

(Translation)

Supplemental Explanatory Notes to the Interim Draft Concerning Revisions of Provisions Concerning Bills of Lading, etc.
(Appendix) Comparison Table with MLETR

【Translator's Notes】

1. This is a tentative English translation by the Translator (Akiyoshi Ikeyama) of the *Appendix to the Supplemental Explanatory Notes to the Interim Draft Concerning the Revisions of Provisions Concerning Bill of Lading, etc.* (“*Comparison Table with MLETR*”), released on 31 March 2023 by the *Office of Directors for Civil Affairs Bureau, Ministry of Justice* together with the said *Interim Draft* by the *Working Group for Commercial Law (Bill of Lading etc.) of Legislative Council*. The original in Japanese language is accessible at <https://public-comment.e-gov.go.jp/servlet/Public> accessed 3 April 2023.
2. Readers are requested to also refer to the Translator's Notes to a tentative English translation by the Translator of *the Interim Draft Concerning the Revisions of Provisions Concerning Bill of Lading, etc.*
3. **Although the Translator is a member of the said Working Group, this translation is purely his personal work and not at all related to the activities of the Working Group (as well as the Legislative Council or any other public institutions, or the firm or any other organizations or bodies he has relation with or belongs to). In addition, this translation is for readers' general reference purpose only and the Translator shall not be liable for any mistakes, errors or omissions remaining in this translation, or for readers' acts or omissions relying upon it.**

The Translator would like to appreciate valuable helps received from Ms. Anna Suzuki for this translation and express gratitude for her great contributions. All remaining mistakes, errors and omissions are solely attributable to the Translator.

Supplemental Explanatory Notes to the Interim Draft Concerning Revisions of Provisions Concerning Bills of Lading, etc.
Appendix: Comparison Table with MLETR

	Original MLETR texts	Provisional translation	Treatments in the Interim Draft
Article 1. Scope of application	<p>1. This Law applies to electronic transferable records.</p> <p>2. Other than as provided for in this Law, nothing in this Law affects the application to an electronic transferable record of any rule of law governing a transferable document or instrument including any rule of law applicable to consumer protection.</p> <p>3. This Law does not apply to securities, such as Shares and bonds, and other investment instruments, and to [...].</p>	<i>Japanese translation omitted</i>	<ul style="list-style-type: none"> - With respect to paragraphs 1 and 3 of this Article, because the amendment of law this time is intended to amend the Commercial Code, etc. and the scope of its application is obvious, the Draft contains no express provision corresponding thereto. - With respect to paragraph 2, because it is obvious that the already existing substantive law will not be affected, the Draft contains no express provision corresponding thereto.
Article 2. Definitions	<p>For the purposes of this Law:</p> <p>“<i>Electronic record</i>” means 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;</p> <p>“<i>Electronic transferable record</i>” is an electronic record that complies with the requirements of article 10;</p> <p>“<i>Transferable document or instrument</i>” means 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</p>	<i>Japanese translation omitted</i>	<ul style="list-style-type: none"> - The Draft III. 1. provides for an equivalent provision. - With respect to “<i>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</i>”, because it is obvious that the information not required to be recorded under the law, such as an electronic endorsement or the fact that the goods have been shipped on board, may be recorded, in which cases they will constitute a part of an electronic bill of lading record, the Draft contains no express provision corresponding thereto. - With respect to the definitions of “<i>transferable document or instrument</i>”, because it is obvious that a bill of lading, etc. in an electronic form falls under the category of “<i>transferable document or instrument</i>”, the Draft contains

