



## GUIDANCE NOTES

# Model Terms to Support the Use of TradeTrust Electronic Bills of Lading

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Infocomm Media Development Authority  
(IMDA) TradeTrust  
Watson Farley & Williams LLP

## INTRODUCTION

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**These Guidance Notes and the Model Terms in Appendix 1 have been prepared by Watson Farley & Williams LLP, an international law firm specialising in the transport and energy sectors.**

1. Infocomm Media Development Authority, Singapore ("**IMDA**") has developed the open-source TradeTrust framework (the "**TT Framework**"). The TT Framework includes software and various rules and protocols for, amongst other things, adoption by business and third-party platforms and systems suppliers ("**Service Providers**" or "**TT Adopters**") for issuing, signing and transferring TradeTrust-enabled electronic bills of lading ("**TT eBLs**"). The TT Framework is designed to operate in a decentralised environment with users using different platforms integrating TradeTrust software ("**TT Software**") and interoperating with respect to Electronic Transferable Records ("**ETRs**"), such as TT eBLs.
2. TradeTrust carries a full user guide providing details of the implementation and operation of TradeTrust on its website.<sup>1</sup> The website also contains sections explaining the benefits of using TradeTrust as a framework for decentralised ETR systems and platforms allowing users to benefit from interoperable systems.
3. In 2023, IMDA engaged Stephenson Harwood LLP to prepare an article entitled "*TradeTrust-enabled Electronic Bills of Lading – a legal and practical analysis of their use in global trade*" (the "**SH Article**").<sup>2</sup> This article provides commentary on TradeTrust as a solution to the lack of interoperability amongst existing eBL platforms,<sup>3</sup> how TT eBLs function<sup>4</sup> and a legal analysis of TT eBLs and their compliance with the UNCITRAL Model Law on Electronic Transferable Records ("**MLETR**"), Singapore, English and US (New York and Delaware) Law.<sup>5</sup> The SH Article concludes with some advice to the market on using TT eBLs.<sup>6</sup>
4. Watson Farley & Williams LLP ("**WFW**") has now been instructed to prepare these Guidance Notes ("**Notes**") and Model Terms ("**Terms**") in Appendix 1 to facilitate applications by TT Adopters to the IG for eBL systems approvals pursuant to the International Group of P&I Clubs ("**IG**") streamlined process, originally announced by the IG in a circular entitled "*Electronic bills of lading – Frequently Asked Questions*" in February 2024.<sup>7</sup> As discussed in Section II below, the Notes and Model Terms may also assist in relation to the IG's deemed approved process announced on 4 February 2025.<sup>8</sup>
5. Beyond the purpose of obtaining IG's approval, TT Adopter may adapt the Terms into their platform's User Agreement Terms and Conditions and TT eBL provisions as they deem relevant. They are not meant to be a full set of comprehensive terms for TT Adopters but can serve as a baseline reference.

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<sup>1</sup> Please see this link to the [TradeTrust website](#).

<sup>2</sup> "*TradeTrust-enabled Electronic Bills of Lading – A legal and practical analysis of their use in global trade*", Stephenson Harwood LLP, September 2023. Please see this link to the [SH Article](#).

<sup>3</sup> See section 2 of the SH Article. [See link in Fn 2.]

<sup>4</sup> See section 3 of the SH Article. [See link in Fn 2.]

<sup>5</sup> See sections 4 to 7 of the SH Article. [See link in Fn 2.]

<sup>6</sup> See section 8 of the SH Article. [See link in Fn 2.]

<sup>7</sup> "*IG P&I – Electronic bills of lading – Frequently Asked Questions*", International Group of P&I Clubs, February 2024. Please see this link to the [IG P&I eBL FAQs](#).

<sup>8</sup> "*Electronic Bills of Lading: Notification of New Process*", International Group of P&I Clubs, 4 February 2025. Please see this link to the [IG P&I Notification of New Process Circular](#).

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6. For TT Adopters and other parties reading these Notes and Model Terms, IMDA and WFW refer to the disclaimer at the end of these Notes.

## BACKGROUND TO THE IG

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7. As the key functions of bills of lading ("**BL**" or "**BLs**") relate to the receipt, transfer of title and evidence of contractual terms for the carriage of cargo by ocean-going vessels, these documents are central to risk management of potential carrier liability to third parties for loss or damage to cargo. Carriers insure this risk through protection and indemnity ("**P&I**") insurance. P&I cover is mainly obtained by carriers through membership of P&I Clubs, who are part of the IG. Between the twelve P&I Clubs which comprise the IG, they provide P&I coverage for approximately 90% of all global ocean-going tonnage.<sup>9</sup>
8. Each of the twelve P&I Group Clubs is an independent, not-for-profit, mutual insurance association, providing cover for their shipowner and charterer members against third party liability arising out of the use and operation of ships. Each Club is owned and governed by its shipowner and charterer members. The terms and conditions of Club membership, including the basis on which P&I cover will be available to the members, are known as "Club Rules" which are published annually.<sup>10</sup> The Clubs all have similar Rules for carrier maritime liability risks, including risks arising out of loss and damage to cargo. The Clubs, while individually competitive, share between them large loss exposures. They also share respective knowledge and expertise on matters relating to member shipowner and charterer liabilities and insurance.
9. Club Rules for liability with respect to cargo include requirements for all BLs issued by members to contain certain legal exclusions from and limitations of liability and other provisions which mitigate risks of claims by, and liability to, third party claimants for loss or damage to cargo. Failure by the carrier to ensure that these matters are included in its BLs could prejudice insurance coverage.
10. In relation to electronic bills of lading ("**eBLs**"), the IG supports the transition from paper BLs to eBLs and sees many benefits.<sup>11</sup> However, whilst the adoption of eBLs remains in a transitional phase with many countries yet to implement supporting legislation and industry standards for electronic systems still being established, such systems have been required to undergo an IG approval process.<sup>12</sup> Consequently, all Group Clubs will not provide cover for liabilities, loss, cost or expense arising from the use of any electronic trading system other than a system which has been approved by the IG to the extent that such liability would not have arisen under a paper BL.<sup>13</sup> In approving electronic trading systems and eBLs, the IG and the P&I

<sup>9</sup> Please see this link to the [IG P&I website](#).

<sup>10</sup> See, for example, "West of England P&I Club Rules of Classes 1 & 2, 2025", West of England P&I, 2025. Please see this link to the [West P&I Club Rules](#).

<sup>11</sup> See, for example, answers to questions 11 and 12 of the IG P&I eBL FAQs. [See link in Fn 7.] Successful transition to eBLs offers a reduced risk of paper document loss, forgery, and errors, as digital records offer enhanced security. They are easily accessible and enable fast and effective data management eBLs should also reduce the need for Letters of Indemnity for delivery of cargo without the presentation of the original paper bill of lading.

<sup>12</sup> See the answer to question 9 of the IG P&I eBL FAQs. [See link in Fn 7.]

<sup>13</sup> See, for example, the West P&I Club Rules, Section 16: "Cargo", Proviso (n) "Paperless Trading", page 20.

"Unless either (1) the Committee otherwise determines or (2) it is otherwise agreed in writing between the Member and the Association, there shall be no recovery from the Association in respect of any liability, loss, cost or expense arising from the use of any electronic trading system, other than an electronic trading system approved by the International Group of P&I Associations, to the extent that such liability, loss, cost or expense would not (save insofar as the Association in its sole discretion otherwise determines) have arisen under a paper trading system.

