

National legal framework for enabling paperless trade

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I . Introduction

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I . Introduction - Why do we need legislation for paperless trade?

- ❖ To meet the demands of the legal certainty as paperless trade
 - Without law there are no certainty in paperless trade
- ❖ To make traditional laws coincide with paperless trade
 - Traditional legal systems do not support electronic documents and uphold their validity and enforceability
- ❖ To provide standards and model for paperless trade process to the related parties
 - Under the law, all parties who participate in paperless trade are able to align with one another

II . Legislations for Paperless Trade in Korea

1. Overview of legislations for paperless trade in Korea

Application Field	Related Laws
Electronic Transaction	<ul style="list-style-type: none">✓ Electronic Trade Facilitation Act✓ Framework Act on Electronic Transaction✓ Digital Signature Act✓ Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.✓ Trade Infrastructure Development Act
Contract	<ul style="list-style-type: none">✓ Foreign Trade Act
Transportation	<ul style="list-style-type: none">✓ Commercial Act✓ Framework Act on Logistics Policies
Customs Clearance	<ul style="list-style-type: none">✓ Customs Act
Marine Insurance	<ul style="list-style-type: none">✓ Electronic Trade Facilitation Act
Payment	<ul style="list-style-type: none">✓ Foreign Exchange Transactions Act• Issuance and Distribution of Electronic Bills Act
Dispute Resolution	<ul style="list-style-type: none">• Arbitration Act

II . Legislations for Paperless Trade in Korea

2. Amend Existing Laws – Foreign Trade Act(1)

- ❖ The purpose of this Act is to contribute to the growth of the national economy by promoting foreign trade, establishing a fair trade system, maintaining international balance of payments and expanding commerce.

Article	Text
Article 2 (Definitions)	1. The term "trade" means the exportation and importation of those falling under any of the following items (hereinafter referred to as "goods, etc."): (a) Goods; (b) Services prescribed by Presidential Decree; <u>(c) Intangible goods in an electronic form prescribed by Presidential Decree;</u>
Article 4 (Measures for Promotion of Trade)	(2) The Minister of Knowledge Economy may give necessary support to a person who falls under any of the following subparagraphs, under conditions prescribed by Presidential Decree, if considered necessary for the promotion of trade under paragraph (1) <u>3. A person who has established and run a platform for the scientific processing of the business affairs relating to trade.</u>

II . Legislations for Paperless Trade in Korea

2. Amend Existing Laws – Foreign Trade Act(2)



Article	Text
Article 15 (Establishment of Platform for Scientific Processing of Trade Affairs)	<p>(1) The Minister of Knowledge Economy shall make efforts to establish a platform for dealing with trade affairs scientifically, including the system of international trade statistics and <u>the exchange system of electronic documents</u>, in order to facilitate systematic and efficient exportation and importation of goods, etc.</p> <p>(2) The Minister of Knowledge Economy may, if deemed necessary for establishing a platform for scientific handling of trade affairs pursuant to paragraph (1), request the heads of the relevant administrative agencies to furnish him/her with information about exportation and importation of goods, etc., including customs records, under conditions prescribed by Presidential Decree. In such cases, the heads of the relevant administrative agencies shall provide cooperation upon receiving such request.</p>

II . Legislations for Paperless Trade in Korea

2. Amend Existing Laws – Customs Act(1)



- ❖ The purpose of this Act is to properly administer the imposition and collection of customs duties and the customs clearance of goods exported and imported, and to secure revenues from customs duties, with the aim of contributing to the development of the national economy.

Article	Text
Article 327 (Construction and Operation of Comprehensive Customs Duties Information Network in Korea)	(1) The Commissioner of the Korea Customs Service may construct and operate the Comprehensive Customs Duties Information Network in Korea (hereinafter referred to as the "Comprehensive Customs Duties Information Network in Korea") concerning electronic data-processing equipment and database to promote convenience of the electronic customs clearance and to seek the facilitation of exports and imports and the safety of trade through exchanges of the customs information with foreign customs.

