



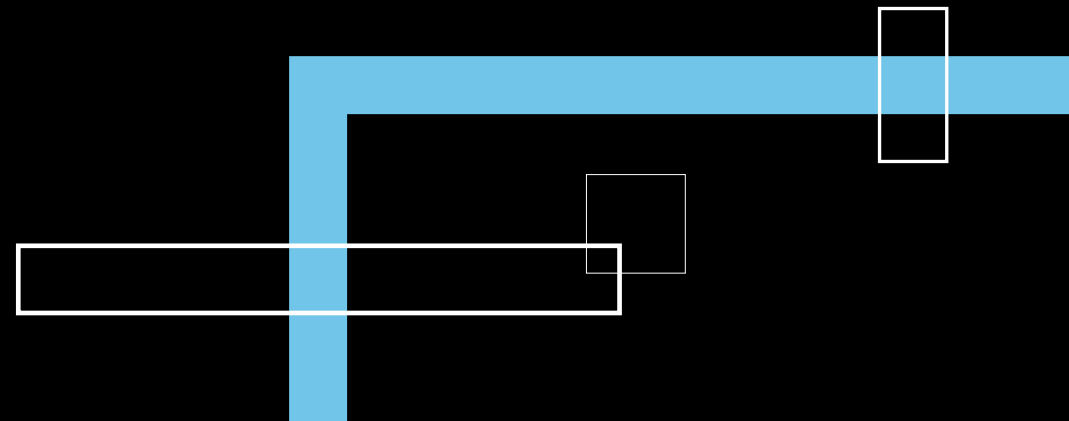
Digitising Trade: the Practical Benefits & Challenges of Legal Change

11 September 2023



01

Intro to ICE Digital Trade



□ ICE Digital Trade



- ✓ Leading paperless trade solution provider
- ✓ **65,000+** customers, offering eB/Ls operationally since **2010**
- ✓

Part of Intercontinental Exchange (ICE)

[Learn more >](#)



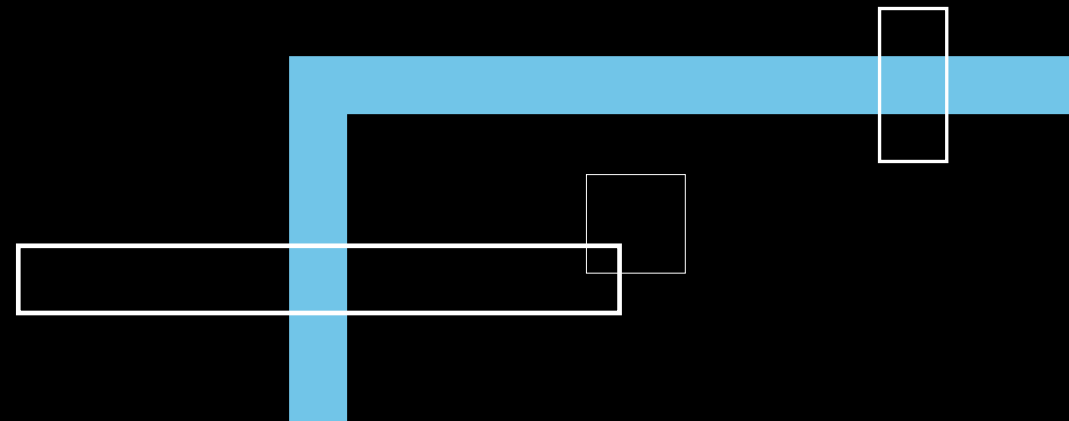
- ✓ **Founded in 2005**, the mission is to replace paper in trade settlement, focused in particular on **negotiable** bills of lading (B/Ls), taking the conservative shipping + trade finance industries from analog to digital



- ✓ **Legal & workflow-based solution** to generate/manage title documents (e.g., eB/Ls,) plus supporting docs throughout the supply chain; and/or quasi-governmental documents such as Certificates of Origin

02

Digitising Trade: Progress to Date



□ The (Continuing) Need for Private Law eB/Ls

- **Until (very) recently, *negotiable* eB/Ls were not recognised by most nations' laws**
 - Specifically, local laws which ensure that the transfer of a paper B/L results in the transfer of rights to possession/suit, either do not envisage the use of electronic documents (i.e they are silent on the issue) or specifically mention paper form
 - Notable exceptions (so far) include: the US (2001); South Korea (2008); Germany (2013); Bahrain (2018); Abu Dhabi Free Trade Zone (2021); Singapore (2021); UK (2023)
- **Private law systems were developed to bridge this gap:**
 - Multilateral Contracts, whose users promise each other that they will treat a negotiable eB/L as the legal and functional equivalent to paper
 - Require IG Club approval: the Rules of each of the 12 P&I Clubs exclude eB/Ls from cover unless they are issued under an 'approved' legal framework
 - Only work if identical contacts are signed by each member of the trade chain (carrier, sellers, buyers, banks), causing an adoption hurdle and preventing cross-platform utilisation
 - Requires change management across entire supply chain

