

CLOSING THE TRADE DIGITALISATION GAP:

THE UNCITRAL MODEL LAW ON ELECTRONIC TRANSFERABLE RECORDS



Introduction to the UNCITRAL Model Law on Electronic Transferable Records

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The views expressed are those of the author and do not necessarily reflect the views of the United Nations and of UNCITRAL.

From Paper to Electronic, from Documents to Data

- High-level goals:
 - Make information available everywhere, anytime
 - Enable data reuse and analysis
 - Digitalise trade end-to-end
- Success is the result of policy, technical and legal choices
 - On the legal side, need to have certainty and predictability on the status of electronic transactions and documents
- Certain stakeholders may be risk-averse



UNCITRAL and Digital Trade Law

- UNCITRAL is the core legal body of the United Nations system in the field of commercial law
- It is tasked with modernising and harmonising commercial law by drafting treaties and model laws
- Active for 50+ years based on universal membership
- UNCITRAL started working on legal aspects of electronic commerce already in the 1980s
- UNCITRAL texts on digital trade (e-commerce) have been enacted in more than 100 States
 - Increasing reference to UNCITRAL texts in free trade agreements
- Texts, status, preparatory and explanatory materials are available on the [UNCITRAL website](#)



UNCITRAL Texts on Electronic Commerce

- UNCITRAL Model Law on Electronic Commerce, 1996
 - Enacted in over 90 States, including Hong Kong
- UNCITRAL Model Law on Electronic Signatures, 2001
 - Enacted in about 40 States
- United Nations Convention on the Use of Electronic Communications in International Contracts, 2005
 - 19 States parties
 - 30+ States have enacted domestically its provisions
- UNCITRAL Model Law on Electronic Transferable Records, 2017
 - Enacted in 10+ jurisdictions
- UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services, 2022
- UNCITRAL Model Law on Automated Contracting, 2024

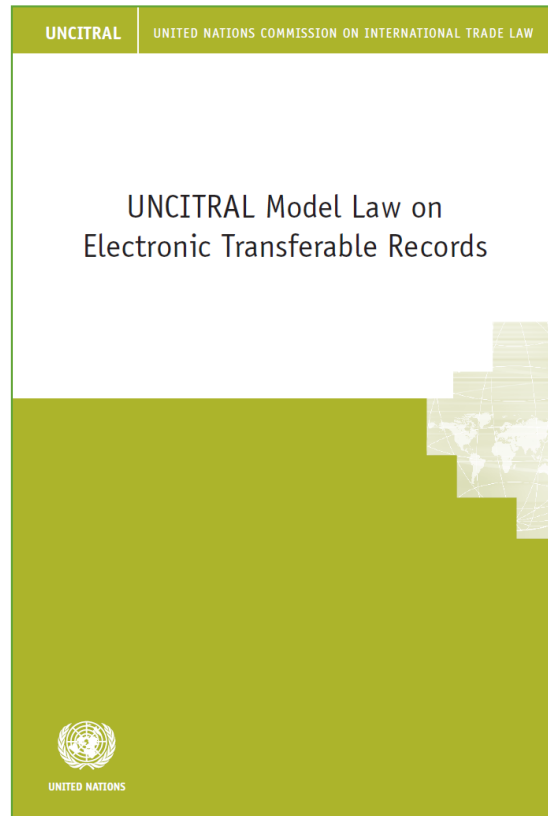


The Missing Block in Trade Documents Digitalisation

- Transferable documents and instruments/documents of title
 - Holder of document may receive in exchange money or goods
 - Bills of lading, checks, bills of exchange, promissory notes
 - Possibly, warehouse receipts, letters of credit
- Can be used for trade financing or for payment
- Contain best quality data about the commercial transaction
- Law developed based on the use of paper
 - How to enable their use in electronic form?



The Solution: The UNCITRAL Model Law on Electronic Transferable Records (MLETR)



- Adopted in 2017, the Model Law on Electronic Transferable Records (MLETR) enables the use in electronic form of bills of lading, promissory notes, etc.
- Critical for digitalisation of trade financing, transport and logistics, and paperless trade facilitation
- Supports the use of emerging technologies such as blockchain, IoT and smart contracts
- Text and explanatory note are available on the [UNCITRAL website](https://www.uncitral.org/uncitral/other/instruments/instruments.asp)



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MLETR: The Legal Effect

- Enabling law: no new regulation
- Gives legal recognition to electronic transferable documents
 - One, some or all, the depending on enacting law
- Does not modify existing law
 - Same law applies to electronic and paper-based documents
 - All existing relevant regulations apply
- Shares the same principles and language with other UNCITRAL texts
 - This facilitates MLETR adoption in those jurisdictions, including Hong Kong, that have already enacted UNCITRAL texts on e-commerce



MLETR: The Features

- Technology neutral (with DLT guidance)
- Based on functional equivalence by achieving control, singularity and integrity with the use of a reliable method to:
 - ensure that the ETR corresponds to the obligation
 - ensure that the person controlling the ETR (e.g. requesting performance) is the intended one
 - record all events during the lifecycle of the ETR



Requirements for an ETR (Art. 10)