	instrument through the transfer of that document or instrument.		no express provision corresponding thereto.
Article 3. Interpretation	<ol style="list-style-type: none"> 1. This Law is derived from a model law of international origin. In the interpretation of this Law, regard is to be had to the international origin and to the need to promote uniformity in its application. 2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based. 	<i>Japanese translation omitted</i>	<ul style="list-style-type: none"> - Because the amendment of law this time is an amendment of the Commercial Code, it is considered difficult to provide for such an interpretation provision. That said, since the Draft is based on the MLETR as international harmonization is found important, it will in any event be interpreted in accordance with the purport of this Article even without the provision of an express provision corresponding thereto.
Article 4. Party autonomy and privity of contract	<ol style="list-style-type: none"> 1. The parties may derogate from or vary by agreement the following provisions of this Law: [...]. 2. Such an agreement does not affect the rights of any person that is not a party to that agreement. 	<i>Japanese translation omitted</i>	<ul style="list-style-type: none"> - With respect to paragraph 1 of this Article, because the amendment of law this time is an amendment of the Commercial Code, it is obvious that the principle of party autonomy will apply. It is also appropriate to leave the distinction between mandatory and default provisions to interpretation. The Draft thus contains no express provision corresponding thereto. - With respect to paragraph 2 of this Article, because it is obvious that an agreement does not affect the rights of a person who is not a party to the said agreement, the Draft contains no express provision corresponding thereto.
Article 5. Information requirements	Nothing in this Law affects the application of any rule of law that may require a person to disclose its identity, place of business or other information, or relieves a person from the legal consequences of making inaccurate, incomplete or false statements in that regard.	<i>Japanese translation omitted</i>	<ul style="list-style-type: none"> - Because it is obvious that the Draft does not restrict demands for information among others, it contains no express provision corresponding thereto.
Article 6.	Nothing in this Law precludes the inclusion of information in an electronic transferable record in addition to that contained	<i>Japanese translation</i>	<ul style="list-style-type: none"> - Because it is obvious that information may be added, the

Additional information in electronic transferable records	in a transferable document or instrument.	<i>omitted</i>	Draft contains no express provision corresponding thereto.
Article 7. Legal recognition of an electronic transferable record	<ol style="list-style-type: none"> 1. An electronic transferable record shall not be denied legal effect, validity or enforceability on the sole ground that it is in electronic form. 2. Nothing in this Law requires a person to use an electronic transferable record without that person's consent. 3. The consent of a person to use an electronic transferable record may be inferred from the person's conduct. 	<i>Japanese translation omitted</i>	<ul style="list-style-type: none"> - With respect to paragraph 1 of this Article, the Draft VI. provides that an electronic bill of lading record shall have the same effect as a bill of lading, and it has provisions with the same contents as those applicable to a bill of lading as a whole. - With respect to paragraph 2 of this Article, the Draft II. 1 and IV. 1. provide that the issue of an electronic bill of lading record requires an agreement of both a carrier and a shipper and the parties shall not be forced to use it. - With respect to paragraph 3 of this Article, the Draft does not require a specific method of acceptance necessary for the issue of an electronic bill of lading record, so that it may be inferred from the person's conduct (see Supplemental Explanatory Notes (2) to the Draft II. 1.).
Article 8. Writing	Where the law requires that information should be in writing, that requirement is met with respect to an electronic transferable record if the information contained therein is accessible so as to be usable for subsequent reference.	<i>Japanese translation omitted</i>	<ul style="list-style-type: none"> - The Draft III. 1. provides for the definition of an electronic bill of lading record. The information in an electronic bill of lading record becomes accessible to be usable for subsequent reference by operation of the said provision. We therefore believe this Article is stipulated in the Draft III. 1.
Article 9. Signature	Where the law requires or permits a signature of a person, that requirement is met by an electronic transferable record if a reliable method is used to identify that person and to indicate that person's intention in respect of the information contained	<i>Japanese translation omitted</i>	<ul style="list-style-type: none"> - The Draft requires an “electronic signature” for the issue of an electronic bill of lading record (Draft III. 3. And V). - With respect to the requirements of an “electronic signature”, the Draft follows Article 2 of the Act on

