

WATSON FARLEY
&
WILLIAMS

FROM PAPER TO PLATFORM: ATTORNMENT AND ELECTRONIC BILLS OF LADING



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1982

FOUNDED

210+

PARTNERS

800+

LAWYERS

19

OFFICES

15

COUNTRIES

25+

LANGUAGES
SPOKEN

THE BILL OF LADING: A CORNERSTONE OF TRADE



Three Core Functions

Receipt for Goods

Confirms quantity and condition of cargo accepted by the carrier.

Evidence of Contract

Records the Contract of Carriage between consignor and carrier.

Document of Title

Enables transfer of ownership and constructive possession while goods are in transit.

WHY BANKS REMAIN CAUTIOUS

Adoption of eBLs is accelerating among carriers and traders – but banks lag behind.

Pledging Uncertainty

Unclear whether eBLs function as documents of title for pledging goods as collateral.

Attornment Mechanics

Uncertainty over how constructive possession transfers without a physical document.

Title to Sue

Concerns over the lawful holder's right to bring claims for Misdelivery or breach.



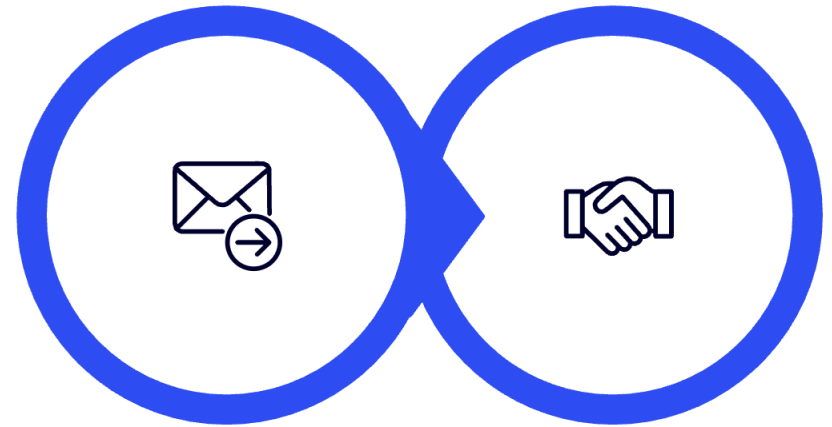
WHAT IS ATTORNMENT — AND WHY DOES IT MATTER?

The Legal Mechanism

Attornment is the bailee's (carrier's or terminal's) express acknowledgment that, following a transfer of rights, it holds the goods for the new bailor — e.g., a financing bank.

At common law, a pledge requires delivery of possession — actual or constructive. Where goods are held by a third party, a pledge is perfected only when that party **attorns** to the pledgee.

- ❑ A pledge of a paper BL (and the goods it represents) is effected by delivery of the BL, endorsed to the bank or in blank.



Notice to Carrier
Carrier

Carrier
Acknowledges

STATUTORY GATEWAYS: THE LEGAL FRAMEWORK

Three legislative frameworks establish functional equivalence between eBLs and paper bills:



MLETR (UNCITRAL)

Uses **control** as the functional proxy for possession. Mandates reliability, singularity, and integrity of the electronic transferable record.



ETDA 2023 (UK)

Electronic trade documents can be **possessed and indorsed**. Requires a reliable system ensuring singularity, exclusive control, and effective transfer.



ET(A)A 2021 (Singapore)

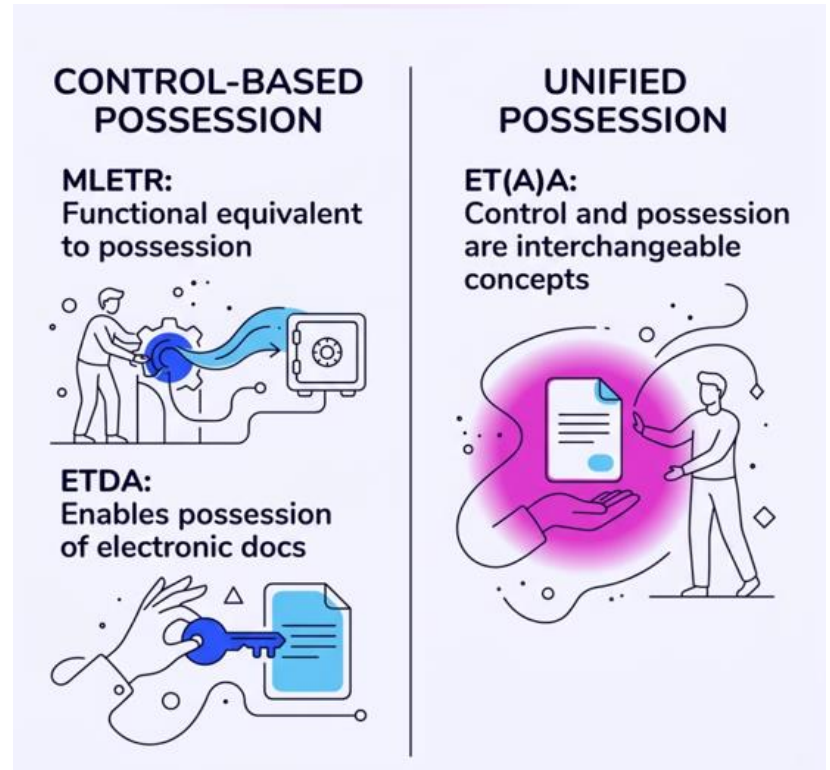
Follows MLETR: reliable method must establish **exclusive control** and identify the person in control. Envisages an accreditation system for reliability.

