

RESPONSE TO CONSULTATION PAPER

Consultation topic:	Consultation Paper – Review Of The Electronic Transactions Act
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1. SUMMARY OF MAJOR POINTS

- 1.1** The shipping industry firmly supports the review of the Electronic Transactions Act (Chapter 88) (the “**ETA**”). In this regard, the Singapore Shipping Association together with its associated legal working group (the “**SSA**”) takes the unified position that the lifting of the exclusion list under the First Schedule to the ETA with respect to all trade, banking and business documents is welcomed¹. A general application of the ETA to all such documents in electronic form is aligned with the interests and the preparedness of the industry to migrate toward the use of electronic documents to facilitate commercial transactions.
- 1.2** Approaching the Consultation Paper and proposed amendments to the ETA through the lens of the National Trade Platform initiative, the UNCITRAL Model Law on Electronic Transferable Records (the “**MLETR**”) offers a comprehensive legislative stepping stone for lawmakers to bring the objectives of the National Trade Platform to fruition. This can be effectively demonstrated through the recognition of electronic forms of negotiable instruments, such as bills of lading and bills of exchange, as equivalents to their physical counterparts.
- 1.3** While there is industry-wide enthusiasm for the adoption of the MLETR, a main concern for legislators would lie in ensuring that all functional aspects of the physical transferable documents are sufficiently provided for by the articles of the MLETR. Furthermore, consideration should be given to supplementary and subsidiary legislation which may be passed to give further validity and certainty in connection with specific electronic documents (such as electronic bills of lading (“**eBLs**”) and bills of exchange). It is highlighted in the comments below that issues relating to international law and treaty rules should also be explored concurrently with the review of the ETA and the MLETR.
- 1.4** Noting the considerations above, the SSA provides its comments to Questions 5 and 6 of the Consultation Paper.

2. STATEMENT OF INTEREST

Sir Stamford Raffles first set foot in Singapore in 1819. Two centuries later, what once began as a strategic colonial port along the Malay Archipelago has evolved into one of the world’s key trading hubs. Coinciding with the bicentennial anniversary of her founding, it is important that Singapore reflects upon her roots and continually implement initiatives to adapt and remain relevant in the current digital age. A timely review of the ETA underpins the legal infrastructure that will support Singapore’s development as a maritime and international trade centre and is a significant step towards the future economy. The efficacy of this initiative demonstrates the thought leadership that has driven Singapore from third world to first, and begins with the amendments to the ETA. The SSA is proud to be a stakeholder in this development.

¹ The SSA does not take a view on documents not generally related to commerce such as wills, lasting powers of attorney, family trusts, etc.

3. COMMENTS

3.1 Question 5: IMDA welcomes views and comments on IMDA's proposal to remove documents such as bills of lading, warehouse receipts, dock warrants or negotiable instruments such as bills of exchange, promissory notes or cheques from the exclusion list under the First Schedule to the ETA.

3.1.1 The SSA supports the removal of all trade, banking and business documents from the exclusion list under the First Schedule to the ETA. The removal of such documents from the exclusions list would allow such documents to reap the benefits from the provisions of the ETA. The SSA does not take a view, however, on documents not generally related to commerce such as wills, lasting powers of attorney, family trusts, etc.

3.1.2 In particular, the SSA strongly backs the full recognition of eBLs under Singapore law. The current legal regime probably only recognises physical bills of lading, and holders of eBLs may be unable to rely on similar legislation/law merchant for transfer of contractual rights of suit or rights of possession to goods. This creates uncertainty over the uptake of eBLs and hinders its adoption in the industry.

3.1.3 With the appropriate safeguards in place, the benefits of eBLs will far outweigh the disadvantages of non-implementation. The use of eBLs will facilitate faster and more secure transactions in the international trading space, and is in line with the objectives of the National Trade Platform.

3.2 Question 6: IMDA welcomes views and comments on IMDA's proposal to adopt the MLETR into Singapore law.

3.2.1 The MLETR should be adopted into Singapore law. This can be done by either having the MLETR implemented as a separate legislation independent of the ETA, or incorporated as a part of the ETA. If the latter approach is adopted, care should be taken to ensure that amendments to the ETA are consistent with the adopted terms and concepts of the MLETR.

3.2.2 In relation to eBLs, a preliminary assessment of the MLETR notes that the articles of the MLETR provide equivalent coverage over the functions of a physical bill of lading. Legal effect, validity and enforceability of an eBL would not be denied solely on the basis that it is in electronic form². A bill of lading's function as a document of title which can be possessed, endorsed and transferred between parties are also similarly addressed in the MLETR³. Such functions are premised on the condition that certain requirements relating to the reliability of the record as prescribed by the MLETR⁴ are met. In this regard, the SSA encourages the adoption of the MLETR and the incorporation of express safeguards to help eliminate uncertainty.

