

22 February 2022

MINUTES OF THE INAUGURAL DSI LEGAL REFORM ADVISORY BOARD MEETING

Meeting 1. Legal Reform Advisory Board Meeting

Date	17 February 2022
Time	13:00-15:00 CET
Place	Video Conference call

Present	DSI Legal Reform Advisory Board Members	ICC Management
	Chris Southworth (Co-chair)* Valentina Mintah (Co-chair)	John W.H. Denton AO (ICC Secretary General)
	H.E Wamkele Mene (AfCFTA) Thomas Abell (ADB) Joy Albright (Afreximbank) Tod Burwell (BAFT) Emmanuelle Butaud-Stubbs (ICC France) Luca Castellani (UNCITRAL) Yann Duval (UNESCAP) Sean Edwards (ITFA) Yesica González (ICC Mexico) Trudi Hartzenberg (Tralac) Ahmadou Kane (ITFC) Vashti Maharaj (The Commonwealth) Sue Probert (UN/CEFACT) Irina Tyan (EBRD) Oliver Wieck (ICC Germany) Yu Min, as Yu Jianlong's representative (ICC China)	ICC DSI Management Raoul Renard (Deputy Director DSI, Legal Reform) Hannah Nguyen (Deputy Director DSI)
		LRAB Observers Gerard Hartsink (Chair, DSI Industry Advisory Board) Nicholas Meyer (B20 Secretariat) Marindra Bawono (B20 Secretariat) Arief Hamdani (B20 Secretariat)
		*Chair of the meeting.
Absent	Satvinder Singh (ASEAN Secretariat) Yu Jianlong (China Chamber of International Commerce)	

NO.	TOPICS
1	Welcome Address ICC Secretary General John W.H. Denton AO gave a welcome address. The Secretary General set out the role of the LRAB in the context of ICC's efforts to create a globally harmonised and digitalised trading environment, and referred to progress already made in operationalising the DSI Industry Advisory Board, including the construction of several working groups.

The Secretary General expressed his thanks to His Excellency Wamkele Mene, Secretary General of the African Continental Free Trade Area for his leadership and enthusiasm for trade digitalisation.

2 Opening Remarks

Co-Chair **Chris Southworth** introduced himself as the Secretary General of ICC United Kingdom and a Co-Chair of the LRAB. Mr. Southworth said that the LRAB is a milestone in moving the trade digitalisation agenda forward. Mr. Southworth further said that the meeting provided an opportunity to set an agenda for the coming months, and stressed that the LRAB presents an inclusive and shared endeavour.

Co-Chair **Valentina Mintah** introduced herself as a member of the ICC Executive Board and practitioner in the trade facilitation ecosystem, having founded West Blue Consulting. Ms. Mintah stressed the imperative for a globally harmonised and digitalised trading environment, and stated that we must go beyond the rhetoric and ensure businesses build back better from COVID-19, supported by a unified legal framework. Ms. Mintah said she looked forward to a dynamic and action-led LRAB and to co-chairing with Mr. Southworth.

3 Introductions

Co-chair **Chris Southworth** facilitated the introductions of LRAB members. Each member spent 1-2 minutes introducing themselves and explaining their current relationship with the LRAB agenda.

H.E. Wamkele Mene thanked the LRAB Co-Chairs for their leadership and thanked Mr. John Denton for his digitalisation vision. Spoke of the unique opportunity on the African continent to craft a legal framework for digital trade that will enable Africa to leapfrog. Starting this year AfCFTA members will begin negotiations on a protocol for digital trade.

Ahmadou Kane mentioned that the International Islamic Trade Finance Corporation (ITFC) has 62 member countries and stressed the need to assist member countries in digitalisation efforts.

Thomas Abell outlined the work already undertaken by ADB on this agenda, including a joint ADB–ICC paper published last year, as well as an initial pilot project in Georgia and ongoing discussions with officials in Viet Nam and China.

Joy Albright underscored the strategic pillar of intra-African trade, and that Afreximbank is poised to elevate intra-African trade throughout the continent. Spoke of Afreximbank's pan-African payments settlement system and dialogue with AfCFTA. Delighted to be a part of the LRAB.

