

e-Trade Legal & Regulatory Framework of KOREA

Hyun Ku, Kang



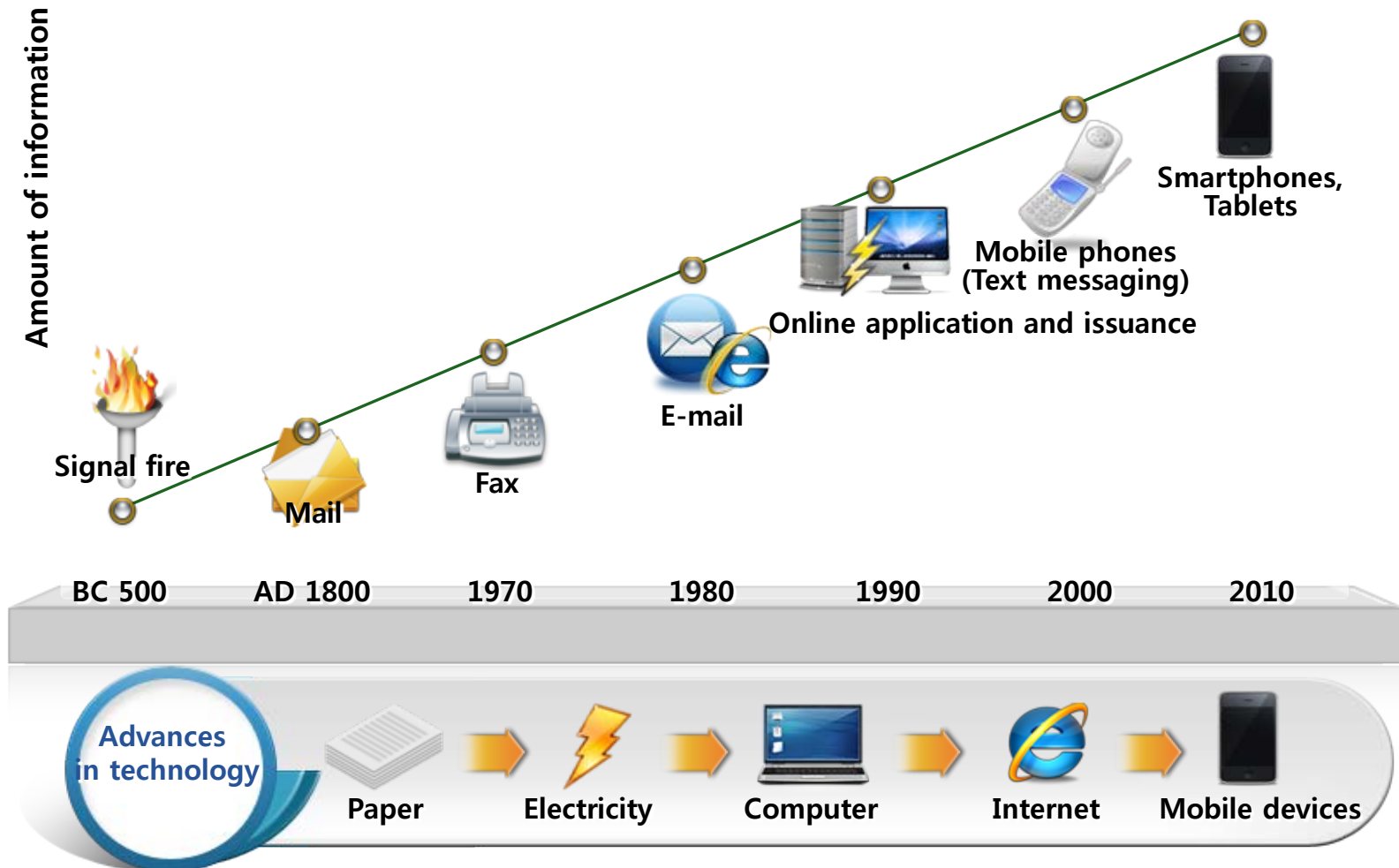
정보통신산업진흥원
National IT Industry Promotion Agency

