

(Translation)

Comparison Table with MLETR

【Translator’s Notes】

1. This is a tentative English translation by the Translator (Akiyoshi Ikeyama) of *Comparison Table with MLETR* (hereinafter referred to as the “*Table*”) prepared by the Ministry of Justice of the Japanese Government at the final stage of deliberation process by the Working Group for Commercial Law (Relating to Bill of Lading and Others) of Legislative Council resulting into *the Outline Concerning Amendments of the Commercial Code (Relating to Bill of Lading and Others) and Others* (hereinafter referred to as the “*Outline*”). The Legislative Council is an organization in the Ministry of Justice. The original in Japanese language of the *Table* is accessible at https://www.moj.go.jp/shingi1/shingi04900001_00255.html (accessed 8 October 2024).
2. The *Outline* has been approved by the Legislative Council to be presented to the Minister of Justice on 9 September 2024. Readers are requested to also refer to the Translator’s Notes to a tentative English translation by the Translator of *the Outline*.
3. This Table refers to the *Draft Outline* for comparison, since it has been the draft status at the time of preparations of this Table. But the *Draft Outline* is the same as the final *Outline*.
4. **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 of 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 heartfelt thanks for her great contributions. All remaining mistakes, errors and omissions are solely attributable to the Translator.

Comparison Table with MLETR

	Original MLETR texts	Provisional translation	Treatments in the Draft Outline
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>	<p>The Draft Outline is intended to cover a bill of lading, a multimodal transport bill of lading and a warehouse receipt (hereinafter referred to as a “Bill of Lading”), which fall under the category of an electronic transferable record. It is therefore compatible with paragraphs 1 and 3 of this Article.</p> <p>The Draft Outline also sets forth provisions for an electronic bill of lading record, an electronic multimodal transport bill of lading record and an electronic warehouse receipt record (hereinafter referred to as an “Electronic Bill of Lading Record”) (Part I. I. to VI. and Part II.). It grants them functional equivalence to a Bill of Lading by extending to apply to them provisions for a Bill of Lading (Part I. VII. and others) and does not affect existing substantive law. It is therefore compliant with paragraph 2 of this Article too.</p>
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</p>	<i>Japanese translation omitted</i>	<p>The Draft Outline (1) proposes to add a definitional provision consistent with this Article (Part I. I. 1.; It assumes as a matter of course that all information logically associated or combined may be recorded in an Electronic Bill of Lading Record so that a record subsequently recorded such as an electronic endorsement may form a part of an Electronic Bill of Lading Record.); and (2) requires the same matters as in Article 10 as technological measures (Part I. I. 2 and Note 3). And (3) a Bill of Lading covered thereunder falls within a “transferable document or instrument”. It is therefore compliant with this</p>

	<p>complies with the requirements of article 10;</p> <p>“Transferable document or instrument” 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 instrument through the transfer of that document or instrument.</p>		Article.
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>	The Draft Outline is drafted based on the MLETR with putting weight on international coordination and is assumed to be interpreted in the light of the purpose of this Article. It is therefore compliant with this Article.
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>	The Draft Outline proposes to add provisions on an Electronic Bill of Lading Record by amending the Commercial Code. The principle of party autonomy prevails in the Commercial Code (Whether a certain provision is a mandatory or default rule shall be left to interpretation.) and the effect of an agreement between the parties is not extended to a person who has not entered into such an agreement. It is therefore compliant with this Article.
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>	The Draft Outline proposes to add provision on an Electronic Bill of Lading Record by amending the Commercial Code. It does not affect the application of other laws and regulations requiring the disclosure of information. It is therefore compliant with this Article.

<p>Article 6.</p> <p>Additional information in electronic transferable records</p>	<p>Nothing in this Law precludes the inclusion of information in an electronic transferable record in addition to that contained in a transferable document or instrument.</p>	<p><i>Japanese translation omitted</i></p>	<p>The Draft Outline assumes as a matter of course that additional information can be recorded in an Electronic Bill of Lading Record. It is therefore compliant with this Article.</p>
<p>Article 7.</p> <p>Legal recognition of an electronic transferable record</p>	<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. 	<p><i>Japanese translation omitted</i></p>	<p>The Draft Outline proposes to add a definitional provision consistent with Article 2 and sets forth provisions on an Electronic Bill of Lading Record (Part I. I. to VI. and Part II.). It grants them functional equivalence to a Bill of Lading by extending to apply to them provisions for a Bill of Lading (Part I. VII. and others). It is therefore compliant with paragraph 1 of this Article.</p> <p>In addition, the Draft Outline proposes to add a provision to the effect that an agreement of both parties shall be required to provide an Electronic Bill of Lading Record (Part I. II. 1). It is therefore compliant with paragraph 2 of this Article too.</p> <p>Furthermore, the Draft Outline does not require any specific method for such agreement (Part I. II. 1) and assumes that such agreement can be inferred from the person's conduct. It is therefore compliant with paragraph 3 of this Article too.</p>
<p>Article 8.</p> <p>Writing</p>	<p>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.</p>	<p><i>Japanese translation omitted</i></p>	<p>The Draft Outline defines an Electronic Bill of Lading Record as the one “used for information processing by computers” (Part I. I. 1) so that the information contained therein can be accessed to be used for later reference. It is therefore compliant with this Article.</p>

