

The Bill of Lading is Dead, Long Live the Bill of Lading!

SME Participation in Supply Chain Finance

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Synoptic Overview

Enhancing Global Supply Chains by Reducing Legal Obstacles

- Bills of Lading
- Trade Finance
- SME (Sustainable Development)
- UNCITRAL Legislative Efforts (WG-I, III, IV)

Key questions

- Whether electronic bill of lading platforms can assist in providing trade finance solutions for SMEs?
- Whether UNCITRAL legislative efforts may support such initiatives?

Bill of lading

- Receipt
 - Records that the cargo has been loaded on the vessel and states quantity of goods, condition, etc.
- Evidence of the contact of carriage
 - Terms and conditions between the parties.
- Document of title
 - Possession of it constitutes constructive possession and control over the goods.
 - It may be used to transfer title to the goods.
 - It is used to provide security in the goods to financial institutions involved in providing credit to international sale transactions.

MAERSK LINE

COMBINED TRANSPORT
BILL OF LADING

MAERSK LINE LTD. (INCORPORATED IN DENMARK)

NO. 1000000 LTD.
100 ABC STREET
MISSISSAUGA, ONT.
CANADA L4E 1B5
PHONE: (416) 602-0000
Cable: MAERSK CANADA and 20000

TO THE ORDER OF UTTARA BANK LTD.

MAERSK

820

Export documents

CPF/99976A

Contracting Agent: Interline

CROWN FREIGHT FORWARDERS LTD
375 TRADERS BUILDING
MISSISSAUGA ON L4E 2B5
Phone and Country of origin

Consent that Agent will be liable

MAERSK Line operates a service of

ABC 100000 LTD.
200 BAYVIEW STREET
CHITTAGONG
BANGLADESH

Place of origin

Place of destination

Place of delivery

Place of receipt

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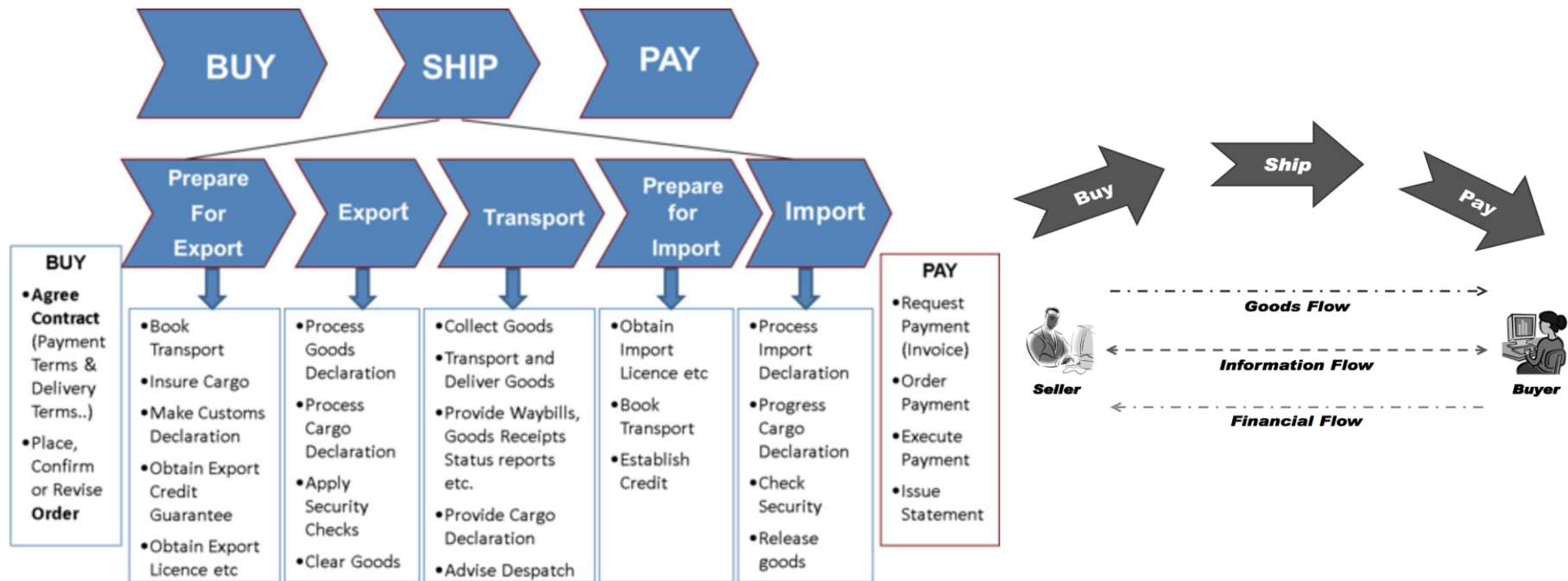
Place of delivery

