

## **SUBMISSION TO SPECIAL BILL COMMITTEE - ELECTRONIC TRADE DOCUMENTS BILL**

### **The International Chamber of Commerce (ICC)**

ICC is the largest world business organisation representing 45 million companies of all sizes and sectors in over 100 countries. ICC is the voice of business at intergovernmental level to champion open, cross border trade – today that means digital and sustainable trade with \$25 trillion of world trade governed by ICC rules and standards. ICC United Kingdom is the representative office of ICC in the UK and represents UK business interests at inter-governmental level.

The Centre for Digital Trade and Innovation (C4DTI) is an ICC United Kingdom-led, global initiative based in the Tees Valley. C4DTI was launched as a public, private partnership led by industry and supported by government on 8 April 2022. Its core mission is to accelerate the digitalisation of UK trade, the implementation of open systems based on common international standards and a digital trade system that is paperless, sustainable and secure.

C4DTI is the UK implementation partner to the ICC Digital Standards Initiative (DSI), the global body responsible for coordinating the digitalisation of 60-80% of world trade by 2026. The DSI is responsible for setting out the legal, rules and standards frameworks that will underpin future trade. C4DTI's role is to implement the frameworks [see roadmap below], working in partnership with counterparts overseas.



ICC United Kingdom has played a pivotal role digitalising UK and international trade since 2016, initially publishing the ICC Roadmap for Digital Trade which led on to the creation of the DSI. This was followed, in 2017, by instigating the campaign for legal reform in the UK, culminating in the Bill and the G7 Ministerial Commitment on electronic transferrable records in 2021/2. This campaign included publishing the UK and G7 business cases for legal reform in 2021. More latterly, the team have helped shape the trade documentation aspects of the UK-Singapore Digital Economy Agreement and are currently, through the C4DTI testing and piloting systems to implement newly agreed digital chapters of the UK's FTAs.

## **Legal Reform; Current State of Play**

The global campaign to remove legal barriers and align laws to the United Nations' Model Law on Electronic Trade Records (MLETR) is coordinated by the Legal Reform Advisory Board at the DSI. To date, 7 countries have legal systems aligned to MLETR, the largest of which is Singapore. The G7 are all expected to have aligned legal systems by 2024/5, starting with the UK, Germany and US in 2023 and France in 2024. Thailand is also expected to be aligned by 2024. The Asia Development Bank is assisting China, Georgia and Vietnam who are all expected to be aligned by 2025 with more multi-lateral development bank assistance programmes for low to middle income countries in the pipeline.

MLETR commitments are now incorporated into the WTO Ecommerce Agreement text, due to be completed in 2024 and the UN Paperless Trade Initiative led by the UN Economic and Social Commission for Asia and the Pacific. The former includes 86 countries and the latter 54 countries. ASEAN and the African Union are both actively scoping out how to incorporate MLETR into regional digital economy frameworks.

To put this in context, most of this has happened in the last 2 years. Realising the benefits of legal reform is all about reaching scale. The more countries that enable trade digitalisation, the more companies and economies will benefit. The UK is at the forefront of this movement but to remain so it needs not just to pass the Bill into law but ensure that its permissive measures are a) facilitated by technology and adopted by those who engage in and facilitate international trade into and out of the UK

## **Significance of the Bill**

The Electronic Trade Documents Bill is a vital piece of legislation that is non-controversial and technical in nature and that has already been through a good deal of scrutiny and consultation thanks to the work of the Law Commission. It will enable commercial trade documents, such as bills of lading, bills of exchange and warehouse receipts, to be handled in digital form, and to have the same legal effect as their paper equivalents. The Bill will also ensure that English law is aligned to MLETR, the global framework for the handling of commercial trade documents in digital form, and would ensure the continued jurisprudential primacy of the Law of England and Wales in the governance of and resolution of disputes concerning international contracts .

The Bill is a pre-requisite to UK companies being able to fully to benefit from new digital trade corridors such as the UK/Australia Free Trade Agreement or UK/Singapore Digital Economy Agreement. Without this new law in place, commercial trade documents must be handled in paper form which means all the unnecessary paper cannot be removed from the system. implement common digital standards to enable trade information to flow across systems and platforms or drive technology solutions at scale.

Despite the significant investment in digital customs and trade facilitation systems since 2013, less than 2% of trade documents are handled in digital form worldwide. This is largely because laws have not been updated to enable commercial trade documents to be handled in digital form. The trade system today continues to operate

much as it did in the 1800's when the laws under which it operates were conceived<sup>1</sup>. Despite the world radically changing since then with the emergence of smarter digital technology, little has changed in trade documentation and working practices. The economic opportunity is vast.

