DELIVERING THE ELECTRONIC TRADE DOCUMENTS ACT PROVISIONS
English Law Reliable Systems Assurance Model

August 2023

Summary

Within a year of the coming into force of the Electronic Trade Documents Act (ETDA), on 20 September 2023, the Centre for Digital Trade and Innovation (C4DTI) aims to have established:

- A model for "reliable systems" as described in the Act such that any system wanting to badge itself as being compliant with the terms of the Act has a simple and straightforward mechanism for identifying the technical standards they would have to meet.

- A mechanism for the "assessment" of such systems as being reliable within the terms of the Act against that model.

- A model that is internationally aligned and promotes the uniform application of the ICC Digital Standards Initiative approved interoperability framework – legal, rules, standards, trusted technology principles.

- A public register for reliable systems that will enable any trader wanting to take advantage of the Act and the benefits that can flow from its digital provisions, can tell at a glance whether any given system has met the terms of the "voluntary scheme".

In doing this, the Centre will work closely with the ICC Digital Standards Initiative and with industry and government to ensure our framework derives its authority and practical usefulness from consensus across industry globally and in the UK, harnessing where possible and desirable existing standards, good practice and capability that already exists in the market.

We accept that there may be other routes to "reliability" other than our framework and indeed that some systems may already consider themselves to be so.

Our starting point is that if we end up with many different models for reliability and systems that do not interoperate with each other, we will not improve on the existing position and will miss the opportunity of the increasing adoption by sovereign states of MLETR-type legislation not just to increase the amount of international trade done digitally but to enable it to be done faster, cheaper, simpler and more sustainably.

Nick Davies

Director, Centre for Digital Trade and Innovation

Our principles

Underpinning the work that we are about to embark on to develop those three elements of our framework will be some principles set out below.

Global legal alignment

The UK's passage of the ETDA is just one implementation of MLETR -type legislation. Other countries have already passed similar provisions, others have such legislation under parliamentary consideration or consultation while others are considering implementation under wider international commitments under WTO, G20 or Commonwealth auspices. We will continue to monitor the global position and will ensure that our framework develops in a way that allows for compatibility with other jurisdictions existing, incipient or reasonably foreseeable intentions. Specifically, we will:

- Monitor the MLETR tracker set up by the ICC's Digital Standards Initiative (DSI)[1] and take steps where feasible to work through ICC channels to ensure alignment of our framework with legislative provisions in those jurisdictions.

- Monitor and take into account developments in international groups such as those mentioned above. In particular we will focus on the Commonwealth and the Digital Trade Working group announced at the recent Trade Ministers' meeting in London[2]. Working with the Commonwealth offers the chance to test legal alignment not just in a good number of jurisdictions whose legal systems will be founded substantially on the common law principles of English Law, but in a wide variety of types of country and economies.

- Continue to engage with the UK's Law Commission to ensure our work maintains the intent and scope of the Act and is consistent with the broader principles of English common law as they apply globally to international trade.

- Keep in mind the possibility of developing a test case in due course for consideration by a court to answer any legal questions that emerge from our model development work and on which judicial opinion would be useful.

We will seek to develop the model with international stakeholders to ensure the outcome is best in class.

Standards reuse

Our starting point here is that there are existing standards in the market to cover all the relevant factors to be taken into account in establishing ETDA reliability. The requirement here is to harness work that has already been done by standard setting bodies and to use a checklist of standards compliance set by the ICC Digital Standards Initiative Industry Advisory Board with which by the systems would enable acceptance as reliable. Specifically we will:

- Work closely with the DSI and their existing and developing work on the "best in class" digital standards that can and should be adopted for particular documents and policy/commercial outcomes[3].

- Where appropriate/necessary leaven those DSI fundamentals by engaging with other experts on subsets of the standards set out in the DSI toolkit and Key Trade Documents and Data Elements batch documents[4] to ensure broader alignment with technical implementation. This to cover elements such as cybersecurity, fraud prevention and digital identity.

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1 ICC Digital Standards Initiative MLETR tracker

2 Commonwealth Ministers Outcome Statement - 6 June 2023

3 WTO Standards Toolkit

4 Standards Toolkit for Cross-border Paperless Trade - ICC

Systems definition

The Act does not define what a system is so we take the intention of the Act to refer to any arrangement of things, protocols and principles which purports to fulfil digitally the legal functions of trade and trade finance documents (such as, but not confined to those listed in the Act). "System" does not therefore mean "platform", so that reliability could be achieved by combinations of platforms or other technical capabilities. Specifically, we will:

● Ensure we build in sufficient flexibility to accommodate any and all combinations of capabilities.