	in the electronic transferable record.		Electronic Signatures and Certification Business.
<p>Article 10. Transferable documents or instruments</p>	<p>1. Where the law requires a transferable document or instrument, that requirement is met by an electronic record if:</p> <p>(a) The electronic record contains the information that would be required to be contained in a transferable document or instrument; and</p> <p>(b) A reliable method is used:</p> <p>(i) To identify that electronic record as the electronic transferable record;</p> <p>(ii) To render that electronic record capable of being subject to control from its creation until it ceases to have any effect or validity; and</p> <p>(iii) To retain the integrity of that electronic record.</p> <p>2. The criterion for assessing integrity shall be whether information contained in the electronic transferable record, including any authorized change that arises from its creation until it ceases to have any effect or validity, has remained complete and unaltered apart from any change which arises in the normal course of communication, storage and display</p>	<p><i>Japanese translation omitted</i></p>	<ul style="list-style-type: none"> - With respect to paragraph 1. (a) of this Article, the Draft provides that the information to be recorded in an electronic bill of lading record shall be the same as the one to be stated in a bill of lading (Draft II. 2.). - With respect to paragraphs 1. (b) and (2) of this Article, the Draft provides them as technological requirements of an electronic bill of lading record (Draft III-1).
<p>Article 11. Control</p>	<p>1. Where the law requires or permits the possession of a transferable document or instrument, that requirement is met with respect to an electronic transferable record if a reliable method is used:</p> <p>(a) To establish exclusive control of that electronic</p>	<p><i>Japanese translation omitted</i></p>	<ul style="list-style-type: none"> - With respect to paragraph 1. (a) of this Article, the Draft establishes the concept of “control” (Draft II. 3.). With respect to (b), the Draft provides it as a technological requirement of an electronic bill of lading record (Draft III. 1.).

	<p>transferable record by a person; and</p> <p>(b) To identify that person as the person in control.</p> <p>2. Where the law requires or permits transfer of possession of a transferable document or instrument, that requirement is met with respect to an electronic transferable record through the transfer of control over the electronic transferable record.</p>		<ul style="list-style-type: none"> - With respect to paragraph 2 of this Article, the Draft provides that the control of an electronic bill of lading record shall be treated in the same manner as the possession of a bill of lading (see Draft V. and VI.).
<p>Article 12.</p> <p>General reliability standard</p>	<p>For the purposes of articles 9, 10, 11, 13, 16, 17 and 18, the method referred to shall be:</p> <p>(a) As reliable as appropriate for the fulfilment of the function for which the method is being used, in the light of all relevant circumstances, which may include:</p> <ul style="list-style-type: none"> (i) Any operational rules relevant to the assessment of reliability; (ii) The assurance of data integrity; (iii) The ability to prevent unauthorized access to and use of the system; (iv) The security of hardware and software; (v) The regularity and extent of audit by an independent body; (vi) The existence of a declaration by a supervisory body, an accreditation body or a voluntary scheme regarding the reliability of the method; (vii) Any applicable industry standard; or 	<p><i>Japanese translation omitted</i></p>	<ul style="list-style-type: none"> - The Draft proposes a couple of options with respect to general reliability. Even supposing any one of them shall be adopted, they all assume the general reliability shall be required (see Draft III. 2.).

	(b) Proven in fact to have fulfilled the function by itself or together with further evidence.		
Article 13. Indication of time and place in electronic transferable records	Where the law requires or permits the indication of time or place with respect to a transferable document or instrument, that requirement is met if a reliable method is used to indicate that time or place with respect to an electronic transferable record.	<i>Japanese translation omitted</i>	<ul style="list-style-type: none"> - With respect to the information to be recorded in an electronic bill of lading, the Draft provides that they shall be equivalent to the one to be stated in a bill of lading. In particular, “the port of loading and the date of loading” and “the place of preparation and the date of preparation” being the information to be stated in a bill of lading shall also be included in the information to be recorded in an electronic bill of lading record (see Draft II. 2).
Article 14. Place of business	<p>1. A location is not a place of business merely because that is:</p> <p>(a) Where equipment and technology supporting an information system used by a party in connection with electronic transferable records are located; or</p> <p>(b) Where the information system may be accessed by other parties.</p> <p>2. The sole fact that a party makes use of an electronic address or other element of an information system connected to a specific country does not create a presumption that its place of business is located in that country.</p>	<i>Japanese translation omitted</i>	<ul style="list-style-type: none"> - Because the “place of business” shall be determined by the interpretation and application of relevant laws and regulations and it is obvious that the amendment of law in accordance with the Draft if realized will also have the same consequences as this Article, the Draft contains no express provision corresponding thereto.
Article 15. Endorsement	Where the law requires or permits the endorsement in any form of a transferable document or instrument, that requirement is met with respect to an electronic transferable record if the information required for the endorsement is included in the electronic transferable record and that information is compliant with the requirements set forth in articles 8 and 9.	<i>Japanese translation omitted</i>	<ul style="list-style-type: none"> - The Draft has provisions for an “electronic endorsement” equivalent to an endorsement, provides for the information to be recorded equivalent to the information to be stated in an endorsement, and requires an “electronic signature” thereon (Draft V).