Table of Contents

- 1. Evolution History of Paperless Trade**
- 2. Paperless Trade Related Laws in Korea**
- 3. Legal Constraints in Paperless Trade**
- 4. Measures for Resolving Legal Constraints**
- 5. e-B/L Exchange Project in APEC(2013)**
- 6. Success Factors in Paperless Trade**

1. Evolution History of Paperless Trade

Diversified document distribution methods and a sharp rise in the distribution volume of documents



Despite the latest advances in IT, **paper consumption** has increased sharply

- An annualized increase of 15.4%; 42.5 billion sheets of paper in 2009



Socio-economic costs incurred by the use of paper documents:
Approx. 28 trillion won per year

Issuance



Various kinds of documents, including certificates, bills, etc.

Daily paper consumption at bank teller counters
(10 million sheets of paper per day)

Distribution



Mail, logistics, door-to-door delivery, etc.

Number of bills issued by carriers per month
(150 million)

Storage



Classification, search, storage, and disposal of paper documents

Number of documents stored in a single bank per year
(1.9 billion sheets of paper)

Concept of Paperless Trade

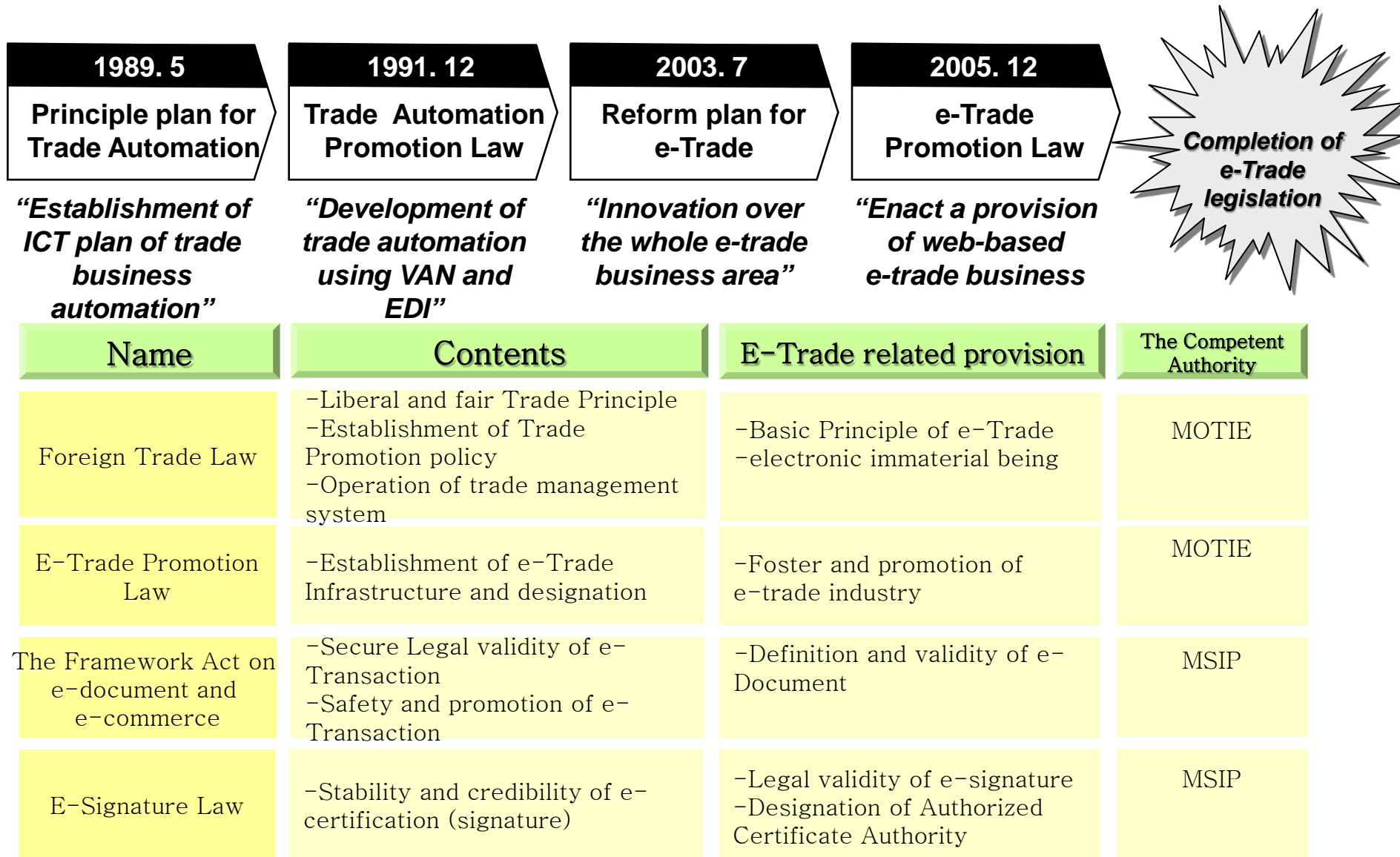
What Is Paperless Trade?

