

(Translation)

Outline Concerning Amendments of the Commercial Code (Relating to Bill of Lading and Others) and Others

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【Translator’s Notes】

1. This is a tentative English translation by the Translator (Akiyoshi Ikeyama) of *the Outline Concerning Amendments of the Commercial Code (Relating to Bill of Lading and Others) and Others* approved by the Legislative Council to be presented to the Minister of Justice of Japanese Government on 9 September 2024 (hereinafter referred to as the “*Outline*”). The Legislative Council is an organization in the Ministry of Justice. The original in Japanese language is accessible at https://www.moj.go.jp/shingi1/shingi03500044_00004.html (accessed 8 October 2024).
2. In the deliberation process leading to the *Outline* by the Working Group for Commercial Law (Relating to Bill of Lading and Others) of Legislative Council, *the Comparison Table with MLETR* has been prepared by the Ministry of Justice. It has also been made public at https://www.moj.go.jp/shingi1/shingi04900001_00255.html (accessed 8 October 2024). A tentative English translation thereof by the Translator is prepared and attached hereto.
3. Readers are reminded that this is yet no more than the *Outline* of substance of proposed amendment and *not* the proposal of article-by-article amendments of relevant statute provisions (in the Commercial Code and others). It is expected that the Government will make preparations for legislation in form of a Bill to Amend the Commercial Code and others in accordance with the *Outline* to be presented to the Diet, legislative body of Japan, in due course.
4. Table of contents herein is not in the original *Outline* but added by the Translator for readers reference purpose.
5. The *Outline* variously refers to the provisions in the Civil Code (Articles 520-2 to 520-20) and the Commercial Code (Articles 757 to 769) currently in force. English translations of those provisions are available at the “Japanese Law Translation” website administered by the Ministry of Justice at <https://www.japaneselawtranslation.go.jp> (accessed 8 October 2024). 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 *Outline* 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. Followings are notable examples (See Part I. IV. of the *Outline* and Articles 520-2 *et seq* of the Civil Code):

Original Japanese	This Translation	Japanese Law Translation
<i>sashizu shiki</i> 指図式	consigned-to-order	negotiable ... payable to order
<i>kimei shiki</i> 記名式	consignee-specified	registered negotiable
<i>mukimei shiki</i> 無記名式	consignee-non-specified	bearer

6. [Note 1], [Note 2], ... herein are notes in the *Outline* in the original Japanese, which shall form an integral part of the *Outline*.
7. **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.

Outline Concerning Amendments of the Commercial Code (Relating to Bill of Lading and Others) and Others

Part I. Revisions of Provisions Concerning Bill of Lading

I. Electronic bill of lading record and basic concepts relating thereto

1. The name of an electronic bill of lading shall be an “electronic bill of lading record”. An electronic bill of lading record shall mean an electronic or magnetic record (a record made in an electronic form, magnetic form or any other form not perceivable by human senses to be used for information processing by computers; the same applies hereinafter) [Note 1] recording the matters to be stated on a bill of lading and prepared in and managed by a specified information processing system, in which the measures to make it possible to check whether or not the said electronic or magnetic record has been altered or other measures to make it possible to definitively demonstrate that the said electronic or magnetic record has been prepared by a carrier or master [Note 2] have been taken.
2. A specified information processing system shall mean an information processing system used to prepare and manage an electronic bill of lading record, in which the technical measures that are necessary for properly and securely conducting the matters pertaining to the control of an electronic bill of lading record and provision of an electronic bill of lading record [Note 3] have been taken.
3. As an alternative concept to the possession or hold of a bill of lading, the “control of an electronic bill of lading record” shall be introduced. The control of an electronic bill of lading record shall mean the status that only a certain specified person may use an electronic bill of lading record as if a person who has the rights pertaining to goods recorded in the said electronic bill of lading record (hereinafter referred to as the “rights under an electronic bill of lading record”) in a certain specified information processing system.
4. As an alternative concept to the delivery or handover of a bill of lading, the “provision of an electronic bill of lading record” shall be introduced. The provision of an electronic bill of lading record shall mean the measures taken by a carrier or master or by a person who has the authority pertaining to the control of an electronic bill of lading record to cause a person designated by them to become the person who will have the authority pertaining to the control of the said electronic bill of lading record in a certain specified information processing system [Note 4].
5. As an alternative concept to the endorsement, an “electronic endorsement” shall be introduced. An electronic endorsement shall mean to record the name of a person who

provides the said electronic bill of lading record and the name of a person to whom the said electronic bill of lading record is provided (hereinafter referred to as an “electronic endorsee”) and to take the measures to make it possible to check whether or not the said record has been altered or other measures to make it possible to definitively demonstrate that the said record has been prepared by a person who recorded the said record in a certain specified information processing system [Note 5].

