

**Amendments Outline of the Commercial Code of Japan  
Concerning Electronic Bill of Lading  
(Outline Concerning Amendments of the Commercial Code (Relating to Bill of  
Lading and Others) and Others by Legislative Council)**

**October 2024  
Akiyoshi Ikeyama**

# CONTENTS

I. Background of Amendments Outline – Why amendments now?

II. Details of Amendments Outline – Just recognize eBL as BL?

III. Impacts of Amendments Outline – What will or will not change?

## References:

- Amendments Outline by Legislative Council [https://www.moj.go.jp/shingi1/shingi03500044\\_00004.html](https://www.moj.go.jp/shingi1/shingi03500044_00004.html)
- Comparison Table with MLETR [https://www.moj.go.jp/shingi1/shingi04900001\\_00255.html](https://www.moj.go.jp/shingi1/shingi04900001_00255.html) No. 16-3
- UK Electronic Trade Documents Act 2023 <https://www.legislation.gov.uk/ukpga/2023/38/contents>

## I. Background of Amendments Outline – Why amendments now?

- 1 History and current status of use of electronic BL (eBL)
- 2 Background of Amendments Outline
- 3 Why amendments now

## II. Details of Amendments Outline – Just recognize eBL as BL?

## III. Impacts of Amendments Outline – What will or will not change?

# I. Background of Amendments Outline – Why amendments now?

## 1 History and current status of use of eBL

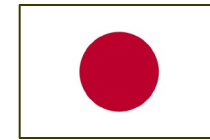
- **History** The concept since 1980s.
  - 1990 CMI Rules for electronic BL
  - 1999 Bolero commercial launch; TEDI demonstration experiment
  - 2010 IG approved BOLERO and essDOCS (now ICE)  
Currently more than 10 companies are approved.
- **Current Status** Not widely used, but used to some extent. It could increase rapidly in the future.
  - Japan MOJ survey in 2021 (survey target: approx. 20 shipping companies)
    - Have received a request of issuance from shipper: approx. 50%
    - Have issued eBL in the last year: approx. 25% (Number of issues: 30/year, 10/year, several/month, etc.)
  - February 2023 DCSA (Digital Container Shipping Association/worldwide container shipping companies) declared 100% use of eBL by 2030 (perhaps including eSWB)
  - Participation in a certain agreement (to approve the validity of eBL therein) drafted by a system (platform) provider is conceptually required – called "Contractual-rule-type eBL" in Legislative Council WG

# I. Background of Amendments Outline – Why amendments now?

## 2 Background of Amendments Outline

### ■ Prehistory outside Japan

- July 2017 MLETR (Model Law on Electronic Transferable Records) was adopted by UNCITRAL ※ Deliberation started in 2011
- April 2021 Ministerial Declaration at G7 Digital and Technology Ministers' meeting supports the initiatives by UNCITRAL and promote the adoption of a legal framework compatible with MLETR
- July 2023 UK Electronic Trade Documents Act 2023



### ■ Prehistory in Japan

- 2017 Consortium for the digitalization of trade practices by applying blockchain was established (Secretariat: NTT Data)
- October 2020 Keidanren "Revised Proposal concerning Regulatory and System Reforms toward the realization of Society 5.0 – 2020 Keidanren Regulatory Reform Demand" No. 63
- January 2021 Regulatory Reform Promotion Council, WG for Investment and Others – 7<sup>th</sup> Meeting
- June 2021 Council Response Section II.3.(2)

# I. Background of Amendments Outline – Why amendments now?

## 2 Background of Amendments Outline

### ■ Movements for legislation

- April 2021 Japan Institute of Business Law "Study Group concerning digitalization of the Business Law (Bills of Lading)" <https://www.shojihomu.or.jp/list/denshika-funani>
- April 2022 Working Group for Commercial Law (Relating to Bills of Lading and Others) of Legislative Council at Ministry of Justice (MOJ)

March 2023 Interim Draft [https://www.moj.go.jp/shingi1/shingi04900001\\_00192.html](https://www.moj.go.jp/shingi1/shingi04900001_00192.html)

August 2024 Amendment Outline Final Draft

- September 2024 Legislative Council General Meeting Amendment Outline adopted
- MOJ is expected to prepare Amendment Bill of the Commercial Code to be submitted by the Cabinet to the Diet – Date unknown