- A new form of trade enabling trade without the constraints of time and space with the use of IT technology, such as Internet, for all the trade processes, including identification of partners, consulting, contract, procurement, transport, customs clearance and payment,
- Whole or part of trade transaction is processed by information processing devices, such as computer, and information & communication network (Foreign Trade Act)

Features of Paperless Trade

- Overcoming the constraints of space and time, shortening of information distribution route
- Formation of borderless single big market
- Reduction of discrepancy between large corporations and SMEs
- Reduction of trade cost, productivity improvement, efficiency in inventory management
- Development of relevant industry, new trade market/industry creation

History of Korean law on e-Trade



2. <1> Structure of Framework Act on e-document and e-commerce

Chapter	Provisions
1. General Provisions	Purpose, definition, scope of application
2. E-Commerce	Time and Place of Transmission or Reception of Electronic Documents, Independency of Electronic Document, Acknowledgement of Receipt, Matters Concerning Digital Signatures, Protection of Business Secrets, and etc.
3. Electronic Documents	Validity of Electronic Documents, Case Where Originator is Deemed to have Sent Electronic Documents, Certified Electronic Documents Depository, Protection of Personal Data, Authentication for Electronic Documents and etc.
4. Policy of promotional programs on Electronic Commerce and Electronic Documents	Principles for Basic Policy on Electronic Commerce and Duties of Government, Formulation and Execution of Promotional Programs, Standardization of Electronic Commerce, Internationalization of Electronic Commerce and etc.
5. Electronic Commerce and Electronic Documents Mediation Committee	Establishment and Composition of Mediation Committee, Mediation of Disputes, validity of disputes mediation and etc.
6. Supplementary Provisions	Delegation or Entrustment of Authority, Reciprocity, Hearing and etc.
7. Penal Provisions	Penal Provisions, Joint Penal Provisions

o The Framework Act on Electronic Documents and Electronic Commerce

- ▷ **Enacted in 1999 and revised in 2002, 2007, 2009, 2011, 2012**
- ▷ **Purpose**
To contribute to the national economy by clarifying the legal concern and ensuring the security and reliability of electronic transaction as well as establishing the framework for facilitating electronic transaction.
- ▷ **The Act prescribes:**
 - Electronic message;
 - e-commerce security;
 - e-commerce consumer protection;
 - e-commerce policy-making system;
 - e-commerce promotion measure; and
 - e-commerce Mediation Committee, etc.

o The Framework Act on Electronic Commerce

▷ **Validity of Electronic Documents**

- An electronic document shall not be denied its validity only because it takes an electronic form, except as otherwise provided in any other Acts. .
- Where the acts to record, report, deposit, keep or prepare, etc. under the provisions of Acts as provided have been made by electronic documents, it shall be deemed that the acts under the relevant Acts have been achieved

▷ **Time of Transmission or Reception of Electronic Documents**

- An electronic document shall be deemed to have been transmitted at the time of input by the addressee or his agent into the information processing system capable of receiving the relevant electronic document.
- If the addressee has designated the information processing system to receive electronic documents, the time of their input in the designated information processing system:

o The Framework Act on Electronic Commerce

▷ **Protection of Personal Data**

The Government shall formulate and execute the policies to protect the private data of users of electronic commerce, in order to ensure the safety and reliability of electronic commerce.