● Enable tech providers, should they so choose, to demonstrate reliability in respect of specific documents or sets thereof, or for specific sectors or types of user.

● Do nothing to limit entry into the market for small and start up tech providers where for them to cover all requirements would be impractical by enabling them to combine with existing and larger providers to cover elements of the model.

Intermediary alignment

Here again we are conscious that other international trade/logistics organisations have already taken steps to encourage their own members to reach digital targets through the adoption of standards (which are largely reflected in the DSI approach). This is all good work that we can harness and reuse in the development of our framework. Specifically we will:

● Leverage the ICC Digital Standards Initiative Future International Trade (FIT) Alliance[5] – which includes DCSA, BIMCO, FIATA and SWIFT – and its commitment to working together to move the dial on digitalisation of trade. We will engage early on with those organisations to ensure both standards and strategic alignment.

● Build on the framework for the exchange of eBLs already established by the IGP&I[6] through their working group and with them managing the transition from the private law, contractual basis upon which exchange has been possible up to now to the public law future as enable by the Act.

Cross sector approach

Many governments worldwide are taking steps to develop digital trade processes for their own policy delivery and border compliance purposes. Types of intervention in the market vary, but there is clear potential for synergy between both public and private sector efforts here so that "reliable systems" under the terms of the Act can be the source of data for governments. This to ensure both better decision making for government agencies and to reduce the administrative burden on traders. Specifically we will:

● Globally continue to engage with government agencies in other jurisdictions to align their work on , for example, Single Trade Window capabilities with the meeting of the broader requirements of industry.

● Leverage that engagement through the digital and innovation chapters included in the UK's wide and growing network of Free Trade and Digital Economy Agreements across the globe.

● Specifically in the UK, continue our existing discussions with the STW programme in HMRC[7], with DBT and the DEA/FTA programme, Cabinet Office and the ongoing Ecosystem of Trust Programme and wider strategy and policy owners of Net Zero, Sustainability and Economic Security goals.

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5   Striving towards paperless global trade - DCSA

6   Electronic Bills of Lading - An Update Part I (ukpandi.com)

7   UK Single Trade Window - Policy discussion paper - GOV.UK

Technology Neutrality

The Act is deliberately silent on the technological means by which the legal functions stipulated by it – broadly the establishment of good title in internationally traded assets and its unique and "rivalrous" transfer to one other person – can be achieved. Evidence before the Bill Committee from the Law Commissioner responsible for its drafting, Professor Sarah Green, indicated that as things stand "hashing algorithms" and "public-private key cryptography" each have a role to play[8]. Applications of Distributed Ledger Technology have achieved these legal ends, but there are and will be in future different means of doing so. We do not intend to be prescriptive here. Specifically, we will:

● Take a lead from the DSI work on Trusted Trade Technology[9] and apply its principle of "transitive trust" in our model to the overall implementation of reliable systems and the rules and protocols under which they operate.

● Focus in on individual factors set out in the Act – "access" via an assured authentication of the corporate or individual participator in a system, "security" of the system via the meeting of good cybersecurity standards and "data integrity" again via interoperable and machine-readable data management methods.

Interoperability

While this is not a specific requirement of the Act, we consider it axiomatic that in the field of international trade a reliable system that does not interoperate with other systems, especially those in other jurisdictions would be of limited value in delivering on the policy intent of the Act. Such interoperability would ideally be generic and agnostic to the technical construct of other reliable systems (except to the extent that those other systems were compatible with the reliable model). Specifically we will

● Continue to develop and build into our model the protocols and frameworks whereby multi-lateral interoperability can be achieved.

● Avoid building into our design any features that would favour one particular proprietary design over any other.

SME Inclusion

The provisions of and the achievable benefits from the Act are not restricted to the large trading, logistics and technology providing entities within its scope. There is a clear opportunity here to enable the economically crucial SME sector to increase its share of the international trade market by making the reliable systems created by the Act simple and cheap to access for those who cannot develop their own bespoke access channels to them. We therefore intend to have in mind during the development of our model the requirements of the SME sector. Specifically we will:

● Continue to engage with the British Chambers of Commerce [10] and with the Federation of Small Business[11] and other relevant business organisations to make sure our model meets their members' needs and that the benefits in terms of cost risk and friction reductions do find their way to the end users of systems and are not absorbed entirely by the suppliers of them.