Tod Burwell applauded ICC for its leadership on this issue and noted that BAFT has been working on trade digitalisation since 2018, focusing both on necessary legal reform, but also developing a digital trade finance product.

Emmanuelle Butaud-Stubbs stated that ICC France has been working on a white paper that covers many dimensions of trade digitalisation, including this issue, but also customs clearance and trade facilitation measures. Pointed out that there are strong linkages between ICC France members and the French Treasury on this agenda.

Yann Duval noted ESCAP's strong engagement on this issue, and its role as Secretariat of the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and

the Pacific. Stated that the Framework Agreement is a powerful driver of political will, which is just as important as reform efforts.

Sean Edwards noted that ITFA has been extremely active in promoting MLETR. It has advocated for legal adoption but is also focused on bringing implementable technology. ITFA has ~50 fintechs in its fintech community. Sean is also on the board of a Swiss enterprise, which is developing an implementable solution. ITFA are actively reaching out to the EU on potential reforms and has enjoyed success advocating for MLETR adoption in the Abu Dhabi Global Market.

Yesica González noted ICC's founding purpose of promoting peace and prosperity through the facilitation of trade and investment. Views this work as entirely in line with ICC's mission.

Trudi Hartzenberg noted that Tralac is focused on digitalisation, transformation, and appropriate digital governance, and is glad to be part of the LRAB.

Vashti Maharaj noted that a lot of The Commonwealth's work on connectivity is focused on the digital economy. Noted that the work to be done by LRAB is critical, because many states have underscored the importance of legal harmonisation and of MLETR.

Sue Probert noted her long history with trade digitalisation, beginning in 1996 with a company she ran in the UK that produced the software that the original EU Bolero project used. Stated that this gives rise to two important aspects: (1) the legal aspect; and (2) the semantics. Noted that with respect to (2), UN/CEFACT has a complete set of semantics to cover the digitalised global supply chain, including the work being done by this Board.

Luca Castellani noted his experience as secretary of Working Group IV, which drafted MLETR, and as a current provider of technical assistance to states seeking to adopt MLETR.

Irina Tyan noted her interim role as a representative of the EBRD. Delighted to be a part of the initiative and looks forward to contributing to the agenda in areas where EBRD invests.

Oliver Wieck noted that ICC Germany has been actively engaged on trade digitalisation for the last 5 years and noted that the German government is eager to continue the work started by the United Kingdom under its G7 Presidency.

YU Min, representing Yu Jianlong, noted that ICC China is very eager to work on this issue. ICC China notes the urgent digitalisation needs of its members. ICC China would like to work with the ICC network to contribute to this great initiative.

4

Overview: The Digital Standards Initiative and Industry Advisory Board

Ms. **Hannah Nguyen**, Deputy Director of the ICC DSI, provided an overview of the DSI and gave a status update on the work of the Industry Advisory Board (IAB).

As an example of the *raison d'être* of the DSI and the need to accelerate progress, Ms Nguyen noted that work began on digitising trade documents over twenty years ago, but that we are only at 0.1% of bills of lading issued electronically today.

There are five principles underlying DSI's approach: (1) re-use rather than recreate; (2) engage standard-setting bodies; (3) consider all approaches; (4) make accessible to all;

and (5) enhance capacity. The structure of the DSI includes an overarching governance board, and then the Industry and Legal Reform Advisory Boards.

Ms. Nguyen gave a recap of the Five Foundational Pillars for Execution that were presented and endorsed by the IAB during IAB meeting #2, starting with taking stock of (i) the Key Data Elements for Trade, (ii) the Key Trade Document types which would benefit from further standardization and (iii) Trusted Technology Environment with the goal to share data seamlessly end to end in a trusted, verifiable, and secure manner.

The (iv) and (v) pillars are especially relevant to the LRAB. Pillar (iv) Modernized Rules for Trade involves the development and adoption of both rules, such as the ICC eUCP and URDTT rules, as well as legislation, such as the UNCITRAL Model Law on Electronic Transferable Records.

For Pillar (v) Seeding digitization, a joint effort will be required to drive acceptance and adoption of relevant standards to enable digitization, as well as build capacity and training resources needed for ICC National Committees, their members and stakeholders and companies around the world to transit from paper to electronic.

