MLETR and the promise of paperless trade

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Trade documents are the quiet engines of international commerce. They are often overlooked, but when an issue arises related to the documents, the consequences ripple across the supply chain. Lost documents, courier delays, mismatched signatures and the occasional coffee stain can trigger a cascade of urgent emails, disputes and unexpected costs. Paper has served global trade well for centuries, but in an era where parcels can be tracked in real time and documents can be signed electronically from the couch, the continued dependence on paper trade documents seems increasingly out of place in modern logistics.

Modern supply chains are complex networks of carriers, forwarders, financiers, insurers and regulators. Alongside this complexity, it has been noted that paper-based systems generate three persistent problems:

1.Delay – Paper moves as fast as the courier carrying it. When cargo arrives before its documents, goods sit idle while storage and demurrage charges mount.

2.Administrative costs – preparing multiple copies, verifying manually, correcting transcription errors and archiving paper documents all add up quickly.

3.Fraud risk – forged or duplicated bills of lading remain a longstanding issue. Paper is easy to manipulate, and the consequences are real and recurring.

The logic of reform is therefore straightforward: if the problem is paper, then getting rid of paper is the solution (or at least reducing its centrality).

The Model Law on Electronic Transferable Records

Enter the global paperless trade movement. Across the world, governments and industry bodies are rolling out initiatives to digitise cross-border transactions, modernise logistics and cut the dead weight of outdated systems. Central to this effort is the Model Law on Electronic Transferable Records (MLETR) developed by the United Nations Commission on International Trade Law which gives electronic transferable records the same legal effect as their paper equivalents (See article 7 of the MLETR). Under MLETR, electronic transferable records include key trade documents such as bills of lading ("straight" bills of ladings are excluded as they are non-negotiable), bills of exchange, promissory notes, consignment notes and warehouse receipts.

The proposal may not dominate headlines outside of the international trade space but it has been noted that MLETR has the potential to unlock significant economic and productivity benefits. Notably, economic modelling suggests that APEC economies could see GDP gains of up to USD 2 trillion between 2024 and 2033 by implementing MLETR-aligned paperless trade measures. Trade volumes, employment and real wages are forecast to increase alongside these gains (See: Giesecke, J & Waschik, R, Paperless Trade in APEC: Modelling the economic consequences of implementing the Model Law on Electronic Transferable Records).

Australia and the Paperless Trade Agenda

Australia is actively considering the implementation of MLETR. Between September and October 2024, the Attorney-General's Department conducted consultations on options for implementing the MLETR in Australia. During this consultation, stakeholders consistently emphasised:

- the need for Australia to unlock the benefits of paperless trade;
- the importance of a regulatory outcome aligned to MLETR; and
- concerns that any deviation from MLETR could hinder the benefits of paperless trade.

More recently, the Standing Council of Attorneys-General agreed to establish a working group of Commonwealth, state and territory officials to progress the implementation of MLETR by way of uniform amendments to the Commonwealth, state and territory electronic transactions acts.

Accordingly, with the Australian Government now actively considering the implementation of MLETR, Australia is at a critical juncture. The path forward now depends on the legislative drafting required to bring the model law into force in Australia. Getting this right will determine whether Australia can fully realise the promised benefits of paperless trade.

The Bill of Lading

At the heart of maritime trade is the bill of lading. A bill of lading serves three functions:

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Your cargo – online

Real-time GPS location, temperature profiles, convenient data access – these are just a few of the features the Hapag-Lloyd LIVE reefer monitoring solution will offer. Hapag-Lloyd will outfit its entire reefer fleet of some 100,000 containers with Hapag-Lloyd LIVE monitoring devices. Our goal is to offer you monitoring solutions that fit your needs. Therefore, we would like to invite customers that are keen to explore latest technologies and shape the future of cold-chain transparency to work with us.

Join us on our journey for smarter shipping.

Our Offer – Basic product

Data:

- Real-time cargo monitoring 24/7/365 when in cellular network range
- Temperature set point
- Supply Air temperature
- Return Air temperature
- GPS Location
- Container Track & Trace Events

Features:

- Temperature graph
- Location tracking in map mode
- Data download in table form

Availability:

- Incremental availability starting spring 2020 from selected locations, with more origins being added as the fleet rollout continues

Your Benefit – Basic product

- Full transparency through unfiltered and untampered data
- Your feedback will allow for further development tailored to your needs
- Easy access to your digital cold chain without manual effort before each trip
- Integrated into Hapag-Lloyd Navigator – all relevant information at one glance

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1. evidence the goods were shipped;
2. evidence of the contract of carriage; and
3. a document of title.