II . Legislations for Paperless Trade in Korea

2. Amend Existing Laws – Customs Act(2)



Article	Text
Article 327 (Construction and Operation of Comprehensive Customs Duties Information Network in Korea)	(2) The head of a customhouse may have a person declare, apply, report, pay, etc. under this Act and apply for the certification and confirmation of goods requiring permission, approval or fulfillment of other conditions under other Acts and subordinate statutes (hereinafter referred to as "electronic declaration, etc.") by using electronic data-processing equipment of the Comprehensive Customs Duties Information Network in Korea, as determined by the Commissioner of the Korea Customs Service.
	(3) The head of a customhouse may deliver, inform on, notify of, etc. (hereinafter referred to as "electronic delivery") approval, permission, acceptance, etc. of electronic declarations, etc. by using electronic data-processing equipment of the Comprehensive Customs Duties Information Network of Korea, as determined by the Commissioner of the Korea Customs Service.

II . Legislations for Paperless Trade in Korea

2. Amend Existing Laws – Customs Act(3)



Article	Text
Article 327 (Construction and Operation of Comprehensive Customs Duties Information Network in Korea)	(4) When an electronic declaration, etc. is filed, the related documents may be presented through the electronic data-processing equipment of the Comprehensive Customs Duties Information Network in Korea, or their submission may be omitted or simplified, as determined by the Commissioner of the Korea Customs Service.
	(5) An electronic declaration, etc. filed pursuant to paragraph (2) shall be deemed to have been accepted by a customhouse when such electronic declaration, etc. is stored in electronic data-processing equipment determined by the Commissioner of the Korea Customs Service and the electronic delivery shall be deemed to have been made to a person entitled to taking such delivery when the electronic delivery is input in the computer designated by the person entitled to taking the delivery (when the electronic delivery is stored in the electronic data-processing equipment of the Comprehensive Customs Duties Information Network in Korea in cases where such electronic delivery is stored in such electronic data-processing equipment of the Comprehensive Customs Duties Information Network in Korea, as determined by the Commissioner of the Korea Customs Service).

II . Legislations for Paperless Trade in Korea

2. Amend Existing Laws – Customs Act(4)



Article	Text
Article 327-2 (Designation, etc. of Business Operators of Comprehensive Customs Duties Information Network in Korea)	(1) The Commissioner of the Korea Customs Service may designate a person who operates all or some of the Comprehensive Customs Duties Information Network of Korea (hereinafter referred to as "business operator of the Comprehensive Customs Duties Information Network in Korea") pursuant to the standards and procedures prescribed by Presidential Decree for the efficient operation of the Comprehensive Customs Duties Information Network in Korea.
Article 327-5 (Standards for Electronic Documents)	The Commissioner of the Korea Customs Service may determine the standards for electronic documents concerning the electronic declaration, etc. and electronic delivery for the efficient exchange of the customs information among countries pursuant to Article 255-3, in consideration of the matters prescribed by international organizations, including but not limited to the World Customs Organization.

II . Legislations for Paperless Trade in Korea

2. Amend Existing Laws – Commercial Act(1)



❖ The purpose of this Act is to provide some rules for commercial activities in Korea.

Article	Text
Article 862 (Electronic Bill of Lading)	(1) A carrier may issue an electronic bill of lading by means of registration with the registry agency designated by the Minister of Justice with the consent of a consignor or a charterer in lieu of issuance of a bill of lading referred to in Article 852 or 855. In such cases, an electronic bill of lading shall have the same legal effect as a bill of lading referred to in Articles 852 and 855.
	(2) Information of all the subparagraphs of Article 853 (1) shall be included in an electronic bill of lading and it shall come into effect when a carrier has transmitted with his electronic signature thereon and a charterer or a consignor has received it.
	(3) A holder of a right of an electronic bill of lading may transfer such right in a way that he draws up an electronic document stating the intention of endorsement, attaches an electronic bill of lading thereto, and transmits them to other party through the designated registry agency.

II . Legislations for Paperless Trade in Korea

2. Amend Existing Laws – Commercial Act(2)



Article	Text
Article 862 (Electronic Bill of Lading)	(4) If other party has received an electronic document in which the intention of endorsement is stated according to the method prescribed by paragraph (3), it has the same effect as delivery of a bill of lading of Articles 852 and 855 with endorsement, and a holder of a right who has received an electronic document of paragraphs (2) and (3) shall acquire the same right as a holder who has received a bill of lading of Articles 852 and 855.
	(5) Designation requirements of a registry agency of electronic bill of lading, electronic method of issuance and endorsement, specific receiving procedure of cargo and other necessary matters shall be prescribed by Presidential Decree.
Article 863 (Issuance of Seaway Bill)	(1) If requested by a charterer or a consignor, a carrier may issue a seaway bill in lieu of a bill of lading of Article 852 or 855. <u>A seaway bill may be issued in an electronic way according to the agreement between the parties.</u>

