

Electronic Bills of Lading and Conflict of Laws (summary)

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Technology to dematerialise shipping documents has created an electronically produced “paperless” bill of lading, that is, the so-called electronic bill of lading. Bolero, the Bills of Lading Electronic Registry Organisation, is a body responsible for implementing electronic bills of lading. An electronic bill of lading generated by the Bolero’s system, named the Bolero bill of lading (BBL), is a functional equivalent of a paper bill of lading, offered through the Title Registry as well as Core Messaging Platform systems. Legal efficacy to a BBL is afforded under the Rulebook, a multi-lateral contract between users, partially based on the CMI Rules for Electronic Bills of Lading 1990.

This article discusses the conflict-of-laws aspects of electronic bills of lading. Our focus is on the international judicial jurisdiction and choice-of-law problems regarding transactions using a BBL.

First of all, in an action relating to transactions using a BBL brought before a court in Japan, the choice of forum clauses in the Rulebook come into question. The Rulebook provides that, “[w] here the sole matter at issue between the parties is a claim for non-compliance with or breach of this Rulebook,” the English courts have exclusive jurisdiction. In relation to any other dispute arising out of the Rulebook, the English courts have non-exclusive jurisdiction. According to a Supreme Court ruling dated November 28, 1975, these clauses are to be legally valid in Japanese courts.

As to the choice-of-law problem, it may be appropriate to divide the legal relationship issues regarding BBLs into three areas for consideration: obligations of the parties using a BBL, novation of the carriage contract, and property rights in cargo. The first would be governed by English law, because this question is almost always an interpretation of the Rulebook, which is a contract governed by the law chosen by the parties in accordance with Article 7 of the Horei (the Japanese statute covering choice-of-law rules). Opinions are divided with regard to the second area. One group considers a novation of the carriage contract as a voluntary assignment of claims and applies Article 12 of the Horei: “The effect on a

third person caused by an assignment of a claim is governed by the law of the place of the obligor's domicile." Others argue that this question should be governed by English law as the law chosen by the parties, insofar as all the parties concerned are Bolero users. Lastly, as to the third area, the law applicable to property rights in cargo, the title of which is intended to be transferred under a BBL, would be determined by Article 10 of the Horei, which adopts the principle of the law of the situs.

Legal obstacles to electronic bills of lading would be partly or almost completely avoided by a contractually binding set of rules like the Rulebook and by the choice of applicable law under which the Rulebook's legal validity is accepted and affirmed. But the best solution lies in an enactment of laws which directly recognizes the legal validity of electronic bills of lading. It should be noted that UNCITRAL undertook to propose a new "draft instrument on the carriage of goods [wholly or partly] [by sea]," which provides for full legal recognition of electronic bills of lading, as "electronic records."