<p>Article 16. Amendment</p>	<p>Where the law requires or permits the amendment of a transferable document or instrument, that requirement is met with respect to an electronic transferable record if a reliable method is used for amendment of information in the electronic transferable record so that the amended information is identified as such.</p>	<p><i>Japanese translation omitted</i></p>	<ul style="list-style-type: none"> - There is no provision for correction with respect to a bill of lading and thus the Draft contains no provision for correction with respect to an electronic bill of lading record. - The Draft requires technological requirements of an electronic bill of lading record shall include that “<i>the information recorded in an electronic bill of lading record can be preserved, except for changes arising in the ordinary course of communication, preservation and display</i>” (Draft III. 1.) It leads to the same consequence as this Article.
<p>Article 17. Replacement of a transferable document or instrument with an electronic transferable record</p>	<ol style="list-style-type: none"> 1. An electronic transferable record may replace a transferable document or instrument if a reliable method for the change of medium is used. 2. For the change of medium to take effect, a statement indicating a change of medium shall be inserted in the electronic transferable record. 3. Upon issuance of the electronic transferable record in accordance with paragraphs 1 and 2, the transferable document or instrument shall be made inoperative and ceases to have any effect or validity. 4. A change of medium in accordance with paragraphs 1 and 2 shall not affect the rights and obligation of the parties. 	<p><i>Japanese translation omitted</i></p>	<ul style="list-style-type: none"> - The Draft contains provisions for the conversion of a bill of lading into an electronic bill of lading record (Draft IV. 1.). - With respect to paragraph 3 of this Article, because it is considered obvious in the Draft that the medium before conversion will cease to have any effect or validity, the Draft contains no express provision corresponding thereto. - With respect to paragraph 4 of this Article, it is stipulated in the Draft by providing that the same information as before conversion shall be entered or recorded in the medium after conversion.
<p>Article 18. Replacement of an electronic transferable record with a transferable</p>	<ol style="list-style-type: none"> 1. A transferable document or instrument may replace an electronic transferable record if a reliable method for the change of medium is used. 2. For the change of medium to take effect, a statement indicating a change of medium shall be inserted in the 	<p><i>Japanese translation omitted</i></p>	<ul style="list-style-type: none"> - The Draft contains provisions for the conversion of an electronic bill of lading record into a bill of lading (Draft IV. 2.). - With respect to paragraph 3 of this Article, because it is considered obvious in the Draft that the medium before conversion will cease to have any effect or validity, the

document or instrument	<p>transferable document or instrument.</p> <p>3. Upon issuance of the transferable document or instrument in accordance with paragraphs 1 and 2, the electronic transferable record shall be made inoperative and ceases to have any effect or validity.</p> <p>4. A change of medium in accordance with paragraphs 1 and 2 shall not affect the rights and obligations of the parties.</p>		<p>Draft contains no express provision corresponding thereto.</p> <ul style="list-style-type: none"> - With respect to paragraph 4 of this Article, it is stipulated in the Draft by providing that the same information as before conversion shall be entered or recorded in the medium after conversion.
Article 19. Non-discrimination of foreign electronic transferable records	<p>1. An electronic transferable record shall not be denied legal effect, validity or enforceability on the sole ground that it was issued or used abroad.</p> <p>2. Nothing in this Law affects the application to electronic transferable records of rules of private international law governing a transferable document or instrument.</p>	<i>Japanese translation omitted</i>	<ul style="list-style-type: none"> - With respect to paragraph 1 of this Article, because the Draft assumes that an electronic bill of lading record may well be issued or used in a foreign country and it is obvious that the legal effect and others thereof shall not be denied by such fact, the Draft contains no express provision corresponding thereto. - With respect to paragraph 2 of this Article, Act on General Rules for Application of Laws does not contain provisions directly dealing with a bill of lading and leaves issues thereof to the interpretation. The Draft also does not contain provisions directly dealing with rules of international private law concerning an electronic bill of lading record and leaves issues thereof to the interpretation as is the case of a bill of lading.