

Digitalizing Trade in Asia Needs Legislative Reform

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- Legislative gaps impede the digitalization of trade.
- Digitalization makes global trade and supply chains more robust; supports economic growth, and job creation; and closes financing gaps for micro, small, and medium-sized enterprises (MSMEs).
- Adoption of the Model Law on Electronic Transferable Records (MLETR), developed by the United Nations Commission on International Trade Law (UNCITRAL), would address the problem. Only five jurisdictions have taken the step to date: Bahrain, Belize, Kiribati, Singapore, and the Abu Dhabi General Market.
- Widespread adoption of the MLETR holds the promise of increased efficiency, consistency, and coherence in the modernization and harmonization of legislation on electronic commerce.
- The time for legislative reform is now: the expected benefits will contribute to post-coronavirus disease (COVID-19) pandemic economic recovery.

INTRODUCTION

This report identifies country-level legislative gaps that inhibit the digitalization of trade in three economic country groupings in Asia: the Association of Southeast Asian Nations (ASEAN),¹ the Central Asia Regional Economic Cooperation (CAREC) Program,² and the South Asia Subregional Economic Cooperation (SASEC) Program.³ It provides a snapshot of developments and opportunities for legal reform to enable the digitalization of transferable records.

ASEAN, CAREC, and SASEC member states are encouraged to

- adopt the UNCITRAL MLETR; and
- accede to the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific.

In partnership with the International Chamber of Commerce, Enterprise Singapore, and the Asian Development Bank (ADB), the International Chamber of Commerce (ICC) Digital Standards Initiative (DSI) was launched in 2020. The DSI is focused on establishing

“Universal standards will connect existing digital islands and enable market forces to improve customer experience. As a leading and neutral voice in the industry, it made sense to bring this project under the umbrella of ICC. This will allow the ICC DSI to lead and coordinate efforts in developing standards and protocols to digitise trade.”

—John W. H. Denton AO, ICC Secretary General

a globally harmonized, digitized trade environment. It envisions digital standards that enable seamless digital trade throughout the trade ecosystem, with end-to-end interoperability for exporters, shippers, ports and customs authorities, logistics providers, financiers, and importers.

This will translate into enhanced resilience in trade finance and supply chain processes, increased productivity, the introduction of new services at scale, and the advancement of the United Nations (UN) Sustainable Development Goals (SDGs). This initiative will leverage technology to reduce the global trade finance gap, particularly among MSMEs.

¹ ASEAN is a regional grouping comprised of Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam.

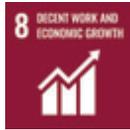
² CAREC is a regional grouping comprised of Afghanistan, Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic, Mongolia, Pakistan, the People's Republic of China, Tajikistan, Turkmenistan and Uzbekistan.

³ SASEC is a regional grouping comprised of Bangladesh, Bhutan, India, Maldives, Nepal, and Sri Lanka.

Alignment to the Sustainable Development Goals



Digitalization can alleviate poverty and reduce inequalities by facilitating global trade, reducing trade barriers, and promoting shared prosperity. Paperless trade will lead to trade-related efficiencies and tackle the trade finance gaps that dampen economic growth and job creation, lifting people from poverty and improving living standards.



Paperless trade will reduce the cost of trade finance, enhance inclusion for MSMEs by eliminating costly paper-based processes, reduce due diligence costs, simplify risk mitigation actions, and vastly reduce process turnaround times.^a These factors will enhance the sustainability of trade as an engine of economic growth.



It is estimated that there are 4 billion trade documents in circulation.^b If stacked on each other, the documents would be 520,000 meters high and constitute approximately half a million trees.



Current technologies that would be enabled by legislative reform, including distributed ledger technology, will substantially reduce fraud risk via smart contracts, bringing greater trust to the international trade finance system.

^a Blockdata. 2019. [Trade Finance & Blockchain: Closing the \\$1.5 Trillion Gap](#).

^b ICC. 2018. [Global Trade – Security Future Growth: ICC Global Survey on Trade Finance](#). p. 139.

