

E-bill Legislation

Frequently Asked Questions

February 2024



The legislation changes

Q1. What is the exact legislation change?

On 20th September 2023, the [Electronic Trade Documents Act \('the Act'\)](#) came into force in the United Kingdom, giving legal recognition in English law to electronic trade documents, including electronic bills of lading ('e-bills'). The Act reflects the recommendations of the Law Commission that the law should be reformed so that certain electronic trade documents, including e-bills, can be recognised as having the same legal recognition and functionality as their paper counterparts. This legislation follows the adoption by Singapore of similar legislation, in the form of the Singapore Electronic Transactions (Amendment) Act in 2021.

Q2. Why has this change been introduced now?

As well as push and interest from industry in moving towards digital trade, the Model Law on Electronic Transferable Records (MLETR), a uniform model law adopted by the UN Commission on International Trade Law (UNCITRAL) in 2018, provided the foundations for individual countries to adopt their own legislative framework.

Q3. What is the significance of the Act?

Due to the prominence of English law and bills of lading subject thereto in international carriage and trade law, the Act is anticipated to be a major turning point in the uptake of e-bills and electronic systems.

Q4. How does the Act change the legal position?

Until the Act came into force, e-bills did not have legal recognition in English law. Therefore, unlike a paper bill of lading to which UK COGSA 1992 applied, the rights and liabilities existing in the e-bill contract did not, as a matter of law, transfer to a third party to that contract upon a purported endorsement. Furthermore, the legal rules governing paper trade documents, including bills of lading, were premised on the idea that they could be physically held or possessed. Possession is important as it determines the right to claim performance of an obligation such as delivery of goods. However, until the Act, possession was only associated with tangible assets and so e-bills, being intangible, could not be possessed in law, and could not therefore function in the same way as their paper counterparts.

Q5. Has MLETR based legislation been widely adopted globally?

No. The legislation has not been widely adopted globally, but other jurisdictions are looking to adapt their own domestic legislation to recognise e-bills. Please refer to the ICC's MLETR tracker

Group Role in approvals

Q1. What was the exact role of the Group in approvals prior to the Act?

Our involvement in the overall approval process of e-bills platforms has been to ensure that systems do not prejudice members' P&I cover, given the lack of widespread recognition in law of e-bills.

In the absence of the law, systems providers have needed to make use of legal workarounds in the form of multipartite contractual agreements between the system's users that are intended to be equivalent to the rights and liabilities that follow from use of a paper bill of lading. These agreements are contractually binding only on those users who have agreed to them. The Group has assessed and approved these user agreements in conjunction with the system's user interface, to ensure that the three functions of a paper bill of lading are replicated electronically, namely i) as a receipt for the goods; ii) as evidence of the contract of carriage, and iii) to give the holder of the bill of lading title to the goods.

Q2. What is the approval process now that this legislation is in place?

The Group has introduced a streamlined approach to approval for systems that are limited to the use of e-bills subject to laws that recognise their validity as equivalent to paper bills. The new process will assess the following:

- The system permits "compliant" electronic bills of lading only. For this purpose, "compliant" means that they are subject to a governing law which gives legal recognition to them as equivalent to paper bills of lading.
- Electronic bills of lading must sufficiently evidence the terms of the contract of carriage.
- The system should facilitate the rejection of a transfer of an e-bill.
- The system should allow for the accomplishment of an e-bill.
- The operator/system provider must accept liability in case of system failure and carry adequate limits of liability in their insurance to cover liabilities arising from system fault or failure of any nature.

Q3. How will members know whether e-bill systems will be reliable for the purposes of the Act?

The Act sets out a reliability test. Whilst this is strictly a legal test, it is in fact a technological one in that the law will be satisfied that the technology meets certain requirements of reliability. Industry bodies such as the International Chamber of Commerce ('ICC'), are reviewing industry standards to establish reliability. Clubs (and the Group) are not in a position to review the technology behind systems, and therefore are not involved in the process of setting industry standards in respect of reliability for the purpose of the Act (or similar legislation).

Q4. What will the role of the Group look like in the long term?

Long-term, the Group envisages that its approval of electronic trading systems shall become redundant. However, the adoption of e-bills remains in a transitional

phase, with many countries yet to implement their legislation, and industry standards still to be established. Therefore, in the meantime, the Group needs to continue with its approval process, adopting a streamlined approach where appropriate.

New platforms and way of working

Q1. Why are we seeing an increase in new e-bill systems?

The emergence of new technologies, such as distributed ledger technology, and new legislation have acted as a catalyst for the development of e-bill systems with enhanced security giving alternatives to paper bills of lading.

Q2. What are the benefits of e-bill systems?

E-bill systems reduce the risk of paper document loss, forgery, and errors as digital records offer enhanced security, are easily accessible, and enable fast and efficient data management, thus lowering the overall burden associated with paper documentation. E-bills should reduce the need for Letters of Indemnity for delivery of cargo without presentation of the original paper bill of lading, as the e-bill ought to be easily retrievable from the system.

Q3. What is your stance on the industry transitioning towards the use of e-bills?

We have always supported adoption of technology and innovation within our industry where appropriate. The Group supports the transition to e-bills which offers many benefits, as outlined at 3.2.

Q4. Does the Group support the setting of industry standards now this legislation has come into place?

The Group will not be participating in the setting of industry standards for reliability because that is outside of our remit. We are supportive of the work that industry bodies are leading in this area, and we are monitoring developments closely. See also 2.3.

¹ MLETR based legislation or Electronic Trade Documents Act 2023, or equivalent, will fulfil this requirement.

² Importantly, bills of lading should be on terms no less favourable than Hague/Hague Visby Rules unless the terms of the contract of carriage are of mandatory application.

³ [see Clause 2 \(5\)](#)

The International Group of P&I Clubs

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