

**(Translation)**

**Interim Draft Concerning the Revisions  
of Provisions Concerning Bill of Lading, etc.**

## **【Translator’s Notes】**

1. This is a tentative English translation by the Translator (Akiyoshi Ikeyama) of *the Interim Draft Concerning the Revisions of Provisions Concerning Bill of Lading, etc.* released on **31 March 2023** by *the Working Group for Commercial Law (Bill of Lading etc.) of Legislative Council*. The Legislative Council is an organization in the Ministry of Justice of Japanese Government. The original in Japanese language is accessible at <https://public-comment.e-gov.go.jp/servlet/Public> accessed 3 April 2023.
2. *The Office of Directors for Civil Affairs Bureau, Ministry of Justice* has also prepared and made public *the Supplemental Explanatory Notes to the Interim Draft Concerning the Revisions of Provisions Concerning Bill of Lading, etc.* at the same time, which are also available at the above website but the translation thereof is not contained herein, except a tentative English translation of the *Appendix* to the said *Notes* (“*Comparison Table with MLETR*”) by the Translator.
3. Readers are reminded that the *Interim Draft* is exactly of interim nature, now made public by the Ministry of Justice for the “public comments” procedure. Anyone interested in the *Interim Draft* may submit its/their comments to the Office of Directors for Civil Affairs Bureau, Ministry of Justice under the said procedure on or before **12 May 2023**. For further details, see <https://public-comment.e-gov.go.jp/servlet/Public> accessed 3 April 2023 (in Japanese language only).
4. The *Interim Draft* variously refers to the provisions in the Civil Code (Articles 520-2 to 520-20), the Commercial Code (Articles 757 to 770 and others) and International Carriage of Goods by Sea Act of Japan currently in force. English translations of those provisions are available at the “Japanese Law Translation” website administered by the Japanese Government (<https://www.japaneselawtranslation.go.jp> accessed 3 April 2023). But choices of translated words and phrases including singular or plural, articles and prepositions, grammatical structures of sentences and other styles in the translation of the *Interim Draft* herein and those in the translation of those provisions therein do not match each other, since the former has been prepared at the Translator’s sole responsibility to try to reflect the meanings/intentions of the original Japanese language further accurately in his opinion. Following differences are notable examples:

### **This translation**

instrument of value [Wertpapier]  
consigned-to-order bill  
consigned-to-holder bill  
consignee-specified bill  
consignee-non-specified bill

### **Japanese Law Translation**

negotiable instrument of value  
negotiable instrument payable to order  
negotiable instrument payable to holder  
registered negotiable instrument  
bearer instrument

5. “(Note)” herein is a note contained in the *Interim Draft* in original Japanese language.
6. **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.*

## **Interim Draft Concerning the Revisions of Provisions Concerning Bill of Lading, etc.**

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## **Part I. Revisions of Provisions Concerning Bill of Lading**

### **I. Name of a bill of lading in an electronic form**

The legal name of a bill of lading in an electronic form to be realized by this amendment of the law shall be an “electronic bill of lading record”.

### **II. Provisions for situations where an electronic bill of lading record is issued, etc.**

#### **1. Provisions for situations where an electronic bill of lading record is issued**

##### **【Option Ko】**

- ① A carrier or master may, instead of the delivery of a shipped bill of lading or a received bill of lading, with the consent of a shipper or charterer, issue an electronic bill of lading record recording that the goods have been shipped on board (hereinafter referred to as a “shipped electronic bill of lading record”) or an electronic bill of lading record recording that the goods have been received (hereinafter referred to as a “received electronic bill of lading record”) to the shipper or charterer.
- ② In cases where a received electronic bill of lading record has been issued instead of the issue of a received bill of lading, it may not be demanded to deliver a shipped bill of lading unless it is in exchange for the transfer of control or the deletion of the said received electronic bill of lading record or other measures to prevent the use and the transfer of control of the said received electronic bill of lading record.
- ③ If a carrier or master issues an electronic bill of lading record pursuant to paragraph 1, it shall be deemed to have delivered a bill of lading.
- ④ The provisions of the preceding three paragraphs do not apply if a sea waybill has been delivered in respect of the goods.
- ⑤ The provisions of 2.② below shall be made.

##### 2. ② below

If it is demanded to deliver a shipped bill of lading in exchange for the transfer of control or the deletion of a received electronic bill of lading record or other measures to prevent the use and the transfer of control of the said received electronic bill of lading record, the preparation of the shipped bill of lading may be substituted by recording that the goods have been shipped on board in the said received electronic bill of lading record. In these cases, the information listed in Article 758, paragraph 1, items (vii) and (viii) of the Commercial Code shall also be recorded.

##### **【Option Otsu】**

- ① A carrier or master may, instead of the delivery of a shipped bill of lading or a

received bill of lading, with the consent of a shipper or charterer, issue an electronic bill of lading record recording that the goods have been shipped on board (hereinafter referred to as a “shipped electronic bill of lading record”) or an electronic bill of lading record recording that the goods have been received (hereinafter referred to as a “received electronic bill of lading record”) to the shipper or charterer.