TRADE RESILIENCE GAPS AND COVID-19

The year 2020 was a huge stress test for international commerce. In addition to impacting the balance sheets of businesses large and small, the pandemic also tested the resilience of supply chain processes. The ability of traders to import and export goods, operating within the traditional paper-based paradigm, was hindered by lockdowns, health and safety procedures, and teleworking measures. COVID-19 revealed that our continued reliance on physical documents is not only an antiquated way of working—holding us back from unlocking new forms of productivity, traceability, products, and services—but is a source of significant risk to supply chains.

Even before COVID-19, paper-based transferable records remained a stubborn form of inefficiency and risk in international trade. Goods sometimes arrived at their port of destination before documents were fully processed, leaving parties to bear additional costs to either hold the cargo or secure a letter indemnifying the carrier for delivering the goods without the relevant transferable record (e.g., a bill of lading). Paper documents also gave rise to risks of fraud, as forgery of transferable records was and remains possible. Verifying document authenticity consumed significant resources.⁴

In this environment, many would have expected to see a groundswell in the adoption of technology platforms currently offering paperless trade services. Yet anecdotal

evidence suggests that uptake in the existing providers has been lackluster, with percentage use increasing in the single digits.

A roadblock to greater uptake of existing solutions is the lack of legal recognition of electronic transferable records. Most jurisdictions require negotiable instruments to be in paper form. Because of this, importers and exporters seeking to use digital means have relied on platforms that enable the transfer of title using rulebooks grounded in contract laws of the United Kingdom and the United States, a potential drawback for companies operating in the ASEAN, CAREC and SASEC regions.

The single greatest driver of electronic record adoption in the post-COVID-19 era will be their recognition within the domestic legal systems of trading nations. Widespread adoption of the MLETR is seen to hold the greatest promise to increase efficiency, consistency, and coherence in the modernization and harmonization of legislation bearing on electronic documentation. The MLETR was drafted by UNCITRAL, a subsidiary body of the UN General Assembly with the official function of modernizing and harmonizing rules on international business. The body drafted the MLETR in a globally inclusive process, in a manner designed to be compatible with all legal traditions and economic systems.

⁴ These issues have been mentioned as reasons for the adoption of the MLETR in Singapore: S. Iswaran. 2021. [Opening Speech at the Second Reading of the Electronic Transactions \(Amendment\) Bill](#). 1 February.

SNAPSHOT OF THE MODEL LAW ON ELECTRONIC TRANSFERABLE RECORDS

The MLETR enables the legal recognition and use of electronic transferable records (ETRs) both domestically and across borders.

Paper-based transferable documents or instruments entitle the holder to claim the performance of the obligation indicated therein and allow a transfer of title through the transfer of possession of the document or instrument.

Transferable documents or instruments typically include, among others, bills of lading, bills of exchange, promissory notes, and warehouse receipts. They are essential commercial tools. Their availability in electronic form will cause a paradigm shift in international trade by democratizing accessibility to reliable, high quality, and trusted data. Digitalizing trade will spark a revolutionary step in how companies engage with each other and local communities and governments, bringing manifold benefits across the transaction cycle.

Today, only large multinationals can deal with the complexity of paper-heavy processes and data quality challenges. The transformation toward electronic records will lead to many benefits, including

- (i) access to new forms of metadata throughout supply chains, further enabling industries to measure and course-correct their progress toward the SDGs;
- (ii) improved quality of the data that companies use for their reporting and analytics needs, increasing analytic accuracy and enabling all companies—from MSMEs to multinationals—to better anticipate market movements; and
- (iii) through the liberation of quality data throughout supply chains and international trade processes, financial institutions will be able to find new mechanisms to measure risk, offering up new asset classes that can help minimize the trade finance gap.

MLETR ensures the singularity of claim throughout a transaction cycle (whether domestic or cross-border) and is informed by three fundamental principles that underly existing UNCITRAL texts on e-commerce: (i) non-discrimination, (ii) functional equivalence, and (iii) technological neutrality. UNCITRAL texts on e-commerce have already been adopted in more than 100 states. They are regularly applied by business and case law interpreting them is available.