II . Legislations for Paperless Trade in Korea

2. Amend Existing Laws – Commercial Act(3)

- ❖ REGULATION ON IMPLEMENTATION OF THE PROVISIONS OF THE COMMERCIAL ACT REGARDING ELECTRONIC BILLS OF LADING
- The purpose of this Decree is to provide for matters delegated pursuant to Commercial Act Article 862 of the Commercial Act and matters necessary for the implementation thereof.

Article

Article 1 (Purpose)

Article 2 (Definitions)

Article 3 (Requirements for Designation of Registry Agencies)

Article 4 (Procedure for Designation of Registry Agencies)

Article 5 (Changes of Requirements for Designation)

Article 6 (Issuance of Electronic Bills of Lading)

Article 7 (Charter Contracts and Electronic Bills of Lading)

Article 8 (Transfer of Electronic Bills of Lading)

Article 9 (Modification to Descriptions of Electronic Bills of Lading)

Article 10 (Claims for Delivery of Shipments against Electronic Bills of Lading)

Article 11 (Delivery of Shipments and Return of Electronic Bills of Lading)

Article 12 (Conversion into Documentary Bill of Lading)

Article 13 (Preservation of Electronic Bills of Lading, etc.)

Article 14 (Supervision, etc.)

Article 15 (Revocation of Designation)

Article 16 (Requests for Cooperation)

II . Legislations for Paperless Trade in Korea

3. Enact New Laws – DIGITAL SIGNATURE ACT

- ❖ The purpose of this Act is to establish the basic framework for the system of digital signatures in order to secure the safety and reliability of electronic messages and to promote their use, thereby stimulating the use of electronic records and communications on a national level and advancing social benefit and convenience.

Chapter	Article
CHAPTER I GENERAL PROVISIONS	Article 1 ~ 3
CHAPTER II LICENSED CERTIFICATION AUTHORITY	Article 4 ~ 14
CHAPTER III AUTHORIZED CERTIFICATE	Article 15 ~ 18-2
CHAPTER IV SECURING OF SAFETY AND RELIABILITY OF CERTIFICATION WORK	Article 18-3 ~ 26
CHAPTER V ADOPTION, ETC. OF DIGITAL SIGNATURE CERTIFICATION POLICY	Article 26-2 ~ 26-6
CHAPTER VI SUPPLEMENTARY PROVISIONS	Article 27 ~ 30
CHAPTER VII PENAL PROVISIONS	Article 31 ~ 34

II . Legislations for Paperless Trade in Korea

3. Enact New Laws – FRAMEWORK ACT ON ELECTRONIC COMMERCE

- ❖ The purpose of this Act is to contribute to the national economy by clarifying legal relations of the electronic commerce, ensuring its security and reliability, and laying the foundation for its promotion.

Chapter	Article
CHAPTER I GENERAL PROVISIONS	Article 1 ~ 3
CHAPTER II ELECTRONIC DOCUMENTS	Article 4 ~ 11
CHAPTER III ENSURING SECURITY IN ELECTRONIC COMMERCE AND PROTECTION OF CONSUMERS	Article 12 ~ 18
CHAPTER IV FORMULATION OF BASIC POLICY ON ELECTRONIC COMMERCE AND SYSTEMS FOR ITS PROMOTION	Article 19 ~ 22
CHAPTER V PROMOTION OF ELECTRONIC COMMERCE AND CREATION OF BASIS	Article 23 ~ 31
CHAPTER V-2 AUTHORIZED ELECTRONIC DOCUMENTS DEPOSITORY	Article 31-2 ~ 31-17
CHAPTER VI ELECTRONIC COMMERCE MEDIATION COMMITTEE	Article 32 ~ 38
CHAPTER VII SUPPLEMENTARY PROVISIONS	Article 39 ~ 42
CHAPTER VIII PENAL PROVISIONS	Article 43 ~ 46

II . Legislations for Paperless Trade in Korea

3. Enact New Laws – ELECTRONIC TRADE FACILITATION ACT(1)

- ❖ The purpose of this Act is to simplify trade procedures, rapidly circulate trade information and reduce time and costs of handling trade business by creating grounds for electronic trade and facilitating the wide use thereof, thereby enhancing the international competitiveness of domestic industries and contributing to the growth of the national economy.

