

SUISSENÉGOCE – Position Paper on Electronic Bills of Lading (EBL)

Geneva / 08.04.2025

Swiss commodities traders, banks and ship operators rely on bills of lading as the cornerstone of international commerce. A bill of lading is commonly issued in one set of three originals by a carrier to a trader and performs the function of (1) receipt, (2) evidence of the contract of carriage and (3) document of title. For traders and banks, the bill of lading is the key to the “floating warehouse”, providing symbolic possession of the goods. Legal possession is transferred through physical delivery and endorsement of the document.

The holder of the physical bill of lading has the right of performance of the obligations recorded therein (e.g., delivery of goods or payment of money) and can transfer that right by endorsing and transferring possession of the document.

Despite advances in technology, the transition from paper-based to digital trade documents has been slow. This is largely because most legal systems did not recognise electronic trade documents as having the same legal functionality and validity as their paper counterparts.

Bills of lading often incorporate English law and arbitration clauses. Until recently, this posed a significant obstacle to adopting electronic bills of lading (eBLs), as English law traditionally required possession of an original hard copy to prove ownership and transfer title. The absence of legal recognition created uncertainty and deterred adoption of digital alternatives.

This legal gap is now being addressed. In 2023, the UK adopted the Electronic Trade Documents Act, which entered into force on 20 September 2023. The new UK legislation is simple and pragmatic. In effect, it provides that as long as a virtual document meets the criteria of an electronic trade document for the purpose of the act, then:

- (1) A person may possess, endorse and part with possession of an electronic trade document;
- (2) An electronic trade document has the same effect as an equivalent paper trade document; and
- (3) Anything done in relation to an electronic trade document has the same effect in relation to the document as it would have in relation to an equivalent paper trade document.

Other jurisdictions have adopted or are advancing similar frameworks. Singapore’s Electronic Transactions Act, Australia’s legislation of the same name, the Netherlands’ Digital Trade Act, and the U.S. Uniform Electronic Transactions Act all provide legal standing to electronic bills of lading. Japan is also moving in this direction with its forthcoming Digital Trade Bill.

For electronic bills of lading that expressly incorporate English law, the Swiss Courts will uphold the parties’ choice of law and recognise that the electronic document represents the goods and can be transferred with the same legal effect as the paper equivalent. It follows that electronic bills of lading are documents of title, the rights to which can be enforced to the same extent as paper equivalents. The security and property rights conferred by the document remain fully preserved and enforceable.

In practice, the rights arising under a bill of lading will very rarely be enforced by Swiss traders or banks in Switzerland. Instead, they will be enforced in the forum designated in the electronic bill of lading (usually England) or in the country of destination of the goods. Most electronic bill of lading platforms will provide the option to switch from a digital to a paper format if a paper document is required for enforcement purposes. In practical terms, there should be no more difficulty in enforcing rights and obligations under an electronic bill of lading than under a paper bill of lading.

Some commentators have remarked that from a pure Swiss substantive law perspective, however, the pledge of a right represented by a certified (i.e. tangible) security also includes the security itself. Indeed, under Swiss law, the security and the right incorporated therein from one unit and the seizure of the former always results in the seizure of the latter. A completely virtual document of title, by itself, cannot currently be the subject of a right of pledge, because it is not considered a certified security (*papier-valeur*) under Swiss law. Only the pledge of the rights (as opposed to the document itself) represented by the electronic bill of lading constitutes a valid transaction under Swiss law.

Swiss-based trade finance banks rely on bills of lading. They hold them under general pledge agreements as security and collateral for the transactions they finance. It is perceived that by accepting electronic bills of lading, instead of paper equivalents, the rights of Swiss banks may be diminished in the absence of equivalent recognition under Swiss law.

In 2021, Switzerland enacted the *Distributed Ledger Technology (DLT) Act* to support the development of the fintech sector and to permit the dematerialisation of tangible securities. This new legislation regulates the use of asset tokens, which are digital representations of assets such as equities, bonds, or other tangible assets, including the rights and obligations associated with it.

The Swiss Code of Obligations has been amended to reflect the changes brought about by the DLT Act. Article 1153 of the Swiss Code of Obligations deals with documents of title to goods issued by a carrier as negotiable securities, and article 1153a permits the issuance of such documents in the form of ledger-based securities.

There is, however, an open question as to whether electronic bills of lading are recognised under Swiss law as “documents of title to goods issued by a carrier” in the same way as paper bills of lading. Academic commentaries on Article 1153 suggest that Swiss maritime law defines bills of lading in line with the *International Convention for the Unification of Certain Rules Relating to Bills of Lading* (the Hague Rules, 1924). There is at least serious doubt as to whether an electronic bill of lading could fall within this definition, as the drafters a century ago could only have envisaged a physical document in the form of paper that could be signed, endorsed, and physically possessed.

To resolve this open question and to ensure Swiss legislation keeps pace with technological documents, the following legislative pathway could be considered:

1. Amendment to the Swiss Code of Obligations (CO art. 1153 – 1155): The CO could be revised to expressly define electronic bills of lading as documents of title to goods issued by a carrier for the purpose of article 1153 and following.

2. Revision of the Federal Law on Maritime Navigation under the Swiss Flag (RS 747.30): The ongoing revision of this legislation by the Federal Department of Foreign Affairs (FDFA), with a public consultation process expected to begin at the end of 2025, provides an ideal opportunity to include explicit recognition of electronic bills of lading as equivalent to their paper counterparts.

Recognising electronic bills of lading under Swiss law would allow Swiss banks to exercise their rights over cargo more rapidly, thanks to the instant transfer of the digital document and the elimination of delays associated with physical couriers. This would help mitigate Switzerland's competitive disadvantage compared to jurisdictions such as London and Singapore, which already recognise certified (tangible) securities over virtual documents.

Until these legislative steps are taken, Swiss traders and banks can continue to rely on electronic bills of lading governed by English law. However, they will not be able to pledge the document itself under Swiss law, which limits its utility as collateral and may place Switzerland at a disadvantage compared to jurisdictions that have already adapted their legislation to the realities of blockchain-based and digital trade.

As other commodity trading hubs move to align their legal frameworks with technological innovation, Switzerland must not be left behind. A targeted legislative clarification recognising the legal equivalence of electronic and paper trade documents would ensure that Swiss law remains aligned with international best practices and that the country continues to provide a secure and competitive environment for global trade.