Use of the principles of technological neutrality and functional equivalence—together with the general reliability standard—is what makes MLETR both deceptively simple yet forward-thinking in its design: simple in that it preserves the key features of substantive law applicable to paper-based transferable records across jurisdictions. Hence, an electronic bill of lading issued under the MLETR is subject to the same law that applies to a paper-based bill of lading. This avoids creating a special legal regime for electronic transferable records, with complications to business practices and additional costs. The MLETR is forward-thinking in that it anticipates and actively enables further technological advances and the incorporation of standards, including standards developed by industry.

These features can be readily appreciated through the following analysis of the experience of Singapore, a pioneer in the field of e-commerce and a recent adopter of the MLETR.

PROGRESS TO DATE IN ASIA

[D]igitalization, and indeed this bill, are all but enablers. They are means to an end, and ultimately, it is how these enablers help to improve the lives of our citizens, and create opportunities for our businesses.⁵

—Mr. S. Iswaran, Minister for Communications and Information, Singapore

Singapore's Approach to the Domestic Adoption of MLETR

Singapore has a longstanding history of leadership on matters relating to electronic commerce. It enacted its Electronic Transactions Act (ETA) in 1998,⁶ becoming the first country to adopt the 1996 UNCITRAL Model Law on Electronic Commerce (MLEC).

On 1 February 2021, Singapore passed an amendment to the ETA, the Electronic Transactions (Amendment) Bill, which introduces a new Part IIA to the Act to adopt the MLETR with modifications. In doing so, Singapore became the second trading nation to adopt the MLETR, following the 2019 adoption by Bahrain.⁷

The benefits of the functional equivalence approach are readily apparent. Owing to the careful design of the MLETR, there is no need to amend the substantive underlying legislation already applicable to paper-based transferable records.

⁵ S. Iswaran. 2021. *Closing Speech at the Second Reading of the Electronic Transactions (Amendment) Bill*. 1 February.

⁶ The ETA was repealed and re-enacted in 2010 to adopt the United Nations Convention on the Use of Electronic Communications in International Contracts in 2010.

⁷ M.-O. Al-Suhaimi. 2019. *Bahrain First Country to Enact MLETR*. *Asharq Al-Awsat*. 16 January.

Legislative Silos in Asia

Republic of Korea. The Republic of Korea already has laws both on e-promissory notes (which are effective nationally but have little to no cross-border uptake) and on electronic bills of lading (which lack cross-border uptake).

Japan. Though Japan is a signatory of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which requires that each party shall maintain a legal framework governing electronic transactions consistent with the principals of the 1996 UNCITRAL Model Law on Electronic Commerce or the United Nations Convention on the Use of Electronic Communications in International Contracts, they have thus far not adopted an UNCITRAL text. CPTPP obligations may open the door to this option.^a

With respect to electronic transferable records, Japan has electronic registries for promissory notes (called electronic recorded monetary claims), which cannot be used for cross-border transactions, limiting their commercial utility.

UNCITRAL = United Nations Commission on International Trade Law.

^a CPTPP Article 14.5.

Source: Compiled by authors.

An interesting feature of Singapore's approach is the inclusion of a provision that enables the Government of Singapore to introduce, if necessary, an accreditation framework for providers of an ETR management system.⁸ Though not a requisite feature of text adopting the MLETR, a declaration of an accrediting body is one of the potential methods of assuring reliability that is enumerated in the general reliability standard found in Article 12.

The Current Legal Status of Paperless Trade in Asia

The adoption of legislation that enables electronic transferable records has been slow both in Asia (Box) and the rest of the world.

These sets of legislation enable multiple use cases for buyers and sellers within the same country and enable the use of electronic records. The challenge is that a uniform model law grounded in the principle of nondiscrimination is required to ensure that importing and exporting nations can, under law, ensure functional equivalence across the entire supply chain.

Framework Agreement on Paperless Trade in Asia and the Pacific

The Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific (CPTA) is a welcome development in the advancement of paperless trade in the region. Under the auspices of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), the CPTA aims to accelerate the implementation of digital trade facilitation measures for trade and development and entered into force on 20 February 2021.