- ② In cases where a received electronic bill of lading record has been issued instead of the issue of a received bill of lading, a carrier or master shall, if demanded by a shipper or charterer, issue a shipped electronic bill of lading record without delay after the goods are shipped. In these cases, it may not be demanded to issue a shipped electronic bill of lading record unless it is in exchange for the transfer of control or the deletion of the said received electronic bill of lading record or other measures to prevent the use and the transfer of control of the said received electronic bill of lading record.
- ③ Notwithstanding provisions in Article 757, paragraph 1 of the Commercial Code, in cases where a received electronic bill of lading record has been issued in substitution for the issue of a received bill of lading, a shipper or charterer may not demand to deliver a shipped bill of lading.
- ④ If a carrier or master has issued an electronic bill of lading record pursuant to paragraphs 1 and 2, it shall be deemed to have delivered a bill of lading.
- ⑤ The provisions of the preceding four paragraphs do not apply if a sea waybill has been delivered in respect of the goods.
- ⑥ The following provision shall be made in substitution for the provisions of 2. ② below.

If it is demanded to issue a shipped electronic bill of lading record in exchange for the transfer of control or the deletion of a received electronic bill of lading record or other measures to prevent the use and the transfer of control of the said received electronic bill of lading record, the issue of the shipped electronic bill of lading record may be substituted by recording that the goods have been shipped on board in the said received electronic bill of lading record. In these cases, the information listed in Article 758, paragraph 1, items (vii) and (viii) of the Commercial Code shall also be recorded.

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

- ① The information listed in each item of Article 758, paragraph 1 of the Commercial Code (except for the information listed in item (xi) thereof; and in case of a received electronic bill of lading record, except for the information listed in items

(vii) and (viii) thereof) shall be recorded in an electronic bill of lading record.

- ② If it is demanded to deliver a shipped bill of lading in exchange for the transfer of control or the deletion of a received electronic bill of lading record or other measures to prevent the use and the transfer of control of the said received electronic bill of lading record, the preparation of the shipped bill of lading may be substituted by recording that the goods have been shipped on board in the said received electronic bill of lading record. In these cases, the information listed in Article 758, paragraph 1, items (vii) and (viii) of the Commercial Code shall also be recorded.

3. Establishment of the concept of “control” and definitions of related concepts

(1) Definition of the concept of “control”

The new concept of “control” of an electronic bill of lading record shall be established, which shall be defined in one of the following options:

**【Option Ko】**

The “control of an electronic bill of lading record” shall be defined as the “status that one can [exclusively] (Note 1) use the said electronic bill of lading record”.

**【Option Otsu】**

The contents of “control of an electronic bill of lading record” is not defined under the statute.

(2) Definition of the “issue of an electronic bill of lading record”

The issue of an electronic bill of lading record shall be defined as a “measure to prepare an electronic bill of lading record and cause the control of the said electronic bill of lading record to be [exclusively] (Note 1) vested with a shipper or charterer”. (Note 2)

(3) Definition of the “transfer of control of an electronic bill of lading record”

The transfer of control of an electronic bill of lading record shall be defined as a “measure to transfer the control of an electronic bill of lading record to another person, whereby the person who transferred the control of the said electronic bill of lading record loses the control of the said electronic bill of lading record at the time when the control of the said electronic bill of lading record is [transferred to/exclusively vested with] (Note 1) the said another person”. (Note 2)

(Note 1) If Option Ko in (1) is adopted but the exclusivity of control is not required in its definition or if Option Otsu therein is adopted, it is considered to provide that the control of an electronic bill of lading record shall be exclusive by way of separately providing for the exclusivity in, *inter alia*, the definition of “issue of an electronic bill of lading record” and “transfer of control of an electronic bill of lading record”.

(Note 2) It is assumed that the issue and the transfer of control of an electronic bill of lading record shall satisfy certain technological requirements. The said technological requirements will be treated in III. below.

### **III. Technological requirements for an electronic bill of lading record**

#### **1. Definition of and technological requirements other than reliability requirements for an electronic bill of lading record**

With respect to an electronic bill of lading record, the definition and technological requirements (except for reliability requirements) thereof shall be provided for as follows:

An “electronic bill of lading record” means an electronic/magnetic record (which means a record prepared in an electronic form, a magnetic form or any other form not perceivable by human senses, to be used for information processing by computers) issued pursuant to the provisions of Article ● of the Commercial Code (Note: the provision of II. 1. Above) and falls under all of the following items:

- (i) It shall be identified as the sole record to prove the rights under an electronic bill of lading record;
- (ii) It shall be a record in which the control of an electronic bill of lading record is possible and the only person who has the control thereof can be identified (Note);
- (iii) It shall be a record in which the transfer of control of an electronic bill of lading record provided for in Article ● of the Commercial Code (Note: the provision of II. 3. (3) above) is possible; and
- (iv) It shall be a record in which 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.

(Note) If Option Ko in II. 3. (1) above is adopted, the provision would read “(omitted) the control of an electronic bill of lading record provided for in Article ● of the Commercial Code (omitted)”.

#### **2. Reliability requirements as part of technological requirements**

With respect to reliability requirements as part of technological requirements of an electronic bill of lading record, one of the following options shall be adopted:

##### **【Option Ko】**

No general reliability requirements shall be expressly provided for with respect to an electronic bill of lading record.