# I. Background of Amendments Outline – Why amendments now?

## 3 Why amendments now

- Final piece in the legal framework for digitalization of trade practice in general
  - Advanced digitalization of commerce (sale and purchase), transportation and finance, together with governmental procedures in each country
  - Since 1980s, shipping companies have gradually improved BL systems before issue and after collection
    - ⇒ Paper BL is mandatory only in the distribution cycle among merchants (cargo interests/financers)
  - Digitalization of BL only is nonsense, but paper is required only for BL is no longer acceptable
    - ⇒ Contractual-rule-type eBL has been gradually developed over the past 25 years
- ↓
- Growing demands for legal recognition of eBL beyond contractual arrangements
  - ⇒ Cf. Relation with parties other than those participating in contractual-rule-type eBL
- Trades of sale and purchase incompatible with electronic Sea Waybill (eSWB) still exist

I. Background of Amendments Outline – Why amendments now?

II. Details of Amendments Outline – Just recognize eBL as BL?

- 1 Introduction – Why did it take so long?
- 2 Scope of amendments – Why BL only?
- 3 Requirements for eBL – What is eBL?
- 4 Equivalent rules for eBL and paper BL – functional equivalence
- 5 Unique rules for eBL

III. Impacts of Amendments Outline – What will or will not change?



## II. Details of Amendments Outline – Just recognize eBL as BL?

### 1 Introduction – Why did it take so long?

- Statement of Minister of State at Regulatory Reform Promotion Council WG (extract)

*Whatever the international electronic rules may currently be, it is necessary to amend the Japanese law stating we must use paper in order to allow to do electronically, and this must be done within this year (note: 2021), what we call the first year of digitalization. ... I'm not saying that you have to do it electronically, I'm just saying that we should amend the law to make it possible to do it electronically.*

- Statement of Chairman at Legislative Council WG (extract)

*In designing a legal system for digitalization of BL and warehouse receipt (WR), it must:*

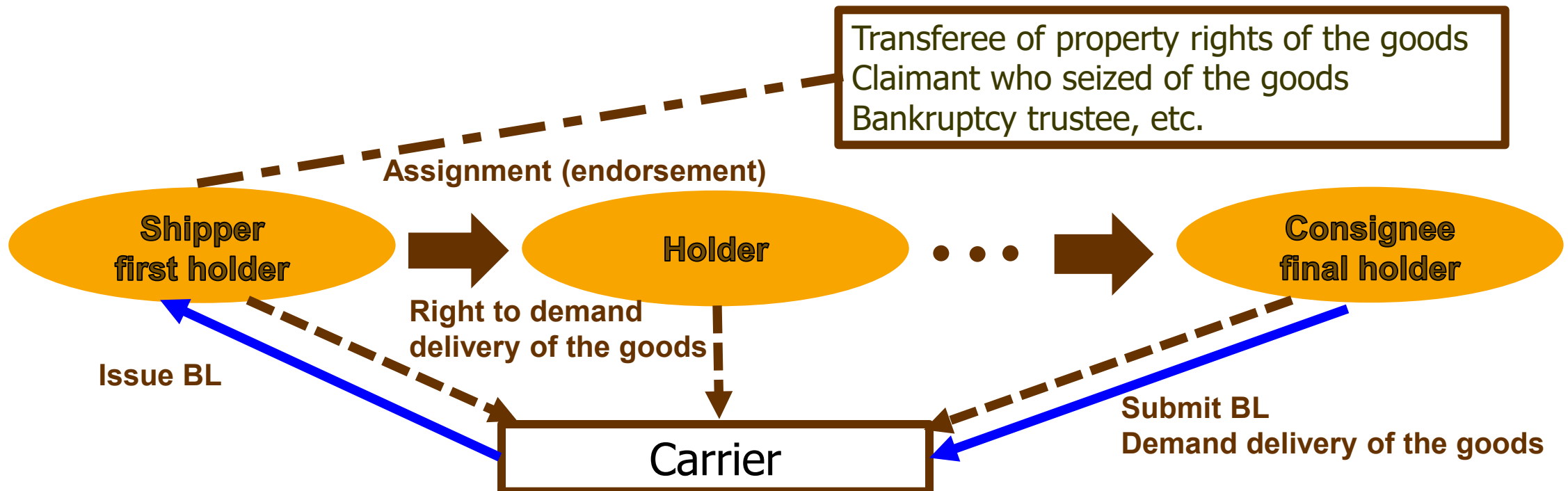
- (1) be in harmony with international rules (≡MLETR);*
- (2) ensure functional equivalence with paper BL and WR; at the same time*
- (3) ensure consistency with Japan's existing legal system; and*
- (4) be in a form responsive to recent changes in digital situation and future developments, such as blockchain technology.*

*We have had to clear an extremely difficult task of finding a solution that would meet all these wide range of requirements.*

## II. Details of Amendments Outline – Just recognize eBL as BL?

### 1 Introduction – Why did it take so long?

- Minister statement assumed bilateral relationship between submitting/receiving parties;
- In reality legal relationships surrounding BL are multilateral.



