

CML Seminar Series: The UK Electronic Trade Documents Bill: How does it compare with recent amendments to the Singapore Electronic Transactions Act?

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The CML Seminar Series on ‘The UK Electronic Trade Documents Bill: How does it compare with recent amendments to the Singapore Electronic Transactions Act?’ was held on 26 January 2023 (Thursday) from 4.30pm to 6pm. The speaker was Professor Miriam Goldby, Professor of Shipping, Insurance and Commercial Law and Director of Research at the Centre for Commercial Law Studies, Queen Mary University of London. Professor Goldby is also an Academic Fellow in CML.

The session opened with recent developments in the digital transformation of international trade.

Professor Golby started by stating that Singapore is one of the first countries to adopt the UNCITRAL Model Law on Electronic Transferable Records (MLETR). Singapore had adopted other UNCITRAL texts, including the UNCITRAL Model Law on Electronic Commerce (MLEC) and the United Nations Convention on the Use of Electronic Communications in International Contracts (Electronic Communications Convention), setting the foundation for recognising electronic transferable records by the functional equivalence approach.

She noted differences and similarities between Singapore’s and UK’s approaches to digitalising trade. Singapore amended its Electronic Transactions Act 2010 (SETA) to adopt the MLETR with minor amendments, retaining the functional equivalence approach. Currently, the UK is legislating an Electronic Trade Documents Bill (ETDB). The ETDB does not engage functional equivalence but seeks to achieve the same objective of overcoming the possession requirement in certain trade documents.

The ETDB uses a different language to the MLETR. It departs from the ‘electronic transferable records’ wording and refers to ‘electronic trade document’ instead. It also eschews the word ‘entitle’, which suggests legal entitlement.

The ETDB uses ‘document’ over ‘record’ to align with other references of ‘document’ in English statutes, including the Civil Evidence Act 1995 and Electronic Communications Act 2000.

The SETA and ETDB also contain the terms ‘possession’ and ‘control’, set reliability requirements and involve a change of medium mechanism. The speaker distinguished the possession and control concepts and compared the SETA and ETDB on their reliability and change of medium approaches.

A 15-minute Q&A session followed the presentation. The participants asked questions on governance, cyber risks, user agreements, practical issues and the distinction between possession, holdership and ownership.

The session closed with some final words from Professor Goldby. The International Chamber of Commerce (ICC) is working hard to bring all the stakeholders on board to digitalise trade. Ultimately, even if stakeholders show enthusiasm, the question is whether they can trust each other.