[Note 1] Article 539, paragraph 1, item (ii) of the Commercial Code defines an “electronic or magnetic record” as a “record prepared in an electronic form, magnetic form or any other form not perceivable by human senses to be used for information processing by computers, and as set forth by the Ordinance of Ministry of Justice” and Article 9, paragraph 1 of the Ordinance for Enforcement of the Commercial Code empowered by the said Code defines it as a “record to be set forth by the Ordinance of Ministry of Justice as prescribed in Article 539, paragraph 1, item (ii) of the Commercial Code shall be the one that records information in a file stored in computers or in a file created in electronic or magnetic recording media (which shall mean recording media pertaining to a record prepared in an electronic form, magnetic form, or any other form not perceivable by human senses to be used for information processing by computers; the same applies hereinafter)”. However, an “electronic or magnetic record” defined in Article 539, paragraph 1, item (ii) of the Commercial Code shall also be amended to a “record prepared in an electronic form, magnetic form or any other form not perceivable by human senses to be used for information processing by computers”.

[Note 2] Details of the measures shall be set forth by the Ordinance of Ministry of Justice.

[Note 3] Details of the measures shall be set forth by the Ordinance of Ministry of Justice. It shall be considered that the Ordinance of Ministry of Justice shall prescribe (1) the measures to identify an electronic or magnetic record that has the validity as an electronic bill of lading record, (2) the measures to record or preserve the history in cases where the information recorded in an electronic bill of lading has been altered or deleted, and (3) the measures to ensure the reliability, amongst others.

[Note 4] Details of the measures shall be set forth by the Ordinance of Ministry of Justice.

[Note 5] Details of the measures shall be set forth by the Ordinance of Ministry of Justice.

II. Provision of electronic bill of lading record instead of delivery of bill of lading

With respect to the case of provision of an electronic bill of lading record instead of the delivery of a bill of lading, the following provisions shall be added:

1. A carrier or master may, with the consent of a shipper or charterer, provide an electronic bill of lading record instead of the delivery of a bill of lading.
2. A shipper or charterer may, in cases where an electronic bill of lading record recording

that the goods have been received (hereinafter referred as to a “received electronic bill of lading record”) has been provided instead of the delivery of a received bill of lading, demand to provide 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”) without delay after shipped on board, in exchange for the measures to prevent the use of the said received electronic bill of lading record as a person who has the rights under the said received electronic bill of lading record.

3. In cases where a received electronic bill of lading record has been provided instead of the delivery of a received bill of lading notwithstanding the provisions of Article 757, paragraph 1 of the Commercial Code, a shipper or charterer may not demand to deliver a shipped bill of lading.

III. Matters to be recorded in electronic bill of lading record and others

With respect to the matters to be recorded in an electronic bill of lading record and others, the following provisions shall be added:

1. The matters listed in each item of Article 758, paragraph 1 of the Commercial Code (excluding item (xi) thereof) (in case of a received electronic bill of lading record, also excluding the matters listed in items (vii) and (viii) thereof) shall be recorded in an electronic bill of lading record.
2. A carrier or master may, in cases where it is demanded to provide a shipped electronic bill of lading record prescribed in II. 2., record that the goods have been shipped on board and the matters listed in Article 758, paragraph 1, items (vii) and (viii) of the Commercial Code in a received electronic bill of lading record, instead of providing a shipped electronic bill of lading record.

IV. Assignment or pledge of rights under electronic bill of lading record

With respect to the assignment or pledge of rights under an electronic bill of lading record, the following provisions shall be added [Notes 1 and 2]:

1. The assignment or pledge of rights under a consigned-to-order electronic bill of lading record shall become effective by an electronic endorsement in the said electronic bill of lading record and by providing the said electronic bill of lading record to an assignee or pledgee.
2. The assignment or pledge of rights under a consignee-specified electronic bill of lading record (limited to the one with a supplementary note that the goods shall be delivered to a person who has the authority pertaining to the control of the said electronic bill of lading record) and a consignee-non-specified electronic bill of lading record shall become effective by providing the said electronic bill of lading record to an assignee or pledgee.

3. Conditional assignment or pledge of the rights under an electronic bill of lading record shall be unconditional.
4. The assignment or pledge of a part of the rights under an electronic bill of lading record shall be null and void.

[Note 1] Provisions of Articles 467 and 364 amongst others of the Civil Code shall not apply to the assignment or pledge of rights under an electronic bill of lading record listed in 1 and 2.