It is the third function (as a document of title) that makes bills of lading particularly complex to digitise. Possession of the original bill of lading conveys the right to demand delivery of the goods, and typically, only the holder of the original bill can exercise that right.

Because the carrier or master must deliver only against the original bill, possession is pivotal. If goods are released without the original document, the carrier or master is liable for misdelivery, regardless of the intended recipient.

Digitising this structure is not as simple as scanning a PDF. An electronic bill of lading must replicate this idea of singularity, ensuring only one person at a time holds the rights embodied in the document.

It is worth noting that Australia's current laws allow for electronic bills of lading, but the framework is limited and largely contractual. Under the Carriage of Goods by Sea Act 1991 (Cth) and the Sea-Carriage Documents Acts, electronic bills of lading are recognised primarily when parties agree to use a private, closed system. In practice, this means that bills of lading can only be issued, possessed and transferred between parties in the supply chain where contractually agreed to. While these arrangements can streamline transactions, they do not create a globally harmonised, open and interoperable framework. The MLETR reform does.

Decoding MLETR – The Concept of Exclusive Control

Notably, MLETR makes no attempt to make any changes to the substantive law. Its purpose is to facilitate an electronic form of traditionally paper-based documents and instruments, which is achieved through the concept of functional equivalence.

Functional equivalence is satisfied when an electronic transferable record meets the following criteria:

a) electronic record contains the same information as would be contained in a paper transferable document or instrument; and
b) a reliable method must be used to:
   I. identify that electronic record as the electronic transferable record;
   II. render that electronic record capable of being subject to exclusive control; and
   III. retain the integrity of the electronic record.

Among these, exclusive control is the legal hinge of paperless trade. It replicates the concept of possession in the paper world, ensuring that only one party at a time can exercise the rights attached to the record. By preventing duplication, the concept of exclusive control allows electronic bills of lading to function exactly as their paper counterparts.

Crucially, MLETR does not prescribe how exclusive control must be achieved. It only requires that a "reliable method" be used, without mandating any specific technology. This approach enables jurisdictions to tailor their approach to the implementation of MLETR.

International Perspectives

Singapore

Singapore has fully enacted MLETR through amendments to the Electronic Transactions Act 2010. This legislative change incorporates MLETR's core concept of "exclusive control" being the functional equivalent to the possession of paper documents. An example of a MLETR-compliant system is the TradeTrust framework (developed by Singapore's Infocomm Media Development Authority) which leverages blockchain technology to issue electronic bills of lading. The mechanism for ensuring exclusive control within TradeTrust is precise: only the legitimate holder of the electronic document (identified by a unique digital wallet address that exactly matches the corresponding on-chain record) can securely transfer and thus control the document.

United Kingdom

The UK in enacting the Electronic Trade Documents Act 2023 (ETDA) has taken a different approach to confirming the functional equivalence of paper and electronic trade documents. While the ETDA recognises that an electronic trade document is capable of being possessed, it does not outline what constitutes possession of an electronic trade document. Instead, the ETDA relies on existing UK common law principles of possession, which require (1) factual control (the actual ability to exercise control over the document) and (2) intention (the intent to possess the document).

Notably, the UK's approach achieves the same outcome as MLETR: there is a single, authoritative holder of the electronic transferable record.

Australia's Path Forward

As Australia considers the implementation of MLETR, the next step lies in the legislative drafting process. Two principles should guide this process:

1. Maximum Alignment with MLETR – Australia should seek maximum alignment with MLETR given the core purpose of MLETR is to enable cross-border interoperability, and that purpose rests on minimising divergence from MLETR.
2. Uniformity – noting that it is currently proposed that MLETR be implemented by way of reforms to the Commonwealth, state and territory electronic transaction acts, any amendments to these laws to implement MLETR must be consistent across Australian jurisdictions. Fragmented implementation of MLETR would undermine the very efficiencies that electronic trade documents are designed to deliver.

Conclusion

The move toward paperless trade is not simply a technological upgrade. It is structural modernisation of global commerce, with the potential to streamline processes across the supply chain. MLETR offers Australia the opportunity to realise this potential but the benefits are not automatic and depend on the method by which Australia intends to implement MLETR. Alignment, not divergence, will determine whether Australia realises the promise of paperless trade.

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