Legislative Amendments for Facilitating Digitalisation of "Business-to-Business" Trade Documents in Hong Kong

Consultation Paper

December 2025

PURPOSE

As announced in the Financial Secretary's 2025-26 Budget and the Chief Executive's 2025 Policy Address, the Government will make reference to the Model Law on Electronic Transferable Records ("MLETR") advocated by the United Nations Commission on International Trade Law ("UNCITRAL") and consider legislative amendments to facilitate digitalisation of trade documents. The consultation paper sets out the proposed framework of the legislative amendments and invites views on certain issues requiring further deliberation.

BACKGROUND

2. The Government is committed to maintaining an environment conducive to preserving and enhancing Hong Kong's competitiveness as an international trade centre. A variety of trade documents have to be produced or submitted by parties in international trade. They can be broadly categorised as "Business-to-Government" ("B2G") trade documents (such as import and export declaration and cargo manifest) submitted by traders / carriers to the Government to fulfill regulatory requirements, as well as "Business-to-Business" ("B2B") trade documents (which includes transferable documents or instruments such as bills of lading and bills of exchange) commonly used among different trading entities to facilitate the transfer of goods and payment.

3. As far as B2G trade documents are concerned, the Government has been actively pursuing their digitalisation, initially through the Government Electronic Trading Services launched in 1997, followed by the Trade Single Window which is being implemented in phases in the recent decade. As regards B2B trade documents, transactions are still largely conducted through paper-based means due to the solemnity, significance or complexity of the transactions, as well as the unreadiness of the parties involved to handle the related documents in electronic form in the past.

4. Digitalisation of B2B trade documents is instrumental in enhancing the competitiveness of Hong Kong as an international financial, maritime and trade centre. It bears the potential to reduce processing time and cost, enhance transparency and integrity, thereby facilitating international trade. According to a research by the Hong Kong Monetary Authority in March 2025 [1], the digitalisation of B2B trade documents that are currently used in paper form may potentially contribute to an estimated net cost savings of $34.9 billion for the trading community over the next decade. It is therefore important for the relevant legislation to be updated in a timely manner to remove any legal hurdle to the digitalisation of these trade documents.

Existing Legal Framework and the Need for Change

5. Currently, the Electronic Transactions Ordinance (Cap. 553) ("ETO") provides the legal basis for the conduct of electronic transactions in Hong Kong and gives electronic records and electronic signatures (including digital signatures) used in these transactions the same legal status as that of their paper-based counterparts. The ETO is primarily modelled on the UNCITRAL Model Law on Electronic Commerce (1996) provisions and is characterised by its non-discriminatory, technology-neutral and functional equivalence principles.

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1 The Half-yearly Monetary and Financial Stability Report (March 2025) issued by the Hong Kong Monetary Authority shows that for B2B trade documents that are currently conducted through conventional means (such as bills of lading, bills of exchange and promissory notes), if businesses in Hong Kong were to digitalise them by 50% in 2031 and 100% in 2033 as per the global industry target, it was estimated that it would potentially contribute to a total net cost savings as high as $34.9 billion over the period of 2027 – 2036, subject to certain assumptions and limitations due to data constraints. The full report is at: https://www.hkma.gov.hk/eng/data-publications-and-research/publications/half-yearly-monetary-financial-stability-report/202503/.

6. Nonetheless, key provisions of the ETO do not apply to certain categories of documents as set out in Schedule 1 to the ETO since its enactment in 2000, including "negotiable instruments", which are documents of title that represent rights to the payment of money or a security for money and are transferable by delivery to another person, enabling a *bona fide* transferee for value to enforce it free from any equities or defects in the transferor's title. A number of key B2B transferable trade documents, such as bills of exchange and promissory notes, fall within this category. Transactions of these documents are typically carried out through conventional means, reflecting concerns that such transactions should more appropriately be handled on paper, given the need to ensure the integrity of these documents and the significant sum of money involved, and that parties at the time were not fully prepared to manage them in electronic form.