## II. Details of Amendments Outline – Just recognize eBL as BL?

### 2 Scope of amendments – Why BL only?

#### ■ Scope of amendments

- BL ⇒ Electronic bill of lading record (Part I)
- Multimodal transport BL ⇒ Electronic multimodal transport bill of lading record (Part II, I.)
- WR ⇒ Warehouse receipt record (Part II, II.)

#### ■ Comparison

- MLETR Transferrable document ⇒ Electronic transferrable record
- UK ETDA 2023 Trade documents ⇒ Electronic trade document

In Japan, for anything other than BL, multimodal transport BL and WR,

- there are no statutory provisions to govern paper trade documents
- there is no legal reason for rejecting electronic or magnetic record even now

## II. Details of Amendments Outline – Just recognize eBL as BL?

### 3 Requirements for eBL – What is eBL?

- **Requirements for eBL (electronic bill of lading record) (Part I, I., 1. to 2.)**
  - (1) Electronic or magnetic record recording the matters to be stated on a BL
  - (2) Prepared in and managed by a specified information processing system
  - (3) 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 have been taken
  
- A mere PDF file will not meet these requirements even if called eBL.
- Contractual-rule-type eBL used in practice will meet these requirements.

## II. Details of Amendments Outline – Just recognize eBL as BL?

### 3 Requirements for eBL – What is eBL?

#### (1) Electronic or magnetic record recording the matters to be stated on a BL

- Matters to be stated therein are the same as on a paper BL
- Distinction between Received/Shipped BL and Onboard Notation remain unchanged (Part I, III.)

#### (2) Prepared in and managed by a specified information processing system

- Requirements for a specified information processing system
  - **Information processing system** used to prepare and manage an eBL
  - **Technical measures** that are necessary for properly and securely conducting the matters pertaining to the control (≡ possession/hold) and provision (≡ delivery/handover) of an eBL have been taken

※ Considerable debates in Legislative Council WG about "control" before Interim Draft

Considerable debates also within the government about "control" and "provision" after Interim Draft

In the end the draft formulated by MOJ at the final stage of WG was adopted

## II. Details of Amendments Outline – Just recognize eBL as BL?

### 3 Requirements for eBL – What is eBL?

#### (2) Prepared in and managed by a specified information processing system (cont'd)

- What is **information processing system**? No definition in the Amendment Outline  
See definition in Act on Facilitation of Information Processing
  - Combination of computers and programs, which is composed to conduct the work of information processing in a systematic manner
    - Program: commands given to a computer (limited to digital type) which are combined to obtain a certain result
    - Information processing: the implementation of calculation or search of information, or processing function similar thereto by using a computer
- Requirements for necessary **technical measures**
  - Measures to identify an electronic or magnetic record that has the validity as an eBL
  - Measures to record or preserve the history in cases where the information recorded in an eBL has been altered or deleted
  - Measures to ensure the reliability, etc.



## II. Details of Amendments Outline – Just recognize eBL as BL?

### 3 Requirements for eBL – What is eBL?

(3) 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 have been taken

- The so-called electronic signature (Note to Part I, III., 3. of the Interim Draft) is assumed. Requirements are not strict.

Measures implemented in relation to the information recorded in an eBL record, which satisfies the following items:

- 1 It is indicating that the said information was prepared by the person who implemented the said measure; and
- 2 It is possible to confirm whether or not an alternation has been made in relation to the said information

## II. Details of Amendments Outline – Just recognize eBL as BL?

### 3 Requirements for eBL – What is eBL?

- **MLETR electronic transferable records**

Articles 2 and 10 to 12 No straightforward definition



- Electronic record (Article 2): corresponding with electronic or magnetic record under Japanese law
- Including information contained in transferable document or instrument (document or instrument that entitles the holder to claim the performance of the obligation and transfer the right to performance of the obligation)
- Reliable method is used concerning identification of the original/controller identifiable)/integrity (retaining the change history)



