Digitalise to enable global trade

ICE Digital Trade's Marina Comninos discusses developments in the acceptability of eBills of Lading



Marina Comninos

People have been talking about digitising the bill of lading since the 1980s: at the time, Chase Manhattan Bank joined forces with INTERTANKO to create Seadocs. So, 40+ years on, how much progress has been made?

The first key adoption milestone was in early 2010: electronic bills of lading (eBLs) were rolled out operationally by various players in the European energy sector.

Progress was slow, and a key reason cited by the industry to explain the pace of adoption was legal uncertainty. Historically, national laws did not recognise eBLs as the legal equivalent of paper bills, so each eBL provider – there were 4 at the time – created its own contractual 'club' which ensured that its eBLs were recognised among the members of its club. Some of these contractual networks received broad acceptance. For example, the ICE Digital Trade legal framework is particularly strong in the bulk carrier industry, where eBLs are being used at scale. Some trade routes are at 70+% digital, recognising that eBLs are the answer to the difficulties, costs and inefficiencies associated with paper BLs.

While the contractual frameworks have proven valuable, a legislative landscape enabling trade digitisation was bound to follow. Industry pressure, and the impact of Covid-19 on international trade, meant that a decade later some progress was finally made in modernising eBL legislation. The foundations were set in 2017, when UNCITRAL published the Model Law on Electronic Transferable Records (MLETR). Bahrain was the first country to embrace the model law in 2018, however, adoption only began to accelerate post-Covid.

Of the critical maritime nations, first Singapore in 2021 and then the UK in 2023 changed their laws so that eBLs now have the same legal effect as their paper counterparts. It is noteworthy that the State of New York recognised eBLs as far back as 2001. However, the nature of international trade is such that one country recognising something is not sufficient – you need a coalition. And speaking of coalitions: it is rumoured that France, Germany and the Netherlands are soon to follow, and the G7 have publicly declared that they will adopt legislation recognising eBLs.

Trade benefits

So, what does the trend to modernise international trade laws to enable digitisation mean for trade and the use of eBLs? And what is the value of legislation which recognises eBLs?

"As the critical link between charterers and carriers, shipbrokers have a critical role to play in enabling trade digitisation"



A paper bill of lading from 1863

Credit: Missouri History Museum

The adoption of laws recognising eBLs as the equivalent of their paper counterparts should enable two things which will greatly accelerate adoption, legal certainty and interoperability. While contractual frameworks have stood us in good stead, they are bulky and complex arrangements – a law saying that an eBL is the same as a paper BL is clearly preferable.

Will contractual frameworks disappear? Not overnight. Contractual frameworks have served the industry well the last 14+ years, and they have an ongoing role to play in the transition from a private law (contractual) system to a public law (statutory recognition) system. While the number of countries which have adopted MLETR-like legislation is limited, trust in local law bills will need to be built up over time, by showing successful adoption and scalable use in pre-determined trade lanes.

How will 'local law' eBLs interact with 'contractual' eBLs? Initially, 'local law' bills i.e. ones which are valid because they are subject to a law which recognises eBLs, will need to co-exist with ones created under one of the contractual frameworks (let's call them 'contractual bills'). This means that some eBLs will be governed by local law and others by contractual frameworks. This will pose some challenges to the industry, as it adds to the complexity of the change management burden. But given the effort over many years to lobby governments to change the law to recognise eBLs, the opportunity is too great to miss. Solution providers must find ways to lighten the change management

burden on users to capitalise on the changing legislative landscape.

'Easier than online shopping'

What are the benefits of eBLs (generally) for carriers? Beyond the ease of an electronic system to review, approve and sign documents – one master described ICE CargoDocs as "easier than online shopping" – eBLs are much more likely to make it through the trade chain before the vessel arrives at the discharge port. As a result, a carrier does not need to discharge against a Letter of Indemnity (LOI) and will therefore remain within the terms of its P&I cover by discharging against the original eBL.

Our assessment is that approximately 90% of all eBLs are surrendered for delivery, even when there are back-to-back documentary credits involved. Of course, the converse is true with paper bills of lading; likely 90% of times an LOI is required to take delivery because the paper BL is not available for surrender.

How does digitisation of the bill of lading impact charterparty negotiations? Charterparties often require a carrier to issue a bill of lading 'as presented' by the charterer, and the carrier is generally indemnified for doing so. Charterparties do not specify that the bill of lading presented needs to be a paper bill, but it is the legitimate expectation of the parties that the bill will be issued in paper unless otherwise specified. When a charterer wants to use eBLs it is therefore common to include a specific clause in the charterparty, giving the charterer the option to ask the carrier to issue an eBL.

BIMCO developed a standard electronic bills of lading clause in 2014 which is in widespread use in the bulk carrier industry. Ensuring the inclusion of an eBL clause in charterparties is a key way the shipbroking community can assist in accelerating trade digitisation.