##### **【Option Otsu】**



General reliability requirements as part of technological requirements with respect to an electronic bill of lading record shall be expressly provided for as requirements for the validity thereof. (Note)

(Note) For example, the following provisions may be made.

A reliable method shall be used to issue an electronic bill of lading record, to transfer the control of an electronic bill of lading record, to enter an electronic endorsement of an electronic bill of lading record, to delete an electronic bill of lading record or take other measures to prevent the use and the transfer of control of the said electronic bill of lading record provided for in Articles ●, ● and ● (Note: II. 1. ② above, II. 2. ② above, IV. 2. ① at Options Ko and Otsu below, and VI. 2. (6) below, etc.), and to present the information recorded in an electronic bill of lading record provided for in Article ● (Note: VI. 2 (15) below).

#### **【Option Hei】**

General reliability requirements as part of technological requirements with respect to an electronic bill of lading record shall not be provided for as requirements for the validity thereof, but general reliability requirements shall be provided for in the following manner for example:

Anyone who issues an electronic bill of lading record, who enters a record in an electronic bill of lading record, who transfers the control of an electronic bill of lading record, and who conducts other acts concerning an electronic bill of lading record shall [make endeavor to] use a reliable method [having regard to the matters prescribed in Ministry of Justice Order (Note)].

(Note) If Ministry of Justice Order is to be made, it is assumed that the it will prescribe the following contents:

The matters prescribed by Ministry of Justice Order provided for in Article ● of the Commercial Code shall be as follows:

- (i) Existence and contents of all rules with respect to the use of an electronic bill of lading record;
- (ii) Methods to ensure the integrity of information recorded in an electronic bill of lading record;
- (iii) Methods to prevent unauthorized use of and access to an electronic bill of lading record;
- (iv) Security of hardware and software used for an electronic bill of lading record;
- (v) Existence, scope and regularity of audit of systems with respect to an electronic bill of lading record by an agency independent of the provider of the system with respect to an electronic bill of lading record;

- (vi) Existence and contents of the assessment of reliability of an electronic bill of lading record conducted by the supervising organizations or regulatory authorities; and
- (vii) Standard treatments in the industry in relation to an electronic bill of lading record

3. Technological requirements for the issue of an electronic bill of lading record

Subject to the definition of the “issue of an electronic bill of lading record” in II. 3. (2) above, technological requirements for the issue of an electronic bill of lading record shall be provided for as follows:

The “issue of an electronic bill of lading record” means a measure to prepare an electronic bill of lading record and cause the control of the said electronic bill of lading record to be [exclusively] vested with a shipper or charterer in a manner prescribed by Ministry of Justice Order. (Note)

(Note) It is assumed that Ministry of Justice Order will prescribe the following contents; but with respect to an “electronic signature”, it may also be considered not to include it in the requirements or only to provide that a reliable method shall be used for the identifiability of the person who enters an electronic signature and for the indication of intention of the said person:

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

4. Technological requirements for the transfer of control of an electronic bill of lading record

Subject to the definition of the “transfer of control of an electronic bill of lading record”

in II. 3. (3) above, technological requirements for the transfer of control of an electronic bill of lading record shall be provided for as follows:

The “transfer of control of an electronic bill of lading record” means a measure to transfer the control of an electronic bill of lading record to another person in a manner prescribed by Ministry of Justice Order (Note), whereby the person who transferred the control of the said electronic bill of lading record loses the control of the said electronic bill of lading record at the time when the control of the said electronic bill of lading record is [transferred to/exclusively vested with] the said another person.

(Note) It is assumed that Ministry of Justice Order will prescribe the following contents:

The manner prescribed by Ministry of Justice Order as provided for in Article ● of the Commercial Code means the manner using electronic data processing system or any other information and communications technology.

#### **IV. Conversions between an electronic bill of lading record and a bill of lading**

##### **1. Conversion of a bill of lading into an electronic bill of lading record**

- ① In cases where a bill of lading has been delivered, the carrier or master who delivered the said bill of lading may, with the consent of a holder of the said bill of lading (Note 1), issue an electronic bill of lading record in exchange for the said bill of lading (if more than one original of a bill of lading have been delivered, all originals). In these cases, the said electronic bill of lading record shall record certain information (Note 2).
- ② For the purpose of application of the provisions of Article ●, paragraph ● of the Commercial Code (Note: The provision in VI. 2, (10) ① below) in cases where an electronic bill of lading record has been issued pursuant to the provisions of the preceding paragraph, a person who has the control of the said electronic bill of lading record shall be deemed to have proved that the person to whom the said electronic bill of lading record was issued had acquired its rights thereunder through uninterrupted series of electronic endorsements.

(Note 1) Certain limitations may be imposed on a “holder of the said bill of lading” by adding brackets thereafter. The contents of brackets shall be in one of the following options:

**【Option A】** It shall be limited to a person who lawfully has the rights under the said bill of lading.

**【Option B】** In cases where the said bill of lading can be assigned or pledged by an endorsement, it shall be limited to a person who has proved its rights by

uninterrupted series of endorsements (the shipper in cases where no endorsement has been entered).

(Note 2) Certain information shall be in one of the following options:

**【Option A】** It shall be all or a part of the following items ① to ④ (If a part thereof is to be taken, there are more than one ideas, such as ① only, ① and ②, or ① and ④).