<p>Article 9. Signature</p>	<p>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 in the electronic transferable record.</p>	<p><i>Japanese translation omitted</i></p>	<p>The Draft Outline requires, as an alternative measure to a signature or print in name with affixed stamp on a Bill of Lading, to take the measures to make it possible to check whether or not an Electronic Bill of Lading Record has been altered or other measures to make it possible to definitively demonstrate that it has been prepared by a certain person (Part I. I. 1 and 5). It grants an Electronic Bill of Lading Record to which such measure is taken functional equivalence to a Bill of Lading (See “Treatments in the Draft Outline” for Article 1). It is therefore compliant with this Article.</p>
<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> <ul style="list-style-type: none"> (a) The electronic record contains the information that would be required to be contained in a transferable document or instrument; and (b) A reliable method is used: <ul style="list-style-type: none"> (i) To identify that electronic record as the electronic transferable record; (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 (iii) To retain the integrity of that electronic record. <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</p>	<p><i>Japanese translation omitted</i></p>	<p>The Draft Outline (1) provides that the matters to be recorded in an Electronic Bill of Lading Record shall be the same as matters to be stated on a Bill of Lading (Part I. I. 1 and III. 1); (2) requires that an Electronic Bill of Lading Record shall be capable of being subject to control, which shall be capable of being transferred (Part I. I. 2); (3) requires that the measures shall be taken to identify an electronic or magnetic record that has the validity as an Electronic Bill of Lading Record (Part I. I. Note 3); and (4) requires that the measures shall be taken to record or preserve the history in cases where the information recorded in an Electronic Bill of Lading Record has been altered or deleted (Part I, I. Note 3), on the basis that it is an electronic or magnetic record to be capable of being recorded and preserved (Part I, I. 1). It grants an Electronic Bill of Lading Record meeting these requirements functional equivalence to a Bill of Lading (See “Treatments in the Draft Outline” for Article 1). It is therefore compliant with this Article.</p>

	which arises in the normal course of communication, storage and display		
Article 11. Control	<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 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>	<i>Japanese translation omitted</i>	The Draft Outline provides that, with respect to an Electronic Bill of Lading, the “control of an Electronic Bill of Lading Record” shall be introduced as an alternative concept to the possession or hold of a Bill of Lading, requires that the control thereof shall be exclusive and the entity thereof shall be capable to be identified (Part I. I. 2, 3 and Note 3), and requires that the control of an Electronic Bill of Lading Record is capable to be transferred to another person (Part I. I. 4). It grants an Electronic Bill of Lading Record meeting these requirements functional equivalence to a Bill of Lading (See “Treatments in the Draft Outline” for Article 1). It is therefore compliant with this Article.
Article 12. General reliability standard	<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> <p>(i) Any operational rules relevant to the assessment of reliability;</p> <p>(ii) The assurance of data integrity;</p> <p>(iii) The ability to prevent unauthorized access to and use of the system;</p>	<i>Japanese translation omitted</i>	The Draft Outline proposes to add provisions on reliability consistent with this Article (Part I. I. Note 3). It is therefore compliant with this Article.