Contract Based eB/Ls in Use

- **9,000+ Companies**
- **Across all commodity sectors**
 - **Energy:** Crude Oil, LNG, LPG, Refined Products (Butane, Propane, Propylene, Naphtha)
 - **Metals/Minerals:** Iron Ore, Copper, Coal, Bauxite, Alumina, Steel
 - **Agri:** Grains, Beans, Oilseeds & Meal, Veg/Palm/Corn Oil, NFC Juice
 - **Chems:** Glycol, Glycerine, Naphtha, Acetone, Benzene, Ethanol, Ethylene, Methanol, Propylene, Polycarbonates, Polyethylene
 - **Manufactured goods:** Containerized final goods incl. Industrial Equipment, Automotive Parts, Packaged Dairy, Packaged Beverage/Spirits, Packaged Food & other FMCG
- **And All Transport Modes**
 - Tanker: **67%** of the global Tanker fleet under management signed up
 - Bulker: **80%** of the global Bulker fleet under management signed up
 - Liner: ONE, PIL, MACS, RCL
 - Barges: **81%** of the ARA Tank Barge Fleet signed up; **15** key US barge lines signed up as part of the NGFDS Agri Barge eBoL solution, which is 90% digital
- **In 81 countries**
- **Using 54 banks**, across 311 branches in 27 countries

□ Key Customers



Metals/Minerals

445 minmetal players

Iron Ore, Coal, Copper, Lead, Zinc, Nickel, Bauxite, Alumina, Steel +



Energy/Chem

199 Energy players

Crude Oil, Petrochemicals, Middle Distillates, Gasoline, LNG + more



Agri

78 Agri players

Grains, Beans, Oilseeds & Meal, Veg Oil, Palm Oil, Corn Oil + more



Traders

Across Metals/ Minerals, Energy and Agri



Banks

54 Banking Groups (311 branches).

Financing flows in all/any commodity type



□ eDocs are in use in 81 countries and counting...

Americas

Argentina
Bermuda
Bahamas
Brazil
Canada
Chile
Colombia
Costa Rica
Cuba
Curacao
Dominican Republic
Ecuador
El Salvador
Honduras
Grand Cayman
Guatemala
Jamaica
Mexico
Panama
Peru
Trinidad & Tobago
United States
Uruguay
Venezuela

Finland
France
Germany
Greece
Holland
Hungary
Italy
Malta
Northern Ireland
Norway
Poland
Portugal
Republic of Ireland
Romania
Russia
Scotland
Slovenia
Sweden
Switzerland
Spain
Turkey
Ukraine