7. Technological capabilities (such as encryption protocols and blockchain) and industry practice have since advanced. The solutions currently offered by the private sector may adequately address the concerns over the digitalisation of negotiable instruments that were still preferably conducted through physical means at the time. Furthermore, the promulgation of the MLETR in 2017 provides a framework to enable the legal use of electronic transferable records ("ETRs")[2] both domestically and across borders. It is already adopted by 12 jurisdictions including some of Hong Kong's key trading partners (such as France, Singapore and the United Kingdom ("UK")). To keep pace with global developments and maintain the competitiveness of Hong Kong, there is a need to update the ETO to align with international standards and provide the legal basis for the use of ETRs, such that the industry may be empowered to develop relevant technical solutions based on their actual needs.

Key Features of the MLETR to be Incorporated in Hong Kong Law

8. The MLETR establishes a harmonised legal framework to facilitate the use of ETRs. Its key objective is to grant ETRs the legal recognition and functionality equivalent to their paper-based counterparts, in particular addressing the notions of uniqueness, control, and reliability

[2] An ETR is the electronic equivalent of a transferable document or instrument.

in an electronic environment. Structurally, the MLETR is divided into four chapters:

(a) the general provisions on the scope of application, interpretation and guiding principles;

(b) the functional equivalence rules for ETRs, establishing conditions for ETRs to meet the conventional paper-based requirements including writing, signature, integrity and possession;

(c) the provisions on the use of ETRs, including the standard on the assessment of reliability, amendment to an ETR, replacement of paper records with electronic ones (and vice versa), as well as other operational standards; and

(d) the provisions on cross-border recognition of ETRs, ensuring non-discrimination of ETRs issued or used in other jurisdictions.

The main text of the MLETR is set out at the **Annex** for reference.

9. Among the 12 jurisdictions with legislation based on or influenced by the MLETR, we have made reference to the legislation in Singapore and the UK, which are common law jurisdictions like Hong Kong, when formulating the proposed legislative framework set out in the ensuing paragraphs. Singapore incorporated most of the MLETR provisions with modifications in its amendment to the Electronic Transactions Act ("ETA") in 2021. The UK, on the other hand, has adopted a "least interventionist" approach and enacted the Electronic Trade Documents Act 2023 ("ETDA"), which incorporates selected MLETR provisions applicable to the English law and reflects the legislative intent to facilitate the use of electronic trade documents.

LEGISLATIVE PROPOSAL

Legislative Approach

10. We have considered the impact of adopting the MLETR on the existing ETO. While some rules of the MLETR are consistent with the provisions in the ETO, the majority of the notions and legal requirements introduced in the MLETR are unique to ETRs which should be more stringent than other types of documents currently covered by the ETO. To minimise unintended impact on the existing provisions, the proposed regime will be set out in a new Part under the ETO exclusively for ETRs. The new Part will articulate the core concepts relevant to ETRs and operate in parallel with existing provisions. With a view to aligning with international standards and promoting cross-border interoperability, suitable MLETR provisions will be codified into the ETO as far as practicable. The scope of application as well as specific issues requiring further deliberation are set out below.

Proposed Scope of Application

11. In line with the MLETR's technology and medium-neutral approach, the new Part will not attempt to create an exhaustive list of applicable transferable documents or instruments as it would otherwise require arduous revisits to the legislation whenever a new suitable document emerges. Instead, it will adopt function-based and future-proof criterion aligned with the MLETR so that qualifying ETRs can be recognised without repeated statutory amendments as market practices and solutions evolve. With reference to the approach adopted by Singapore, the new Part will define certain key trade documents including bills of exchange (e.g. cheque), promissory notes and bills of lading within the scope set out in the respective governing ordinances [3] and recognised under Hong Kong law (including common law) [4]. Apart from these trade

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[3] Including the Bills of Exchange Ordinance (Cap. 19), the Bills of Lading and Analogous Shipping Documents Ordinance (Cap. 440) and the Carriage of Goods by Sea Ordinance (Cap. 462).