- ① The same contents as those stated in the said bill of lading with respect to the information listed in each item of Article 758, paragraph 1 of the Commercial Code (except for the information listed in item (xi) of the said paragraph);
- ② That it is issued in substitution for the said bill of lading;
- ③ The name of a person to whom the said electronic bill of lading record was issued in substitution for the said bill of lading; and
- ④ If the said bill of lading is the consignee-specified type and it is stated therein that an endorsement is prohibited, that an electronic endorsement shall be prohibited

**【Option B】** It shall be simply “the same contents as those stated in the said bill of lading”.

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

The provisions of the conversion of an electronic bill of lading record to a paper bill of lading shall be in one of the following options:

**【Option Ko】**

- ① In cases where an electronic bill of lading record has been issued, the carrier or master who issued the said electronic bill of lading record may, with the consent of a person who has the control of the said electronic bill of lading record (Note 1), deliver one or more originals of an bill of lading in exchange for the transfer of control or the deletion of the said electronic bill of lading record or other measures to prevent the use and the transfer of control of the said electronic bill of lading record. In these cases, the said bill of lading shall state certain information (Note 2).
- ② For the purpose of application of the provision in Article 520-4 of the Civil Code in cases where a bill of lading has been delivered pursuant to the provisions of the preceding paragraph, the holder of the said bill of lading shall be deemed to have proved that the person to whom the said bill of lading was delivered had acquired its rights thereunder by means of uninterrupted series of endorsements.

(Note 1) Certain limitations may be imposed on “a person who has the control of the said

electronic bill of lading record” by adding brackets thereafter. The contents of brackets shall be in one of the following options:

**【Option A】** It shall be limited to a person who lawfully has the rights under the said electronic bill of lading record.

**【Option B】** In cases where a consigned-to-order electronic bill of lading record has been issued, it shall be limited to a person who has proved its rights by uninterrupted series of electronic endorsements (the shipper in cases where no electronic endorsement has been entered).

(Note 2) Certain information shall be in one of the following options:

**【Option A】** It shall be all or a part of the following items ① to ④ (If a part thereof is to be taken, there are more than one ideas, such as ① only, ① and ②, or ① and ④).

- ① The same contents as those recorded in the said electronic bill of lading record with respect to the information listed in each item of Article 758, paragraph 1 of the Commercial Code (except for the information listed in item (xi) of the said paragraph);
- ② That it is issued in substitution for the said electronic bill of lading record;
- ③ The name of a person to whom the said bill of lading was delivered in substitution for the said electronic bill of lading record; and
- ④ If the said electronic bill of lading record is an electronic bill of lading record provided for in Article ●, paragraph ● of the Commercial Code (Note: The provisions in V. ③ below), that an endorsement shall be prohibited

**【Option B】** It shall be simply “the same contents as those recorded in the said electronic bill of lading record”.

**【Option Otsu】**

- ① A person who has the control of an electronic bill of lading record (Note 1) may demand the carrier or master who issued the said electronic bill of lading record to deliver one or more originals of a bill of lading in exchange for the transfer of control or the deletion of the said electronic bill of lading record or other measures to prevent the use and the transfer of control of the said electronic bill of lading record. In these cases, the said bill of lading shall state certain information (Note 2).
- ② For the purpose of application of the provision in Article 520-4 of the Civil Code in cases where a bill of lading has been delivered pursuant to the provisions of the preceding paragraph, the holder of the said bill of lading shall be deemed to

have proved that the persons to whom the said bill of lading was delivered had acquired its rights thereunder by means of uninterrupted series of endorsements.

(Note 1) The same as Note 1 in Option Ko.

(Note 2) The same as Note 2 in Option Ko.

**V. Types of an electronic bill of lading record and methods of transfer thereof, etc.**

- ① Assignment or creation of pledge of the rights under a consigned-to-order electronic bill of lading record shall have effects by the transfer of control of the said electronic bill of lading record with an electronic endorsement (this means, in cases where a person who has the control of an electronic bill of lading record transfers the control of the said electronic bill of lading record to another person, to record the name of the person who transfers the control of the said electronic bill of lading record and the name of a person to whom it is transferred in the said electronic bill of lading record in the manner prescribed by Ministry of Justice Order (Note); the same shall apply hereinafter.)

(Note) It is assumed that Ministry of Justice Order will prescribe the following contents; but with respect to an “electronic signature”, as is the case of the technological requirements for the issue of an electronic bill of lading record as provided for in III. 3., it may also be considered not to include it in the requirements or only to provide that a reliable method shall be used for the identifiability of the person who makes an electronic signature and for the indication of intention of the said person:

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

relation to the said information.