Middle-East

Israel
Lebanon
Oman

Qatar
Saudi Arabia
United Arab Emirates

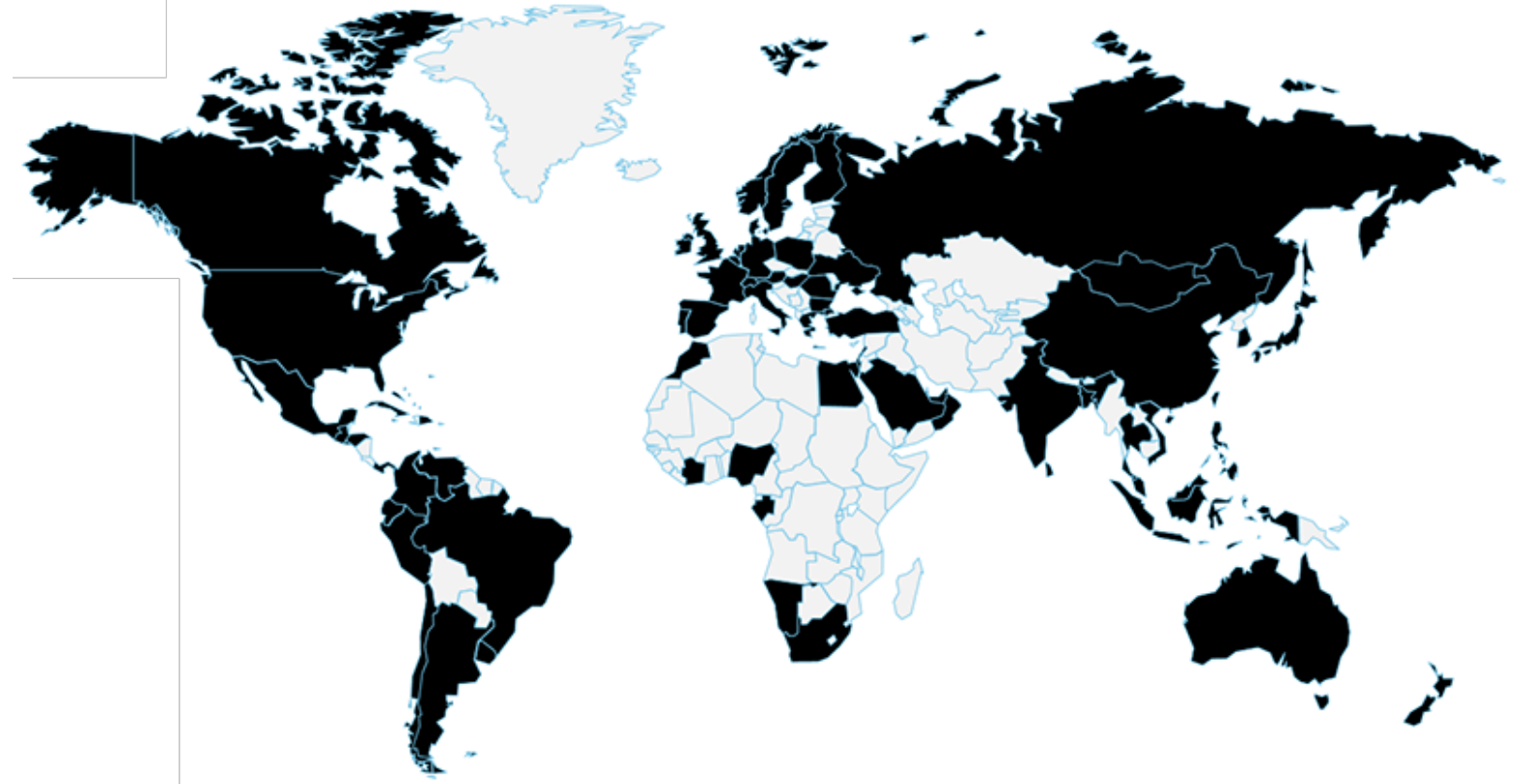
Africa

Egypt
Gabon
Morocco
Mozambique
Namibia
Nigeria
South Africa

Ghana

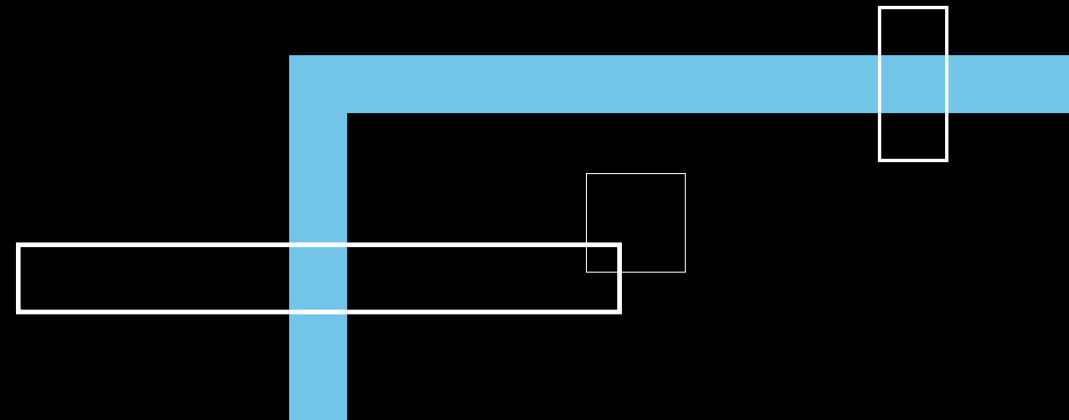
Asia

Australia
Bangladesh
China
India
Indonesia
Japan
Malaysia
Mongolia
New Zealand
Philippines
Samoa
Singapore
South Korea
Taiwan
Thailand
Vietnam