With up to 80% of world trade reliant on natural resources, digitalisation is also a key enabler to delivering net zero, nature positive global value chains. What the goods are, who owns them and who is financing them are all vital pieces of information locked up in millions of paper of documents. It's not possible to aggregate data on any scale to provide the transparency we need to know what is sustainable and what is not until trade is digitalised.

The Bill is the cornerstone to making UK trade cheaper, faster, quicker and more sustainable. It is also the cornerstone to digitalising world trade – 80% of all bills of lading operate under English law. English law has a disproportionately large impact on world trade, more so than any other legal framework due to the UK's legacy in world trade. This Bill provides a unique opportunity for the UK to demonstrate its global leadership credentials, stand by its G7 Ministerial Commitment, modernise its laws and importantly help and support other countries to do the same.

To iterate, while passage of the Bill is a necessary condition to realise in full the potential benefits of digitalisation of trade processes, it is not sufficient. There needs to be continued leadership support and advocacy for its intended effect from both public and private sectors as we in ICC and C4DTI look to turn the will of parliament as expressed in the Bill to practical and scaleable effect.

## **Benefits for business**

ICC's 2021 reports<sup>2</sup> stated that digitalising commercial trade documents would deliver the following benefits to the UK economy:

- £25 billion in SME trade growth
- £1 billion in additional trade finance [50% of the UK trade finance gap]
- 80% reduction in trade transaction costs
- £225 billion in efficiency savings
- A reduction on cross border compliance processing time from 25 days to 1 day (75% reduction)

These benefits scale further across the G7 and Commonwealth.

- \$9 trillion in SME growth across the G7

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<sup>1</sup> Bills of Exchange Act 1882.

<sup>2</sup> <https://www.dsi.iccwbo.org/policymakers>

- \$1.2 trillion in trade growth across The Commonwealth
- \$2 trillion across The Commonwealth if combined with customs digitalisation (equivalent to 2030 intra-Commonwealth trade target)

The ability to use digital documents instead of the paper-based processes would improve SME efficiency by 35%. According to the Digital Container Shipping Association (DCSA), 16 million bills of lading are issued by ocean carriers in a year, costing the industry \$11 billion a year. Less than 0.3% were electronic bills of lading. A 50% adoption of electronic bills of lading would save more than \$4 billion per year. These benefits will be multiplied across all sectors importing and exporting goods.

Whilst we fully support the government impact assessment figures, our belief is that they are conservative. This Bill will have positive impacts on numerous aspects of the UK economy, particularly the speed and efficacy in which trade finance can be provided to SMEs. Both ICC and government analysis however suggest that the numbers are large and this Bill represents an excellent opportunity to drive much needed economic growth, and not just any old growth, but growth that is based on transparent and accountable supply chains where industry and regulators can be better able to ensure that management of those supply chains is compliant with net zero and sustainability objectives and with future resilience more assured.

### **Opportunity to scale reforms**

The Commonwealth provides a unique opportunity to scale legal reforms, arguably faster than any other global network, because of its shared legal heritage around English law. A number of Commonwealth nations are already aligned to MLETR (Belize, Papua New Guinea, Singapore), numerous others are either already committed through existing trade/G7 agreements such as Australia, Canada and New Zealand or are about to commit through the WTO Ecommerce Agreement in 2024.

The Commonwealth Secretariat is actively promoting MLETR alignment as a solution to economic growth, financial inclusion and gender equality<sup>3</sup>. Once the Bill receives Royal Assent, the UK has the ability to create the impetus for fast track reforms, using the new legislation as a template that can be replicated across 52 other Commonwealth nations.

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<sup>3</sup> Worldwide, 5 of 6 digital businesses are run by women. UNCTAD.

## **Bill implementation**

We are conscious that laws changing don't always translate to action and benefit. C4DTI, in its practical work, is anticipating an international trade environment in which adoption of the Bill's provisions and alignment to MLETR will be the norm in all major trading jurisdictions. We are bringing together the following:

### Business Rules

ICC produces universally accepted rules and guidelines for international banking practice and the most recent, Uniform Rules for Digital Trade Transactions (URDTT), were published on 1 October 2021. The rules provide a high-level framework outlining obligations, rules and standards for the digitalisation of trade transactions.

Until recently, very few laws existed in respect of electronic trade documents. This changed with the introduction of MLETR and would be further enhanced by the introduction of the proposed Electronic Trade Documents Bill. The URDTT definitions are modelled on the MLETR and are, therefore, already compatible with the Electronic Trade Documents Bill.

The proposed reforms contained within the Electronic Trade Documents Bill not only fully align with the content of the MLETR and the URDTT, but also meet existing market needs for required legal expectations.