Azerbaijan, Bangladesh, Iran, the People's Republic of China, and the Philippines have ratified the agreement, and Armenia and Cambodia have signed but not yet ratified.⁹

Encouragingly, a current draft road map for the implementation of the substantive provisions in the CPTA calls for the establishment of a national policy framework for paperless trade.¹⁰ The draft road map envisions that parties will create an enabling domestic legal environment for paperless trade, including by identifying and selecting relevant international legal frameworks and best practices within 9 months of entry into force.

Notably, the agreement will be guided by the principles of nondiscrimination, functional equivalence, technological neutrality, and the promotion of interoperability. These are the same general principles underpinning UNCITRAL texts, including the MLETR. Further, Article 10 of the CPTA states that the parties "may, where appropriate, adopt relevant international legal instruments concluded by United Nations bodies and other international organizations." The CPTA thus provides a framework conducive to the adoption of the MLETR.

These factors suggest that the CPTA may serve as a powerful driver of MLETR adoption in Asia and the Pacific in 2021 and beyond.

Update of Country-Specific Legislation Enabling Electronic Commerce in Asia

To gain perspective on model law adoption in ASEAN, CAREC, and SASEC member states, the table compares the status and year of adoption of the UNCITRAL model laws on electronic commerce, electronic signatures, and electronic transferable records, as well as whether their members countries have signed, ratified, or acceded to the United Nations Convention on the Use of Electronic Communications in International Contracts (CUECIC), and signed, ratified, acceded to and/or approved of the CPTA.

⁸ *Electronic Transactions (Amendment) Act 2021* Division 6.

⁹ A list of Member State signatures and ratifications can be found in UN Treaty Collection. [Status of Treaties](#).

¹⁰ UNESCAP. 2018. [Draft Road Map for the Implementation of the Substantive Provisions in the Framework Agreement on Facilitation of Cross-Border Paperless Trade in Asia and the Pacific](#). Fourth Meeting of the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation. Bangkok, Thailand. 22–23 March.

State of Adoption of UN Model Laws and Agreements on E-commerce in the ASEAN, CAREC and SASEC Country Groupings

| Country | MLEC (1996) | MLES (2001) | CUECIC (2005) | CPTA (2016) | MLETR (2017) |
|----------------------------|-------------|-------------|---------------|---------------|--------------|
| ASEAN | | | | | |
| Brunei Darussalam | 2000 | N/A | N/A | N/A | N/A |
| Cambodia | 2019 | N/A | N/A | Signed 2017 | N/A |
| Indonesia | N/A | N/A | N/A | N/A | N/A |
| Lao PDR | 2012 | N/A | N/A | N/A | N/A |
| Malaysia | 2006 | N/A | N/A | N/A | N/A |
| Myanmar | N/A | N/A | N/A | N/A | N/A |
| Philippines | 2000 | N/A | Signed 2007 | Acceded 2019 | N/A |
| Singapore | 1998 | N/A | Ratified 2010 | N/A | 2021 |
| Thailand | 2019 | 2001 | N/A | N/A | N/A |
| Viet Nam | 2005 | 2005 | N/A | N/A | N/A |
| CAREC | | | | | |
| Afghanistan | 2020 | 2020 | N/A | N/A | N/A |
| Azerbaijan | N/A | N/A | Acceded 2018 | Acceded 2018 | N/A |
| Georgia | N/A | N/A | N/A | N/A | N/A |
| Kazakhstan | N/A | N/A | N/A | N/A | N/A |
| Kyrgyz Republic | N/A | N/A | N/A | N/A | N/A |
| Mongolia | N/A | N/A | Acceded 2020 | N/A | N/A |
| Pakistan | 2002 | N/A | N/A | N/A | N/A |
| People's Republic of China | 2004 | 2004 | Signed 2006 | Approved 2020 | N/A |
| Tajikistan | N/A | N/A | N/A | N/A | N/A |
| Turkmenistan | N/A | N/A | N/A | N/A | N/A |
| Uzbekistan | N/A | N/A | N/A | N/A | N/A |
| SASEC | | | | | |
| Bangladesh | 2006 | N/A | N/A | Ratified 2020 | N/A |
| Bhutan | 2006 | 2006 | N/A | N/A | N/A |
| India | 2000 | 2009 | N/A | N/A | N/A |
| Maldives | N/A | N/A | N/A | N/A | N/A |
| Nepal | N/A | N/A | N/A | N/A | N/A |
| Sri Lanka | 2017 | N/A | Ratified 2015 | N/A | N/A |