▷ **Protection of Business Secrets**

- (1) The Government shall formulate and execute the policies to protect the business secrets of users of electronic commerce, in order to ensure the safety and reliability of electronic commerce

- (2) Any business operator of electronic commerce shall devise the measures to protect the business secrets of users of electronic commerce

▷ **Formulation or Execution, etc. of Policies to Protect Consumers**

- The Government may advise any business operator of electronic commerce and any business operators' organization to autonomously set forth the activity norms, so as to prevent any occurrence of unfair practices relevant to electronic commerce.

o The Framework Act on Electronic Commerce

▷ Authentication for Business Operators of Electric Commerce

- The Government may support the authentication project for excellent business operators of electric commerce, in order to protect consumers and to ensure the sound development of business operators of electric commerce.

▷ Certified Electronic Documents Center

- The Minister of Science, ICT and Future Planning may designate the persons having the speciality for the deposit, etc. of electronic documents as the certified electronic documents center in order to secure the safety and accuracy of keeping, etc. of electronic documents, and make them keep, etc. the electronic documents.

- Electronic documents kept in the certified electronic documents center shall be presumed that the relevant details have not been modified during the keeping period

- Where the certified electronic documents center has issued a certificate for the matters on the fact of keeping, originator, addressee and the date and time of transmitting and receiving, etc. under the methods and procedures as prescribed by the Presidential Decree, the matters stated on the certificate shall be presumed to be true.

2. <2> Structure of e-Signature Act

Chapter	Provisions
1. General Provisions	Purpose, definition, Effect of Digital Signature
2. Licensed Certification Authority	Designation of Licensed Certification Authority, Disqualification, Suspension of Certification Work or Revocation of Designation
3. Authorized Certificate	Issuance of Authorized Certificate, Termination, etc. of Validity of Authorized Certificate, (Suspension, Revocation and etc.
4. Securing Safety of Licensed Certification Work	Securing Safety, Time-Stamp of Electronic Messages, Control of Digital Signature Creating Key, Control, etc. of Authorized Certificates and etc.
5. Policies for Development of Digital Signature Certification System	Formulation, etc. of Policies for Development of Digital Signature Certification System, Mutual Recognition Development of Techniques and Manpower Training
6. Supplementary Provisions	Protection of Subscribers and Users, Reciprocal Recognition, Imposition of Fees
7. Penal Provisions	Penal Provisions, Joint Penal Provisions

o The Electronic Signature Act

▷ **Enacted in 1999 and revised in 2001, 2008, 2010**

▷ **Purpose**

To promote information society and improve convenience of people's life by providing basic rules regarding electronic signature for the purpose of securing safety and reliability of electronic message and facilitating its use.

▷ **The Act prescribes:**

- Public certification authority;
- Public certificate;
- Securing safety and reliability of certification service; and
- Policy-making for certification of electronic signature, etc.

o The Electronic Signature Act

▷ Effect of Digital Signature

- (1) In cases that a signature, signature and seal, or name and seal is, under other Acts and subordinate statutes, required to be affixed on a paper-based document or letter, it shall be deemed that such requirements are satisfied if there is a certified digital signature affixed on an electronic message.

- (2) In cases that a certified digital signature is affixed on an electronic message, it shall be presumed that such a digital signature is the signature, signature and seal, or name and seal of the signer of the electronic message concerned and that there has been no alteration in the contents of such message since it was signed digitally.

▷ Designation of Licensed Certification Authority

- (1) The Minister of Science, ICT and Future Planning may designate as a licensed certification authority an entity that is deemed to be capable of performing authorized certification work in a secure and reliable manner.