- ② Assignment or creation of pledge of the rights under an electronic bill of lading record that does not fall under the electronic bill of lading record provided for in the preceding paragraph (except for the consignee-specified type in which it is recorded that an electronic endorsement is prohibited) shall have effects by the transfer of control of the said electronic bill of lading record.
- ③ Assignment or creation of pledge of the rights under a consignee-specified electronic bill of lading record in which it is recorded that an electronic endorsement is prohibited shall be made only in compliance with the formalities concerning assignment or creation of pledge of a claim and only with the effects thereof.
- ④ An electronic endorsement shall be simple, and any condition attached to an electronic endorsement shall be deemed not to have been recorded.
- ⑤ Notwithstanding the provisions of paragraph 1, an electronic endorsement may be entered without recording the name of a person to whom the control of an electronic bill of lading record is transferred, or by simply recording the name of the person who transfers the control of the said electronic bill of lading record (hereinafter referred to as a “blank electronic endorsement”).
- ⑥ If a blank electronic endorsement has been entered, a person who has the control of an electronic bill of lading record may conduct acts listed in the following items:
  - (i) To supplement blank with its name or the name of another person;
  - (ii) To enter another electronic endorsement by way of a blank electronic endorsement or with indicating the name of another person; or
  - (iii) To assign or create pledge of the rights under an electronic bill of lading record by transferring the control of the electronic bill of lading record without supplementing blank and without an electronic endorsement
- ⑦ An electronic endorsement with a note that the goods shall be delivered to a person who has the control of an electronic bill of lading record and without record of the name of a person to whom the control thereof is transferred shall have the same effects as a blank electronic endorsement.

## **VI. Contents of provisions concerning the effects, etc. of an electronic bill of lading record**

### **1. Basic ideas with respect to how to draft provisions**

How to draft provisions concerning the validity, etc. of an electronic bill of lading

record shall be in one of the following options:

**【Option Ko】**

The idea that, with respect to the provisions in the Commercial Code, the Civil Code, etc. applicable to a paper bill of lading, the following provisions shall be made rather than making comprehensive *mutatis mutandis* application provisions and drafting individual provision to be made applicable to an electronic bill of lading record:

- ① An electronic bill of lading record shall have the same effects as a bill of lading.
- ② If a carrier or master has issued an electronic bill of lading record, it shall be deemed to have prepared and delivered a bill of lading.
- ③ If a person who has the control of an electronic bill of lading record has entered an electronic endorsement in the electronic bill of lading record, it shall be deemed to have entered an endorsement on a bill of lading.
- ④ Records in an electronic bill of lading record shall be deemed to be statements on a bill of lading, the control of an electronic bill of lading record shall be deemed to be the possession of a bill of lading, and the person who has the control of an electronic bill of lading record shall be deemed to be a holder of a bill of lading respectively.
- ⑤ A person who has transferred the control of an electronic bill of lading record shall be deemed to have delivered, passed or returned a bill of lading.
- ⑥ If a person who has the control of an electronic bill of lading record has presented the information recorded in the said electronic bill of lading record, it shall be deemed to have presented a bill of lading.

**【Option Otsu】**

The idea that, with respect to the principal provisions in the Commercial Code and the Civil Code applicable to a paper bill of lading, comprehensive *mutatis mutandis* application provisions shall be made with replacement provisions (Note); provided, however, that a provision to the effect that “an electronic bill of lading record shall have the same effects as a bill of lading” shall also be separately inserted in this idea.

(Note) It is assumed that, for example, the replacement provisions will be as follows:

Except as otherwise provided, with respect to an electronic bill of lading record and an electronic multimodal transport bill of lading record,

the provisions of Part III, Chapter III, Section 3  
(except for the provisions of Articles 757, 758, 765, 766, 767 and 769) and  
the provisions of Part III, Chapter I, Section 7 of the Civil Code (Act No. 89 of 1896)  
(except for the provisions of Articles 520-2, 520-3, 520-7, 520-8 (including cases where it is applied *mutatis mutandis* in Articles 520-18 and 520-20), 520-11 (including cases where



it is applied mutatis mutandis in Articles 520-18 and 520-20), 520-12 (including cases where it is applied mutatis mutandis in Articles 520-18 and 520-20), 520-13, 520-17 and 520-19 of the said Code)

shall apply mutatis mutandis thereto to the extent that application thereof is not inconsistent with the nature of the same.

In these cases,

“bill of lading” shall be replaced

with “electronic bill of lading record”,

“consigned-to-order bill”

with “consigned-to-order electronic bill of lading record”,

“consignee-specified-but-consigned-to-holder bill” and “consignee-non-specified bill”

with “electronic bill of lading record provided for in Article ●, paragraph 2 (Note: The provision in V. ②)”,

“the said bill”

with “the said electronic bill of lading record”,

“state/statement(s)”

with “record(s)”,

“prepare/preparation”

with “issue”,

“endorsement(s)”

with “electronic endorsement(s)”,

“possess/possession”

with “control”,

“rights under the bill”

with “rights under the electronic bill of lading record”,

“holder”

with “person who has the control”,

“obligor of a consigned-to-order bill” and “obligor of a consignee-specified-but-consigned-to-holder bill”

with “carrier”,

“holder in good faith” in Article 760

with “person who has the control in good faith”,

“Even if a bill of lading is the consignee-specified type, it” in Article 762

with “Even if an electronic bill of lading record is the consignee-specified type, the rights under the said electronic bill of lading record”,

“by an endorsement”

with “by the transfer of control of the said electronic bill of lading record with an electronic endorsement”,

“If a bill of lading has been delivered” and “the said delivery” in Article 763

with “If the control of an electronic bill of lading record has been transferred” and “the said transfer”,