For the purposes of this paragraph:

(a) an electronic trading system is any system which replaces or is intended to replace paper documents used for the sale of goods and/or their carriage by sea or partly by sea and other means of transport which: (i) are documents of title, or (ii) entitle the holder to delivery or possession of the goods referred to in such documents, or (iii) evidence a contract of carriage under which the rights and obligations of either of the contracting parties may be transferred to a third party.

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Clubs are therefore primarily concerned with protecting the interests of the carrier from risks and exposure to potential third-party liabilities arising from the unchecked use of eBL systems.

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*(b) a "document" shall mean anything in which information of any description is recorded including, but not limited to, computer or other electronically generated information.*  
[See link in Fn 10.]

## THE IG'S APPROVAL OF ELECTRONIC TRADING SYSTEMS

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11. Since 2010, the IG has approved thirteen eBL systems, with varying technological and governance structures. For earlier approved systems, the IG notes "*in the absence of the law, system providers have needed to make use of legal workarounds in the form of multipartite contractual agreements between the system's users that are intended to be equivalent to the rights and liabilities that follow from use of paper bills of lading*". The IG assessed and approved the user agreements in conjunction with the system user interfaces to ensure that the three functions of a paper BL were replicated electronically.<sup>14</sup>
12. However, the IG's approach to approvals has changed due to technological and legal developments. New technologies such as distributed ledger technology have emerged. Further, new legislation has come into force such as the UK's Electronic Trade Documents Act 2023 ("**ETDA 2023**"), which gives legal recognition under English law to electronic trade documents including eBLs and which meets the requirements of the MLETR. Other countries such as Singapore have already adopted similar legislation in the form of the Singapore Electronic Transactions (Amendment) Act 2021 ("**ETAA 2021**"), which amended the Electronic Transactions Act 2010 ("**ETA 2010**"). Other countries are planning to adopt similar legislation. These developments have acted as a catalyst for the development of eBL systems.<sup>15</sup>
13. In February 2024, the IG announced new streamlined procedures setting out five approval criteria for eBL systems that used only eBLs subject to laws which recognise their validity as equivalent to paper BLs (the "**Streamlined Process**").<sup>16</sup> The five criteria are discussed in detail below.<sup>17</sup>
14. Under the ETDA 2023, the effectiveness of an eBL depends on the system being reliable.<sup>18</sup> In the case of the ETAA 2021, the corresponding requirement is for the system to use a "reliable method".<sup>19</sup> The IG has noted that this is in fact a technological test and it will not assess the reliability of systems as part of its approval process, nor will it take part in setting industry standards. Nevertheless, since the ETDA 2023 and ETAA 2021 have come into force, industry bodies have been reviewing industry standards to establish reliability.
15. Owing to the legislative, industry and technological developments referred to above, the IG Clubs have now agreed to a further revision to their approach to approvals with a "deemed approved" process (the "**Deemed Process**") which came into effect from 20 February 2025.
16. In the IG circular dated 4 February 2025 entitled "*Electronic Bills of Lading: Notification of New Process*" ("**IG New Process Circular**"),<sup>20</sup> the IG announced the Deemed Process with only two requirements to satisfy. Save in the case of a request for listing with the IG (see below) this process is "deemed approved" and does not require any actual review by the IG. The IG P&I

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<sup>14</sup> See question 6 of the IG P&I eBL FAQs. [See link in Fn 7.]

<sup>15</sup> See paragraphs 3 and 4 of the IG P&I Notification of New Process Circular. [See link in Fn 8.]

<sup>16</sup> See question 7 of the IG P&I eBL FAQs. [See link in Fn 7.]

<sup>17</sup> The IG reviews systems for the purposes of approvals through a working group, (the "**E-Bills Working Group**"), made up of representatives of the IG Secretariat and some of the P&I Group Clubs. The E-Bills Working Group reviews the materials provided to support electronic systems approvals and makes final recommendations of approval to the Bills of Lading Committee, on which all twelve Clubs are represented.

<sup>18</sup> Electronic Trade Documents Act 2023, Section 2(5).

<sup>19</sup> Singapore Electronic Transactions (Amendment) Act 2021, Section 16H(b).

<sup>20</sup> [See link in Fn 8.]

Clubs have amended their existing Rules on eBLs to reflect the Deemed Process.<sup>21</sup> The IG New Process Circular and the P&I Club Rules are further discussed at Section II to these Notes.

17. The IG has added a third approval process available to electronic system providers. The linked IG circular also dated 4 February 2025 and titled "*International Group requirements for electronic trading system providers*" sets out ten criteria,<sup>22</sup> which form generic specifications ("**Generic Specifications Circular**" and "**Generic Specifications**" respectively) for all electronic system providers who are not eligible to apply for the Streamlined Process or the Deemed Process.<sup>23</sup> The Generic Specifications are primarily for situations where the eBLs in those systems are not subject to laws that recognise their validity as equivalent to paper BLs. This is evident from criteria two to five, whereby the IG requires agreement on these matters between all parties to the electronic system agreement to make up for the absence of laws recognising eBLs as equivalent to paper BLs.
18. Previously, the IG electronic systems and terms approvals were announced to P&I Club members by circulars published by the IG with all P&I Clubs following suit. As of 20 February 2025, the IG and P&I Clubs will no longer issue circulars when a system or user terms or eBL terms are approved. After approval or deemed approval, if the system wishes, it may be listed on the IG website upon request to the IG Secretariat.<sup>24</sup> In the case of "deemed approvals" the system must present evidence to the IG that it has fulfilled the two requirements before it can be listed.

<sup>21</sup> See, for example, the West P&I Club Rules, Section 16, "Cargo", Proviso (n) "Paperless Trading", page 21.

"(c) an electronic trading system shall be deemed approved, provided:

(i) it is a reliable system in accordance with the Electronic Trade Documents Act 2023 of the United Kingdom or UNCITRAL's Model Law on Electronic Transferable Records and the reliability of that system is evidenced by:

(ia) an audit by an independent body; or

(ib) a declaration by a supervisory, regulatory or accreditation body or applicable voluntary scheme; or

(ic) applicable industry standards; and

(ii) any electronic document generated thereunder, which performs the functions specified in paragraph (a) (i)-(iii), has the same effect under its applicable law as a paper document performing those functions."

[See link in Fn 10.]

<sup>22</sup> The ten "generic" specification criteria are as follows:

1. The system must be able to accomplish a transfer of title, rights, and liabilities (endorsement as a matter of law).
2. There must be a signature provision whereby the parties agree that an electronic signature is a valid signature.
3. A mechanism is necessary whereby parties must agree not to dispute that the e-bill is a bill of lading.
4. A mechanism is necessary whereby users can sue and be sued.
5. The system must ensure that treaties, conventions, and national laws which ordinarily apply to a paper bill of lading are applicable as if the e-bill were a paper bill.
6. The operator/system provider must accept liability in case of system failure.
7. The system must allow for clausing, accomplishment, and rejection of the e-bill.
8. There must be sufficient evidence of the terms of the contract of carriage.
9. The system must expressly exclude application of the Contracts (Rights of Third Parties) Act of 1999.
10. The operator or system provider must carry adequate limits of liability in their insurance to cover liabilities arising from system fault or failure of any nature.

<sup>23</sup> "*International Group requirements for electronic trading systems*", International Group of P&I Clubs, 4 February 2025. Please see this link to the [IG Generic Specifications Circular](#).

<sup>24</sup> "*IG approved electronic bill of lading systems*", International Group of P&I Clubs, 4 February 2025. Please see this link to the [IG approved electronic bill of lading systems schedule](#). It can be seen from the schedule that the approval process does not involve a single application per system. The same developer may return for approvals covering new services being developed or when new user terms or bill of lading terms are drafted for approval.