Chapter	Article
CHAPTER I GENERAL PROVISIONS	Article 1 (Purpose) Article 2 (Definitions) Article 3 (Scope of Application)
CHAPTER II SYSTEM FOR FACILITATING ELECTRONIC TRADE	Article 4 (Development and Implementation of Measures to Facilitate Electronic Trade) Article 5 (Establishment of National Electronic Trade Committee)
CHAPTER III ELECTRONIC TRADE INFRASTRUCTURE BUSINESS OPERATORS	Article 6 (Designation, etc. of Electronic Trade Infrastructure Business Operators) Article 7 (Disqualification Grounds for Electronic Trade Infrastructure Business Operators) Article 8 (Report of Service Charges) Article 9 Deleted. <by Act No. 9377, Jan. 30, 2009> Article 10 (Corrective Orders) Article 11 (Revocation, etc. of Designation)

II . Legislations for Paperless Trade in Korea

3. Enact New Laws – ELECTRONIC TRADE FACILITATION ACT(2)

Chapter	Article
CHAPTER IV USE, ETC. OF ELECTRONIC TRADE INFRASTRUCTURE	Article 12 (Use, etc. of Electronic Trade Infrastructure) Article 13 (Standardization of Electronic Trade Documents) Article 14 (Validity of Applications, etc. or Approvals, etc.) Article 15 (Validity of Electronic Trade Documents)
CHAPTER V KEEPING AND ATTESTATION OF ELECTRONIC TRADE DOCUMENTS	Article 16 (Validity of Electronic Trade Documents Kept by Electronic Trade Infrastructure Business Operators) Article 17 (Certification of Electronic Trade Documents)
CHAPTER VI FACILITATION OF USE OF ELECTRONIC TRADE DOCUMENTS	Article 18 (Facilitation of Use of Electronic Trade Documents) Article 19 (Special Cases concerning Attached Documents Needed to File Applications, etc.)
CHAPTER VII SECURITY AND MANAGEMENT OF ELECTRONIC TRADE DOCUMENTS	Article 20 (Security of Electronic Trade Documents and Trade Information) Article 21 (Publication of Electronic Trade Documents and Trade Information)

II . Legislations for Paperless Trade in Korea

3. Enact New Laws – ELECTRONIC TRADE FACILITATION ACT(3)

Chapter	Article
CHAPTER VIII SERVICE BUSINESS OPERATOR SPECIALIZING IN ELECTRONIC TRADE	Article 22 (Support, etc. for Service Business Operators Specializing in Electronic Trade) Article 23 (Revocation of Registration of Service Business Operator Specializing in Electronic Trade)
CHAPTER IX FACILITATION, ETC. OF DEVELOPMENT OF ELECTRONIC TRADE TECHNIQUES	Article 24 (Facilitating Development of Electronic Trade Technology) Article 25 (Training of Electronic Trade Professionals)
CHAPTER X SUPPLEMENTARY PROVISIONS	Article 26 (Access, Inspections, etc.) Article 27 (Hearings) Article 28 (Delegation of Authority) Article 29 (Legal Fiction of Public Officials in Application of Penal Provisions)
CHAPTER XI PENAL PROVISIONS	

V. Conclusion

- Paperless trade is quick, efficient, convenient, and cost effective. Electronic communication systems are amenable to automation, which reduces preparation time and eliminates data transcription, manual sorting, matching, filing, and reconciling tasks as well as the associated errors.
- In Korea, the government and business have created a paperless trade environment by developing relevant policies, financial support, legal framework, etc. for more than 20 years. As a result, all international trade documents, including B/L, can be exchanged electronically in Korea. But this is not the case in other countries.
- However, for developing countries, paperless trade is not realized yet, because of several reasons. Legal framework is not just one of the reasons but first step of the constructing paperless trade environment of their country.
- For solving, the legal validity of electronic transactions, the legal status of electronic signatures, and the evidential value of electronic data to the application of concepts such as possession, holding, and negotiability of electronic documents, legislation is the only and fastest way.



Q & A

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