It is worth noting that the URDTT provide that where the applicable law requires or permits delivery, transfer, or possession of an electronic record, that requirement or permission is met by the transfer of that electronic record to the exclusive control of the addressee. "Exclusive control" of an electronic record is functionally equivalent to "possession" of a paper document and therefore meets the criteria for 'possession' as defined in the Law Commission's recommendations.

In order to qualify as an electronic trade document, a document in electronic form must contain the same information as would be required to be contained in the paper equivalent. Both the URDTT and the Electronic Trade Documents Bill cater for this.

The Law Commission have stated that electronic signatures can be used to sign electronic trade documents without the need for an express statutory provision. The URDTT does not contain any substantive requirement that an electronic record contain an electronic signature, and merely states that if an electronic signature is used, it must be in compliance with any conditions specific to that electronic signature in the digital trade transaction.

A recent analysis by C4DTI analysing both the URDTT and the proposed Electronic Trade Documents Bill concluded that both are compatible with the proposed legislative changes with regard to the use of possessable electronic trade documents as set out in the Law Commission recommendations.

This alignment will greatly benefit the trade community and it is considered that the reforms definitely achieve what they are intended to.

## Standards

The ICC in conjunction with the World Trade Organisation has developed a Digital Standards Initiative (DSI) which takes the best in class standards from 16 global standard setting bodies and provides an overview of how those standards can be safely adopted and implemented in technical solutions to drive adoption of digital processes, drive adoption of digital trade processes identifying potential gaps and further development requirements and to promote interoperability between commercial and sovereign systems. More detail on this can be found here [Standards Toolkit for Cross-border Paperless Trade - ICC - International Chamber of Commerce \(iccwbo.org\)](https://www.iccwbo.org/standards-toolkit-for-cross-border-paperless-trade/)

## Technology

New technology, correctly implemented and governed, can now in principle digitalise uniqueness, property and rivalrous exchange and this without the major exchange or risk of unpermitted exposure of commercially or regulatorily sensitive data. But industry has shown itself to be reluctant to move quickly to adopt such technology.

Recent failures in some major platforms that have adopted that new technology have posed questions about the safety governance and commercial models that need to be in place to enable the full extent of the Bill to be put into practice across different jurisdictions and systems.

With the passage of this Bill, and the continued support of government in seeing into practical effect its provisions, the UK would have all the ingredients necessary not just to deliver on the terms of the Bill itself but to put itself at the forefront of the development of the transformation we need in supply chains and trade if we are to make them the secure, transparent and accountable processes that are the prerequisite of our future sustainable economic international relations.

## **Pilots**

C4DTI is working with industry and the government of Singapore to test and pilot the application of interoperable legal, rules and standards frameworks in preparation for the change in English law. The aim is to establish a uniform playbook piloting model that can be replicated in every trade corridor enabling the UK to implement trade agreements without delay and realise the benefit as soon as they are negotiated.

## **Responses to Committee questions**

### **Whether you agree with the proposed reforms and whether the reforms achieve what they are intended to;**

Yes. There is universal agreement across all industry groups that this reform is vital to making trade cheaper, faster, simpler and more sustainable.

The trade system is antiquated and inefficient partly because it operates under laws designed in the 1800's – these are not fit for purpose for the digital world. The bill will update the existing legislation, recognising that trade today is increasing digital and will all be digital in the future.

Digital transactions covered in the Bill are already undertaken digitally by members of closed systems such as those run by individual Protection and Indemnity Insurance groups (P&I Clubs) but these are currently the preserve of those “in the club” - mainly large carriers etc- and involve considerable private law management and the generation of a large amount of technical legal contractual documentation. The Bill would make a fundamental shift of this capability out of the realm of private law into public statutory law , increasing its accessibility to many more traders, especially in the economically significant SME sector.

### **Whether the Government was right to extend the Bill to the whole of the UK;**

Yes. The best option for business is to operate under a single set of rules or one common framework. This is the least burdensome on small companies.

Legal fragmentation – 180+ legal systems all with different requirements is a huge part of the problem for cross border trade. To successfully digitalise world trade, we need laws, rules and standards to align.

### **Whether the application of the Bill to the whole of the UK sufficiently takes account of any differences there may be with the law of Scotland;**

We have looked at the Scottish legal system and see no substantive reason as to why Scotland should be under a different regime. The Bill is simply removing the requirement for commercial trade documents to be handled on paper and aligning English law to the MLETR framework.

This provides the essential interoperable trading environment companies need to benefit from cheaper, faster, simpler and more sustainable trade. Scotland will benefit from the change in law in the same way as England and Wales.