[4] We consider it not necessary to go as far as covering those ETRs recognised under laws of other jurisdictions at this juncture, as it may create uncertainties by allowing ETRs not covered in Hong Kong legislation to be interpreted by Hong Kong laws which has limited use cases. ETRs under laws of other jurisdictions may still be handled in Hong Kong courts with respect to the laws of the jurisdictions concerned.

documents, any other document or instrument that is (or may in future acquire the status of) a transferable document or instrument would also be handled per the stipulations in the new Part in alignment with MLETR standards as far as digitalisation is concerned.

<u>Question 1</u>:	Do you agree to the non-exhaustive approach set out in paragraph 11 above? Are there any other types of B2B transferable trade documents that should be expressly defined in the new Part? Alternatively, are there any of such documents that are preferably conducted through physical means and should not be digitalised at this juncture, hence should be excluded from the application of the legislative proposal?

General Reliability Standard

12. The MLETR sets out that a reliable method needs to be used in determining whether an ETR may be recognised as the "paper-equivalence" in digital form. In defining such a reliable method, the MLETR does not lock in any particular technology but seeks to provide a non-exhaustive list of factors to be considered, such as the security of hardware and software, the ability to prevent unauthorised access, applicable industry standard, etc.. This technology-neutral approach is reflected in the legislation of Singapore and the UK.

13. To provide a certain level of objectivity in assessing the reliability of the methods used, the MLETR has included, among other factors, "declaration by a supervisory body, an accreditation body or a voluntary scheme" as one of the possible considerations, without making it mandatory. In divergence from the MLETR, the ETA of Singapore lays out the additional provisions on the accreditation of a provider of an ETR management system [5] to enforce the general reliability standard in the MLETR. Nonetheless, Singapore has yet to introduce such an accreditation system, meaning the assessment of reliability continues to

[5] Section 16O(2) of the ETA provides that if an electronic transferable record is issued, transferred, controlled, presented and stored by an accredited electronic transferable records management system provided by a provider that is registered, licensed, accredited or recognised, the methods used by that system are considered as "reliable".

follow the MLETR's flexible, factors-based approach. The UK ETDA similarly sets out general reliability requirements but does not establish a government-led enforcement mechanism.

14. We propose following the UK approach of relying on the factors set out in the MLETR, without introducing a supervisory or accreditation regime. Given the rapid pace of technological advancement, prescriptive regulatory oversight may risk becoming outdated or inadvertently constrain innovation. Allowing the market to determine and refine reliability standards in line with industry practices and market needs would provide the necessary flexibility to accommodate rapidly evolving technologies and business models.

15. In addition to the factors-based assessment, the MLETR also provides another "proven-in-fact" approach, whereby the reliability of a method that is proven to have achieved its intended function need not be assessed with reference to the standards of the factors-based assessment. We consider that including such "proven-in-fact" approach as adopted by Singapore has merits in preventing frivolous litigation against a method or a system that has indeed fulfilled its intended purpose. It would also offer the industry the flexibility required to test and develop various technical solutions, especially during early adoption.

Question 2:	As far as the general reliability standard is concerned, would you consider the abovementioned approach sufficient as a legal basis to facilitate the use of digitalised B2B transferable trade documents?

Associating an ETR with the Person in Control

16. The new Part will incorporate the MLETR requirement that in order for an electronic record to qualify as an ETR, a reliable method (assessed based upon the aforesaid general reliability standard) shall be used, among others, to render the record capable of being subject to control. While the MLETR requires the reliable method to be capable of identifying the person in control of the record, it does not specifically require that the method also allows the person to demonstrate such control when it is

disputed. We propose modelling on the UK approach by introducing an additional provision in the new Part to cater for circumstances where the intention to possess may need to be demonstrated through actions in order to establish possession when being challenged. This provision will make clear that a person may establish possession of an ETR by demonstrating that they are able to exercise exclusive control over it through a reliable method and would provide a clearer legal basis for recognising possession of a transferable document or instrument in digital form, including bearer instrument [6] (e.g. bearer cheque). In practice, such possession could be evidenced through technological means that link the document to specific identifiers, such as unique addresses, security credentials, or other reliable means of control.

