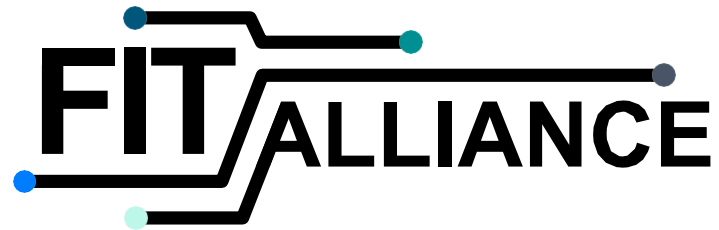




# COMPLETE GUIDE TO ELECTRONICS BILL OF LADING—LEGAL REFORM





## The FIT Alliance

*This publication has been produced by the The Future International Trade (FIT) Alliance. Members of the FIT Alliance are the Digital Container Shipping Association (DCSA), BIMCO, FIATA, the International Chamber of Commerce (ICC), and Swift. The Alliance works together to generate awareness about the benefits of going digital and the importance of common and interoperable data standards and common legislative conditions across international jurisdictions and platforms. The aim is to facilitate acceptance and adoption of eBLs by shippers, carriers, regulators, banks and insurers and to unify communication between these organisations and all other stakeholders involved in an international trade transaction. By establishing open-source, interoperable, technology-agnostic standards, the FIT Alliance intends to make the digitalisation of international trade a reality, enabling smooth data exchange and streamlining the end-to-end shipping process for the entire industry.*



## OVERVIEW OF THE LEGAL AND REGULATORY FRAMEWORK FOR BILLS OF LADING

This chapter delves into the legal and regulatory framework that surrounds bills of lading, tracing their evolution from historical origins to their current state in the digital age. We also explore the Model Law on Electronic Transferable Records (MLETR) and its impact on the global recognition of electronic bills of lading (eBLs).

**Brief regulatory history:** The history of the bill of lading traces back to ancient times, evolving alongside shifts in trade practices. Originally conceived as a means to entrust goods to maritime chartered service providers, the bill of lading transformed into a document of title, embodying terms and conditions governing shipowner-charterer relationships. In 1855, the British Parliament passed the Bill of Lading Act<sup>1</sup>, and most other countries engaged in international trade later adopted similar legislation. This act established three functions of the bill of lading: (1) Receipt for goods; (2) Evidence of contract of carriage; (3) Document of title. In 1971, in a report on bills of lading drafted by the Secretariat of United Nations Conference on Trade and Development (UNCTAD), a bill of lading was defined as “a document evidencing the loading of goods on a ship”<sup>2</sup>.

There are other international rules that also provide guidance on the bill of lading: the Hague Rules in 1924, where an updated version (Hague-Visby) was introduced in 1968. These rules set, clarify, and govern the BLs limits for merchant fleets and the liabilities of involved parties in the charter. Followed by the Hamburg Rules in 1978, and the Rotterdam Rules adopted in 2008 aimed at providing mandatory standards of liability for loss or damage arising from the international carriage of goods by sea<sup>3</sup>. The Rotterdam Rules are also one of the first instruments to refer to “electronic transport records”, which acted as a modern successor to earlier international conventions in the field though lacking sufficient ratifications to enter into force.

In addition to these international conventions, the acceptance, rights, and obligations under the contract of carriage around bills of lading have been long governed by case laws across jurisdictions. Notably, recent legal developments purposefully abstain from delving into the substantive law surrounding bills of lading, focusing on recognising and enabling the digital transition.

**The current state of eBL regulation:** The emergence of electronic bills of lading (eBLs) is poised to redefine trade documentation, yet the regulatory landscape remains diverse and dynamic. Despite attempts since the 1980s to replace traditional paper bills, the absence of uniform and harmonised legislation that recognises electronic bills of lading remains a challenge. While public law struggles to provide a comprehensive solution, the private market has introduced interim remedies through eBL platforms, showcasing notable expansion.

<sup>1</sup> Bills of Lading Act 1855: <https://www.legislation.gov.uk/ukpga/Vict/18-19/111/enacted>

<sup>2</sup> Bill of Lading, a Report by Secretariat of UNCTAD. United Nations, New York, 1971

<sup>3</sup> The Rotterdam Rules: <https://unctad.org/topic/transport-and-trade-logistics/policy-and-legislation/international-maritime-transport-law/rotterdam-rules>

These platforms achieve the digitisation of bills of lading by necessitating all participants to engage in a multi-party agreement, obligating all users to adhere to platform-specific bylaws or rulebooks. Simultaneously, if any stakeholder in the supply chain is not a user of the platform, a paper form of the bill must be issued. This contractual framework effectively replicates the legal foundation of traditional paper bills of lading within their electronic systems. With the assumption that interoperability among platforms is no longer a concern, this setup provides a viable foundation for jurisdictions that are either clearly lacking or remain ambiguous in terms of public law recognition.