Place of receipt

Apportionment of Liability and Documentary Trade



Electronic Bills of Lading - Paperless Trade - Trade Facilitation

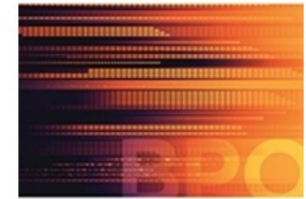


- Digitize bills of lading and letters of credit to have a smarter view of the supply chain.
- This will revolutionize trade finance and provide better working capital and supply chain management.
 - E.g.: Bolero, essDocs, E-Title, Wave

Bank Payment Obligation by SWIFT

- Use of electronic bills of lading and BPO may accelerate the transfer and presentation of documents, shorten the payment cycle and, potentially, improve the working capital position of exporters.

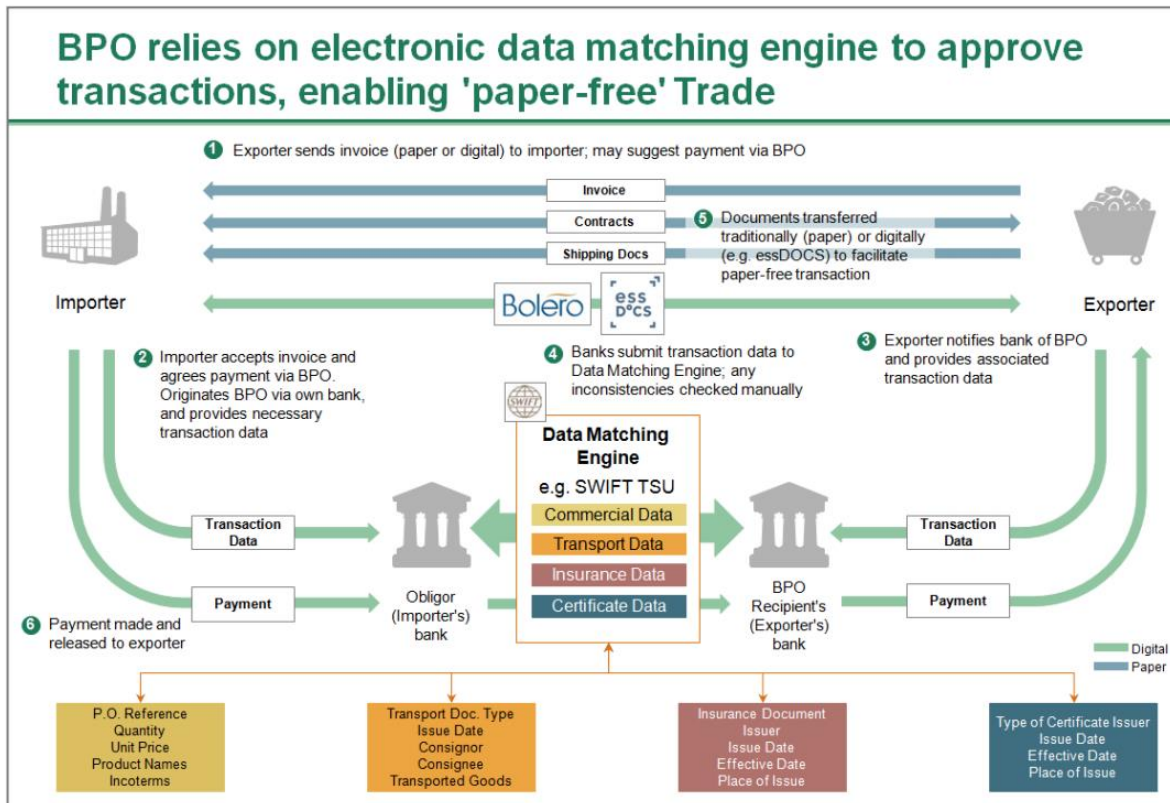
Uniform Rules for
Bank Payment
Obligations