[Note 2] With respect to an electronic bill of lading record corresponding with a bill in other consignee-specified type (Part III, Chapter 1, Section 7, Subsection 3 of the Civil Code), special provisions concerning assignment and others of rights under an electronic bill of lading record shall not be added.

V. Special provisions of electronic endorsement

The following provisions shall be added as special provisions of an electronic endorsement:

1. An electronic endorsement shall also be made by not recording the name of an electronic endorsee in an electronic bill of lading record.
2. In cases where an electronic endorsement prescribed in 1. (hereinafter referred to as a “blank electronic endorsement”) is made, a person who has the authority pertaining to the control of an electronic bill of lading record may conduct acts set forth in the following items:
 - (i) To record its own name or other person’s name in the said electronic bill of lading record as an electronic endorsee;
 - (ii) To make an electronic endorsement (including a blank electronic endorsement) in the said electronic bill of lading record;
 - (iii) To assign or pledge the rights under the said electronic bill of lading record by providing the said electronic bill of lading record without recording its own name or other person’s name in the said electronic bill of lading record as an electronic endorsee and without making an electronic endorsement in the said electronic bill of lading record.
3. An electronic endorsement with a supplementary note that the goods shall be delivered to a person who has the authority pertaining to the control of an electronic bill of lading record without recording the name of an electronic endorsee shall have the same effect as a blank electronic endorsement.

VI. Demand to deliver goods

A person who has the rights under an electronic bill of lading record may not demand to deliver the goods except in exchange for the measures to prevent the use of the said

electronic bill of lading record as a person who has the rights under the said electronic bill of lading record.

VII. Revisions/additions of provisions concerning electronic bill of lading record

With respect to an electronic bill of lading record, necessary revisions/additions of provisions, including provisions to apply *mutatis mutandis* thereto or to have equivalent meanings to:

- provisions concerning a bill of lading in Part III, Chapter 3, Section 3 of the Commercial Code (excluding Articles 757, 758 and 765 through 767 of the said Code); and
- provisions in Part III, Chapter 1, Section 7 of the Civil Code (excluding Articles 520-2, 520-3, 520-8 (including as applied *mutatis mutandis* pursuant to Articles 520-18 and 520-20), 520-11 (including as applied *mutatis mutandis* pursuant to Articles 520-18 and 520-20), 520-12 (including as applied *mutatis mutandis* pursuant to Articles 520-18 and 520-20), 520-13 and 520-19 of the said Code)

shall be made.

VIII. Conversion between electronic bill of lading record and bill of lading

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

With respect to conversion from a bill of lading into an electronic bill of lading record, the following provisions shall be added:

- (1) In cases where a bill of lading has been delivered, a carrier or master who delivered the said bill of lading may convert the said bill of lading into an electronic bill of lading record with consent of a holder of the said bill of lading (in cases where the said bill of lading is capable to be assigned or pledged by an endorsement, it is limited to a person who has proved the rights thereunder by means of an uninterrupted series of endorsements (a shipper or consignee if no endorsement has yet been made); the same applies hereinafter). In this case, a carrier or master who delivered the said bill of lading shall, in exchange for the said bill of lading (in cases where two or more bills of lading have been delivered, all of them), record the matters identical to those stated on the said bill of lading [Note 1] in an electronic bill of lading record and provide the said electronic bill of lading record to the holder of the said bill of lading.
- (2) In cases where an electronic bill of lading record has been provided as a conversion pursuant to the provision of (1) (except before an endorsement on a bill of lading in (1)), it shall be deemed that there has been an uninterrupted series of electronic endorsements up to the person to whom the said electronic bill of lading record has been provided pursuant to the provision of (1).

- (3) A person whose name is recorded as a person to whom an electronic bill of lading record has been provided pursuant to provision of (1) in the said electronic bill of lading record provided as a conversion pursuant to provision of (1) is presumed to be a person to whom the said electronic bill of lading record has been provided pursuant to provision of (1) [Note 2].

[Note 1] Details of the matters identical thereto shall be set forth by the Ordinance of Ministry of Justice.

[Note 2] The idea that the name of a person to whom the said electronic bill of lading record has been provided pursuant to the provision of (1) shall be an optional record matter and not included in the “matters identical to those stated on the said bill of lading” in (1) shall be considered.