	<ul style="list-style-type: none"> (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>(b) Proven in fact to have fulfilled the function by itself or together with further evidence.</p>		
<p>Article 13.</p> <p>Indication of time and place in electronic transferable records</p>	<p>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.</p>	<p><i>Japanese translation omitted</i></p>	<p>The Draft Outline provides that the matters to be recorded in an Electronic Bill of Lading Record shall be the same as those on a Bill of Lading (Part I. I. 1 and III. 1.) and they include the matters concerning time and place. The manners to record such matters is not limited. They are required no more than to meet requirements provided for in provisions concerning reliability as consistent with Article 12 (Part I. I. Note 3). It is therefore compliant with this Article.</p>
<p>Article 14.</p> <p>Place of business</p>	<p>1. A location is not a place of business merely because that is:</p> <ul style="list-style-type: none"> (a) Where equipment and technology supporting an information system used by a party in connection with electronic transferable records are located; or (b) Where the information system may be accessed by other parties. <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</p>	<p><i>Japanese translation omitted</i></p>	<p>The Draft Outline does not propose to add a provision concerning the “place of business”. The “place of business” shall be determined by the interpretation and application of relevant laws and regulations and shall not depend on provisions concerning an Electronic Bill of Lading Record. It is therefore compliant with this Article.</p>

	of business is located in that country.		
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>	The Draft Outline provides that the matters to be recorded as an electronic endorsement in an Electronic Bill of Lading Record shall be the same as those to be stated as an endorsement on a Bill of Lading and requires, as an alternative measure to a signature or print in name with affixed stamp on a Bill of Lading, to take the measures to make it possible to check whether or not an Electronic Bill of Lading Record has been altered or other measures to make it possible to definitively demonstrate that it has been prepared by a certain person (Part I. I. 5). It grants an Electronic Bill of Lading Record with such electronic endorsement functional equivalence to a Bill of Lading (See “Treatments in the Draft Outline” for Article 1). It is therefore compliant with this Article.
Article 16. Amendment	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.	<i>Japanese translation omitted</i>	The Draft Outline (1) does not propose to add a provision concerning amendment with respect to an Electronic Bill of Lading Record because there is no provision concerning amendment with respect to a Bill of Lading and (2) requires that the measures shall be taken to record or preserve the history in cases where the information recorded in an Electronic Bill of Lading Record has been altered or deleted (Part I. I. Note 3). It is therefore compliant with this Article.
Article 17. Replacement of a transferable document or instrument with an electronic	<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 	<i>Japanese translation omitted</i>	The Draft Outline (1) proposes to add provisions concerning the change of medium from a Bill of Lading to an Electronic Bill of Lading Record (Part I. VIII. 1); (2) requires that an Electronic Bill of Ladings Record after the change of medium shall record that the medium has been changed (Part I. VIII. 1 (1) latter part); (3) requires that change of medium to an Electronic Bill of Lading Record shall be made in exchange for a Bill of Lading in order to ensure that a Bill of Lading before the change of medium ceases to be valid (Part I. VIII. 1 (1) latter part); and (4)

transferable record	<p>accordance with paragraphs 1 and 2, the transferable document or instrument 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 obligation of the parties.</p>		<p>requires that same contents as on a Bill of Lading before the change of medium shall be recorded in an Electronic Bill of Lading Record after the change of medium in order to ensure that the rights and obligation of the parties shall not be affected by the change of medium (Part I. VIII. 1(1) latter part). It is therefore compliant with this Article.</p>
<p>Article 18.</p> <p>Replacement of an electronic transferable record with a transferable document or instrument</p>	<p>1. A transferable document or instrument may replace an electronic transferable record if a reliable method for the change of medium is used.</p> <p>2. For the change of medium to take effect, a statement indicating a change of medium shall be inserted in the 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><i>Japanese translation omitted</i></p>	<p>The Draft Outline (1) proposes to add provisions on the change of medium from an Electronic Bill of Lading Record to a Bill of Lading (Part I. VIII. 2); (2) requires that a Bill of Lading after the change of medium shall state that the medium has been changed (Part I. VIII. 2 (1) latter part); (3) requires that the change of medium to a Bill of Lading shall be made in exchange for measures to prevent the use of an Electronic Bill of Lading Record in order to ensure that an Electronic Bill of Lading Record before the change of medium ceases to be valid (Part I. VIII. 2 (1) latter part); and (4) requires that same contents as in an Electronic Bill of Lading Record before the change of medium shall be stated on a Bill of Lading after the change of medium in order to ensure that the rights and obligation of the parties are not affected by the change of medium (Part I. VIII. 2 (1) latter part). It is therefore compliant with this Article.</p>
<p>Article 19.</p> <p>Non-discrimination of foreign electronic transferable records</p>	<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>	<p><i>Japanese translation omitted</i></p>	<p>The Draft Outline proposes to add provisions on an Electronic Bill of Lading Record by amending the Commercial Code but it (1) neither denies the validity of an Electronic Bill of Lading Record on the ground that it was issued or used abroad (2) nor proposes to add provisions concerning designation of governing law and does not directly affect the rules of international private law. It is therefore compliant with this Article.</p>