- **UK ETDA 2023 electronic trade document** Article 2

- Including information contained in a paper trade document (document possession of which is required to claim the performance of an obligation used in trade/transport/financing thereof)
- Reliable method is used concerning identification of the original/protection against unauthorised alteration/exclusive controllability/controller identifiable/deprivation of control by the previous controller due to transfer



## II. Details of Amendments Outline – Just recognize eBL as BL?

### 4 Equivalent rules for eBL and paper BL – functional equivalence

#### (1) Establishment of basic concepts

- "Control" of eBL in place of possession or hold of paper BL (Part I, I., 3.)
  - Status that only a certain specified person may use an eBL as if a person who has the rights pertaining to goods recorded in the said eBL in a certain specified information processing system
- "Provision" of eBL in place of delivery or handover of paper BL (Part I, I., 4.)
  - Measures taken by a carrier or master or by a person who has the authority pertaining to the control of an eBL (=controller) to cause a person designated by them to become the person who will have the authority pertaining to the control of the said eBL in a certain specified information processing system
- "Electronic endorsement" in place of endorsement on paper (Parts I, I., 5. and V.)
  - Blank endorsement is also possible
    - ※ The law will not require a system to enable a controller to effect blank endorsement; it means if blank endorsement is possible and actually so endorsed under a certain system, then the law will grant it the same effect as if made on a paper BL.

## II. Details of Amendments Outline – Just recognize eBL as BL?

### 4 Equivalent rules for eBL and paper BL – functional equivalence

#### (2) *Mutatis mutandis* applications of provisions relating to paper BL in principle

- Provisions relating paper BL shall be applied *mutatis mutandis* in principle (Part I, VII.)
  - Recognize the same 4 types construed to be recognized in paper BL under Japanese law: **corresponding assignment methods** (Part I, IV. and VII.)
    - Consigned-to-order type (cf. Article 520-2 of the Civil Code and Article 762 of the Commercial Code)  
= Order BL + Straight BL: **electronic endorsement + provision**
    - Consignee-specified-but-consigned-to-holder type (cf. Article 520-13 of the Civil Code)  
= ??? : **provision**
    - Other consignee-specified type (cf. Article 520-19 of the Civil Code)  
= “Non-negotiable” Straight BL: **Assignment as a claim as per Article 467 of the Civil Code (Notice to a carrier, etc.); difficult in practice as surrender of instrument is also required**
    - Consignee-non-specified type (bearer type) (cf. Article 520-20 of the Civil Code)  
= Bearer BL: **provision**
- ※ Type of BL to be issued shall be considered to be a part of a contract of carriage; The law will not require a system that enables a carrier to issue all 4 types; it means if it is possible and/or actually so issued/assigned under a certain system, the law will grant it the same effect as that in paper BL.

## II. Details of Amendments Outline – Just recognize eBL as BL?

### 4 Equivalent rules for eBL and paper BL – functional equivalence

#### (3) Points of discussion

- Is it possible to imagine a consignee-specified-but-consigned-to-holder BL?
- Is it necessary to explicitly recognize this type in eBL legislation?
  - "Consignee-specified eBL (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 eBL (=controller≠holder))" (IV., 2.)
    - ⇒ Assignable by provision (≠delivery) without electronic endorsement (≠endorsement)
- Will carrier be found in delay in performance if consigned-to-order bill is merely "presented" (≠surrendered; delivered; provided) ? (VII., Article 520-9 of the Civil Code)
  - Conceptual difference between this Civil Code Article (effect of presentation) and Article 764 of the Commercial Code (requirement of surrender for the holder to demand delivery)
  - How to define the concept of "presentation" of eBL is undecided

## II. Details of Amendments Outline – Just recognize eBL as BL?

### 4 Equivalent rules for eBL and paper BL – functional equivalence

#### ■ MLETR



- "In writing" requirement for a transferable document
  - It is met if the information contained in an electronic transferable record is accessible so as to be usable for reference (Article 8)
  - Where a signature is required, it is met if there is a reliable method for identifying the preparer and indicating their intent (Article 9)
- No substantive law rules (provisions concerning the substance of rights/obligations)
  - Substantive law rules are out of scope therein as each country shall have its own rules.