5 Problem Statement and State of Play

Mr. **Raoul J Renard**, Deputy Director of Legal Reform, ICC DSI, set out the problem statement and the current state of play.

ICC and partners realised early in the process of developing DSI that we cannot achieve the ambitious aim of establishing a globally harmonized, digitized trade environment with standards development and implementation alone: legal reform is urgently required.

The challenge today is that most jurisdictions continue to require negotiable instruments to be presented in paper form. The solution lies in the widespread adoption or alignment to the UNCITRAL Model Law on Electronic Transferable Records (MLETR).

Actions to date to promote MLETR alignment include:

- Securing key advocacy wins, including the G7+ Ministerial Declaration in April 2021, where Digital and Technology Ministers declared that 'paper-based transactions, which still dominate international trade are a source of cost, delay, inefficiency, fraud, error and environmental impact.
- An increasing number of trade commitments reflecting provisions calling for legislation consistent with MLETR, including a provision in the WTO E-commerce JSI as well as Digital Economy Agreements concluded by Singapore with Chile and New Zealand (DEPA) and Australia (SADEA).
- We have also generated a number of tools to assist governments and industry on the legal reform journey, including the Practical Guide to Legal Reform, a joint ICC-ADB report on legal gaps in Asia, various economic studies and advocacy tools, which can be found on the DSI website: <https://dsi.iccwbo.org/policymakers>.
- We have seen substantial action by jurisdictions to align laws with MLETR (1 jurisdiction at start of 2021, 7 jurisdictions by end 2022).

However, we need a broad coalition to scale and coordinate global efforts, hence the formation of this Legal Reform Advisory Board, operating under the Governance Board of the DSI, and comprised of up to 30 members across a range of entities: multilateral development banks, regional economic communities, industry associations and international organisations.

5.1

Open Discussion

Board open discussion moderated by Co-Chair Chris Southworth.

Tod Burwell noted that in the United States BAFT concluded that the most comprehensive path forward lay in amendment to the Uniform Commercial Code, but also realised that this would take a very long time. BAFT determined that an amendment to the E-Sign Act may be the most viable path forward. BAFT have identified reforms that they would like to see implemented, and have engaged with some stakeholders, including members of US Congress, to advance.

The change in US Administration has caused a reset in advocacy efforts. Bipartisanship is challenging in the current climate. BAFT have not given up and are seeking to have the reform taken up in committee and further progressed. Unfortunately, have taken some steps backwards with the change in government.

Sean Edwards noted that ITFA has multiple points of contact with the European Commission and multiple MEPs. There is an ongoing review of the eIDAS regulation. There is a movement within Europe towards digital citizenship. That is the main driving force behind the eIDAS reform, but the regulation also deals briefly with eDocuments. Unfortunately the brief reference currently is insufficient to provide for legal recognition of eDocuments. ITFA has engaged with various stakeholders to suggest reforming this article within eIDAS to provide for legal recognition. They have engaged a firm in Brussels to promote this reform.

Sue Probert stated that within UN/CEFACT there is an MLETR project. It is producing a white paper, looking at how UN/CEFACT can contribute to the application of MLETR.

Luca Castellani stated that there is a necessity to provide guidance on any certification or accreditation system for operators of ETR systems. This is foreseen in some existing legislation (Bahrain, Singapore) and is even mandatory in Paraguay. This work is really at the intersection of legal and technical and should be identified as a priority deliverable.

Emmanuelle Butaud-Stubbs noted that it is important to have a follow up on the revision of eIDAS. The provision ICC France assessment is that not only may France need to revise four civil codes, but the way EU directives have been implemented should also be scrutinized. It is therefore relevant to have an EU institutional representation at the Board, perhaps someone from DG connect, to help us save time.

On Africa, it has been important to create relationships with National Committees in Africa. ICC France has helped organize a webinar in Senegal and are exploring further engagements in Togo and Benin. It would also be very useful to have documents available in French.

Vashti Maharaj noted the importance of ensuring the input of Caribbean nations, because all small island developing states should be included in this initiative. This June The Commonwealth is hosting its Heads of Government Meeting in Kigali, Rwanda. High-level government leaders can be engaged to reiterate the importance of digital standards and legal reform. The Commonwealth will also be hosting a digital trade workshop for COMESA states, and once details are finalized would be happy to share with the Board.

