those corresponding provisions because there might have been transfers of the right by way of endorsement from the initial issue of a paper bill to the time of conversion, *i.e.* during the time when a paper bill was circulated and such preceding endorsements (with necessary paper signatures) cannot be found in the converted electronic bill as such. Readers may also notice that “the persons to whom the said electronic bill of lading record was issued” are expressed in plural form but feel it strange. In fact, there is no distinction between singular and plural in Japanese language. The translator adopts the plural as the context therein refers to “successive transfers of control”. It is humbly suggested that the correct phrase may be “the persons to whom the control of the said electronic bill of lading record was transferred” or similar. In any event, whether this provision perfectly fits with such purpose remains to be seen.

^{xxiv} Similarly, the background of this provision is to rectify the situation that the holder of a paper bill of lading after conversion from an electronic bill in the course of circulation cannot simply rely on Article 520-4 of the Civil Code because there might have been transfers of the right by way of transfers of the control from the initial issue of an electronic bill to the time of conversion, *i.e.* during the time when an electronic bill was circulated and such preceding transfers of control cannot be reproduced in the converted paper bill as such. Whether this provision perfectly fits with such purpose remains to be seen.

^{xxv} Generally speaking, Chapters 7. and 8. are intended to set out logically amended provisions for the purpose of applying provisions for a paper bill in the Commercial and Civil Codes to an electronic bill. It is submitted, however, that there must be more detailed review about the draft presented herein.

^{xxvi} This also implies that the law distinguishes two notions: (i) a simple bearer or holder of a bill and (ii) a person who is lawfully entitled to the *substantive* right under the bill, *i.e.* the substantive right, *inter alia*, to claim the goods against the carrier. Here the simple holder cannot demand conversion unless he/she/it also lawfully has the right, and that it is accordingly drafted on the basis that the control of an electronic bill is only corresponding to possession of a paper bill, without regard to whether the relevant person (the person who has control thereof) is lawfully entitled to the right concerning the electronic bill.

^{xxvii} These three translated words “deliver”, “pass”, and “return” reflect three original Japanese words, “*kofu*”, “*hikiwatashi*” and “*henkan*”.

^{xxviii} This intends to describe an act corresponding to the surrender of a paper bill in case of an electronic bill. But exactly what is intended or required by saying “presentation of something that indicates ...” appears vague and not readily understandable. In addition, the action to be taken in relation to an electronic bill corresponding to the surrender of a paper bill is in fact described in a different expression elsewhere, *i.e.* “transfer of the control of the said electronic bill of lading record [or deletion or any other measures to prevent use and transfer of the control of the said electronic bill of lading]” in 3. 1. (2), 7. 2. (5), and 8. 2. (5). The only difference is that the word “*teiji*” (as translated to “surrender”) of a bill is referred to here in the original Japanese whilst the mere phrase “in exchange of the bill of lading” is used in other places without the word of “*teiji*”. But it appear to describe the same situation.

^{xxix} “Non-endorsable type” means an electronic bill of lading record corresponding to a bill of lading in (3) other-payee-specified type (non-endorsable type) [*sonota no kimei shoken gata (uragaki kinshi gata)*], *i.e.* the type corresponding to a straight bill of lading with indication of “non-negotiable”. As mentioned earlier, under Japanese law, even a straight bill of lading can be transferred from a consignee by his/her/its endorsements, unless there is express indication of prohibition of assignment (*e.g.* the indication of “non-negotiable” in practice).

^{xxx} This is a more detailed definition of the “non-endorsable type”. See above Note. For that reason, it is necessary to provide here to require to record (indicate) not only nomination of the consignee but also prohibition of assignment in an electronic bill. If the latter is missing, its legal character is equal to an order bill under Japanese law, and thus to (1) a payable-to-order type [*sashizu shoken gata*], except that initial endorsement begins from the consignee rather than the shipper.

^{xxxi} This deals with the transfer of the right concerning an electronic bill of lading record corresponding to a bill of lading in (2) a payee-specified-but-payable-to-bearer type [*kimeishiki shojininbarai shoken*]

gata], *i.e.* a bill of lading looking like a straight bill but with the indication that it is also a bearer bill.

^{xxxii} This deals with the transfer of the right concerning an electronic bill of lading record corresponding to a bill of lading in (4) a payee-non-specified type [*mukimeishi shoken gata*], *i.e.* a bearer bill of lading.

^{xxxiii} This deals with the transfer of the right concerning an electronic bill of lading record corresponding to a bill of lading in (1) a payable-to-order type [*sashizushi shoken gata*], *i.e.* an order bill of lading *plus* a straight bill of lading without indication of “non-negotiable” and thus endorsable from the consignee under Japanese law.

^{xxxiv} The original words for “names” are “*shimei*” or “*meisho*”. The name of a natural person is called the former and that of a corporation or other legal person is called the latter.