● Continue to engage with branches of these organisations in other jurisdictions and their sister organisations therein so that SME implementation is interoperable too and for any and all potential trade corridors.

● Work with ports and existing freight forwarders and CSPs to make sure that they can offer services based on reliable systems to their users and customers with business and economic models that ensure fair gains for all actors.

8 Special Public Bill Committee Oral evidence: Electronic Trade Documents Bill [HL]

9 ICC Digital Standards Initiative Trust in Trade paper

10 BCC Trade Manifesto 2023

11 Customs Clearance | FSB, The Federation of Small Businesses

Pilot Testing

Our view is that the deliberately non-prescriptive drafting of the Acts provisions is an indication that there are some questions that remain to be answered and indeed cannot be so without testing in a safe or "sandbox" environment. We have already proved a degree of interoperability and "reliable system" assurance in our previous work with Singapore (who already have MLETR on their books). Our pilot programme will continue in parallel with our work on the model and, as issues crop up or solutions need confirmation we will test these in , as far as possible, real life situations, with the agreement of insurers carriers and shippers that it is safe and informative to do so. Specifically, we will:

- Continue to do pilots with jurisdictions where the legal consequences of digital transactions are well understood (at least in theory) and where specific techno-legal issues can be focused on.

- Plan our programme of pilot work to coincide with those jurisdictions where the UK has or is negotiating FTA/DEA provisions that reinforce the intent of both to enable digital trade between them to be the norm.

Minimum but sufficient governance/paperwork

Our efforts here will be negated or at least highly compromised if we exchange one set of paper-based bureaucracy at the expense and risk for a digital one. We hope and expect that by adopting the principles set out above, we will be able to deliver on the provisions of the Bill at proportionate cost to industry. Specifically we will:

- Be open and consultative on all iterations of our model and design for future governance and administration of the reliable system assurance regime.

- Hold monthly open calls to update all relevant stakeholders on progress.

- In between times we will work on the individual strands with groups of experts and ask for specific contributions to those as we progress.

- Monitor progress against the timetable set out below and keep industry informed of any divergence therefrom.

- Be open to any and all stakeholders who consider that they have undertaken Act -compliant transactions to feed in their experience and with their permission include a commentary on those transactions in our regular updates and in our overall framework design.

Stakeholder Engagement

To iterate previous comments, the authority for any model and registry we come up with will derive not directly from its source, but from its acceptance as the "voluntary scheme or industry standard" referred to in the Act. We will therefore be keeping all our stakeholders, public and private, domestic and international, users and suppliers updated throughout the process. Specifically we will:

- Starting in September have monthly open briefing calls for any and all interested parties to update on progress.

- Distribute as widely and as regularly as possible written iterations of the model with invitations across the community for contributions and discussion.

Our Timetable

From much of the above, it is clear that we are not starting from a blank canvas here. There is already plenty of work that has been done and that we can and indeed should bring together to deliver on the Act's provisions. That said, it is critical that we not only take the time needed to establish the consensus behind the "voluntary scheme" we need, but also to ensure that this is a "once and for all" effort that interoperates with as much of existing and future digital trade infrastructure as possible. It is also critical that the framework we come up with is the framework – to have many of them going forward would be to confound our efforts and , indeed, what we take to be the intent behind parliament's passage of the Act.

Our high-level timetable is as follows:

Now – End of 2023

- Development of the model, including listing of the standards and criteria for achieving reliability

Q 1 2024

- Iteration of model by testing in variety of PoCs in sandbox conditions

Qs 2+3 2024

- Build and deliver model and finalise design of ongoing audit and registry processes

Immediate Next Steps

Over August and early September, the Centre will work up an initial draft of the model following the principles set out above with the intention of exposing that for initial consultation at or around the time the Act comes into force on 20th September.

At that stage apart from the proposed stakeholder calls, we will be hosting a series of events and doing some comms around the Act and our ongoing work so we make the most of the momentum created by the change in the law.

ICC United Kingdom is the representative voice for ICC in the UK and provides a mechanism for UK industry to engage effectively in shaping international policy, standards and rules.

We are the leading voice on digital trade ecosystems, act as the ICC representative to the Commonwealth and Co-Chair the Legal Reform Advisory Board at the ICC Digital Standards Initiative.

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