CONTROL AS THE DIGITAL PROXY FOR POSSESSION

ETDA: A Fact-Based Concept

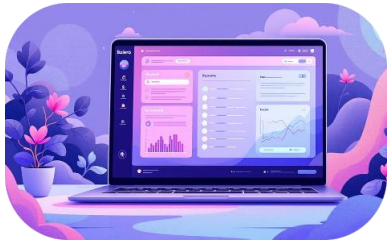
Under the ETDA, **control** is fact-based – not a legal right. It covers the ability to use, transfer, and dispose of the document. The Law Commission concluded that control can apply to electronic trade documents to establish possession, citing *Mainline Private Hire Ltd v Nolan* [2011].

ETDA §3(3): transfer of possession of an eBL has the **same effect** as transfer of possession of the equivalent paper document.



APPROVED PLATFORMS MEETING STATUTORY TESTS

Several platforms already satisfy the requirements of ETDA, ET(A)A, and MLETR. The International Group of P&I Clubs has approved multiple eBL systems for transfer of title, rights, and liabilities.



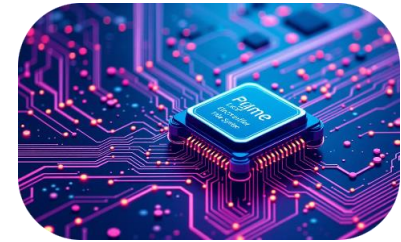
Bolero

Cloud-based platform with digital signature authentication and a centralised **Title Registry** ensuring singularity of the eBL.



ICE Digital Trade

Drafting via **DocHub**, exchange via **DocEx**. Documents can be shared directly with banks, supporting documentary trade finance.



E-Title

Peer-to-peer system using **HSMs and e-signatures** to create electronic titles, safeguarding information integrity.

Cross-platform eBL transfers have been demonstrated using DCSA and FIT Alliance standards, supported by a control-tracking registry ensuring singularity and divestment across systems.

KEY BANK CONCERNS & MITIGATIONS

No Attornment on Endorsement

Embed explicit attornment language in carrier SOPs and terminal instructions. Platform must reflect who the bailee holds goods for at every transfer point.

Misdelivery & LOI Reliance

Implement instant electronic surrender and holder verification. Where LOIs remain necessary, use IG-recommended wording with bank countersignature.

Jurisdictional Fragmentation

Select governing law under ETDA or MLETR; incorporate change-of-form protocols and contract for cross-platform registry receipts.

Cybersecurity Risk

Require SOC 2 or ISO 27001 attestations, penetration testing reports, and escrowed business continuity commitments from platform providers.

Banks can also ensure readiness by adopting **eUCP 2.1** standards for electronic presentation under letters of credit.



THE CASE FOR BANKS TO ACT NOW

3

Legal Frameworks

ETDA, ET(A)A, and MLETR all confirm eBLs carry the same legal effect as paper bills.

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Timing Mismatch

eBLs issued, transferred, and presented in near real time – virtually eliminating document-cargo timing gaps.

↑

Collateral Security

Real-time title control lets lenders enforce rights immediately, reducing fraud and Misdelivery exposure.

CONCLUSIONS

The Attornment Hurdle Is Surmountable

By embedding Attornment clauses in carrier SOPs, requiring platform-level visibility of bailee obligations, and leveraging registry-backed interoperability, banks can achieve the same certainty as traditional tripartite letters – with greater speed and reliability.

"The question is no longer whether eBLs work. The question for banks is whether they will seize this opportunity to strengthen their risk posture and remain competitive in a digital-first trade finance landscape."

Key Takeaways

- Legal framework is supportive: ETDA, ET(A)A, and MLETR confer full legal equivalence
- Misdelivery risk materially reduced through real-time electronic title and control
- Digital audit trails and cybersecurity safeguards exceed paper processes
- Mitigations for Attornment are already available and practical
- Banks that delay risk being left behind in a digital-first trade ecosystem