^{xxxv} Under Japanese law, the right is generally divided into (i) “*bukken*” or the real right (or property rights) as provided for in Part II (Article 175 *et seq.*) of the Civil Code and (ii) “*saiken*” or the claim as provided for in Part III (Article 399 *et seq.*) of the Civil Code. The “claim in general” here deals with the claim in this context. The claim is in principle transferable by the agreement between the parties but its effect will not be completed against the third party in principle unless such transfer is notified from the assignor to the debtor or is acknowledged by the debtor and such notice or acknowledgement is dated with certified dating stamp, according to Article 467 thereof. What is said here is that the right under the bill cannot be assigned by simple transfer (handover) of the bill with or without endorsement but yet technically assignable in so far as the assignor implement necessary steps provided under the Civil Code. Having said that it is to be noted there is another rule in Article 764 of the Commercial Code, which provides that only a bill of lading holder can claim delivery of the goods. Accordingly, even if a person is assigned the right under/concerning a bill in accordance with Article 467 of the Civil Code, such assignee cannot exercise the right to claim delivery in reality, until and unless he/she/it also obtains the bill.

Another point to be noted here is that the suggested draft does not expressly deal with the initial transfer of the control of a straight bill of lading record (with or without indication of prohibition of the assignment by “non-negotiable” or otherwise) and/or the initial transfer of right concerning the bill from the shipper A indicated therein to the consignee B indicated therein. It is submitted that the draft would recognize (not deny) transfer of the control from A to B, since A is surely recognized as a person who initially has the control; but perhaps it does not consider that the right concerning the bill is transferred from A to B by corresponding transfer of control but considers that the initial right concerning the bill is vested with B from the very beginning, as we cannot find any provisions related to the transfer of right from A to B. A may *de facto* control the cargo by retaining (by not passing) the bill to B but it does not mean more. This analysis has been indicated in a certain judicial precedent of a lower court but not clearly in the current legislation.

^{xxxvi} Option A is excluded because this option recognizes only “non-endorsable type and another, without providing for payable-to-order type”. It follows that this option does not cover the bill transferrable by endorsement thus does not deal with the notion of (and does not have any provisions related to) endorsement. Thus, no need to provide for blank endorsement. Option A does not perhaps exclude the possibility that the relevant contractual rule arrangements among the parties have additional rules for endorsement on a voluntary basis but it means the notion of endorsement is expelled at least from the law (statutes) only in case of an electronic bill.

^{xxxvii} Literal translation of this part is “the Commercial Code, *etc.*” Here it is exceptionally translated to reflect what is intended by “*etc.*” as it obviously stands for the Civil Code.

^{xxxviii} As is the case elsewhere, literal translation of this part is “electromagnetic”.

^{xxxix} How to rewrite Articles 761 and 763 of the Commercial Code will be the key provisions in the context of current legislation deliberation. Article 761 provides, if a bill of lading is issued in respect of certain goods, the disposal of the goods (including the ownership or other property right thereof) may be made only through the disposal (*i.e.* transfer of possession with or without endorsement) of the relevant bill of lading; and Article 763 provides, if (the possession of) a bill of lading is transferred from a person to another person entitled to receive the goods (under the relevant contract with the former or otherwise), such transfer of the possession of a bill shall have the same effect of delivery (*i.e.* the transfer of possession) of the goods themselves. It effectively means, if the latter obtains the possession of a bill, he/she/it can assert his/her/its rights in the goods vis-à-vis the creditors or administrator of the former trying to attach or demand the goods. These effects are understood not achieved by contractual rule arrangements among the parties to the electronic bill of lading systems but only by the law.

^{xl} This is to provide for necessary logical amendments and exclusions applying the relevant provisions in

the Commercial Code (Book II, Chapter 8, Section 2 dealing with carriage of goods in general) to a carriage of goods by sea covered by a bill of lading.

^{xli} As mentioned earlier, the law distinguishes two notions: (i) a simple bearer or holder of a bill and (ii) a person who is lawfully entitled to the *substantive* right under the bill, *i.e.* the substantive right, *inter alia*, to claim the goods against the carrier. In addition, the law says, in case of type (1) payable-to-order type bill [*sashizu shoken gata*](an order bill), if the person in (i) (holder of a bill) *proves* his right by way of uninterrupted series of endorsements, then such person is *presumed* to be the person in (ii) (lawful holder of a bill who is entitled to claim delivery under the bill); In contrast, in cases of type (2) payee-specified-but-payable-to-bearer type bill [*kimeishiki shojininbarai shoken gata*] and type (4) payee-non-specified type bill [*mukimei shoken gata*](a bearer bill), if the person in (i) *proves* his right by his/her/its very possession of the bill (without uninterrupted endorsements as they are not required), then such person is automatically *presumed* to be the person in (ii). Here the draft intends to reproduce the same idea in each type. The “uninterrupted series of endorsements” is replaced with the notion of “successive receipts of transfers of the control there of by records” in the bill. It remains to be seen whether these wordings are perfectly fit with the intention.