ICC
Version 1.0

Barriers to adoption of BPO

- By banks:
 - Investment
 - Cannibalization
 - Network effects
- By companies:
 - Investment
 - Sub-optimal trade-off
 - Network effects
- 50 corporates and 20 banks can use BPO
- SMEs do not benefit



SME Participation in Supply Chains and Access to Trade Finance

Sustainable Development Goals, Target # 8.3

Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro-, small- and medium-sized enterprises, including through access to financial services.

ADB 2016 Trade Finance Gaps, Growth, and Jobs Survey highlights

- Global trade finance gap is \$1.6 trillion.
- \$692 billion of the gap is in developing Asia.
- 56% of SME trade finance proposals are rejected.
- Firms report that 25% more trade finance would enable them to hire 20% more people.
- Woman-owned firms face higher than average rejection rates.
- 70% of surveyed firms are unfamiliar with digital finance.

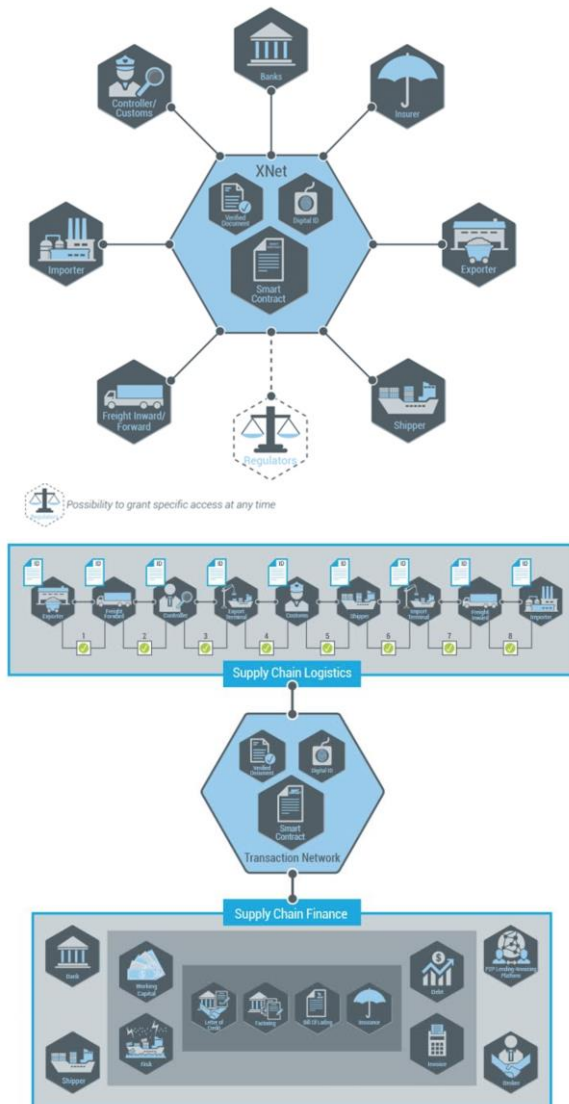
Way forward for SMEs

- Increase the visibility of SMEs
- Embrace disruption

Way forward for SMEs

- Increase the visibility of SMEs
 - ADB study shows that SME exporters can benefit directly from online business registries and global business identifiers. These create the identity that SMEs often struggle to prove.
 - Several national, regional and international institutions are focusing on business registries; UNCITRAL WG I is engaged in preparing a legislative guide.
 - Upcoming work of UNCITRAL WG IV on identity management is also relevant.
- Embrace disruption
 - ADB study also highlights technology can be leveraged to benefit firms that are least linked into the financial system. Digitization in banks can promote transparency, efficiency, and equality. Fintech can make inroads into markets where traditional trade finance is limited.