	The Commonwealth has launched a repository of digital laws and regulations as a resource to all Commonwealth states.
6	<p>Forward Programme</p> <p>Mr. Raoul J Renard, Deputy Director of Legal Reform, ICC DSI.</p> <p>The draft 2022-2023 objectives were raised for discussion:</p> <ul style="list-style-type: none"> • Double the number of countries that have legally aligned to MLETR to 14 (up from 7 in 2021) • Support emerging economies in their legal harmonisation efforts (5-10 projects) • Secure commitments from 100 countries to align to MLETR • Create a monitoring framework from MLETR socialization through to domestic passage of legislation.
6.1	<p>Open Discussion</p> <p>Co-chair Chris Southworth moderated an open discussion on the forward programme.</p> <p>Joy Albright, Afreximbank noted that with the launch of the AfCFTA, it has also expedited the AfCFTA protocol on e-commerce, which aims to standardize ecommerce procedure across member states. Afreximbank are currently working with AfCFTA on boosting intra-African trade and it would be possible for Afreximbank to work with AfCFTA on this agenda.</p> <p>Luca Castellani made three practical comments.</p> <ol style="list-style-type: none"> 1. In the G7 process, the EU member states have similar concerns. They all must ensure that their roadmap to MLETR adoption is compliant, especially with the EU rules on trust services. It could be useful to exchange views between Germany, France, and Italy to identify common solutions to any implementation issues. 2. There could be an opportunity in Ghana. In practice, how do we get there? Should we form special groups for each jurisdiction? 3. There was an UNCTAD eTrade Readiness Assessment on Jordan just today. It has legislation on electronic transactions that is not considered efficient. One of the recommendations in the assessment is to replace it with MLETR. Perhaps we should create an information sharing protocol so that these sorts of opportunities are explored. <p>Tod Burwell asked: When you refer to one of the goals being to secure funding for 5-10 developing country projects, what would the project consist of, and what would be the sources of funding that you're talking about?</p> <p>Chris Southworth stated that the ideal scenario is to have the multilateral development banks help identify priority jurisdictions, and then provide funding for legal experts to assist governments to undertake the reform. The ADB is already operating under this model.</p> <p>Joy Albright noted that what Afreximbank tends to do is look at regional influence, trade volumes, and whether the jurisdiction is a regional hub and/or has a track record of early adoption. Ms. Albright asked: How will you seek to identify jurisdictions?</p> <p>Chris Southworth stated that the DSI will explore these criteria with each of the MDBs, including Afreximbank, and report back to the Board at the next meeting.</p> <p>Emmanuelle Butaud-Stubbs noted that the degree of ambition in the national digital transformation of the country is very important, because it should be a holistic transformation. On the WTO Trade Facilitation Agreement, some projects carried out</p>

	under the aegis of this agreement cover digital transformation, particularly for customs authorities. Perhaps there is a connection that should be forged, given that we have an interlinkage at ICC with the Global Alliance for Trade Facilitation.
7	Charter Run-through This agenda item was skipped due to time constraints. Board members have received the draft Charter and are invited to provide feedback to Raoul.RENARD@iccwbo.org .
7.1	Open Discussion See above. Open discussion of draft Charter to be continued via email with the DSI Management team.
8	Next Steps Mr. Southworth identified 5 key areas that we would like feedback from the Board: <ol style="list-style-type: none"> (1) For the 10 funded projects, what jurisdictions do you think we should target, bearing in mind the criteria of (i) regional influence; (ii) a track record of early adoption; and (iii) relative trade volumes? (2) How can you help secure commitments from countries to align to MLETR? (3) How can the monitoring framework be improved? Relatedly, are there stages of reform that are not currently captured? (4) Are there gaps in representation in the Board currently, and if so, which institutions and individuals would you recommend? (5) Are there amendments or enhancements that should be made to the Charter? <p>Ms. Valentina Mintah closed with the statement that the agenda has been active since the 90s, but that it's critical for us to accelerate the pace of progress now.</p> <p>Mr. John W.H. Denton AO underscored the importance of the LRAB to the mission of ICC.</p>

March 2022



Valentina Mintah
Co-Chair LRAB



Chris Southworth
Co-Chair LRAB