**The interoperability of the Bill with national and international regimes, in particular the Model Law on Electronic Transferable Records from the United Nations Commission on International Trade Law (MLETR);**

See above points made.

**The reliability and security implications of moving to an electronic system, including:**

- the immutability of electronic documents;
- the potential risks from the ability to create multiple copies of a document;
- the reliability of electronic signatures; and
- the benefits and risks of a list of trusted signatures and reliable systems;
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4 billion paper based documents flow through the trading system at any given time – paper-based fraud costs the global economy billions per annum.

New technologies such as blockchain enable documents to be handled in much securer environments.

The application of Distributed Ledger Technology, if done properly, can provide not only an immutable digital record of an event (eg the making of an export) having happened, but can make that record available to any participant in a relevant system who is either permitted or entitled to see it , through access to that system that is precisely calibrated to the nature and extent of that permission or entitlement. The one digital record thus only needs to be created once and used many times- there is no need to create multiple copies and any attempt to do so will be immediately evident to all members of the system. Uniqueness and signatures can be assured via cryptography and use of private keys to enable validation and authorisation only by those empowered to provide such. The view of ICC UK is that there is a reference or target architecture that will allow of the safe , real time and assured access to one single source of authoritative data about a trading transaction that would enable all parties to a transaction – commercial and regulatory- to make the decisions they need to at the optimal time and with optimal assurance and this all enabled by the Bill.

Neither ICC UK nor the Centre claim to have all the answers here, that is why we are looking to make the most of the time before and immediately after the Bill's expected passage to test in practical terms how we can replicate the safety and security achieved by the private law application of digital transactions to the more generic , public law systems enabled by the Bill. We need to work with banks, platform providers, carriers and the trading community themselves as well as other jurisdictions to show how we can design security reliability and resilience into systems from the start.

That requires not just separate technological and legal experimentation, but real time input from lawyers – such as Professor Green and her team at the Law Commission – who understand both the law and the technology. We have a good range of



stakeholders already engaged with our early design for piloting how such systems would work in practice and we fully expect to be able to run with a real life exemplar of how this would work to statutory effect in the UK immediately after the Bill receives royal assent.

**Whether the list in Clause 2(2) of what constitutes an “electronic trade document” is right;**

We assume this to mean the list in Clause 1 (2) of the Bill as currently drafted.

This is group of documents that cannot currently be handled in digital form under public law and the same group of documents listed on the MLETR framework.

ICC considers that , in principle, any and all of the 50 or so documents involved in international trade could and indeed should eventually be capable of practical and legal implementation via digital means. Indeed we would go further and invite all involved to consider not just the digitalisation of individual documents that have developed from the paper-based means of transacting that have been the norm for centuries, but how you would achieve the policy and commercial functions of those documents in a truly digital way. We consider it highly likely that the number and range of “documents” required to complete a digital trade transaction – with no reduction in security and reliability – would reduce considerably; a transformation enable by the Bill’s provisions and on which the UK would be well-placed to lead.

All other trade documents can already be handled in digital form – there are no legal barriers.

- whether the emphasis on “possession” and its development by the courts in the UK rather than “exclusive control” is the best approach (as compared to Article 11 of MLETR and section 16 I of the Singapore Electronic Transactions (Amendment) Act 2021);[\[3\]](#)
- The Centre and its advisors are looking at the practical difference between the proposed UK and actual Singapore concepts. ICC UK and the Centre have been closely involved with the development of the legal views on this by both the Law Commission and by our member firm Squire Patton Boggs. Each of these organisations will be submitting separately and covering this point. We fully agree with their respective submissions.
- We consider the “Affirmative Procedure” as suggested in the Bill for the extension of the list to be sound. There may be a case for recommendations to flow into the parliamentary procedure from either an existing authority or, because of the new and developing nature of the technology and the systems by which it operates, from a new statutorily constituted consultative body of techno-legal experts which will be able to give a combined view on both the legal and practical efficacy of any proposed extension, The Centre and ICC would be happy to provide more input on this if the Committee considers this worth consideration.

## **Whether the Bill is future proofed.**

Yes. The future will be trade built around decentralised and interoperable systems that fully paperless and digital, where transactions take minutes not months to complete and where finance transacts at the same time as the transfer of ownership. The bill is specifically designed to enable this environment to become a reality for all companies.

The Bill also enable trade data to be digitalised, aggregated at scale and integrated with wider sustainability data thereby giving decision makers full visibility over global value chains. This is a pre-requisite to net zero, nature positive trade.

## **Possession vs. Control**

We have discussed and debated this issue at length and in depth with our legal experts for the duration of the consultation leading to the Bill. We fully support the position of the Law Commission for England and Wales and the submission by Robert Parsons at Squire Patent Boggs.