**MLETR:** The United Nations Commission on International Trade Law (UNCITRAL) drafted Model Law on Electronic Transferable Records (MLETR) has emerged as the preferred guideline for legal reforms to promote the digitalisation of trade because it provides an international framework to align national laws and enables the legal use of electronic transferrable records, such as bills of lading both domestically and across borders. It allows the electronic use of transferable records by recognising the electronic version of these instruments as equivalent to their paper-based counterparts, known as “functional equivalence”.

MLETR builds on three key principles underpinning all UNCITRAL texts on electronic commerce:

1. *Non-discrimination* against the use of electronic means. This principle ensures that an electronic record is not denied legal effect, validity, or enforceability solely on the basis that it is in electronic form.
2. *Technological neutrality*. This principle ensures that the law does not mandate or favor the use of any specific technology or method. It enables the use of modern technologies, thereby making legislation future-proof.
3. *Functional equivalence*. This principle lays out criteria for electronic communications that satisfy form requirements applicable to paper-based documents such as “writing”, “original”, and “signed”.

Among these three fundamental principles, MLETR facilitates the interchangeability of an electronic transferable record with a transferable document and vice versa as dictated by the transaction's requirements. Moreover, the substantive laws that apply to paper-based transferable documents and instruments also extend to electronic transferable records. It's essential to note that MLETR's focus lies in the transferability of the record and not in its negotiability, a domain falling under substantive law.

Some countries are taking the initiative to amend their domestic laws to provide legal validity to eBLs by aligning to MLETR<sup>4</sup>, while others have incorporated eBL provisions into broader electronic commerce or trade facilitation laws as the demand for cost reduction, efficiency, and transparency increases in the global trade community. This strategic evolution reflects a global trend towards the recognition of electronic bills of lading, responding to the escalating demand for cost reduction, efficiency, and transparency within the global trade community.

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<sup>4</sup> As of August 2023, eight jurisdictions have fully adopted it or have become in principle MLETR compliant: (i) Abu Dhabi Global Market, (ii) Bahrain, (iii) Belize, (iv) Kiribati, (v) Papua New Guinea, (vi) Paraguay, (vii) Singapore, and (viii) the United Kingdom. Countries such as Germany, France have submitted legislation in compliance with MLETR principles as of September 2023.

See examples below:

<b>Germany</b>	Passed laws enabling the use of electronic transport documents in 2013, but did not provide sufficient clarity for industry implementation.
<b>The United Kingdom</b>	On 20 July 2023, the Electronic Trade Documents Act 2023 (ETDA) received Royal Assent and became law in the UK. Since 20 September 2023, the ETDA allows for the legal recognition of trade documents such as bills of lading and bills of exchange in electronic form.
<b>Australia</b>	Australia's Sea-Carriage Documents Act provides for electronic bills of lading, which expressly includes electronic and computerised sea-carriage documents: in section 4(1) and (2). <sup>5</sup>
<b>United States</b>	Functional equivalence of the electronic format of BL is recognised under the revision of Article 7 of the Uniform Commercial Code, which is now adopted by most US states. <sup>6</sup>

The ICC Digital Standards Initiative (DSI) monitors progress on policy reform worldwide, both MLETR-based or MLETR-compliant legislation, based on the following criteria: socialisation among relevant policymakers; political support; domestic analysis to identify legal gaps; readiness assessment on laws requiring amendment; stakeholder consultation; legislative drafting; passage of legislation; and entry into force of relevant law. The DSI publishes the information on a tracker on its [website](#). This tracker reflects information known to the ICC's DSI. Stakeholders are invited to share any additional information that may be relevant to update it.

While the global acknowledgment of eBLs is moving in a positive direction, the enactment or adoption of MLETR-compliant legislation by countries is merely the initial, albeit significant, step towards achieving seamless cross-border digital trade. Take, for instance, the United Kingdom, which has recently joined the list of countries legally recognising electronic bills of lading, among other key trade documents. Despite this major development, the absence of common law cases creates a sense of uncertainty for stakeholders, hindering their risk assessments.

Building certainty in this context requires a growing number of transactions conducted within these enabling legal environments. To contribute to this progress, consider aligning with your chosen eBL solution provider and endorsing the FIT Alliance declaration. Actively engaging in proof-of-concept initiatives, implementing standards, and sharing success stories will collectively drive the process forward.

<sup>5</sup> 4.(1) This Act applies, with necessary changes, to a sea-carriage document in the form of a data message in the same way as it applies to a written sea-carriage document. (2) This Act applies, with necessary changes, to the communication of a sea-carriage document by means of a data message in the same way as it applies to the communication of a sea-carriage document by other means.

<sup>6</sup> U.C.C. – §7-102 – Documents of Title 102