#### ■ UK ETDA 2023



- Electronic trade document
  - Capable of being held (possessed)/endorsed/delivered (loss possession) (Article 3, para. 1)
  - Same validity as paper trade document (Article 3, para. 2)
- No substantive law rules (provisions concerning the substance of rights/obligations) except above comprehensive rules
  - They have been matters of case law in principle

## II. Details of Amendments Outline – Just recognize eBL as BL?

### 4 Equivalent rules for eBL and paper BL – functional equivalence

- All essentially aim for the same objective = functional equivalence
  - There are differences in the existence and substance of substantive law rules concerning paper documents
- Why English law approach was not adopted in Japan?
  - Statement of a member at Legislative Council WG 2<sup>nd</sup> meeting (extract)

*It may be possible to consider an eBL as equivalent to a bill of lading at the constructional or statutory level as long as it is functionally equivalent to a bill of lading, which is a "thing", as is similar to English approach. However, on the other hand, we must say a certain legal concept is existing in the overall balanced manner in a legal system in relation to other concepts relying upon that concept. As you know Japan's legal system clearly defines the concept of what is considered to be a "thing". The context of compulsory execution by way of example, we find a strict division between tangible and intangible object (thing and non-thing). If you read statutory provisions too loosely or functionally, we can face with repercussions elsewhere. The legal system as a whole adopts a concept from other statutes to maintain an overall balance, so I feel it not always possible to construe it too functionally. (per Prof Matsui)*

## II. Details of Amendments Outline – Just recognize eBL as BL?

### 5 Unique rules for eBL

#### (1) Different provisions reflecting difference from paper BL

- If a received BL first issued is an eBL, then a shipped BL issued as a result of exchange request by a shipper will naturally be an eBL too (Part I, II.)
  - Cf. It is rare in practice to exchange received to shipped, but it is possible under the law. On board Notation is an alternative method of this exchange (Article 757, para. 2 and Article 758, para. 2).
- No number of originals (or obviously 1 original) (Part I, III., 1.)
- No system for public notification and order of nullification of a right in the event of loss (Part I, VII. Inapplicability of Article 520-11 of the Civil Code)
- Compulsory execution against the rights under an eBL (Part I, IX.)
  - Cf. In the case of a paper BL, enforcement against a movable thing (paper) is applicable in principle (Article 122 of the Civil Execution Act)
    - "Enforcement against a claim for delivery of movables (cargoes)" (Article 143 and 163 of the Civil Execution Act) is conceptually applicable.
    - Adjustment with Article 764 of the Commercial Code (Requirement to surrender BL to claim delivery): Grant an applicant (claimant) the right to demand a debtor to provide (=transfer control of) an eBL



## II. Details of Amendments Outline – Just recognize eBL as BL? 5 Unique rules for eBL

### (2) Requirements and effects of conversion between paper BL and eBL (Part I, VIII.)

- Requirements
  - Consents of both rightful controller (holder) and carrier (issuer)
  - The fact of conversion is to be stated on/in the BL/eBL after conversion
  - The name of the controller (holder) at the time of conversion will perhaps become an optional statement matter
- Effects
  - Uninterrupted series of electronic endorsements/endorsements up to the controller/holder at the time of conversion = presumed to be the rightful controller/holder
    - (1) is not referred to in MLETR and UK Act
    - (2) is referred to in MLETR and UK Act but no description other than the second point of the requirements.

I. Background of Amendments Outline – Why amendments now?

II. Details of Amendments Outline – Just recognize eBL as BL?

III. Impacts of Amendments Outline – What will or will not change?

1 At Law

2 In Practice



# III. Impacts of Amendments Outline – What will or will not change?

## 1 At Law

- Recognize an eBL under statute in the Japanese legal system
  - Since there are a considerable number of substantive statutory provisions concerning BL in the Japanese law (Civil Code provisions concerning negotiable instruments (Weltpapier) and Commercial Code provisions concerning paper BL) (and since it has been thought that a simple comprehensive *mutatis mutandis* application of paper BL provisions to eBL would not work), it is expected that there will also be a considerable number of statutory provisions addressed to eBL.
  - This will not intend to change substantive law rules for BL/eBL.
  
- Relation with laws other than maritime laws
  - Initial case of establishing the concepts of "control" and "provision (=transfer of control)" of an electronic or magnetic record under Japanese law

# III. Impacts of Amendments Outline – What will or will not change?

## 1 At Law

- Secure property right (ownership) of cargo interests (controller of an eBL)

- Main theoretical reason originally in the Keidanren request

Extend the non-contractual effect of a paper BL under the [Commercial Code](#) to an eBL

Article 761 (Disposition of Goods) and

Article 763 (Effect of Delivery of BL)

⇒ If a person has got the control of an eBL, it has secured not only the right to demand delivery from the carrier but also the property right (ownership) concerning the goods covered thereunder.

