THE NEED FOR A LEGAL REGIME FOR ELECTRONIC NEGOTIABLE DOCUMENTS IN INTERNATIONAL TRADE

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Negotiable Documents

• Legal regime based on possession (negotiable documents issued on an individual basis)

• Express recognition by the law is needed (general rules on electronic writings and signatures or contract law are not enough)

• Often used in commercial transactions, with a financial purpose in many cases.
Existing rules

• Few examples in legislation

• Most recent approach: based on “control” of the document as the functional equivalent to possession

• “Control” of the negotiable document: sufficiently reliable proof of title
Systems for the issuance and use of electronic negotiable documents: registry systems

- **Title Registry**
  - **Holder 1**
  - **Holder 2**
  - **Negotiable Document**

- **Registrar**
- **Debtor / Issuer**
- **Holder 1 Transferor**
- **Holder 2 Transferee**
- **Closed system for centralized electronic multilateral communications**

**Flow Diagram**:
- **Creation** from Debtor / Issuer to Title Registry
- **Issuance** from Title Registry to Holder 1 and Holder 2
- **Access** to Closed system
- **Negotiation** between Holder 1 Transferor and Holder 2 Transferee
- **Communication** flows among the entities
Systems for the issuance and use of electronic negotiable documents: registry systems

Debtor / Issuer

Creation

Issuer

E-vault (custodian)

Creation

Issuance

Negotiation

Communication

Negotiable Document

Communication

Title Registry

Holder 1

Holder 2

Communication

Registrar

Closed system for centralized electronic multilateral communications

Holder 1 Transferor

Holder 2 Transferee
Systems for the issuance and use of electronic negotiable documents: token systems

Debtor / Issuer

Creation

Issuance / Access

Negotiable Document

E-vault (custodian)

Closed system for centralized electronic multilateral communications

Access

Communication

Negotiation

Communication

Holder 1
Transferor

Holder 2
Transferee
Systems for the issuance and use of electronic negotiable documents: token systems
What do all these systems have in common?

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// Trusted Third Party
( certification entity, custodian, registrar, service provider )
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“Control” of the document is achieved in all its aspects through:

- Technology
- Reliability
- Intermediation
- Trust
Legal policy and strategy

• Harmonized scheme allowing the issuance of electronic negotiable documents

• Relevant matters (only adjective or formal aspects):
  – Functional equivalence (possession and control): title, transfer
  – The role of Trusted Third Parties: legal approach and policy thereon (accreditation, liability, insurance).
  – Conditions for cross-border recognition

• Strategy: Model Law
Feasible benefits

• Impact on national and international markets

• Removal of barriers to the use of electronic negotiable documents

• Enhancement to the development of electronic trading systems and e-marketplaces dependent or based (at least partially) on the use of this type of documents