“unless it is in exchange for the said bill of lading” in Article 764

with “unless it is in exchange for the transfer of control or the deletion of the said electronic bill of lading record or other measures to prevent the use and the transfer of control of the said electronic bill of lading record”,

“obliged to return” in Articles 520-5 and 520-15 of the Civil Code

with “obliged to transfer the control of”,

“acquired” in the said latter Article

with “received the transfer of control”,

“obligee before the assignment” in Articles 520-6 and 520-16 of the said Code

with “person who has the control thereof before the transfer of control”,

“assignee in good faith” therein

with “person who has the control in good faith”,

“holder of the bill presents the said bill” in Article 520-9 of the said Code

with “person who has the control of an electronic bill of lading record (except for the consignee-specified type in which it is recorded that an electronic endorsement is prohibited) presents the information recorded in the said electronic bill of lading record”,

“signature and seal” in Article 520-10 of the said Code

with “measure prescribed by Ministry of Justice Order in place of signature and seal”, and

“obligor” in the said Article

with “carrier”.

### **【Option Hei】**

The idea that, with respect to the provisions applicable to a paper bill of lading which shall also be made applicable to an electronic bill of lading record, individual provisions shall be drafted (Note); provided, however, that a provision to the effect that “an electronic bill of lading record shall have the same effects as a bill of lading” shall also be separately inserted in this idea.

(Note) It is assumed that the contents shall be as set forth in 2. below; provided, however, that it is also considered that, with respect to the provisions in the Commercial Code applicable to a paper bill of lading, provisions may be made in the manner of incorporating them into the provisions of the Commercial Code applicable to a paper bill of lading, rather than separately drafting a set of provisions for an electronic bill of lading record as set forth in

2. below.

**【Option Tei】**

The compromise idea between Options Otsu and Hei that, with respect to the provisions applicable to a paper bill of lading in the Commercial Code which shall also be made applicable to an electronic bill of lading record, provisions shall be made in the manner of incorporating them in the provisions in the Commercial Code applicable to a paper bill of lading; and with respect to the provisions applicable to a paper bill of lading in the Civil Code which shall also be made applicable to an electronic bill of lading record, comprehensive mutatis mutandis application provisions shall be made with replacement provisions. (Note) A provision to the effect that “an electronic bill of lading record shall have the same effects as a bill of lading” shall also be separately inserted in this idea.

(Note) It is considered that replacement provisions are like those in Option Otsu with those related to the provisions in the Commercial Codes excluded therefrom.

2. Contents of individual draft provisions

With respect to the contents of the provisions concerning the effects, etc. of an electronic bill of lading record, the contents of those provisions in cases where Option Hei in 1. above is adopted shall be as follows. In cases where Options Otsu or Tei in 1. above are adopted and replacement provisions are made, the provisions after replacement shall also read basically in the same contents:

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

- ① In cases where a carrier or master issues an electronic bill of lading record and if notice is given in writing or by electronic/magnetic means by a shipper or charterer with respect to the information listed in Article 758, paragraph 1, items (i) and (ii) of the Commercial Code, it shall record the said information according to the said notice.
- ② The provisions of the preceding paragraph do not apply if there are reasonable grounds to believe that the notice referred to in the said 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 voyage.
- ③ 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 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 has been issued, disposal of the goods shall be made through the electronic bill of lading record.
- (4) Provision corresponding to Article 762 of the Commercial Code  
Even if an electronic bill of lading record is the consignee-specified type, the rights under the said electronic bill of lading record may be assigned or pledged by transferring the control of the said electronic bill of lading record with an electronic endorsement; provided, however, that this shall not apply to the cases where it is recorded in the said electronic bill of lading record that an electronic endorsement is prohibited.
- (5) Provision corresponding to Article 763 of the Commercial Code  
If the control of an electronic bill of lading record has been 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 goods with respect to the acquisition of the rights to be exercised for the goods.
- (6) Provision corresponding to Article 764 of the Commercial Code  
If an electronic bill of lading record has been issued, it may not be demanded to deliver the goods unless the said demand is in exchange for the transfer of control or the deletion of the said electronic bill of lading record or other measures to prevent the use and the transfer of control of the said electronic bill of lading record.
- (7) Articles 765, 766 and 767 of the Commercial Code  
These do not apply to an electronic bill of lading record.
- (8) Provision corresponding to Article 768 of the Commercial Code  
For the purpose of application of the provisions of Chapter VIII, Section 2 of the preceding Book in cases where an electronic bill of lading record has been issued, “shipper” in Article 580 is replaced with "person who has the control of an electronic bill of lading record" and the provisions of Articles 581, 582, paragraph 2, and the proviso to 587 do not apply.
- (9) Articles 520-2, 520-3, 520-13 and 520-19, paragraph 1 of the Civil Code  
These shall be provided as the provisions concerning the types of an electronic bill of lading record and the methods of transfer thereof, etc. in V. above (See V. above).
- (10) Provisions corresponding to Articles 520-4 and 520-14 of the Civil Code
  - ① If a person who has the control of a consigned-to-order electronic bill of lading record (including an electronic bill of lading record in cases where the rights under the said bill of lading record may be assigned or pledged by the transfer of control of the said bill of lading record with an electronic endorsement

pursuant to the main sentence of Article ● of the Commercial Code (Note: The provision in (4) above)) proves its rights through uninterrupted series of electronic endorsements, the said person shall be presumed to lawfully have the rights under the said electronic bill of lading record. In these cases, a cancelled electronic endorsement shall be deemed not to have been recorded, and if there is another electronic endorsement following a blank electronic endorsement, the person who entered the said electronic endorsement shall be deemed to have received the transfer of control of the electronic/magnetic bill of lading (*sic*) with a blank electronic endorsement.