ASEAN = Association of Southeast Asian Nations, CAREC = Central Asia Regional Economic Cooperation, CPTA = Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific, CUECIC = United Nations Convention on the Use of Electronic Communications in International Contracts, Lao PDR = Lao People's Democratic Republic, MLEC = 1996 UNCITRAL on Electronic Commerce, MLES = 2001 UNCITRAL Model Law on Electronic Signatures, MLETR = 2017 UNCITRAL Model Law on Electronic Transferable Records, SASEC = South Asia Subregional Economic Cooperation, UN = United Nations. *Myanmar is also a member of SASEC but is included in the ASEAN section of this table.

Source: UNCITRAL. Compiled by authors.

A few observations flow from the table:

- Countries that have already adopted the MLEC or other UNCITRAL texts on e-commerce—which include 8 of the 10 ASEAN members, 3 of the 11 CAREC members and 4 of the 6 SASEC members—have an opportunity to enact the MLETR by way of amendment to their own electronic transaction acts, taking into account any modifications as may be necessary in their jurisdiction. The experience of Singapore is instructive in this regard.
- Of the ASEAN members, the Philippines, Thailand, and Viet Nam appear particularly well-disposed to MLETR adoption, given familiarity with UNCITRAL model laws on e-commerce and, in the case of the Philippines, recent accession to the CPTA.
- Cambodia can build on the recent adoption of the MLEC (2019) and signing of the CPTA (2017) by adopting the MLETR, acceding to the CPTA and working toward the establishment of a national policy framework for paperless trade.
- Of the CAREC members, Azerbaijan should build on its 2018 accession of the CPTA by identifying and selecting for adoption relevant international legal frameworks and best practices, including the MLETR.
- Of the SASEC members, Bangladesh, Bhutan and India—having adopted UNCITRAL model laws on e-commerce already—are also well-disposed to MLETR adoption, especially Bangladesh (having ratified CPTA in 2020).
- CAREC and SASEC members have a considerable opportunity to modernize laws enabling the digital economy. Relevant government stakeholders should review current legislative frameworks with a view to adopting or aligning to core UNCITRAL texts, including MLETR. Accession to the CPTA may also provide a useful device with which to advance paperless trade regulatory frameworks.

Greater socialization will be necessary among many of the ASEAN, SASEC, and CAREC member states.

CALL TO ACTION

COVID-19 has accelerated pre-existing trends toward digitalization of economies. Huge benefits can accrue to those countries that provide an enabling domestic legal environment for electronic transferable records.

For governments

1. Consider adoption of the MLETR

ASEAN, CAREC, and SASEC jurisdictions are encouraged to study the recent experience of Bahrain and Singapore in their domestic adoption of the MLETR, engage with relevant stakeholders, including industry, and ADB, and consider adoption of the MLETR.

2. Consider accession to the CPTA

ASEAN, CAREC, and SASEC jurisdictions that have not done so are encouraged to accede to the CPTA and begin the process of establishing national policy frameworks for paperless trade.

For industry

1. Advocate for reform

Industry bodies should convene dialogues with relevant government agencies to communicate the case for reform. Industry is also encouraged to establish cross-sectoral working groups, comprised of carriers, financiers and traders, to identify specific gaps in regulatory and legal frameworks.

2. Engage with the ICC Digital Standards Initiative

If stakeholders wish to discuss legislative reform to enable digital trade further, or further engage in standard-setting activities in digital trade, please contact the ICC Digital Standards Initiative at Oswald.KUYLER@iccwbo.org.



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Publication Stock No. ARM210396-2