² Article 7 of the MLETR

³ See Articles 11 and 15 of the MLETR

⁴ See Articles 10 and 12 of the MLETR

- 3.2.3** The SSA recommends an identification of the functions of the other documents to be removed from the First Schedule to the ETA and the corresponding provisions in the MLETR to ensure that the MLETR is sufficient in addressing all documents that may be transacted in electronic form. Aside from bills of lading, documents such as bills of exchange and warehouse receipts are commonly transacted in maritime trade. A financing perspective should also be considered in tandem with that of the shipping industry, as some of these documents are commonly used as security for the provision of trade and other facilities by financial institutions. Notwithstanding, a harmonised push for the full suite of these documents in electronic form to be legally recognised under the ETA would be a significant development in the maritime industry, while a piecemeal approach to the exclusion list may result in unwanted gaps in the legislative regime regarding sea carriage documents. This may conversely lead to further uncertainty in the industry. Furthermore, as the National Trade Platform aims to digitise many aspects of international trade transactions, the removal of commercial documents from the exclusion list would further the objectives of the platform.
- 3.2.4** With respect to paragraph 3.2.3 above, it is suggested that the current Bills of Lading Act (Chapter 384) (the “**BLA**”) may be supplemented with subsidiary legislation to create substantive law in relation to the recognition of eBLs as legally valid documents. This, together with the adoption of the MLETR (as part of the ETA or otherwise) would provide eBLs with the legal certainty to be confidently transacted in the maritime industry. The relevant mechanism for the creation of subsidiary legislation has already been provided by Parliament under section 1(5) of the BLA, which states that the Minister may by regulations make provision for the application of the BLA to cases where telecommunication system or any other information technology is used for effecting transactions corresponding to (a) the issue of a document to which the BLA applies; (b) the indorsement, delivery or other transfer of such a document; or (c) the doing of anything else in relation to such a document. It is recommended that such regulations should expressly provide that the MLETR shall apply to eBLs. It is further noted that by legislating under the BLA, there may be stronger foreign recognition of eBLs as valid documents and thereby mitigating potential risks associated with conflicts of laws rules.
- 3.2.5** Sufficient consideration should also be afforded to the usage of approved processes in ensuring the reliability of and greater certainty surrounding the use of systems by which eBLs will be transacted. In connection with this, it must be ensured that the provisions of Article 12 of the MLETR are drafted broadly enough to cover the approved processes and any future technological developments which may be employed by the different IT service providers involved with the National Trade Platform. The technologies and the certification authority framework described in sections 3 and 4 respectively of the Consultation Paper are directly related to the general reliability standards envisioned under Article 12 of the MLETR. The SSA encourages further engagement between the relevant authorities and IT systems providers with respect to the ability of their service offerings to satisfy Article 12 of the MLETR.

3.2.6 It is noted that unlike the Rotterdam Rules⁵, the Hague Visby Rules (the “HVR”), which carries the force of law in Singapore by virtue of the implementation of the Carriage of Goods by Sea Act (Chapter 33) (“COGSA”), does not expressly recognise the usage of eBLs as equivalents to physical bills of lading. This may potentially give rise to conflicts in the interpretation of the COGSA. Arguments could be made that where eBLs are valid under local law, the same may not come within the scope of treaty rules as eBLs were not within the contemplation of legislators or the State Parties when the HVR was adopted in 1968. To address this issue, it is recommended that there be an extension of such recognition of electronic documents to the COGSA by way of amendment to the ETA, BLA or to the COGSA itself. One notable example is Australia, which enacted the HVR by way of the Australian Carriage of Goods by Sea Act (the “**Australian COGSA**”). She has legislated for the recognition of electronic sea carriage documents by way of an amendment in 1997 to the Australian COGSA. An explanatory memorandum to the amendments provides that the amendment regulations were made with the intention that, as agreed by industry, all relevant shipping documents, including electronic forms of these documents, will be included in the Hague Rules⁶.

4. CONCLUSION

The amendments to the ETA and the adoption of the MLETR are both welcome changes in light of the broad approach favoured by the maritime industry. Reiterating certain comments set forth in this response paper, a wholesale adoption of the MLETR without a wider inquiry into the knock-on effects on ancillary legislation is ill-advised. Much consideration should also be paid to the practical effects of the amendments to the ETA. For example, the amended ETA should wholly support the initiatives being driven by the government and industry, such as the National Trade Platform, lest it becomes cumbersome and counter-intuitive for stakeholders to navigate within the new regime.

⁵ The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea

⁶ http://classic.austlii.edu.au/au/legis/cth/bill_em/cogbsab1997286/memo_0.html