Cf. Principles under the [Civil Code](#)

Article 178 (Requirements of perfection of transfer of real rights concerning movables) and

Article 184 (Transfer of possession by instruction)

⇒ If a person who (claims to) has(have) received transfer of property right (ownership) first gives instructions to the carrier (direct possessor of the goods) and receives its consent, that person will have priority over the goods to another transferee.

- Disputes assumed are those in the relationship between [A] controller of an eBL and [B] (1) claimant who seized of the goods (≠rights under eBL), (2) bankruptcy trustee of the former shipper, etc.

# III. Impacts of Amendments Outline – What will or will not change?

## 1 At Law

### Commercial Code

(Disposition of Goods)

Article 761 If a bill of lading has been prepared, its holder must use it to dispose of the goods.

(Effect of Delivery of Bills of Lading)

Article 763 If a bill of lading is delivered to a person who is entitled to use it to collect the goods, its delivery has the same effect as the delivery of the goods as it concerns the acquisition of rights that are exercised in connection with the goods.

### Civil Code

(Requirements of Perfection of Transfer or Real Rights Concerning Movables)

Article 178 The transfer of a real right on movables may not be duly asserted against a third party, unless the movables are delivered.

(Transfer of Possession by Instruction)

Article 184 If a thing is possessed through an agent, the principal orders that agent to thenceforward possess that thing on behalf of a third party, and that third party consents thereto, the third party acquires the possessory rights.

Source: <https://www.japaneselawtranslation.go.jp>

# III. Impacts of Amendments Outline – What will or will not change?

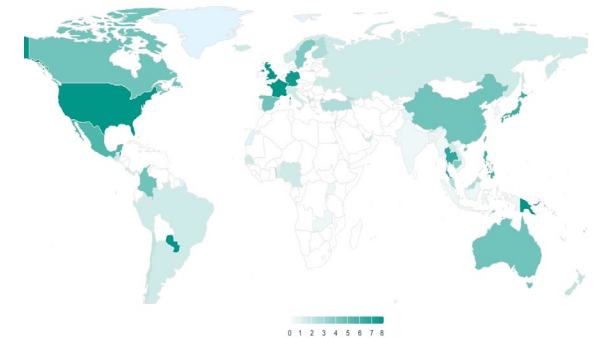
## 1 At Law

- Does it make sense to amend only the Japanese Law?
  - **There is no international convention concerning the issue, transfer and surrender of a paper BL**  
Cf. International convention concerning the contract of carriage (carrier's liability) evidenced by a paper BL = Hague-Visby Rules, etc.
  - Nevertheless, a paper BL has long been smoothly used in practice on the assumption that there exist no fundamental differences in national laws.  
↓
  - **Just as the laws of each country has recognized a paper BL, if the laws of each country recognize eBL, it would be beneficial for the promotion of the use of eBL?**
- Application of Japanese law to eBL governed by foreign law
  - Governing law for the issue and transfer of the contractual-rule-type eBL (≠governing law of the contract of carriage evidenced by an eBL) is basically the non-Japanese law at present.
  - Japanese law may be applicable to the relationship outside the parties to the contractual-rule-type eBL, and in such cases the validity of eBL in question as an eBL may well be recognized.

# III. Impacts of Amendments Outline – What will or will not change?

## 2 In Practice

- Yet Amendments Outline. Timing of enactment remains to be seen.
- Maybe no unambiguous and direct impact even enacted?
  - Will (all or a part of) "rules" of the contractual-rule-type eBL become unnecessary?
- Digitalization will be promoted as the sense of security will be enhanced by legal recognition under Japanese and other countries' laws?
  - Digitalization in different countries in different appearances although they all claim compatibility with MLETR.
  - Bahrain, Singapore, USA(UCC), UK, Germany, France ...
- What will happen when digitalization is more advanced?
  - Interoperability among systems (platforms)?
  - Competitions among systems (platforms) will become severer?
    - Users' (carriers', cargo interests' and financiers') increased costs for having to sign up for and get familiarized with multiple systems (platforms).



Source:  
ESCAP/ICC DSI  
Cross Border  
Paperless  
Trade Database  
MLETR Tracker

Thank you for your attention!

Akiyoshi Ikeyama

[akiyoshi.ikeyama@abesakata.com](mailto:akiyoshi.ikeyama@abesakata.com)