19. The status of systems previously approved by the IG remains unchanged. Existing approvals remain valid. It appears from the present list of IG approved systems that most of the electronic systems approved to date by the IG are mainly centralised systems designed to cover the issuance, signing and all transfers of a bill of lading over the document's commercial lifetime. All issuers and users of the eBL operate on a single eBL system platform, owned by a single third-party platform provider. However, recently the IG has approved user agreement terms from four systems,<sup>25</sup> which include terms purporting to allow the systems to interoperate with other platforms. The details of these new approved provisions are not publicly available.
20. As discussed above, there are now three potential routes to approval of electronic systems by the IG, with all three routes resulting in the carrier having its P&I cover approved. In Sections I and II below we comment in more detail, firstly on the Streamlined Process and, secondly, on the Deemed Process. We will not be covering the Generic Specifications as a separate section because TT Adopters are likely to either qualify for the Streamlined or Deemed Processes.

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<sup>25</sup> (i) ICE Digital Trade Management Limited (please see this link to the [Skuld P&I Circular](#)), (ii) Enigio AB (trace:original™) (please see this link to the [NorthStandard P&I Circular](#)), (iii) TradeGo (please see this link to the [Shipowners Circular](#)) and (iv) IQAX eBL (please see this link to the [UK P&I Circular](#)).



## I. THE IG STREAMLINED PROCESS

21. The five assessment criteria under the IG's Streamlined Process for eBL systems are as follows:<sup>26</sup>

<b>(a)</b>	The system permits "compliant" eBLs only. For this purpose, "compliant" means that they are subject to a governing law which gives legal recognition to them as equivalent to paper bills of lading.
<b>(b)</b>	eBLs must sufficiently evidence the terms of the contract of carriage.
<b>(c)</b>	The system should facilitate the rejection of a transfer of an eBL.
<b>(d)</b>	The system should allow for the accomplishment of an eBL.
<b>(e)</b>	The operator/system provider must accept liability in case of system failure and carry adequate limits of liability in their insurance to cover liabilities arising from system fault or failure of any nature.

### General comment on the Streamlined Process

22. It is assumed that the TT Adopter is entitled to apply for the IG Streamlined Process because its system only permits eBLs subject to laws which treat an eBL in the same way as a paper BL. The linked circular, "*Process for E-bill system providers*", dated 4 February 2025,<sup>27</sup> ("**System Providers Circular**") sets out what system providers should provide to the IG. The IG will require the full version of the system user terms and conditions.<sup>28</sup> If the terms and conditions are divided between general terms and conditions ("**GTCs**") and special terms and conditions ("**STCs**") specifically for TT eBLs, both should be made available.
23. If some user terms (being terms which facilitate the eBL System) are to be included in the eBL this should also be available in human readable form.<sup>29</sup> A copy or example of the eBL or eBLs which the system uses should in any event be available in readable form for the purposes of *criteria (b)*.<sup>30</sup>
24. In the fourth bullet point of the System Providers Circular, the IG states that "*the system provider will normally be invited to provide a demonstration of the system to the Working Group. This is to allow the IG Working Group to view the functionality of the system, from a user perspective only, to see that the system replicates in digital form the functions of a paper bill of lading*". Such a demonstration, together with the terms of use, will also assist in demonstrating that the system satisfies *criteria (c) "facilitate the rejection of a transfer of an e-bill" and (d) "allow for the accomplishment of an e-bill"*.<sup>31</sup> Care should be taken in ensuring

<sup>26</sup> See question 7 of the IG P&I eBL FAQs. [See link in Fn 7.]

<sup>27</sup> "*Process for E-bill system providers*", International Group of P&I Clubs, 4 February 2025. Please see this link to the [IG System Providers Circular](#).

<sup>28</sup> See the second bullet point of the IG System Providers Circular. [See link in Fn 27.]

<sup>29</sup> See the second bullet point of the IG System Providers Circular. [See link in Fn 27.] The Model eBL Terms and Conditions are "*terms and conditions related to the use of the TT Enabled System*" and therefore will need to be reviewed.

<sup>30</sup> Under this criteria "*eBLs must sufficiently evidence the terms of the contract of carriage*" reference should be made to a carrier or platform standard eBL form or at least an industry standard form of bill of lading which can be digitized for the purposes of use on an eBL platform.

<sup>31</sup> See the first requirement of the Generic Specifications, which uses "accomplish" in a different sense of "*accomplish a transfer of title, rights and liabilities (endorsement as a matter of law)*." [See link in Fn 23.] WFW have not attempted to show that the system "allows for" the endorsement function by drafting a specific clause.

that the system does replicate all the required functions of a paper BL before providing the demonstration to the IG.

25. Owing to the importance of originating systems where the carrier is the originating user who issues the eBL which could potentially remain on the same platform for most of its commercial life. It is therefore anticipated that each TT Adopter with an originating system will need to demonstrate, (i) clausing,<sup>32</sup> (ii) issuing and signing of the eBL, (iii) transfer of possession by endorsement, (iv) rejection, and (v) surrender, request for identification, delivery, and accomplishment of the eBL.

### **Criteria (a) – Systems permitting "compliant" eBLs only – subject to laws from MLETR-based legislation**

26. The TT eBL system applying to be approved by the IG must permit only "compliant eBLs" to come on to the system. "Compliant" means that the eBLs are subject to national laws which give legal recognition to them as equivalent to paper BLs. The IG's approval criteria informs us through footnote 1 to the IG's FAQs that [either] "*MLETR based legislation or Electronic Trade Documents Act (ETDA) 2023, or equivalent*" will fulfil this requirement.
27. It is therefore clear, owing to the reference to the ETDA 2023, that a system satisfies this requirement if it permits only the use of eBLs subject to English law, thereby subject to the ETDA 2023. An eBL complying with that Act achieves legal recognition of it as equivalent to a paper BL. Whilst not expressly mentioning the ETAA 2021 in the quoted footnote in paragraph 26 above, there is a clear basis for the IG to recognise an eBL which is subject to Singapore law. Singapore is widely recognised as an MLETR-adopting jurisdiction and its law gives legal recognition to eBLs as equivalent to paper bills of lading.<sup>33</sup> The preamble to the ETAA 2021 makes it clear that the legislation implements the MLETR.<sup>34</sup> Singapore is expressly mentioned by the IG at question 5 of its FAQs and is listed on the International Chamber of Commerce ("**ICC**") MLETR tracker as well as the UNCITRAL MLETR status tracker<sup>35</sup> as a formal adopter of the MLTER.
28. Criteria (a) of the IG's Streamlined Process may allow for the system to permit eBLs subject to other laws than only those from countries who are listed by UNCITRAL or the ICC as having "Legislation based on or influenced by the Model Law" provided that the relevant foreign legislation or law can be demonstrated to give legal recognition to eBLs as equivalent to paper BLs. If the relevant law is not from a country listed by UNCITRAL or the ICC as having adopted the MLETR, the TT Adopter may need to produce some analysis from local counsel

<sup>32</sup> See paragraphs 47 and 51 further below.

<sup>33</sup> See section 5 of the SH Article. [See link in Fn 2.]

<sup>34</sup> Preamble to the Singapore Electronic Transactions (Amendment) Act 2021: "An Act to provide for the security and use of electronic transactions, to implement the United Nations Convention on the Use of Electronic Communications in International Contracts adopted by the General Assembly of the United Nations on 23 November 2005, to adopt the UNCITRAL Model Law on Electronic Transferable Records adopted by the United Nations Commission on International Trade Law on 13 July 2017 and to provide for matters connected therewith."