03

Digitising Trade: What the Future Holds



□ The (Exciting) Time for Statute Based eB/Ls

▪ MLETR & eB/L Recognition

- A brilliant model law which digitises negotiable instruments – it addresses the legal gap which prevents intangible objects (such as data in an electronic environment) from being possessed
 - Key documents covered: *negotiable* bills of lading, bills of exchange, promissory notes, warehouse warrants
- Implementation of MLETR and legislation which is influenced by MLETR is picking up pace:
 - Bahrain (2018); Belize (2021); Kiribati (2021); Paraguay (2021); Singapore (2021); Abu Dhabi Global Market (2021); Papua New Guinea (2022); UK (2023)
 - In progress: Germany, France, G7 countries, Netherlands
- The US recognised eB/Ls in 2001 under the UCC; Canada, Colombia, Guatemala and the Philippines have enacted articles 16 and 17 of the UNCITRAL Model Law on Electronic Commerce which stipulate that transport documents can be transferred digitally, provided a reliable system is used

▪ Future State:

- Will not need multilateral frameworks, as eB/Ls will be recognised under local laws

▪ Intermediate State:

- Meantime in a transition period which will raise its own challenges
- Contract Based eB/Ls will live alongside Statute Based eB/Ls for a while: contractual frameworks have served the industry well the last 10+ 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, through trials and controlled expansion
- This will pose some challenges to the industry, as it adds to the complexity of the change management burden: solution providers need to step in to ease that burden

Reliability

▪ Requirements

- The ETDA, similar to the Model Law, and its enactment in Singapore, all require that the system which manages the eB/L lifecycle is a 'reliable' system
- Reliability is broadly defined, and is intentionally technology neutral
- There is nothing in the requirements which should cause concern to a seasoned solution provider:
 - Properly identify signer and ensure an eB/L cannot be altered after signature
 - Distinguish Originals from Copies
 - Ensure only one person has the right of control and there is no double spend
 - Secure the solution, including protecting the integrity of the data and preventing unauthorized access
- If Contract Based Solutions in use today did not meet these requirements, they would not be in business
 - The challenge in the short term is how to prove this to the satisfaction of industry
- Critical that this is not judged at a national level: we are dealing with international trade, so we have to develop international standards
 - Imagine needing to gain accreditation in each country where the eB/L may be used/presented/enforced...

▪ Projects

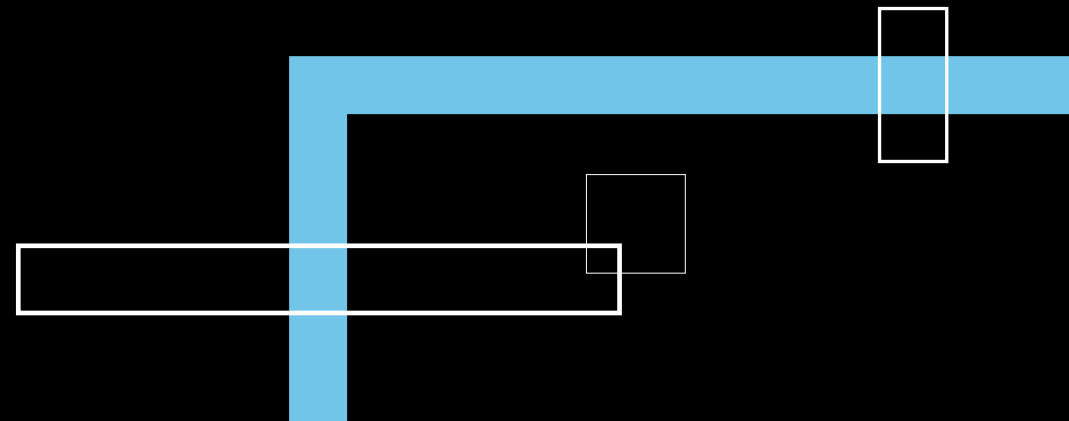
- The industry focus is gradually shifting to consider standards the international trade community can implement to establish 'reliability' of our systems, such that the law will recognize an eB/L issued by these systems
- ICC UK, with the ICC Centre for Digital Trade & Innovation (C4DTI), have launched a consultation with a broad cross-section of industry participants to consider appropriate standards.
 - Updates are expected on this by year end

