

DIGITALIZATION OF BILLS OF LADING

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In February of this year 2023, nine of the world's leading shipping lines belonging to the Digital Container Shipping Association (DCSA) pledged to make 50% of their bills of lading digital within five years and 100% of their bills of lading digital by 2030.

The announcement by the nine shipping lines belonging to this association confirmed what we already knew: the electronic bill of lading is here to stay.

Even though for some the subject still generates resistance, due to the uncertainty of the new, fear that some work or service will be affected, doubts about how it will be implemented in practice, the reality is that those who do not adopt it will be left out. Therefore, I believe that we should get on board the train as quickly as possible to grab the best places, and mainly to set clear rules in order to create legal certainty for all parties involved.

The electronic bill of lading brings many benefits; in a few years it will seem unbelievable that these documents traveled the world on paper.

For starters, it saves a lot of costs. Documents are transmitted quickly and securely. It speeds up not only the process of sending documents, but also all commercial transactions. The benefit is not only in the speed of exchanging documentation, but also that bills of lading can be endorsed and goods can be sold and resold more quickly. By being able to exchange documents quickly, commercial relations become much more agile and effective.

One of the problems that would be solved is the letters of guarantee issued by the P&I Clubs for goods delivered without bill of lading; a problem that occurs constantly when ships arrive before the documents.

Moreover, it reduces the number of e-mails sent between the parties in the document preparation process. The computer systems used considerably improve the process. The parties have all the information unified in a single system, which means that it is stored in a much more orderly and clearer way. You can work from anywhere, because all the paperwork is done through the software. The computer systems are much more secure than any courier delivery system.

And finally, it brings great benefits to the environment.

How are we doing with this issue in Uruguay?

Many shipping companies are already using it, such as Mediterranean Shipping for example, which is highly committed not only to the implementation of this system but also to its dissemination and promotion.

The biggest problem we have in Uruguay is not simply that the possibility of using this documentation in electronic form is not legally foreseen, because we have a number of regulations that, although they do not expressly refer to bills of lading, can be used analogically. The problem is that we do not have any international standard approved to give us legal certainty across borders.

The legal certainty needed is both nationally and internationally. Because bills of lading are documents that travel from one country to another, they must necessarily have international validity.

Therefore, we should not only count on local legal norms, but also consider the International Conventions that regulate this type of documents.

Uruguay has not approved any of the International Transport Conventions and within them we have provisions that enable the possibility of using electronic transport documents.

Let us start with the **United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules)**:

Art. 14 paragraph 3 states "*3. The signature on the bill of lading may be handwritten, facsimile printed, perforated, stamped, embossed, in symbols or recorded by any other mechanical or electronic means, if not inconsistent with the laws of the country in which the bill of lading is issued*".

Although it does not provide for the possibility of issuing bills of lading electronically, the possibility of signing documents electronically was already included at that time.

Currently, the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 2008) ("Rotterdam Rules") expressly regulates this possibility in detail.

Chapter 3 of this Convention refers in full to electronic transport documents, their use and effectiveness, procedures for their use, as well as the possibility of substituting the paper transport document for the electronic one and vice versa. Chapter 8 regulates the issuance of these documents, the data they must contain, the identity of the carrier, requirements regarding the electronic signature, rules concerning deficiencies in the contract data, evidentiary value of their data and others.

It is a Convention that although it has its critics in many aspects that do not correspond to enter in this opportunity, we cannot deny that it is very complete in terms of the legal regulation of electronic transport documents.

Finally, we have the **Model Law of the United Nations Commission on International Trade Law on Electronic Transferable Documents**. This law was created by the United Nations Commission on International Trade Law, and as its name indicates, it is not a Convention but a model law. The aim is for countries to adopt it as domestic law, and thus achieve the uniformity of law that is sought at the international level.

In its explanatory material it is explained that the aim is to help the states to improve their legislation on electronic commerce. But it also stresses the importance of having a law that is uniform for all States, bearing in mind that commercial transactions take place across borders. Therefore, it would not be advisable for each State to legislate differently, as this could be a hindrance to trade relations. It is therefore sought that the States incorporate into their domestic law a model law of international origin.

The main characteristics of this law are the following:

To begin with, it focuses on the transmissibility of the document and not on its negotiability. This is very important, because it does not regulate substantive law issues. It does not enter into the analysis of substantive law, but only regulates functional aspects. Therefore, I understand that it could be adapted to practically any legislation.

It does not apply to those documents that only exist in electronic form, but only to those that necessarily have a functional equivalent on paper.

It is based on three principles: technological neutrality, functional equivalence and the principle of non-discrimination.

The principle of technological neutrality refers to the fact that the law adopts a neutral approach to the computer systems used. Taking into account that technology is constantly changing, we have a law that, because it is neutral, adapts perfectly to technological changes without the need to be modified.

Functional equivalence refers to the requirements that the electronic transferable document must contain in order to be functionally equivalent to the paper transferable document, when there are requirements such as the signature, the written record, or determining who has possession of the document.

By way of example, when the law requires that the document must be in written form, it is understood that the requirement has been met *"if the information contained therein is accessible for subsequent consultation"* (art. 8). With respect to the signature requirement, it is understood to be fulfilled *"if a reliable method is used to establish the identity of that person and to indicate that person's intention with respect to the information contained in the electronic transferable document"* (art. 9). Where the law refers to possession of the document, this requirement is deemed to be met if a reliable method is used *"to determine that the electronic transferable record is under the exclusive control of a person"* and *"to identify that person as the person in control"* (art. 11).

Finally, the principle of non-discrimination refers to the fact that a document shall not be denied legal effect solely on the grounds that it is in electronic form. It also establishes that no requirement may be imposed on an electronic transferable document that is not imposed on a paper document.

The law includes a general reliability standard that provides guidance for assessing the reliability of the method or computer system used for issuing documents. It is intended that this standard will be used to provide guidance to judges when there is a legal dispute regarding the questionability of a document, but also to provide guidance to the developers of these computer systems.

The model law regulates how to protect the uniqueness of the document, its integrity, as well as its transmissibility and possession in a secure manner.

As any change, it is normal that it generates insecurity for those who have been used for years to operate with paper documents. But this law is quite friendly and I understand that it can be adapted to any jurisdiction, as it does not enter into substantive law. It includes an article which admits the autonomy of the will to the effect that the parties by agreement may exclude or modify provisions of the law, as long as they do not affect the rights of third parties. It foresees the possibility that whoever does not want to use an electronic transferable document may change the medium and substitute it for a paper document, and vice versa. It expressly states that no one is obliged to use one method or the other. The latter is important because, as I said before, not everyone is yet ready to implement this system.

As I have already stated, although it is necessary to regulate it internally, we must consider the International Conventions in order to have greater legal certainty in international commercial

transactions. But taking into account that the International Conventions (as is the case of the Rotterdam Rules) regulate a number of other aspects that refer to substantive law and that make their ratification much more difficult, I consider that the adoption of the Model Law on Electronic Transferable Documents is a good place to start legislating, simple to achieve and much safer.

Of course (and in the same way as the Conventions) it is necessary to incorporate it into the domestic legislation of many States in order to achieve the desired international standardization.

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