- ② The provisions of the preceding paragraph shall also apply if the final electronic endorsement is a blank electronic endorsement.
- ③ A person who has the control of an electronic bill of lading record provided for in Article ● of the Commercial Code (Note: The provision in V. ② above) shall be presumed to lawfully have the rights under the said electronic bill of lading record.

(11) Provisions corresponding to Articles 520-5 and 520-15 of the Civil Code

- ① A person who has lost the control of an electronic bill of lading record (except for the consignee-specified type in which it is recorded that an electronic endorsement is prohibited) (limited to a person who lawfully has the rights under the said electronic bill of lading record) for any reason may demand a person who has the control thereof to transfer the control of the said electronic bill of lading record to the person who has lost the control thereof.
- ② Notwithstanding the provisions of the preceding paragraph, in cases where a person has lost the control of an electronic bill of lading record (except for the consignee-specified type in which it is recorded that an electronic endorsement is prohibited) for any reason and if a person who has the control thereof proves its rights pursuant to the provisions of the preceding Article (Note: The provision in (10) above), 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 this does not apply if the person who has the control thereof has received the transfer of control in bad faith or in gross negligence.

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

A carrier may not duly assert against a person who has the control in good faith of an electronic bill of lading record (except for the consignee-specified type in which it is recorded that an electronic endorsement is prohibited) any grounds that could have been duly asserted against a person who had the control thereof before the transfer of

control of the said electronic bill of lading record, except for the information recorded in the said electronic bill of lading record or any results that necessarily arises from the nature of the said electronic bill of lading record.

(13) Articles 520-7 and 520-17 of the Civil Code

No provision shall be made.

(14) Article 520-8 of the Civil Code

This does not apply to an electronic bill of lading record.

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

Even if a due date is specified for the performance of its obligation, a carrier shall be responsible for delay only on and after the time when a person who has the control of an electronic bill of lading record (except for the consignee-specified type in which it is recorded that an electronic endorsement is prohibited) presents the information recorded in the said electronic bill of lading record to demand the performance thereunder after the due date has arrived.

(16) 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 a person who has the control of an electronic bill of lading record (except for the consignee-specified type in which it is recorded that an electronic endorsement is prohibited) and the authenticity of electronic signatures therein; provided, however, that the performance of the carrier is invalid if it acted in bad faith or in gross negligence.

(17) Articles 520-11 and 520-12 of the Civil Code

These do not apply to an electronic bill of lading record.

(18) Amendment of Article 7 of International Carriage of Goods by Sea Act

The provisions of Article 7 of International Carriage of Goods by Sea Act shall be amended as follows (underlined parts mean amended parts):

- ① If the goods are partially lost or damaged, a consignee or holder of a bill of lading or person who has the control of an electronic bill of lading record shall issue a notice in writing or by electronic/magnetic means to a carrier at the time of receipt concerning the outline of the said loss or damage; provided, however, that if it is not possible to immediately discover the said loss or damage, the said notice may be issued within three days from the date of receipt.
- ② If the notice referred to in the preceding paragraph has not been issued, the goods are presumed to have been delivered without any loss and damage.
- ③ The provisions of the preceding two paragraphs do not apply if the condition of the goods has been confirmed at the time of delivery with attendances of the

parties.

- ④ If it is suspected that the goods have been lost or damaged, a carrier and a consignee or holder of a bill of lading or person who has the control of an electronic bill of lading record shall provide each other with the necessary accommodations to inspect the goods.

(19) Others

In addition to (1) to (18) above, provisions expressly providing for a “bill of lading” in the Commercial Code, the Civil Code and International Carriage of Goods by Sea Act include:

Articles 563 (rights to intervene), 741 (consignee's obligation to pay freight charges, etc.), 756 (mutatis mutandis application of provisions with respect to contract of carriage of individual goods, etc.), 770 (sea waybill) and 809 (damage or expenditure constituting general average) of the Commercial Code; and Articles 9 (liability limit), 11 (prohibition of special provisions) 12 (special provisions of the prohibition of special agreements), 14, 15 (application of the Commercial Code) and 16 (tort liability of carrier, etc.) of International Carriage of Goods by Sea Act.

With respect to these provisions, revisions shall be made as necessary, including revisions:

- ① To add “electronic bill of lading record” to “bill of lading” side by side therein;
- ② To add “person who has the control of an electronic bill of lading record” to “holder of the bill of lading” side by side therein; accordingly,
- ③ To add “record”, “issue” and “transfer of control” for an electronic bill of lading record corresponding to “state/statement(s)” and “deliver/delivery” pertaining to a bill of lading therein; and
- ④ With respect to the provisions to apply mutatis mutandis the already existing provisions of the Commercial Code concerning a bill of lading, to add the corresponding provisions concerning an electronic bill of lading record therein to the scope of the said mutatis mutandis application (Note).