- (2) The entity that can be designated as a licensed certification authority shall be limited to State agencies, local governments and corporations.

o The Electronic Signature Act

▷ Issuance of Authorized Certificate

- (1) A licensed certification authority shall issue an authorized certificate to the person who applies for the issuance of an authorized certificate. In this case, the licensed certification authority shall verify the identity of the applicant.
- (2) If a person applies for the issuance of an authorized certificate, a licensed certification authority may issue an authorized certificate having limits on the scope or purposes of its use.

▷ Securing Safety of Licensed Certification Work

- (1) A licensed certification authority shall securely operate its facilities and equipment for performing certification work, including a certification work system that serves to enable the public to ascertain at all times whether the authorized certificates it issues remain valid.
- (2) A licensed certification authority shall keep and control records of the issuance of authorized certificates for its subscribers and the performance of its certification work in a secure manner.

o The Electronic Signature Act

▷ Protection of Subscribers and Users

- The Government shall adopt such necessary measures as to deal with the complaints or damages of subscribers and users promptly and justly.

▷ Reciprocal Recognition

- (1) The Government may enter into an agreement with a foreign government on the reciprocal recognition of digital signatures

- (2) In case of the conclusion of the agreement, it may form the basic contents of the agreement to grant a foreign certification authority or a certificate issued thereby the same legal status or effect as the licensed certification authority or the authorized certificate as provided in this Act.

- (3) If an agreement has been concluded with a foreign government, a foreign digital signature or certificate shall be deemed to have the same legal effect as an authorized digital signature or an authorized certificate.

2. <3> Structure of e-Government Act

o e-Government Act

▷ **Enacted in 2001 and revised in 2003, 2007, 2010**

▷ **Purpose**

To effectively implement e-government and increase administrative productivity, transparency and Democracy by providing basic rules , procedures regarding Administrative tasks electronically processing

▷ **The Act prescribes:**

- Resolve complaints electronically
- Electronic administrative processing
- Joint use of administrative information
- Securing Safety of Information Systems, etc.

o e-Government Act

▷ **Resolve complaints without visiting**

- To Improve relevant laws and regulations, and to provide the establishment of the necessary facilities and systems including various conditions

▷ **inform or notify in a electronical method**

- Where the addressee want to receive a notice in a electronical method, even if required to be notified with paper documents such as bills, notices, it is possible to be notified by e-document

▷ **Establishment and the effect of electronic documents**

- An electronic document shall not be denied its validity only because it takes an electronic form, except as otherwise provided for in any other Acts.

2. <4> Structure of eTrade Promotion Act

Chapter	Provisions
1. General Provisions	Purpose, definition, scope of application
2. System for facilitating e-Trade	Development of Implementation of Policy Steps for facilitating e-Trade, Establishment of National E-Trade committee
3. e-Trade infrastructure business operators	Designation of e-Trade business operators, Ground for disqualification from designation, Report of rate of utilization, corrective orders and etc.
4. Use of e-Trade Infrastructure	Use of e-Trade Infrastructure, Standardization of e-documents, Effect of Application or Approval, Effect of e-documents
5. Keeping and attestation of e-Trade documents	Effect of e-documents kept by e-Trade infrastructure, Attestation of e-documents

Chapter	Provisions
6. Facilitation of use of e-Trade documents	Facilitation of use of e-Trade documents, Special cases concerning Attached Needed to file applications
7. Security and management of e-trade documents	Security and publication of e-trade documents
8. Service business operators specializing in e-Trade	Support for service business operators specializing in e-Trade
9. Facilitation of Development of e-Trade techniques	Facilitation of Development of e-Trade techniques, Training of Human resources specializing in e-Trade
10. Supplementary Provisions	Access, Inspection, Hearing, Delegation of authority, Legal fiction of public officers in Application of penal provisions
11. Penal Provisions	Penal Provisions, Joint Penal Provisions

o e-Trade Promotion Act

- ▷ **Enacted in 1991 and revised in 1999, 2006, 2008, 2009, 2011**
- ▷ **Purpose**
To contribute to the national economy by clarifying the legal concern and ensuring the security and reliability of electronic transaction as well as establishing the framework for facilitating electronic transaction.
- ▷ **The Act prescribes:**
 - System for facilitating e-Trade;
 - e-Trade infrastructure business operators;
 - Use of e-Trade Infrastructure;
 - Facilitation of use of e-Trade documents; and
 - Security and management of e-trade documents, etc.