Are carriers insured by their P&I clubs for using eBLs? The International Group of P&I Clubs (IG) is very supportive of digitising bills of lading, recognising that, in the modern trading world, it is the only way to avoid delivery LOIs. Over the years, nine contractual frameworks have been approved meaning that carriers using contractual eBLs created on these nine platforms remain within the terms of their P&I Club cover.

More recently, the IG has approved two local law frameworks, so these eBL providers, including ICE Digital Trade, can leverage the benefits of the changes in legislation. Currently, ICE Digital Trade is the only solution which supports both a contractual and a local law eBL solution, with full IG approval for each approach.

What is the governing law of the eBL? Critical to the validity of a Local Law eBL is that it is governed by a law which recognises eBLs. In containers, this is easy: all container line eBLs specify the governing law of the bill, either on the front or the back. The difficulty is for bulk carrier bills, which almost invariably refer to the charterparty, and either expressly or impliedly state that the bill of lading is governed by the law and jurisdiction clause of the charterparty. In such circumstances, to utilise the Local Law eBL option, eBL forms need to be amended to include a law and jurisdiction clause. ICE Digital Trade is working with BIMCO to develop a standard law and jurisdiction clause for eBLs.

Building blocks

What else is needed to fully digitise trade? Legislative change alone is not sufficient, there are a number of building blocks to ensure success:

Data standards: these will greatly facilitate interoperability and great work is being done by the Digital Container Standards Association (founded by container lines) and the FIT Alliance (comprising BIMCO, DCSA, FIATA, ICC and Swift) in this sector.

Change management: it is incumbent on solution providers to make the transition to digital as seamless and effortless as possible.

Leadership: change by definition needs strong leadership, with people recognising that it is needed and willing to undertake the effort. For that leadership to continue to thrive, the problems associated with analogue trading practices need to be clearly articulated, and the benefits broadly publicised. While trade participants remain unwilling to quantify the benefits of digitising, this value proposition remains opaque, which slows down adoption.

What can you do to help progress the digital transformation for eBLs? As the critical link between charterers and carriers, shipbrokers have a critical role to play in enabling trade digitisation. Educating the market on what is available, making sure digitisation is addressed during charterparty negotiations and helping to articulate and substantiate the benefits all assist in getting the message out. We have fair winds behind us now, let's seize the opportunity to finally bring international trade into the digital world. **SN**

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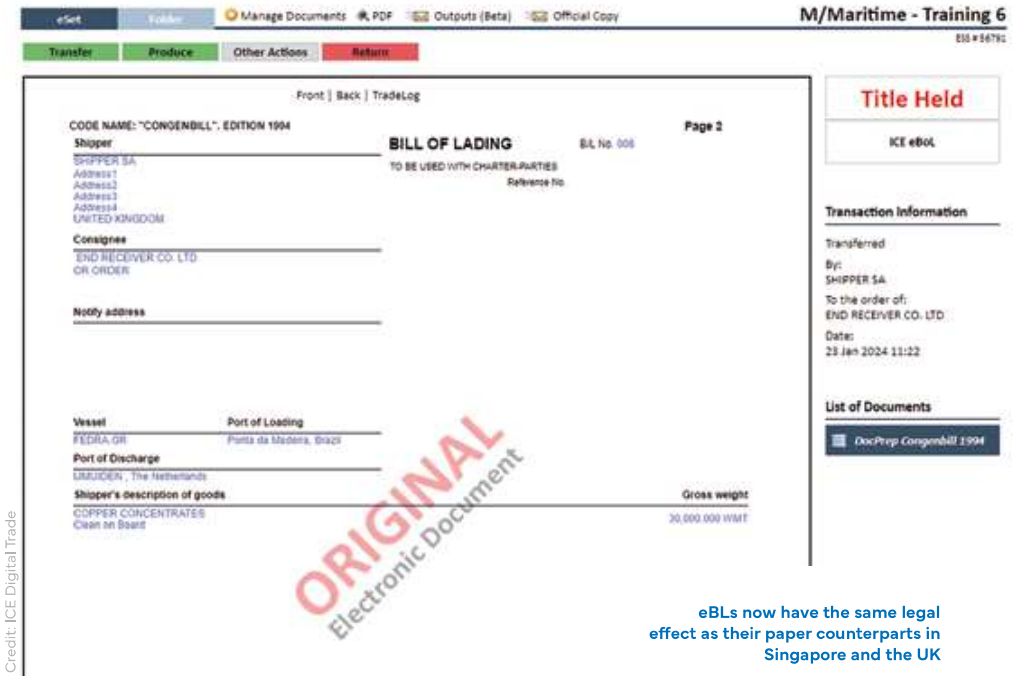

eBLs now have the same legal effect as their paper counterparts in Singapore and the UK