

The documents of the trade

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The documents on which commodity finance rests deserve closer attention, since their integrity determines the security of the lenders. The bill of lading, issued by the carrier when the goods are loaded on the vessel, has three functions: it is a receipt for the goods, evidence of the contract of carriage and a document of title, whose holder is entitled to take delivery of the goods at the port of discharge. A lender that holds the original bill of lading, or to whose order it has been endorsed, controls the goods while they are at sea. The practice of issuing the bills of lading in sets of three originals, any one of which can be used to take delivery, creates a risk that the lender must manage by requiring the full set.¹

In the oil trade, cargoes are often sold several times while the vessel is at sea, so that the bills of lading do not reach the final buyer before the vessel arrives. The goods are then released against a letter of indemnity, in which the seller undertakes to indemnify the carrier for any loss resulting from delivery without the presentation of the original bill of lading. Although the practice is efficient, it weakens the position of the lender who relies on the bill of lading as security and has been exploited in several frauds. Inspection certificates, which confirm the quantity and quality of the goods, and warehouse receipts, which confirm the storage of goods in a warehouse, are equally important and equally vulnerable to forgery.

The digitalisation of trade documents promises to reduce these risks. Electronic bills of lading, issued and transferred through secure platforms, prevent the duplication of documents and make their transfer traceable. The Model Law on Electronic Transferable Records of the United Nations Commission on International Trade Law, adopted in 2017, provides a framework for the legal recognition of such documents. The United Kingdom gave them legal effect through the Electronic Trade Documents Act 2023.² Swiss law, whose provisions on documents of title presuppose a paper document, has been the subject of discussion on the need for

adaptation. The distributed ledger technology legislation of 2021 created a category of ledger-based securities that could serve as a model.³ For a canton that is at once a centre of the commodity trade and of the industry of crypto-assets and Digital Assets, the convergence of the two is a natural field of innovation.

1 Notes

1. Wikipedia, "Bill of lading", en.wikipedia.org (accessed September 2026): a bill of lading is a receipt for the goods loaded, contains or evidences the terms of the contract of carriage and serves as a document of title to the goods. Roy Becker, "Presenting a Full Set of Ocean Bills of Lading Under a Letter of Credit", 7 August 2017, shippingsolutionssoftware.com: bills are typically issued in sets ("Three Bills of Lading all of this tenor and date, one of which being accomplished the others to stand void"); the carrier releases the goods to the first holder of an original; banks require the full set so that no original can be used to claim the goods without their knowledge. ↩
2. UNCITRAL, "UNCITRAL Model Law on Electronic Transferable Records (2017)", uncitral.un.org: date of adoption 13 July 2017. Electronic Trade Documents Act 2023 (2023 c. 38), legislation.gov.uk: Royal Assent 20 July 2023; under section 8(2) it came into force two months after passing, on 20 September 2023. ↩
3. Art. 973d OR (SR 220), [swissrights.ch](https://www.swissrights.ch): ledger-based securities (Registerwertrechte), inserted by the Federal Act of 25 September 2020 on the Adaptation of Federal Law to Developments in Distributed Electronic Register Technology, in force since 1 February 2021 (AS 2021 33). Treated in Part H. ↩

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