<sup>35</sup> For "formal adopters", countries include Singapore, the UK, France, the UAE (Abu Dhabi Global Market) and other signatories. Please see this link to the [UNCITRAL MLETR Status Page](#).

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to demonstrate that the jurisdiction in question has laws which are broadly equivalent to the MLETR or the ETDA 2023 and recognises eBLs as having the same effect as paper BLs.<sup>36</sup>

29. It is recommended that the TT eBL does not simply contain a governing law clause but also includes an express submission to the jurisdiction clause to the relevant MLETR signatory state (either to national courts or to a well-known arbitration institution seated in that jurisdiction, as discussed in paragraph 91 below). A major reason for this recommendation is that without a suitable submission to jurisdiction clause, an adverse party may attempt to "forum shop" by starting proceedings in a non-MLETR jurisdiction and by trying to argue in that jurisdiction that the TT eBL should not be given the same legal effect as its paper equivalent. There may be other jurisdictions available to such parties where the courts will entertain arguments that they should apply mandatory local laws (in preference to the MLETR based law) which do not recognise ETRs. Singapore, England and New York have well developed anti-suit injunction laws and procedures to restrain parties from litigating in breach of clearly agreed exclusive jurisdiction provisions.<sup>37</sup>
30. In Appendix 1, Model Terms are provided with Singapore (or other MLETR jurisdictions) governing law and submission to arbitration clauses in the same jurisdiction for user agreements (see Appendix 1, Part B, clauses 9-10) and for the TT eBL itself (see Appendix 1, Part C, clauses 5-6).<sup>38</sup>
31. The Model Terms include definitions of "TradeTrust eBLs" which are used on "TradeTrust Enabled eBL Systems", which state that the TT eBL must be subject to and compliant with the laws of Singapore (or another MLETR jurisdiction) and which recognise the TT eBLs as being equivalent to paper BLs. The TT eBLs must incorporate the Model eBL Terms and must be used on "TradeTrust Enabled eBL Systems", which must also incorporate the Model User Agreement Terms (see Appendix 1, Part A, "Definitions").
32. The Model eBL Terms also include a Notice for the TT eBL to be carried in a prominent place to re-enforce compliance with the requirement that the TT eBL is a "compliant" document in line with Singapore (or other MLETR complaint) law (see Appendix 1, Part C, clauses 1 and 5-6).
33. By using the above provisions, the Service Provider and the carrier should be able to demonstrate that the system permits "compliant" TT eBLs only.

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<sup>36</sup> For a more detailed explanation as to how eBLs can satisfy or are "compliant" with the requirements in the MLETR, ETDA, ETAA or broadly equivalent US law (in New York and Delaware) to be given legal recognition as equivalent to paper bills of lading, see sections 3-7 of the SH Article. [See link in Fn 2.]

<sup>37</sup> See also section 8.3 of the SH Article. [See link in Fn 2.] Legal advice should be taken to confirm that anti-suit injunctions are available equally to restrain foreign court proceedings in favour of the parties' choice of arbitrations and should such as situation arise, legal advice should always be taken to ensure prompt and appropriate action is taken.

<sup>38</sup> The Model Terms have used terms based on the [Singapore International Arbitration Model Terms](#) (revised as of 9 December 2024), provided the applicable law is that of a country which has adopted the MLETR or otherwise recognises eBLs as being equivalent to paper bills of lading. However, other arbitration institution model provisions or a clause for submission to the jurisdiction of national courts can also be used.

### Criteria (b) – the eBL must sufficiently evidence the terms of the contract of carriage

34. One of the three main functions of a BL is that it is evidence of the terms of carriage. In almost all agreements for carriage of goods by sea, the original contract of carriage will be concluded prior to the issuing of the BL on shipment at the time when the shipper, or its agent, books or otherwise agrees the transportation of the cargo. Where there is an underlying charter party, the content of the agreement for carriage of goods will mainly be determined during the negotiation of that charter party. The terms in the BL are good evidence of the contract but may not be conclusive as between the carrier and the shipper if further evidence is presented as to the actual terms of carriage. However, when transferred to other holders, it becomes conclusive evidence of the agreement between the carrier and those new holders.<sup>39</sup>
35. We assume for the purposes of these Notes that the TT eBL terms chosen will properly reflect the contract of carriage made during the booking or charter party negotiation stage which is not part of the functionality of the TradeTrust Software.

### BL standard forms evidencing the terms of the contract of carriage

36. As discussed in paragraph 23 above, the TT Adopter should have available as part of any demonstration before the IG an English language version of the standard bill of lading terms which will be used on the system (front and back) in the usual box and printed on a reverse side terms format. Terms of carriage are normally evidenced in BLs in two ways.
37. As is common in liner trades, the full terms of carriage are normally contained on the reverse side of the bill of lading form. The front of the form will have an acceptance clause making it clear that the terms are accepted. For example:

*"SHIPPED on board in apparent good order and condition (unless otherwise stated) the total number of Containers/Packages or Units indicated in the Box opposite ..... for carriage to the port of discharge ....., to be delivered in the like good order and condition at the port of discharge unto the lawful holder of the Bill of Lading, on payment of freight as indicated ..... In accepting this Bill of Lading the Merchant expressly accepts and agrees to all its stipulations on both page 1 and 2 whether written, printed stamped or otherwise incorporated as fully as if they were all signed by the Merchant ....."*

*"In WITNESS whereof the Carrier, Master or their agent has signed [the Bill of Lading] ....."*<sup>40</sup>

38. On standard forms, the term "Merchant" is usually defined to include the shipper, the receiver, the consignor, consignee, and any person entitled to possession of the cargo.<sup>41</sup>
39. Page 2 of the BL will contain the full terms of carriage to which the recommended Model eBL Terms in Appendix 1, Part C will be added.

<sup>39</sup> *Scrutton on Charterparties and Bills of Lading*, 25<sup>th</sup> Edition, 2024, Articles 8, 49, 52 and 53.

<sup>40</sup> See, for example, BIMCO CONLINEBILL 2016. Please refer to this link to the [BIMCO CONLINEBILL 2016](#). BIMCO provides its standard form BLs as a pay-as-you-go service subject to terms and copyright.

<sup>41</sup> See, for example, BIMCO CONLINEBILL 2016, clause 1, "Definition". [See link in Fn 40.]

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40. In tramp services where the vessel is trading on non-scheduled voyages often for bulk cargo and subject to a voyage or time charter party, the BL will often contain a clause with similar "SHIPPED" language to cover the description and condition of the cargo, state that the carriage is to the Port of Discharge and provide a place for the Master or Owner to sign. The reverse side of the bill of lading form will contain incorporation wording such as:

*"All terms and conditions, liberties and exceptions of the Charter Party dated as overleaf are herewith incorporated. If the date of the Charter Party is not specified, the relevant Charter Party is deemed to be the voyage charter party that regulates the carriage of the cargo in respect of which this Bill of Lading has been issued."*<sup>42</sup>

41. Page 2 will include a limited number of express clauses including a law and arbitration/jurisdiction clause which may provide that any dispute arising out of or in connection with the BL will be referred exclusively to arbitration or the jurisdiction of a national court and in accordance with and subject to the law specified in the charter party identified in the BL.<sup>43</sup> The incorporating terms will need to be checked and subject to legal advice, may need to be amended to ensure that the carrier may issue TT eBLs with the Model eBL Terms, MLETR aligned governing law and dispute resolution terms.