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

With respect to conversion from an electronic bill of lading record to a bill of lading, the following provisions shall be added:

- (1) In cases where an electronic bill of lading record has been provided, a carrier or master who provided the said electronic bill of lading record may convert the said electronic bill of lading record into a bill of lading with consent of a person who has the authority pertaining to the control of the said electronic bill of lading record (in cases where the rights under the said electronic bill of lading record is capable to be assigned or pledged by an electronic endorsement and by providing the said electronic bill of lading record, it is limited to a person who has proved the rights thereunder by means of an uninterrupted series of electronic endorsements (a shipper or consignee if no electronic endorsement has yet been made); the same applies hereinafter). In this case, a carrier or master who provided the said electronic bill of lading record shall, in exchange for the measures to prevent the use of the said electronic bill of lading record as a person who has the rights under the said electronic bill of lading record, state the matters identical to those recorded in the said electronic bill of lading record [Note 1] on one or more bill(s) of lading and deliver the said bill(s) of lading (in cases where there are two or more bills of lading, all of them) to the person who has had the authority pertaining to the control of the said electronic bill of lading record.
- (2) In cases where a bill of lading has been delivered as a conversion pursuant to the provision of (1) (except before an electronic endorsement in an electronic bill of lading record of (1)), it shall be deemed that there has been an uninterrupted series of endorsements up to the person to whom the said bill of lading has been delivered pursuant to the provision of (1).
- (3) A person whose name is stated as a person to whom a bill of lading has been delivered pursuant to the provision of (1) on the said bill of lading delivered as a

conversion pursuant to the provision of (1) is presumed to be a person to whom the said bill of lading has been delivered pursuant to the provision of (1) [Note 2].

[Note 1] Details of the matters identical thereto shall be set forth by the Ordinance of Ministry of Justice.

[Note 2] The idea that the name of a person to whom the said bill of lading has been delivered pursuant to the provision of (1) shall be an optional statement matter and not included in the “matters identical to those recorded in the said electronic bill of lading record” in (1) shall be considered.

IX. Right to demand to provide electronic bill of lading record

With respect to the right to demand to provide an electronic bill of lading record corresponding with the right to demand to return a bill of lading and the right to demand to provide an electronic bill of lading record in cases where the judicial enforcement against the rights under an electronic bill of lading record has been implemented, the following provisions shall be added:

1. A person who has the rights under an electronic bill of lading record may demand a person who has the authority pertaining to the control of the said electronic bill of lading record to provide the said electronic bill of lading record.
2. The same as 1. applies to a claimant in cases where the judicial enforcement against the rights under an electronic bill of lading record has been implemented.

Part II. Revisions of Other Provisions

I. Multimodal transport bill of lading

With respect to a multimodal transport bill of lading, necessary revisions/additions of provisions shall be made, including the following provisions:

A carrier or master may, with the consent of a shipper, provide a shipper with an electronic multimodal transport bill of lading record recording that the goods have been shipped on board or an electronic multimodal transport bill of lading record recording that the goods have been received, instead of delivering 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.

II. Warehouse receipt

1. With respect to a warehouse receipt, corresponding with the revisions of provisions concerning a bill of lading (Part I), necessary revisions/additions of provisions, including provisions concerning:

- electronic warehouse receipt record and basic concepts relating thereto;
 - provision of electronic warehouse receipt record instead of delivery of warehouse receipt;
 - matters to be recorded in electronic warehouse receipt record and others;
 - assignment or pledge of rights under electronic warehouse receipt record;
 - special rules of electronic endorsement;
 - demand to return bailed goods;
 - conversion between electronic warehouse receipt record and warehouse receipt;
and
 - right to demand to provide electronic warehouse receipt record shall be made.
2. With respect to an electronic warehouse receipt record, necessary revisions/additions of provisions, including provisions to apply *mutatis mutandis* thereto or to have equivalent meanings to:
- provisions concerning a warehouse receipt in Part II, Chapter 9, Section 2 of the Commercial Code (excluding Articles 600, 601, and 608 of the said Code); and
 - provisions in Part III, Chapter 1, Section 7 of the Civil Code (excluding Articles 520-2, 520-3, 520-8 (including as applied *mutatis mutandis* pursuant to Articles 520-18 and 520-20), 520-11 (including as applied *mutatis mutandis* pursuant to Articles 520-18 and 520-20), 520-12 (including as applied *mutatis mutandis* pursuant to Articles 520-18 and 520-20), 520-13 and 520-19 of the said Code) shall be made.

[Note] With respect to provisions corresponding with Article 603 of the Commercial Code (demand to divide the bailed goods), in cases where an electronic warehouse receipt record has already been provided, when one demands to divide bailed goods, the right to demand to provide an electronic warehouse receipt record corresponding with each part thereof shall be allowed but the right to demand to deliver a paper warehouse receipt corresponding with each part thereof shall not be allowed. In addition, it shall also be considered to add the provision corresponding with Article 608 of the Commercial Code (re-issue of a warehouse receipt).

III. Necessary revisions/additions

Other necessary revisions/additions shall be made.