Blockchain Technology in Supply Chain



- Distributed ledgers built on blockchain technology can validate ownership, certify documents and make payments.
 - This may restrict banks' role in the trade ecosystem to nothing more than providing financing.
- Several large investment banks recognize this and are supplementing their independent efforts by backing the start-up R3CEV, with the intention of developing universal standards for blockchain in financial services.
- In October 2015, Barclays engaged Wave to develop trade finance platform using blockchain.
- In September 2016, Barclays Africa made the first pilot blockchain trade finance transaction.

Efforts of UNCITRAL to Dematerialize Bills of Lading

- Rotterdam Rules
 - Applies to bills of lading; adopted in 2009; received 3 ratifications; requires at least 20 ratifications for entry into force.
- Model Law on Electronic Transferable Records (ML)
 - Applies to bills of lading, warehouse receipts, cargo insurance certificates, air waybills, etc.; deliberations of WG IV concluded in November 2016; due for adoption at the next Commission session in 2017.
- Both instruments follow the guiding principles of non-discrimination of electronic means, functional equivalence and technology neutrality.
- Will same interpretation rules apply for both the instruments above?
 - A model law is created as a suggested pattern for law-makers in national governments.
 - A convention is an instrument that is binding under international law on States and departures are only permitted if reservations are permitted.

RR and ML Can Accommodate Blockchain Technology

Notion of electronic record, terminology and definitions

- RR - Art. 1, paras. 15-20; negotiable electronic transport record
- ML - Art. 2, 7 and 9; electronic transferable record

Technology can be chosen by parties through agreement; counteract tampering - singularity

- RR - Arts. 8 and 9
 - **Art. 8** - Use and effect of electronic transport records
Subject to the requirements set out in this Convention:
(a) Anything that is to be in or on a transport document under this Convention may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent of the carrier and the shipper; ...
 - **Art. 9 - Procedures** for use of negotiable electronic transport records
 1. The use of a negotiable electronic transport record shall be subject to procedures that provide for: ...
 - (b) An assurance that the negotiable electronic transport record retains its **integrity**; ...
- ML – No specific provision; **agreement between parties is impliedly assumed**
 - **Art. 9** - Requirements for the use of an electronic transferable record
 - “1. Where the law requires a transferable document or instrument, that requirement is met by an electronic record if: ...
 - (b) **A reliable method is used**: ...

Contd.

Possession = Control

- RR - Art. 1 paras. 21 and 22, Art. 47, Art. 51 para. 4 and Art. 57 para. 2
- ML - Art. 10

Potential conflicts between the two instruments is currently being investigated by the author.

Participation

- There was active participation from industry in drafting the RR. CMI prepared the first draft and passed it on to UNCITRAL WG-III. Observers from IGOs, NGOs and industry experts in national delegations ensured that the Rules covered practical aspects of maritime trade.
- There was limited participation from industry in the preparation of the Model Law. Banking industry was not involved.

Identity Management and Trust Services

- For banks the identity of the counterparty is of fundamental importance as it is necessary for verifiability and other regulatory reasons, such as know your customer (KYC) and anti-money laundering (AML) requirements.
- Most banks have expressed preference to operate within permissioned blockchain, where an administrator can control the membership and prescribe the legal terms and conditions upon which participation is permitted.
- Such a scheme would require access control and identity management for the supply chain actors.
- There are several legal concerns for the identity provider, relying party and the user/data subject. Major among them is liability. Other concerns may relate to data integrity, e-contracts and e-signatures, cyber security law, privacy and data protection law, dispute resolution, etc.
- In November 2016 UNCITRAL WG-IV started its deliberations on identity management and trust services.

Concluding Remarks

- The law relating to bill of lading has to be appreciated from a wider perspective in light of paperless trade and sustainable development initiatives.
- There exists governing legal framework for electronic bill of lading in the RR and the Model Law. States need to act for implementation in their national jurisdictions.
- RR, Model law, and the upcoming work on identity management and trust services has to be seen as a package for creating viable electronic bill of lading solutions which may lead to more inclusive supply chains.
- Collaboration with other working groups of UNCITRAL is necessary, e.g., WG I on MSME and WG IV on Electronic Commerce need to collaborate. Also, collaboration with other international institutions, such as WTO, UN/ESCAP and UN/CEFACT is inevitable for achieving the wider perspective of paperless trade and sustainable development.