### Other important eBL provisions

42. Club Rules also typically require the bill of lading terms to:
- contain standard terms of carriage that are no less favourable than the Hague/Hague-Visby Rules ("**HR**"/"**HVR**") unless there are terms of mandatory application;
  - avoid on the face of the bill of lading a declaration of cargo value exceeding US\$2,500 per unit, piece or package;<sup>44</sup> and
  - exclude deck cargo liability unless the cargo is suitable for carriage on deck, provided that an appropriate liberty clause is incorporated and the carriage is subject to HR/HVR or similar rights, immunities and limitations in favour of the carrier.
43. The IG and P&I Club circulars on eBL approval processes frequently conclude with a "Club cover reminder" of other exclusions of P&I cover under Club Rules will continue to apply in respect of carriage of cargo irrespective of whether a BL is issued in paper form or through an approved eBL provider.<sup>45</sup> These exclusions include but are not limited to discharge at a port or place other than the port or place provided for in the contract of carriage, issue of an

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<sup>42</sup> BIMCO CONGENBILL 2022

<sup>43</sup> See for example, the BIMCO CONGENBILL 2022 form and the BIMCO GENCON 2022 voyage charter party form. Note also that the form includes the BIMCO Electronic Bill of Lading Clause 2014 which allows a charterer to require the owner to subscribe to and use an electronic trading system as directed by the charterers provided that the system is approved by the IG, although this is subject to the owner receiving an indemnity. Charterers may be able to negotiate suitable changes to this clause for the use of TT eBLs.

<sup>44</sup> See, for example, West of England P&I Club Rules, Section 16 "Cargo", proviso (h) "Value declared on Bill of Lading", page 19. [See link in Fn 10.]

<sup>45</sup> See, for example, paragraph 12 of the IG P&I Notification of New Process Circular. [See link in Fn 8.]

ante or post-dated electronic document and delivery of cargo other than in accordance with the rules of that trading system.

44. Failure to comply with the above may lead to a refusal by P&I Clubs of cover for cargo loss or damage.
45. If the System Provider is a carrier or is working with a carrier to develop an originating system, the carrier may have its own legal advisors or may have previously checked with its P&I Club manager concerning the terms of its standard BLs to ensure that they sufficiently evidence the contract of carriage in a way that does not breach any of the Club Rules. If the System Provider is providing its own eBL terms, it should have its own legal advisors review such terms before submitting these to the IG for approval.

#### **Criteria (c) and (d) – the system should facilitate rejection of a transfer of an eBL and allow for accomplishment of an eBL**

46. In relation to rejection, "facilitate" includes a functionality which should be demonstrated to the IG. The parties may also be assisted by provisions allowing for clausing as well as rejection and accomplishment in the system user agreements and TT eBLs.

#### **Clausing**

47. During the documentation process, the carrier or its agent will fill in a draft BL based upon information provided to it by the shipper. This will include details of the cargo (quantity, description, packaging etc.). These details are likely to be initially accepted on a sight unseen basis. Generally, the eBL should not be signed until the cargo has been seen and inspected to ensure it matches the description provided in the draft bill of lading or alternatively recorded as not seen (as is the case in pre-packed goods in container trades).<sup>46</sup>
48. For cargo which can be inspected, upon receipt of the cargo, the carrier has a general duty to state apparent order and condition of the cargo under Article III, Rule 3(c) of the Hague-Visby Rules, which are given effect in English law by virtue of the Carriage of Goods by Sea Act (CoGSA) 1971. In addition, under the Hague-Visby Rules, the carrier has a broader duty of care in respect of the cargo (Article III, Rule 2) and the BL shall constitute "*prima facie* evidence of the receipt by the Carrier of the goods as therein described." When the carrier receives cargo for shipment and prior to the signing of the BL, the carrier will inspect the cargo and has the right to clause the BL by inserting comments/notations on the BL as to the quality and condition of the goods.
49. WFW has addressed this important bill of lading function at Appendix 1, Part B, Clause 2 (*eBL Clausing*) of the Model User Agreement Terms.<sup>47</sup> Clause 2 is technically not required by the carrier in an originating system user agreement as, assuming the TT eBL is compliant,

<sup>46</sup> For example, it is common to see remarks such as "*the Shipper has stuffed and sealed the container at its own premises and the carrier was not permitted to verify the quality, quantity, condition, contents marks and numbers of the cargo which are declared by the Shipper*".

<sup>47</sup> Although the system allowing for clausing is expressly mentioned along with rejection and accomplishment in the Generic Specifications, (see Fn 22 above, and requirement number 7), there is no express mention of clausing in the IG's five criteria for its streamlined approach.

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incorporates the HVR and the system or method used is reliable, the TT eBL will be recognised as being legally equivalent to a paper BL. Therefore, rights and obligations to clause TT eBLs should apply to the carrier under the law in any event. Furthermore, the clause will only serve a purpose in originating systems because it only relates to rights of the carrier exercisable prior to the signing of the TT eBL. Nevertheless, clausing, while helping to protect the carrier from liability which occurred before shipment, can have serious effects on the shipper's ability to negotiate the eBL and, if inappropriately claused, an eBL can be the source of a dispute between carrier and shipper. Also, the System Provider will wish to avoid being caught up in such a dispute and may choose to have such a clause to set expectations and/or make it clear that it is not responsible for descriptions of the cargo in TT eBLs.

## Rejection

50. Not every eBL will have an unhindered progression between signing and issuance, through endorsements and eventual surrender in return for the carrier's satisfactory delivery of the goods at the discharge port and thereafter accomplishment.
51. There are instances where, for example, clausing may lead to the shipper/seller breaching obligations to provide a "clean" or "unclaused" eBL in its sale of goods agreement with the buyer or in relation to its finance documents with its bank.
52. Under UCP 600 Articles 14(a) and 16, a bank receiving a presentation of documents (which may include an eBL) has a duty to conclude whether a presentation is a complying presentation. If the bank decides that documents are discrepant, it may issue a notice under Article 16 that the credit will not be honoured or negotiated, and it may return the documents to the presenter. This may lead to an eBL being rejected and returned to the shipper.
53. Under the CoGSA 1992, the lawful holder of a BL is entitled to demand performance from the carrier. The consignee as the lawful holder may reject the transfer of a BL if there are valid grounds for doing so upon the shipment's arrival. These grounds may include, for example, any unnecessary deviation from the agreed route of transportation or any unreasonable delay in the dispatch of the cargo.
54. This traditional (paper) BL right of rejection is required to be facilitated, as set out in the IG's Streamlined Process. The TT Software is designed so that control will pass to a new holder prior to that holder having the opportunity to reject the TT eBL. As this is arguably an exceptional circumstance where the prior holder regains possession/control of the TT eBL, the parties may wish to provide for this possibility.
55. In order to facilitate this requirement at *criteria (c)*, we have included clause 3 (*Rejection of the eBL*) in Appendix 1, Part B in the Model Terms. Further, as part of its approval processes, we note that the IG may wish to be shown how the rejection function is exercised in the relevant TT eBL system's user interface.