<u>Question 3</u>:	Would you consider the abovementioned approach modelling on the UK approach practicable? Would there be any B2B transferable trade documents that would be unable to perform such a function?

Reproduction Requirement

17. While not specified in the MLETR, we note that Singapore has introduced the requirement that all information contained in a transferable document or instrument must be accurately reproduced, and a statement indicating a change of medium must be inserted in the replacing ETR (collectively as the "reproduction requirement"). We propose adopting a similar requirement in the new Part of the ETO to enhance legal certainty and reduce disputes where the legal effect of an ETR might otherwise be questioned because certain information present in paper form is missing or altered in the digital version. It is worthwhile to note that this requirement does not prevent an ETR from containing additional information that may not be contained in its physical equivalent (such as metadata or a unique identifier, as well as dynamic information that may be subject to change over time), as the policy intent is to avoid the loss of required information, not to forbid additional information in an ETR having regard to the different nature of the two media.

[6] A bearer instrument is a type of financial instrument payable to the holder in possession of it. By nature, no ownership information is prescribed on a bearer instrument (i.e. no specified holder).

Question 4:	Would there be any difficulties in enforcing the reproduction requirement for B2B transferable trade documents, such as bills of lading, bills of exchange and promissory notes?

Consequential Amendments

18. As mentioned above, the key provisions of the ETO do not apply to negotiable instruments set out in Schedule 1 to the ETO. While we note that Singapore has removed the exclusion for "negotiable instruments" entirely, we shall consider the matter holistically after ascertaining the documents to be digitalised in this legislative exercise. For instance, if all B2B transferable trade documents are ready for digitalisation, there may be a case to remove "negotiable instruments" for clarity's sake.

19. With MLETR provisions appropriately adopted in the ETO, it is proposed to make consequential amendments to the Bills of Exchange Ordinance (Cap. 19) ("BoEO") and the Bills of Lading and Analogous Shipping Documents Ordinance (Cap. 440) ("BLASDO") to resolve the remaining incompatibilities with digitalisation. For instance, amendments to the BoEO are required to clarify that the existing arrangement for physical cheques will be unaffected by the current legislative exercise. Relatedly, with reference to the consequential amendments made in the Singapore and UK legislation, the current empowering provision in section 7 of the BLASDO may also be repealed.

INVITATION FOR COMMENTS

20. We welcome views and suggestions on our proposal, which will help us formulate a legislative framework in line with the needs of the industry for developing the required technical solutions. We will take into account the views received and refine our proposal, with a view to developing the relevant legislative proposal for submission to the Legislative Council within 2026.

21. Persons who would like to respond to this industry consultation should provide their views and supporting evidence on the issues set out in this consultation document on or before 27 March 2026 by email, post or fax at the following addresses and fax number—

Email: MLETR_consultation@cedb.gov.hk

Post: Division 4
Commerce and Economic Development Bureau
23rd Floor, West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Fax: 2147 3065

22. This consultation document is available on the website of the Commerce and Economic Development Bureau ("CEDB") (www.cedb.gov.hk).

23. Submissions received will be treated as public information, which may be reproduced and published in whole or in part and in any form for the purposes of this consultation exercise and any directly related purposes without seeking permission of or providing acknowledgement to the respondents.

24. It is voluntary for any respondent to supply his or her personal data upon providing comments. The names and background information of the respondents may be posted on the websites of CEDB, referred to in other documents published for the same purposes, or transferred to other relevant bodies for the same purposes. If you do not wish your name and/or your background information to be disclosed, please state so when making your submission. For access to or correction of personal data contained in your submission, please write to CEDB via the above means.

Commerce and Economic Development Bureau
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