(Note) In addition, it will be further considered that whether there are any other provisions about which substantial revisions shall be considered, in the context of an electronic bill of lading record in the provisions in statutes directly providing for an “instrument of value [Wertpapier]”, or in the provisions to apply mutatis mutandis the provisions in the Commercial Code or the Civil Code concerning a “bill of lading” or an “instrument of value [Wertpapier]”.

## **VII. Contents of provisions concerning compulsory execution against a person who has the control of an electronic bill of lading record**

The contents of provisions concerning compulsory execution against a person who has the control of an electronic bill of lading record shall be in one of the following options:

### **【Option Ko】**

- ① In cases where compulsory execution or other injunctive order to restrict disposal of the rights in respect of a claim pertaining to the delivery of goods is effected and if a carrier and a person who has the control of an electronic bill of lading record becomes aware of the said fact, they shall record the said fact in the electronic bill of lading record (including electronic/magnetic records associated therewith.); provided, however, that this shall not apply if the carrier and the person who has the control of the electronic bill of lading record are unable to enter the said record.
- ② ( **【Option Ko-1】** If compulsory execution or other injunctive order to restrict disposal of the rights in respect of the claim pertaining to the delivery of goods / **【Ko-2】** If the record provided for in the preceding paragraph is entered), the electronic bill of lading record shall cease to have its effects.

### **【Option Otsu-1】 (Note 1)**

- ① For the purpose of application of the provisions of Article 143, paragraph 1 of Civil Execution Act (including cases where it applies mutadis mudandis to Article 50, paragraph 1 of Civil Provisional Remedies Act) with respect to compulsory execution or civil provisional remedy effected against a claim pertaining to the delivery of goods in cases where an electronic bill of lading record has been issued, the claim pertaining to the delivery of goods shall not be subject to compulsory execution, etc. by assuming that an instrument of value [Wertpapier] subject to execution against movables have been issued.
- ② An obligee from a person who has the control of an electronic bill of lading record shall be entitled to be subrogated with the rights of the person who has the control of the electronic bill of lading record to claim conversion thereof into a bill of lading against a carrier, and in the said cases, it shall not be required to be in exchange for the transfer of control or the deletion of the said electronic bill of lading record or other measures to prevent the use and the transfer of control of the said electronic bill of lading record.

(Note 1) This can be adopted only if Option Otsu is adopted in IV. 2. above.

### **【Option Otsu-2】**

- ① For the purpose of application of the provisions of Article 143, paragraph 1 of Civil Execution Act (including cases where it applies mutadis mudandis to Article 50,



paragraph 1 of Civil Provisional Remedies Act) with respect to compulsory execution or civil provisional remedy effected against a claim pertaining to the delivery of goods in cases where an electronic bill of lading record has been issued, the claim pertaining to the delivery of goods shall not be subject to compulsory execution, etc. by assuming that an instrument of value [Wertpapier] subject to execution against movables have been issued.

- ②' In cases where compulsory execution against the rights to use, profit from or dispose of an electronic bill of lading record is effected, an obligee may demand an obligor who has the control of the said electronic bill of lading record to transfer the control thereof to the obligee.

**【Option Hei】**

In cases where compulsory execution against a claim pertaining to the delivery of goods is effected, an obligee may demand an obligor who has the control of the said electronic bill of lading record to transfer the control thereof to the obligee.

**【Option Tei】**

No special provision shall be newly made with respect to compulsory execution against a person who has the control of an electronic bill of lading record.

## **Part II. Revisions of other provisions in the Commercial Code**

### **I. Revisions of provisions concerning a sea waybill**

Provisions in Article 770, paragraph 3 of the Commercial Code shall be amended as follows:

The carrier or master provided for in paragraph 1 may, instead of the delivery of a sea waybill, with the consent of a shipper or charterer, provide the information to be stated in a sea waybill by electronic/magnetic means. In the said cases, the said carrier or master shall be deemed to have delivered a sea waybill.

### **II. Revisions of provisions concerning a multimodal transport bill of lading**

The following provisions shall be made for a multimodal transport bill of lading in an electronic form (referred to as an “electronic multimodal transport bill of lading”) as a provision corresponding to Article 769 of the Commercial Code.

- ① A carrier or master may, instead of the delivery of a multimodal transport bill of lading stating that the goods have been shipped on board or a multimodal transport bill of lading stating that the goods have been received, with the consent of a shipper, issue an electronic multimodal transport bill of lading record recording that the goods have

been shipped on board (hereinafter referred to as a “shipped electronic multimodal transport bill of lading record”) or an electronic multimodal transport bill of lading record recording that the goods have been received (hereinafter referred to as a “received electronic multimodal transport bill of lading record”) to the shipper.

- ② Depending upon the contents of the provisions of an electronic bill of lading record, necessary revisions shall be made by making mutatis mutandis application provisions, etc. and “the place of issue and the place of destination” shall be added as the information required to be recorded under the law specifically applicable to an electronic multimodal transport bill of lading record.

### **III. Revisions of provisions concerning a warehouse receipt**

With respect to a warehouse receipt, it may also be considered to provide for its electronic form in the similar contents as those of an electronic bill of lading record?