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## Accomplishment

56. Accomplishment, in simple terms, means that the delivery of the goods at the discharge point to the person entitled to delivery (i.e., the consignee) has completed and all of the primary contract of carriage of goods obligations have been performed on both sides (although secondary rights to claim damages for failure to take due care of the cargo may still remain). As a result, the bill of lading is made inoperative and deemed to have been exhausted and no longer acts as a document of title. "Accomplishment" can be distinguished from "surrender", which instead relates to the act of returning the bill of lading by endorsement to the carrier in exchange for delivery of the goods. Given the significance of accomplishment in extinguishing the legal obligations under the bill of lading, this requirement is reflected in the IG's Streamlined Process, in which the IG require the relevant system to allow for the accomplishment of an eBL. The IG will also have an opportunity to see how this bill of lading function operates in the relevant eBL system's user interface when viewing the demonstration of the system.
57. In respect of the TT eBL digital file in particular, this file cannot be marked, nor changed in any way once the TT eBL is signed/issued. At the point when the TT eBL is surrendered by the lawful holder and accepted by the carrier, subject to any right which the carrier may have for not delivering the cargo,<sup>48</sup> the TT eBL will be inoperative and cease to exist as an ETR. In order to reflect this functionality, TradeTrust's reference implementation displays large red wording on the user interface which states: "Returned to Issuer". Accordingly, the system provider may make additional arrangements in its system to demonstrate that the carrier is able to show on its user interface that the TT eBL is accomplished.
58. Procedures for surrendering BLs, exchanging for goods, issuing delivery orders or other methods of the carrier delivering the goods to the BL holder may differ depending on the trade and the port. Carriers and Service Providers with originating systems designed to receive TT eBLs back onto the carrier's system should ensure that the functionality of the system and the legal provisions accurately reflect the procedures at the relevant discharge ports.
59. In both the Model User Agreement and eBL Terms there is a clause which focusses on and "allows for" the final actions of "Surrender, Delivery and Accomplishment" which result in the carrier having performed its obligations to deliver under the TT eBL and the TT eBL finally being made inoperable by the carrier (see clause 5 in Part B, Model User Agreement Terms and clause 4 in Part C, Model eBL Terms "Surrender, Delivery and Accomplishment"). Many standard BL forms will already contain some terms dealing with accomplishment, surrender and delivery rights and obligations and the terms should be checked to avoid inconsistencies with the Model Terms.

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<sup>48</sup> A common example of the carrier having a right not to deliver the cargo is when there is an obligation on the consignee to pay freight, but it fails to do so. In this case, the carrier normally has a right to exercise a lien on the cargo for non-payment of freight.



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**Criteria (e) – the operator/system provider must accept liability in case of system failure and carry adequate limits of liability in their insurance**

60. Acceptance of liability for system failure with a cause or combination of causes within the system provider's reasonable control with certain carve-outs or exceptions appears to be acceptable to satisfy this requirement.<sup>49</sup> IMDA will not take responsibility for failure of any of the individual TT eBL systems. It is for each System Provider to ensure that it complies with the IG's requirement of liability insurance. There does not appear to be any standard type or amount of liability insurance cover or formula for liability limits that is used by the IG to assess the level of insurance required. However, the insurance requirement under criteria (e) appears to be wide. It requires the system provider or operator to "cover liabilities arising from system fault or failure of any nature". At least one approved system user terms of which we are aware has defined the cover more precisely to cover "Hacking Risks" and system "Downtime and Fault" risks.<sup>50</sup>
61. Potential TT Adopters should be prepared to propose to the IG adequate types and levels of cover for their systems to carry. This may dictate the contractual limit of liability with respect to claims by each user. We have included this provision in our draft Model Terms with the primary purpose of satisfying the IG's requirement (e) for liability to be accepted in case of system fault or failure of any nature (see Appendix 1, Part A, clauses 6 and 7). However, the need to have adequate insurance coverage for professional negligence as well as hacking and the quantum of insurance coverage required and/or limits of liability offered are commercial decisions to be decided by the individual Service Provider and discussed with the IG on a case-by-case basis.
62. At clauses 6.1, 6.2 and 6.3 of our draft Model Terms, we have noted the various exemptions from liability for the Service Provider in respect of matters beyond reasonable control, no warranties or representations as to errors, harmful components, malfunctions and corrections. Our approach here is to mark each of these exemptions as optional and leave it to the individual Service Providers to decide whether they wish to exclude such liability or if there are already terms and exclusions set out in their general terms and conditions which will still apply with respect to TT eBL systems.

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<sup>49</sup> See, for example, clause 23 (*Liability of the Service Provider*) of eTEU's eBL Platform Terms & Conditions, 7 September 2023 Edition. Please see this link to the [eTEU eBL Platform Terms & Conditions](#).

<sup>50</sup> See clause 23.1 (a) and (b) of eTEU's insurance provisions within its eBL Platform Terms & Conditions. [See link in Fn 49.]

## II. THE DEEMED PROCESS

63. As set out in paragraphs 15 and 16 above, on 4 February 2025 the IG announced a new "deemed approved" process for paperless trading systems, provided that they meet two broad requirements:

<b>(i)</b>	the system permits 'compliant' E-bills only, meaning E-bills which are subject to a governing law which gives legal recognition to them as equivalent to paper bills of lading; and
<b>(ii)</b>	<p>the system is reliable and is evidenced as such, [by]:</p> <ul style="list-style-type: none"> <li>• an audit by an independent body; or</li> <li>• a declaration by a supervisory, regulatory or accreditation body or applicable voluntary scheme; or</li> <li>• applicable industry standards.</li> </ul>

### Requirement (i) – the system permits 'compliant' E-bills only

64. This requirement is similar to requirement (a) in the IG's Streamlined Process discussed at paragraphs 21 to 32 above. The P&I Clubs have adopted a slightly different formulation in their Rules. For example, in the West of England Rules (see footnote 21 above) the requirement is set out as follows:

*"any electronic document generated [under the evidenced reliable system] which performs the functions [as a document of title, entitles the holder to possession or delivery and is evidence of a contract of carriage under which the rights and obligations of either party may be transferred to a third party] has the same effect under its applicable law as a paper document performing those functions."*

65. This requirement can be satisfied by the system providers taking the same measures as discussed above in criteria (a) under the Streamlined Process. The carrier should take responsibility for ensuring that the electronic system only uses eBLs which are subject to the laws of MLETR-aligned jurisdictions which provide for the electronic trade document (in this case, a TT eBL) to have the same effect as a paper document performing the same functions.

### Requirement (ii) – the system is reliable and is evidenced as such

66. The requirement is that the system is reliable **and** is evidenced as such. The reference to a "reliable system" is a reference to section 2(2) of the ETDA or equivalent to "reliable method", which is language used in the MLETR, Article 11 and the ETAA, section 16H(a). As previously noted by the IG, the question as to whether a system is reliable or not is a technological question. Further, the IG is not in a position to review the technology behind the systems, as this would stray into territory beyond its scope as a mutual insurance association seeking to protect its members' P&I interests. However, the IG recognised in 2023 and again in 2025 that industry bodies such as the ICC DSI (Digital Standards Initiative) were reviewing industry standards to establish reliability and common standards for all stakeholders, with the overarching aim of standardising and enabling digital trade. Furthermore, in its New Procedure Circular in 2025, the IG noted that the DSI has launched a digital trade reliability

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assessment tool and, for the time being, it is not aware of any other similar initiatives which have been launched.<sup>51</sup> Indeed, many of the pilot participants of this digital trade reliability assessment tool included system providers which had themselves already obtained IG approval.<sup>52</sup>

67. The digital trade reliability tool referred to by the IG is part of the ICC DSI/DGC's (Digital Governance Council of Canada's) Conformity Assessment Scheme: Digital Trade Documentation (the "**CAS**") which offers a Reliable Systems Assessment Framework (the "**RSA Framework**") accessed through either the ICC DSI or DGC websites.<sup>53</sup> The aim of this reliability framework is to achieve global consensus in regard to what is meant by a "reliable system". The use of the TT software components may help TT Adopters assess their platforms as meeting a majority of the requirements of the RSA Framework. The RSA Framework is intended to develop and adapt over time based on industry and legislative changes. The overview states:

*"This new framework provides a standardised method for assessing the reliability of platforms that support the use of ETRs in place of traditional paper-based trade documentation. The assessment aligns with the [MLETR], offering a clear benchmark for service providers to demonstrate their platform's capability to execute reliable ETR transfers in compliance with global standards ... this framework establishes a common market standard for evaluating the reliability of platforms handling ETRs. Service providers can use the framework to showcase their adherence to these standards, which are increasingly recognised worldwide."*

68. Presently, the RSA Framework offers a service whereby the Service Provider can carry out a self-assessment by filling out a technical spreadsheet containing a questionnaire intended to consolidate and synthesise the legislative requirements found in the ETDA, ETAA and/or MLETR.<sup>54</sup> The Service Provider can then apply for an independent review and verification by the DGC on behalf of the ICC DSI.<sup>55</sup> A copy of a draft verification statement (the "**Verification Statement**") is also provided.<sup>56</sup> The Verification Statement provides confirmation that:
- the applicant has completed the MLETR self-assessment questionnaire for the electronic system;
  - the self-assessment has been reviewed by the DGC in accordance with the MLETR and in accordance with its own programme of policies;
  - based on the self-assessment and the above review, the Service Provider has provided sufficient evidence regarding the electronic system to establish the following:

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<sup>51</sup> See question 8 of the IG P&I eBLs FAQs. [See link in Fn 7.] See paragraphs 4 and 6 of the IG's Notification of New Process Circular. [See link in Fn 8.]

<sup>52</sup> "Reliable System Assessment Framework – Introductory Webinar", ICC DSI DGC, 30 October 2024. Please see this link to the [Webinar Presentation Slides](#) from 30 October 2024. The names of pilot participants are listed on page 4 of the presentation.

<sup>53</sup> Please see this link to the [Conformity Assessment Scheme](#) and this link to the [Reliable System Assessment Framework](#).

<sup>54</sup> Please see this link to the [CAS MLETR Assessment Questionnaire](#).

<sup>55</sup> The cost of the application is C\$250 and the process is typically expected to take two to three weeks depending on the quality and completeness of the questionnaire application submitted.

<sup>56</sup> Please see this link to the draft [Example Verification Statement](#). To date, we understand from the ICC DSI that four such Verification Statements have been issued so far.

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- i. adherence to the general provisions outlined in MLETR, Articles 1-7;
  - ii. functional equivalence in relation to MLETR, Articles 8-11;
  - iii. fulfils the general reliability standard in Article 12 for the purposes of Articles 9, 10, 11, 13, 16, 17, 18 and Article 15; and
  - iv. in support of the Article 12 general reliability standard, the Service Provider has (i) applicable operational and security controls in place to support general reliability and (ii) the technical procedures used in the creation, maintenance and transfer of electronic records are suitable to ensure compliance with current technological standards.
69. The above Articles of the MLETR are all reflected in specific assessment requirements or questions in the self-assessment questionnaire which the applicant is required to complete.
70. The DGC gives an assurance that the assessment process was conducted impartially, using evidence in accordance with its procedures but notes that the verification statement is not an endorsement of the product or the Service Provider by the DGC/ICC DSI. It also states "*until such time as the DGC Digital Trust Conformity Assessment Program receives accreditation this verification statement shall be relied on as an **interim acknowledgement** only. Once accreditation is received, this verification statement shall be reviewed and considered for **formal recognition**...*".<sup>57</sup> It is not wholly clear whether following accreditation, the review of the Verification Statement and consideration for formal recognition referred to will involve any changes to the self-assessment process or its potential outcome. Indeed, as the DGC/ICC DSI verification tool develops, it may be that a more formal certification is issued by the ICC/DSI (or by another body) that possibly supersedes the current verification process, which the IG E-Bills Working Group may then consider as appropriate.
71. The references by the IG in its New Process Circular and by the P&I Clubs in their rules to evidence of reliability, namely (a) an audit by an independent body; (b) a declaration by a supervisory, regulatory or accreditation body or applicable voluntary scheme; or (c) applicable industry standards are similar to the terms found in MLETR Article 12, ETAA section 160 and section 2(5) of the ETDA. These are all matters to be taken into account when deciding whether a system is reliable. The precise meaning of the terms in (a), (b) and (c) above is open to interpretation. The MLETR's own commentary does not fully explain the origin of these terms but notes that they derive from use in earlier Electronic Model Law conventions. However, it is likely that auditors, supervisory, regulatory or accreditation bodies or voluntary schemes, all involve oversight by an independent body which can guarantee a level of objectivity in the assessment.<sup>58</sup> Furthermore, "Industry Standard", is preferably a recognised international standard. However, it appears from the IG's New Process Circular that the IG and the P&I Clubs are prepared to accept as suitable evidence of reliability the Verification Statement under the ICC DSI/DGC self-assessment tool as an "applicable industry standard" or possibly a declaration by a "voluntary scheme". The overview in the ICC

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<sup>57</sup> [See link in Fn 56.]

<sup>58</sup> Part II, Article-by-Article Commentary to the UNCITRAL Model Law on Electronic Transferable Records, paragraphs 132 and 133. Please see this link to the [UNCITRAL MLETR Commentary](#).

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DSI/DGC website referred to at paragraph 67 above appears to have been drafted to support a claim that the RSA Framework is an industry standard.

72. According to paragraph 9 of the IG's New Process Circular, the system provider need only provide the IG with supporting evidence as to how the criteria under the Deemed Process has been met if the Service Provider wishes to have its system listed as approved on the IG's website. However, many carriers will prefer the security of seeing their or the Service Provider's eBL systems listed on the IG website.
73. Even if the Deemed Process is chosen in preference to the Streamlined Process, the Model Terms recommended to satisfy the first requirement of the system permitting only compliant eBLs will still be needed by the System Provider or TT Adopters. As for the requirement that the system is reliable and is evidenced as such, the new Deemed Process appears to be a trade-off between IG oversight of User terms and system functionality in return for a form of third-party verification as to reliability. If the ICC DSI/DGC assessment tool and Verification Statement procedure works efficiently, this will generally be regarded as a positive step towards a standardised and quicker form of technological assessment of reliable systems for electronic trading systems approvals.
74. However, the IG now has three potential routes to approval and TT Adopters will have to choose which approval process best suits their system. It is anticipated that most systems providers will see the attractiveness of a self-assessment questionnaire and the DGC issuing a Verification Statement, albeit only an interim acknowledgement for the time being, as a fast(er)-track route to IG approval. However, customers may have different views about the level of certainty offered by an interim system compared to the Streamlined Process, which results in the approval by the IG and P&I cover which is not expressly subject to the system being reliable, or being evidenced as reliable. It could be that carriers, for example, may still wish to pursue the Streamlined Process for completeness and comfort that P&I cover is in place. However, this is very much a commercial decision based on the individual customer's objectives.

### III. DISCUSSION OF DEFINITIONS, OTHER MODEL USER TERMS AND MODEL EBL TERMS (APPENDIX 1, PARTS A, B AND C)

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#### Definitions (Appendix 1, Part A)

75. The Model Term definitions have been included in a separate section to the Model Terms because whilst most definitions apply to the Model User Agreement Terms, two defined terms as indicated in italics will also be used for the Model eBL Terms.
76. The definitions have been drafted for the Model Terms in isolation and not with any specific existing user terms in mind. Therefore, for TT Adopters who already have terms, the definitions will need to be adapted to be consistent with other defined terms for each system. However, TT Adopters who do not yet have terms drafted will be able to consider using the definitions to begin with. The definitions to be used for the Model eBL Terms should also be checked against the other standard eBL terms.
77. It is noted that the definition of the eBL as a "TradeTrust eBL" is not obligatory and Service Providers and/or carriers may provide another name for the eBL (for example named after the relevant system). However, other definitions using TradeTrust (for example with reference to TradeTrust software or to TradeTrust Enabled eBL Systems) should remain.