3. Legal Constraints in Paperless Trade

- 1 Main features of paperless trade is to exchange information and make transactions using electronic medium, instead of paper or face-to-face transaction, in the whole processes of trade
- 2 Though it seems that paperless trade can be arranged with the agreement among the parties, there is a space for trading partners to stick to paper-based transaction in consideration of possibility on **potential dispute and non-compliance to existing laws**
- 3 Legal issues of paperless trade are closely related to the matters occurring from replacement of paper document with electronic document
- 4 Legal issues of paperless trade are basically legal constraints and includes contracting of paperless trade, Originality and evidentiality of paperless trade document, electronic expression of intention, validity of paperless trade contract, jurisdiction of court of justice and governing law on paperless trade contract

4. Measures for Resolving Legal Constraints

Legal Constraints	Resolution Measures
Identity of Actor and Right holder	- Install technological mechanism to secure identity of Actor and Right holder and legal framework recognizing such technical mechanism, (asymmetric public key, biometrics, etc.)
Validity of content such as expression of intention	- Install technological mechanism to guarantee integrity of content on expression of interest shown on preamble during transmission and legal framework recognizing such technical mechanism (asymmetric public key, biometrics, etc.)
Retention for dispute resolution	- Message transmission through third party
Originality of paperless trade document	- Evidence Function : application of e-signature to guarantee integrity - Symbolic function: install a mechanism to accept such practice legally or in commercial practice.

Legal Constraints	Resolution Measures
Evidentiality of paperless trade document	<ul style="list-style-type: none"> - Korea legal system is based on Civil Law, and adoption of evidence is endowed to the conscience of judges with no limit - Effort to support with descriptive law and accept it.
Electronic expression of intention (Willenserklärung)	<ul style="list-style-type: none"> -Specify Interpretation and remedy measures for issues of sending/receipt time and expression of intention resulting from sophism and mistake, though there are no fundamental issues. - Additional measures are needed since laws are mostly not applied to electronic expression of intention even in the case of expression of intention resulting from sophism and mistake
Validity of paperless trade contract	<ul style="list-style-type: none"> - Limited possibility for legal intervention due to agreement between parties, however having general, reasonable and predictable principles would be necessary.
Jurisdiction and governing law	Designate jurisdiction and government law through agreement between parties

5. e-B/L Exchange Project in APEC(2013)

