



Overview of the UNCITRAL Model Law on Electronic Transferable Records

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UNCITRAL

- The United Nations Commission on International Trade Law (UNCITRAL) is the core legal body of the United Nations system in the field of commercial law
 - Has operated for 50 years based on universal membership
- Its mandate is the modernization and harmonization of rules on international business by drafting conventions, model laws and other legal texts
- UNCITRAL texts on e-commerce give legal recognition and certainty to the use of e-transactions and e-signatures In commercial and non-commercial settings

UNCITRAL texts on electronic commerce

- UNCITRAL Model Law on Electronic Commerce, 1996
 - Enacted in some 80 States
- UNCITRAL Model Law on Electronic Signatures, 2001
 - Enacted in over 30 States
- United Nations Convention on the Use of Electronic Communications in International Contracts, 2005:
 - 18 signatories, 15 States parties
- UNCITRAL Model Law on Electronic Transferable Records, 2017
 - Enacted in 5 States
- Texts, status, preparatory and explanatory materials are available on the [UNCITRAL website](#)

Paperless trade facilitation: the private side

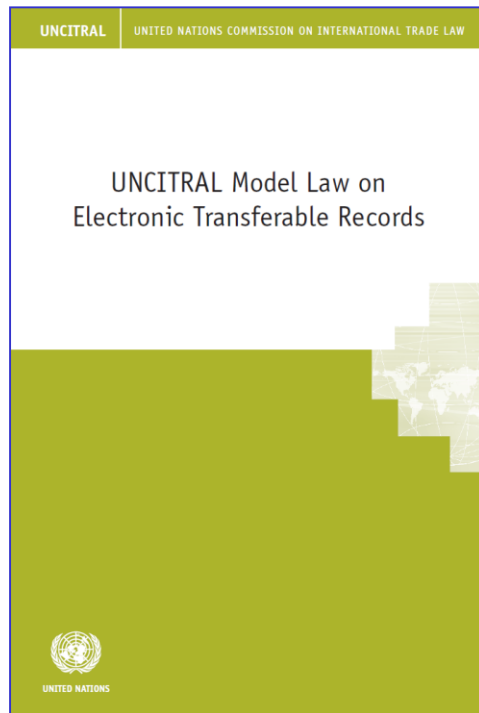
- B2B transactions fall under the scope of commercial law
- Limited number of provisions needed to complement general contract law
- According to the principle of technology neutrality, parties are free to choose the technology, method or product used
- Legal uniformity based on UNCITRAL texts facilitates mutual legal recognition of electronic communications and data flows across borders

Paperless trade facilitation: the public side

- Electronic single windows (e-SW) perform public functions
 - Submission to e-SW is a B2G transaction
 - Cross-border e-SW is a G2G transaction
- Commercial operators may be asked to use specific e-SW formats and technologies
 - This brings additional compliance costs that may discourage traders from using e-SW facilities

Paperless trade facilitation: reconciling private and public side

- Need to enable B2B, B2G and G2G exchanges
- e-SW technical and legal standards are not uniform across States
 - This hinders mutual legal recognition of electronic communications and data flows
- The same laws should apply to private and public sector and across States in order to:
 - facilitate exchange of trade-related data
 - reinforce regulatory functions



Adopted in 2017, the Model Law on Electronic Transferable Records (MLETR) enables digital trade financing and paperless trade facilitation

It supports the use of emerging technologies developments such as blockchain, IoT and smart contracts

MLETR: the core issue

- Certain commercial documents and instruments incorporate the right to delivery of goods or payment of sums of money:
 - bills of lading; bills of exchange; promissory notes; warehouse receipts; cheques; insurance policies / certificates; (letters of credit) ...
- Commonly used in cross-border trade
- Contain valuable information on the transaction
- The incorporation of the right to delivery or payment presupposes the use of a tangible medium (paper)

Background

- ETR, especially e-bills of lading, have been a pending issue for decades
- Few existing laws:
 - Demand the use of specific technology
 - Deal with one type only of document
 - Create a special type of ETR
- This approach may be effective in the short term, but multiplies IT systems and creates data silos
- E-B/L based on contractual rules
 - Law of B/L does not apply to them
 - The contractual rules do not apply to third parties

Fundamental features of the MLETR

- Enabling law: existing regulation continues to apply
- Technology neutral: compatible with registry-, token- and distributed ledger-based (blockchain) systems
 - Promotes interoperability and dataflows
- Built around functional equivalence rules: the same law applies to electronic and paper-based documents:
 - Interaction with third parties
 - Use as collateral
- Allows inclusion of metadata, data originating from oracles, smart contracts etc.
- Provide guidance on change of medium

Preventing double-spending

- Need to avoid multiple requests for the same performance
 - Paper-based documents are supposed to be issued in a single original
 - Practice shows that paper-based documents are far from perfect
 - Documentary credit fraud is on the rise
- The MLETR combines the notions of “control” and “singularity” to prevent multiple claims
- Each ETR represents one right to performance

MLETR and business process re-engineering

- Dematerialisation of commercial documents is a necessity
- Adoption of the MLETR allows reengineering business processes around transactions (and not documents)
- A single ETR may contain transport, finance and other documents
 - Data may be selectively shared with business partners
 - This enables integration in a single flow of all data elements in the supply chain (“data pipeline”)
- A single electronic transferable record offers best data quality
 - complete, accurate, up-to-date and authentic

Why enact the MLETR?

- Enables trade-related dataflows
 - Based on technology neutrality and interoperability
- Improves governance of supply chains and trade financing
- Reduces compliance costs
 - Easier access to credit
- Safeguards against fraud
- Minimises manual inputs
 - Prevents errors and inconsistencies
- Addresses specifically cross-border operations

MLETR benefits in practice: response to COVID-19 related trade disruptions

- Risk reduction:
 - paperless trade minimises personal interaction
 - blockchain implementation may increase origin traceability
- Faster response:
 - full control of logistics and customs supply chain allows real time tracking and priority delivery of critical shipments
- Robust economic recovery:
 - improved trade financing governance and reduced compliance costs allow easier, faster and more affordable access to credit, including by SMEs

How to enact the MLETR?

- MLETR may be enacted as a stand-alone or add-on to existing texts
 - Some 100 States have already enacted UNCITRAL texts on e-commerce
- MLETR has been adopted in Bahrain, Belize, Kiribati, Singapore and Abu Dhabi Global Market
- Bill pending in Paraguay
- Referenced in Digital Economy Agreements
- The G7+ [ministerial declaration](#) of 28 April 2021 promotes a framework for G7 collaboration on electronic transferable records based on MLETR