□ Statute Based eB/Ls in Trials

- **Trust** in Statute Based eB/Ls will be achieved by showing successful adoption and repeated operational (scalable) use in pre-determined trade lanes
 - Follows our approach when we first introduced eB/Ls which were governed by contractual frameworks
 - Showcase successful high adoption examples
 - Industry-wide education on current eB/L adoption + traction
 - Readily available materials on legal opinions/reviews + technological due diligence
- **Number of different routes:**
 - **Singapore Law:** participating in a trial using Singapore law governed eB/Ls from Middle East to APAC
 - **UK Law:** working on a series of trials of container (EMEA & APAC), tanker (intra-Europe) & bulker (intra-APAC) eBLs, with combination of open account and trade financed flows
- **Industry is committed to accelerating adoption:**
 - **Commitment to 100% Ocean eBLs by top Container Lines by 2030 spearheaded by DCSA:** Nine ocean carriers commit to converting 50% of original bills of lading to digital within five years and 100% by 2030 to accelerate the digitalisation of container trade
 - **25x25 pledge spearheaded by BIMCO:** signed by 4 leading metals/minerals producers and other stakeholders to exceed 25% eBLs in at least one trade bulk trade lane

04

Watch out for...

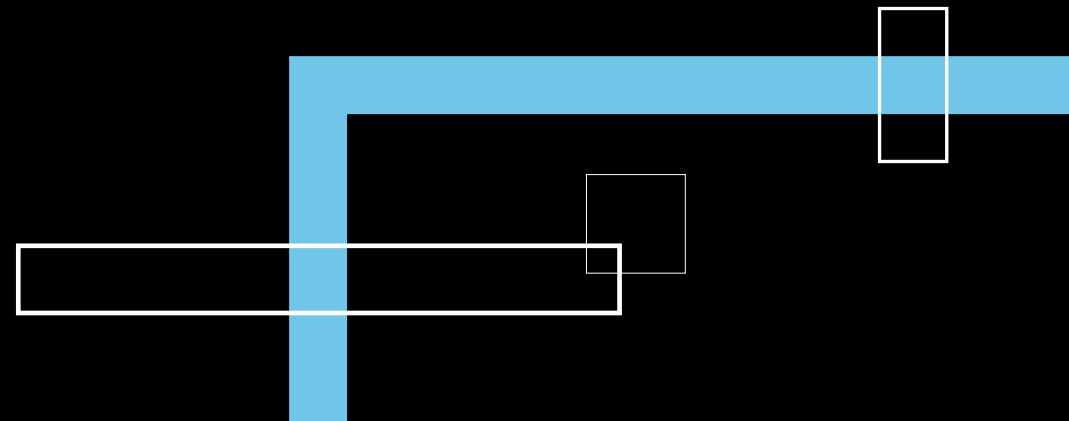


□ Change Management Challenge

- **Change management is an issue even before the change in law**
 - Even without the changes in law to recognise eB/Ls, there is a significant (and under reported) change management challenge
 - The change management challenge is often one of the reasons organisations resist adoption of eB/Ls: requires risk analysis, switch from existing process, apply new technology, run dual processes, etc.
- **Change in law adds another layer of complexity because we need to run in parallel contract based and statute based eB/Ls for a time**
 - Lobbied governments for years to change law: now must show adoption as utilisation will drive progress and deliver certainty
 - Need to be alert not to allow the transition from contract to statute to slow down adoption
- **What can Solution Providers do to assist in this change management hurdle:**
 - Industry-wide education on eB/L adoption + traction
 - Simplified process for onboarding, using user-guides, training videos, automated forms - customized for each actor-role (shipper, trader, buyer, carrier, etc.)

05

Crystal Ball...



□ Final Thoughts

▪ Quiet before the storm

- We're at a cross-roads: contractual frameworks have got us this far, we are now looking at alternatives
- This may slow down adoption before it accelerates it, as trade participants assess these alternatives
- Optimistic that we are finally at the inflection point for digitizing trade: in the bulk markets there is already considerable adoption and the trend is only going up

▪ What can each of us do to help speed up adoption?

- Keep lobbying your government to enact the Model Law, or a piece of legislation influenced by the Model Law. If you cannot lobby government, join your local ICC team, and encourage them to lobby your government.

▪ When will Contract Based eB/Ls fade away?

- When a 'sufficient' number of countries have enacted legislation recognising eB/Ls, statute-based bills will become the de facto solution for electronic transferable records
- So, what is sufficient?
 - We know one country is not sufficient: New York law has recognised eB/Ls since 2001, but that was not enough
 - Singapore alone in 2021 did not meaningfully move the needle
 - Together though, US, Singapore and UK, are formidable when it comes to relevant maritime nations: approx. 80-90% of bulker bills are likely governed by these 3 laws, and 40-50% of liner bills



Thank you

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