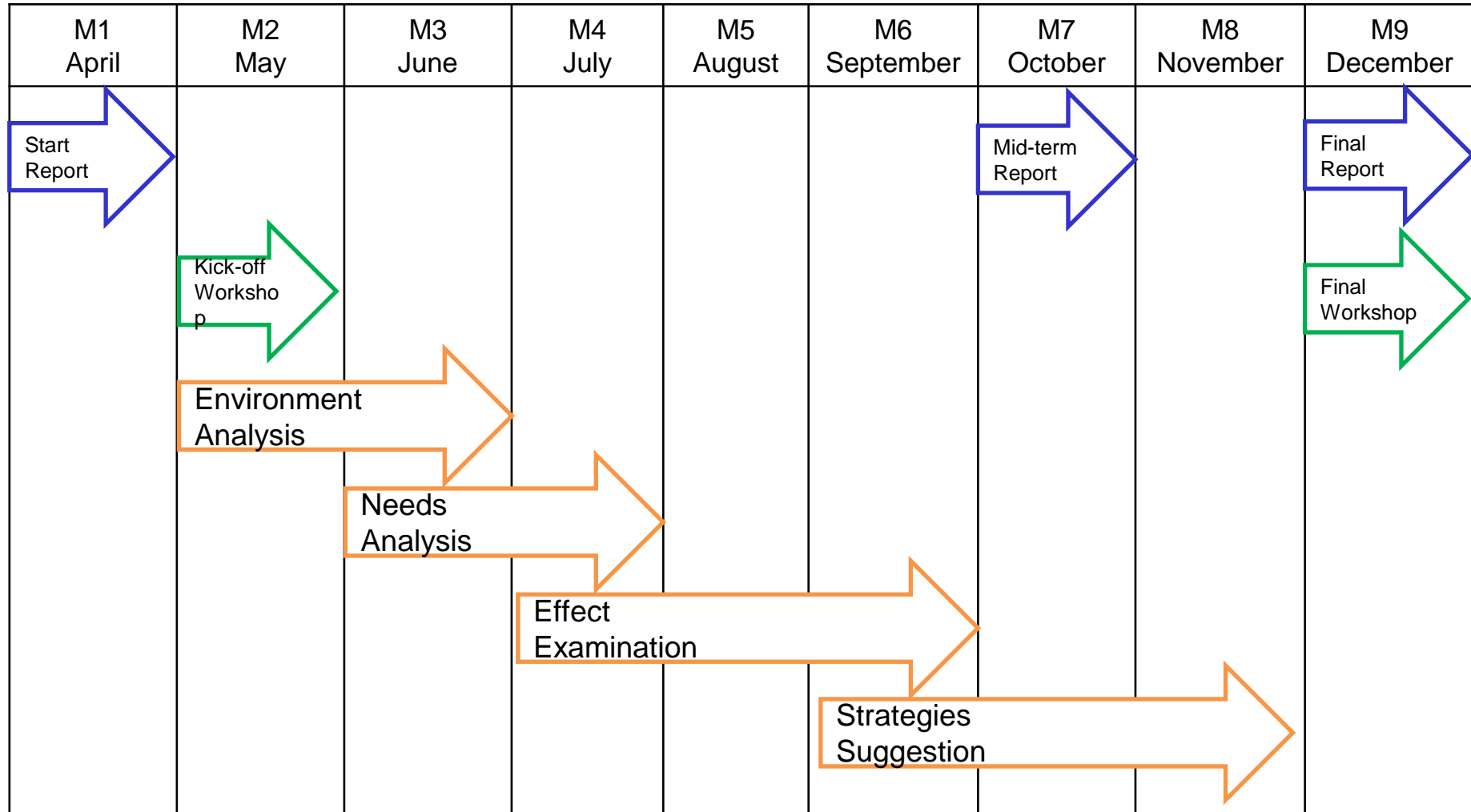
e-B/L

- ✓ **Reduction of exchange commission due to the delay of document delivery**
- ✓ **Reduction of cargo storage cost and insurance fees**
- ✓ **Prevention of forge and loss**

□ This project is aimed to address necessary steps for the practical use of e-B/L among traders, carriers, forwarders, banks and other parties in international trade. This project also identifies the viability of the e-B/L international exchange model in **Korea, China and Russia**, as well as other APEC member economies. Therefore, this project will carry out the following:

- Research legal, technical and commercial environments of e-B/L exchange in Korea, China and Russia.
- Investigate needs and demands of traders, carriers, forwarders, banks and other related parties for e-B/L
- Examine effects of exchanging e-B/L in APEC member economies
- Suggest strategies for APEC economies to boost e-B/L exchange
- Hold seminar and meeting for sharing knowledge, opinions, information and experiences related to e-B/L (at the beginning and end of project)

5. e-B/L Exchange Project in APEC(2013)



6. Conclusion: Success Factors in Paperless Trade

- Establishment of legal Framework related to Paperless trade
- Strong support will of government
- Leadership of the institution responsible for public private partnership
- Securing of relevant financial resources
- IT Infrastructure Readiness (Network, Hardware, Software)
- Experiences in System Integration (SI)
- IT capacity (e-Readiness) of trading community
- Integration of international standards and new trends related to paperless trade
- Collaboration among trade-related agencies