^{xlii} Articles 520-5 and 520-15 of the Civil Code are technical but theoretically important provisions. They provide for the so-called “acquisition of rights by a *bona fide* purchaser” (“*zen-i shutoku*”) applicable to a paper bill of lading under Japanese law, which may not be allowed to a bill of lading under English law. It in essence provides, if a holder of a bill has acquired the possession of the bill from its previous holder relying upon the uninterrupted series of endorsements until the previous holder (in case of (3) payable-to-order type bill [*sashizu shoken gata*] (an order bill)), or relying upon the possession of the previous holder (in case of (2) payee-specified-but-payable-to-bearer type bill [*kimeishiki shojininbarai shoken gata*] and type (4) payee-non-specified type bill [*mukimei shoken gata*] (a bearer bill)), then such holder would also acquire the right under the bill and thus not be obliged to return it to the further previous originally lawful holder who had lost possession, in so far as he/she/it has acquired it in good faith, *i.e.* without knowledge or gross negligence. Here the draft intends to reproduce the same idea in each type. It remains to be seen whether these wordings are perfectly fit with the intention. One thing we can point out here is that if Option A is adopted for an electronic bill, the notion of an order bill will be lost, the concept of endorsement will be lost, and accordingly the notion of reliance upon the concept corresponding to uninterrupted series of endorsements will also be lost.

^{xliii} This is to introduce the rules under the relevant Article of the Civil Code with logical amendment only, but a straight bill of lading is excluded therefrom. In essence, it means that the carrier shall be responsible for delay in delivery of the goods unless and until an electronic bill of lading record is presented (or surrendered) in principle but it shall be responsible without it in case of a straight electronic bill of lading. Whether this is correct remains to be seen.

^{xliv} Many parts of this Chapter 8. are equal or corresponding to those in Chapter 7. Therefore, no footnote is given to the corresponding words, phrases and/or provisions.

^{xlv} The explanatory notes say the use of “transfer” instead of “assignment” (of “the claim related to delivery of the goods”) is intentional because the electronic bill under contractual rule arrangements may adopt the novation of contract (instead of assignment of contractual right) and this covers such arrangements too.

^{xlvi} As you will see, the phrase “the claim related to delivery of the goods” is consistently used Chapter 8 instead of “the right concerning an/the electronic bill of lading record” in Chapter 7, except descriptions intended to indicate a straight bill of lading with indication of non-negotiable, which is discussed in the original footnote 3.

^{xlvii} Whilst the relevant provisions in Chapter 7. uses a positive form of “shall become effective upon”, the draft here used a negative form of “shall not become effective until and unless”. The reason for this difference is unclear.

^{xlviii} Why this part is different from the counterpart in Chapter 7. may be of interest. It is understood that in so far as we deal with “the claim related to delivery of goods” (rather than “the right concerning an electronic bill of lading record”), it is found needless to say that such “claim” can be assigned or pledged only in compliance with the formalities and effects concerning the assignment or pledge of the claim in general as mentioned in Chapter 7.

^{xlix} It is unclear which of assignment and pledge is in fact to be presumed. No standard to distinguish these two is not apparently considered. The same question arises in subsequent provisions too.

^l The corresponding counterpart provision is not found in Chapter 7. It is presumed that it is not necessary therein since the effects dealt with herein are covered by the general provision that an electronic bill has the same effects as a paper bill in 7.1(1).

^{li} This phrase means an enforcement procedure of a judgment debt against a certain asset, here the rights concerning an electronic bill of lading record.

^{lii} This is drafted having regard to the current method of judicial enforcement against a paper document of title, including a paper bill of lading: Such paper is regarded as a “movable” in that context and the physical possession thereof can be legally forfeited by the court enforcement officer, who is authorized to go on to judicially auction it with adding necessary notes thereon. The debtor, including the carrier, is expected to discharge its obligation to the holder who get it through such judicial auction. In case of an electronic bill, however, the court enforcement officer cannot forfeit the physical possession as a matter of reality. What is expected here is that the creditor first demands the carrier to convert an electronic bill to a paper bill by surrogating the right of the holder, and then the above process will be carried out. Thus, this option cannot be taken unless the holder of an electronic bill can demand conversion to a paper bill.

^{liii} The phrase here appears somewhat inconsistent with the requirement for conversion from an electronic bill to a paper bill as set out in Option Y in Chapter 5.2(1).

^{liv} This refers to the case of the loss of control of an electronic bill of lading record due to system failures or malfunctions (by hacking or for any other reasons), corresponding to the loss of possession of a paper bill.

^{lv} In contrast, this refers to the case of the loss of an electronic bill of lading record itself due to total system breakdown or malfunctions (by hacking or for any other reasons), corresponding to loss (*e.g.* burnt down) of a paper bill itself.

The translator would like to acknowledge valuable helps received from his secretary Ms Anna Suzuki for this translation and express appreciation for her great contributions. All remaining mistakes, errors and omissions are solely attributable to the translator.