

TOWARDS CRITICAL MOMENTUM IN THE ELECTRONIC TRANSFER OF RIGHTS IN CARRIAGE BY SEA: ROLE OF LEGAL INSTRUMENTS IN FACILITATING THE USE OF ELECTRONIC TRANSPORT RECORDS

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(「海上運送の電子的権利移転の重要な転換に向けて :

電子的運送記録利用の促進における法的手段の役割」)

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論 文 内 容 の 要 旨 .

An electronic record is, and has been, legally recognized if it performs the same functions of its paper predecessor. What has made it difficult for an electronic Bill of Lading (B/L) to come into use is the difficulty of replicating the document of title function. A document of title is a document which legally entitles a holder of the document to take possession of goods, thus its transfer has the effect of transferring the right to possession of the goods. It has traditionally been based on something tangible that can be physically possessed and transferred – this poses legal and practical challenges when trying to replicate the same function with an electronic record to perform the same function. This dissertation tackles the critical question of whether and how electronic records can achieve the function of transferability and achieve widespread use. Many attempts have been made to effect the electronic transfer of rights through the use of closed electronic B/L networks, together with contractual and technical approaches of guaranteeing that only one person is entitled to take the possession of goods. Most early attempts failed to attract many users, but a few major electronic B/L systems have survived to continue their growth. On the legal side, a prolonged lack of legal regimes applicable to the electronic transfer of rights in carriage by sea has failed to provide potential electronic B/L users an assurance as to whether using electronic B/Ls would be given legal effect in the course of cross-border international transactions. In this regard, two international legal instruments that have been recently developed draw special attention for their potential to promote legal certainty and create momentum for the broader use of electronic transport records – the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules, 2009) and the UNCITRAL Model Law on Electronic Transferable Records (Draft Model Law, 2017). This dissertation aims to investigate whether these two legal instruments can provide the effective mechanisms necessary to achieve confidence in the electronic transfer of rights to goods in carriage by sea. Given that neither of the legal instruments are currently in effect, different scenarios lie ahead depending on the ratification or enactment prospects of each instrument. The novel contribution of this dissertation presents the critical assessment of each scenario based on the potential legal effects and influences upon the electronic B/L industry as well as on parties involved in international trade. At the same time, each assessment proposes suggestions or alternatives to rectify the situation and ultimately move toward facilitating the use of electronic transport records.