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Foreword
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Trade Finance in the digital world – what changes are likely in the coming months and years?

Much has been written – and will be written – about the need to digitise trade transactions. Less use of paper and greater speed and efficiency are some of the reasons for this. The availability of 'tech tools' in support of this objective increases almost daily and the potential use of Artificial Intelligence (AI) is often provided as the basis on which to remove the human element from the processing and checking of digital documents.

All the above can be said to be driven, or supported, by changes in law to facilitate digitalisation. This began with MLETR (the Model Law on Electronic Transferable Records) the prominence of which was accelerated by the pandemic and now by the adoption of and support for the Electronic Trade Documents Act (ETDA) in the UK. This will be followed by its equivalent in France and possibly other EU countries and by States in the U.S. permitting changes to their own UCC (Uniform Commercial Code).

What does all this mean in practice – at least under English law?

In reality, English law has for years supported digitalisation. It is possible to sign a document using electronic signatures and smart contracts (click and sign) with legal effect in most cases. Electronic documents and records can be used in trade. Indeed, the International Chamber of Commerce (ICC) had published the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (eUCP) in support of letters of credit and has recently updated this to cover MLETR and ETDA electronic documents and records.

Electronic invoicing has been available for many years and there are a large number of platforms offering methods to acquire and discount invoices and other payment obligations.

Whilst it is true that many jurisdictions still require certain title documents including bills of lading to be in paper, there were ways around this offered by "clubs" supporting eBLs (Electronic Bills of Lading). ETDA will give legal effect to eBLs and other documents of title as well as eNIs (Electronic Bills of Exchange and Promissory Notes) under the UK Bills of Exchange Act 1882.

Other work from the ICC such as the URDTT (Uniform Rules for Digital Trade Transactions), and from ITFA with the URTEPO (Uniform Rules for Transferable Electronic Payment Obligations) all point to available means of digitalising trade transactions, the payment for them and the transfer of digital payment obligations.

What is holding us back?

Holding progress back include challenges of Compliance and Know Your Customer (KYC) and the attitude, particularly of Banking Regulators, to the adoption of tech solutions. This is not helped by the growing use of sanctions as a political weapon. Many of the KYC issues could be solved by the adoption of Legal Entity Identifiers (LEI) but the speed of rollout remains slow.

There is no doubt that concerns about fraud in trade finance transactions will continue to worry funders. Arguments that frauds are isolated incidents remain the case, but the size of such frauds hit the headlines. Data protection and duties of confidentiality remain problems to be overcome. Frauds tend to rely on simple tools such as duplicate invoices and title documents – however due diligence and the sharing of information remain the counter to this, if only they were permitted.

So, there are the means available to digitalise trade and there will be the increasing use of electronic records and digital solutions for certain aspects of trade and trade finance. These will undoubtedly continue to increase over the months and years ahead. Increased digitalisation of trade is very welcome, as anything that increases the speed and availability of finance for trade is crucial to the narrowing of the so-called 'trade finance gap.' It will also enable means to be found for the entry of non-bank funders into the trade finance space.

Sullivan is very much part of the above.

Are there limits to the full digitalisation of trade transactions?

What will be slow in its realisation is the full digitalisation of a trade transaction. This is good news for the humans working in trade. There is growing use of the tools available to assist in speeding processes up, but the human element remains absolutely necessary to give the final approval to a trade transaction, the presentation of documents under a letter of credit, the payment away of funds or the release of goods from a warehouse or ship.

It is suggested that striving for the absolute machine-controlled solution is unnecessary and deflects from what is good about trade and trade finance.

The months and years ahead will see us all involved in more and more fintech solutions to all aspects of trade and trade finance. There will, and should be, the growing use of tools to facilitate aspects of Compliance which hopefully will lead to the growth of onboarding SMEs around the world and, in turn, more trade being financed.

This ends with the usual plea to Regulators and legislators to give better treatment for trade and its practitioners in all aspects of trade finance.

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