#### Model User Agreement Terms (Appendix 1, Part B)

##### Preamble

78. We have prepared a short note and preamble in Part B of Appendix 1 for use of the Model Terms as "Special Conditions" where it is anticipated that some TT Adopters will already have pre-existing general terms and conditions for their websites or other platforms. If this is the case, the Model Terms will have to be considered to take these other clauses and definitions into account. The Model User Terms may be capable of use without significant modification where terms have not already been drafted and TT Adopters are starting with a clean sheet.

##### Switch to Paper – Clause 4

79. We have included a switch to paper clause. The IG may review how this functionality is exercised under the TT Enabled eBL System as part of the demonstration. We have sought to address who is entitled to request a paper bill of lading, who will be issuing the paper bill of lading, what information this will contain and what is to happen to the returned eBL. For TT eBLs to be converted to paper form, the owner and holder must surrender the TT eBL to the relevant carrier and, at the same time, submit a formal request for a paper bill of lading to be issued with the relevant information. It is assumed that the User instructing a switch to paper will discuss any attendant expenses with the carrier who will have their own procedures for issuing a paper bill of lading.<sup>59</sup>
80. Switch to paper does not occur automatically by operation of law and the parties must intend and agree for the change of medium. Indeed, under section 4 of the ETDA 2023, Article 18 of the MLETR and section 16N of the Singapore ETA 2010, a conversion from electronic to paper form can only take effect and replace the prior electronic form if a statement has been included in the new paper form of bill of lading to indicate the change

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<sup>59</sup> Although a commercial decision, the carrier may wish to charge a fee for this service and/or charge for any courier or other expenses for delivering the paper bill of lading to the holder.

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of medium. Such a statement is included as part of the clause. Most systems only allow a switch to paper once, following which the original eBL becomes permanently inoperable.

### **Interoperability – Clause 8**

81. The Model Terms address interoperability with a brief warranty that the TT Enabled eBL Systems are designed to and will interoperate on the basis that the TT Software specifically allows for cross-platform interoperability to take place and TT-enabled platforms will have a common framework from which to utilise this attribute. Since each system provider will have warranted to each of its users that such interoperability is available on their systems with other TT-enabled systems, this should allow for User B on Platform B to provide User A on Platform A with its unique wallet address to enable User A to safely endorse and negotiate the Non-Fungible Token ("NFT") element of a TT eBL to User B on Platform B.
82. As the users become holders of the TT eBL, they can agree to transfer NFTs to the wallet address of another TT Enabled System user. Once they are no longer holders of the TT eBL, they have no continuing interest in the eBL.<sup>60</sup> The new holder will look to its TT-Enabled eBL System to provide services and (having warranted interoperability), when the time comes, to endorse the TT eBL by transferring the NFT to the next user's wallet address. The carrier's right to receive the TT eBL back on its issuing system is explicit because this right is reflected in the Model eBL Terms and the holder of the TT eBL, which is demanding delivery from the carrier, cannot do so without subjecting itself to the obligations owed to the carrier under the TT eBL.

### **Dispute Resolution and Governing Law – Clauses 9 and 10**

83. In respect of any disputes arising out of or in connection with the Model User Agreement Terms, we have included a placeholder in the Dispute Resolution clause with a presumption in favour of either (i) Singapore, SIAC arbitration or (ii) Singapore, SCMA arbitration, with Singapore law to apply for the agreement, seat and arbitration agreement. We see benefit in providing users with a choice between these two sets of arbitral rules, since the SIAC Rules expressly provide for consolidation (which is useful but not essential to have) under administered arbitration, whereas the SCMA Rules provide for joinder and concurrent hearings (but not consolidation) under a self-administered arbitration model. The clause has a tribunal of three arbitrators whereas the parties could agree a sole arbitrator tribunal. Legal advice should be taken on choices relating to the details discussed above.
84. The intention is to allow the relevant TT Adopter the freedom to replace Singapore arbitration with any relevant arbitration body and set of rules of its own choosing. The important point, however, is that the TT Adopter includes a clear dispute resolution mechanism and choice of an MLETR-based law in all user agreements.

## **Additional Bill of Lading Clauses (Appendix 1, Part C)**

### **1. Notice of compliant eBLs with the same effect as an equivalent paper document**

85. It is recommended that the Notice at clause 1 should be displayed in a prominent place on the front of the TT eBL.

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<sup>60</sup> Under CoGSA 1992, such interests are extinguished on transfer.

86. The notice serves as an affirmation that the TT eBL is to be treated as an ETR, compliant with the MLETR and Singapore law and should be given the same legal effect as a paper bill of lading. Such a statement that the TT eBL is compliant with the MLETR as implemented under Singapore law is not binding just because it is stated so. Ultimately, if challenged this assertion would have to be proved. However, it firstly notifies parties receiving it of the carrier's view of its rights and obligations and secondly, the statement can be demonstrated to be correct by reference to TradeTrust's functionality as discussed in sections 3 and 4 of the SH Article.<sup>61</sup>
87. Finally, as discussed above, the statement also satisfies one of the IG's Criteria (Criteria (a)) for approval of the eBL system. If needed, it should not be difficult to demonstrate functional equivalence on the basis that the electronic record can be (i) shown to contain the same information as would be contained in a paper transferrable document ("Same Information") and (ii) a reliable method has been used to satisfy the "Singularity", "Exclusive Control" and "Retain Integrity" of the record, these being requirements under the MLETR.

## **2. TT enabled system originating systems and right of carrier to receive back onto its system**

88. This provision is effectively the one express requirement to the otherwise brief interoperability provisioning in the Model User Agreement. The carrier, having issued the TT eBL on its originating system, has a right to have the TT eBL surrendered back on to this system. For the reasons explained in paragraph 81 and 82 above, the carrier has a legally enforceable right should such a right ever need to be enforced in practice.

## **3. Switch to paper clause and notice**

89. Reference is made to the commentary above at paragraphs 79 and 80. This clause and the notice which follows to be stated on the resulting paper BL after a switch to paper has occurred is sufficient to provide a requesting holder with a paper document containing the same rights as the eBL. It also provides assurance that the former eBL is now void and no longer operative and therefore will not affect the singularity, exclusive control and integrity of the record that the holder will enjoy by possessing the paper BL in the usual way.

## **4. Surrender, Delivery, Accomplishment – right to proof of identity**

90. These rights exist whether or not they appear in an eBL clause, and we refer to legal the commentary above. The carrier has an additional right as against the receiver of the cargo to obtain appropriate identification documents if so required. Whilst such a right can arguably be implied, the clause provides express agreement.

## **5+6. Separate dispute resolution and governing law clause**

91. As discussed in paragraphs 83 and 84 above, it is important that the TT eBL contains a clear choice of law clause from an MLETR aligned jurisdiction and a matching submission to jurisdiction to assist with enforcement if required. The carrier should ensure that it is not already bound by other dispute resolution provisions which it may already have separately agreed with the shipper.

<sup>61</sup> See also the discussion on a "Reliable System" or "Method" being used to achieve this. These matters are also discussed in sections 3 and 4 of the SH Article. [See link in Fn 2.]



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**WATSON FARLEY & WILLIAMS LLP, 27 March 2025**

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