1. ETR must contain all **information needed** for paper document
 - May contain optional information
 - May contain information available only in electronic form (metadata, automated clauses, data originating from IoT)
2. A **reliable** method must be used to
 - A. Identify an electronic record as **the** electronic **transferable** record (**'singularity'**)
 - B. Make the ETR subject to **control** for the whole lifecycle
 - C. Retain the **integrity** of the ETR
 - All events during the ETR lifecycle should be recorded so that the information is 'complete and unaltered'



Possession and Control (Art. 11)

- The key challenge is to define the equivalent of ‘possession’
 - Possession is a fact that refers to tangible goods
 - How to possess in a virtual environment?
- The ETR management system must:
 - Establish **exclusive control** over the ETR
 - **Identify** the person in control
- Control and integrity are implemented through technical solutions
- In practice, trust services may be used
 - For instance, transfer of control may be recorded with an electronic registered delivery service



Preventing Fraud ('Double-Spending')

- Need to avoid multiple requests for the same performance
 - Paper-based documents are to be presented in original
 - Paper is far from perfect
 - But established practice allows risk assessment
 - Documentary credit fraud is on the rise
- The MLETR combines the notions of 'control' and 'singularity' to prevent multiple claims
- One ETR = one claim for performance



What is a Reliable Method?

- Article 12 MLETR contains an open-ended list of circumstances relevant for reliability
- Rulebooks and other contractual agreements on terms and conditions of the service may be relevant between the parties
- Emerging private sector standards:
 - ICC DSI is helping industry to co-develop technical standards
 - Importance of assessment of reliability by IG of P&I Clubs
- MLETR does not contain a mechanism for designation of services presumed reliable, but does not exclude it



How to Promote Reliability?

- Different approaches to reliability assessment of ETR management services are possible
 - Similar to e-signatures and other trust services
- A ‘two-tier’ approach is common:
 - All services may have legal effects
 - Certain ‘qualified’ services enjoy legal presumptions
- This enhances legal predictability while enabling the use of ETR



Why Adopt MLETR?

- Enables trade-related dataflows
 - Based on technology neutrality and interoperability
- Improves governance of supply chains and trade financing
- Reduces compliance costs
 - Easier access to credit
- Safeguards against fraud
- Minimises manual inputs
 - Prevents errors and inconsistencies
- Facilitates cross-border operations



MLETR Impact on Trade Digitalisation

- Dematerialisation of all commercial documents is a necessity
- Adoption of MLETR allows reengineering business processes around commercial transactions instead of documents
 - All commercial (transport and finance) and regulatory documents may be contained in a single electronic transferable record
- A single electronic transferable record offers best data quality
 - complete, accurate, up-to-date and authentic
- Adoption of MLETR may lower costs and build more resilient logistic and supply chains
 - Need to manage jointly physical and digital trade flows
 - In line with calls from carriers for 100% e-BL by 2030



Benefits of Electronic Bills of Lading

- Improved description of goods
 - Clearer package limitation
- Avoid misdelivery
 - Electronic bills of lading are always available
 - No need to issue letters of indemnity due to delayed or lost bills
- Prevent fraud
 - Easy verification of the bill holder / person in control
 - Link between document and cargo
 - Cargo is traceable from the source
- Facilitate investigation of cargo damage and loss
 - Accurate description of cargo conditions
 - Constant monitoring of carriage



Benefits of Digital Trade Finance and Fintech

- Improve compliance at reduced cost
 - Information is reusable
- Reduce access to credit costs
 - Better identification of SMEs and of their assets
 - Easier and faster handling of trade financing
- Prevent documentary fraud and money laundering
- Introduce innovative products
 - Merge transport and finance information



Where Do We Stand with MLETR Adoption?

- The G7 has endorsed MLETR twice
 - France, Singapore, UK adopted
 - Australia, China, Japan, Thailand are adopting
 - Germany and US adopted compatible laws
- Reference in Free Trade Agreements / Digital Economy Agreements
- Importance of involving all States
 - To address the digital divide
 - To facilitate foreign ETR recognition



Are There Differences in MLETR Enactments?

- Some jurisdictions have followed MLETR closely, and for all documents
 - Bahrain, Singapore, UK adopted
- Other jurisdictions have introduced variations
 - UK: declaration that intangibles may be possessed
 - US: notion of control in UCC Articles 7 and 9
- France has opened the door to civil law style enactment
- Some jurisdictions are enacting limited to e-BL
 - China, Japan



Enacting the MLETR

- The MLETR shares the same principles and language as other UNCITRAL e-commerce texts
- This facilitates MLETR enactment in those States that have already enacted UNCITRAL texts on e-commerce
 - MLETR may be enacted a new chapter of the electronic transactions law or as a separate law



Enacting the MLETR in Hong Kong

- Cap. 553 Electronic Transactions Ordinance
- MLETR can be enacted as a new chapter of the ETO
- Section 5. Requirement for writing
- Section 6. Electronic signatures, digital signatures, etc.
 - Can be used for electronic transferable records
- Schedule 1, exclusion of negotiable instruments to be deleted



Enacting the MLETR in Hong Kong

- Cap. 440 Bills of Lading and Analogous Shipping Documents Ordinance
- Section 7. Regulations
 - (1) The Secretary for Commerce and Economic Development may by regulation make provision for the application of this Ordinance to cases where a telecommunications system or any other information technology is used for effecting transactions corresponding to—
 - (a) the issue of a document to which this Ordinance applies;
 - (b) the endorsement, delivery or other transfer of such a document; or
 - (c) the doing of anything else in relation to such a document.

