

WORLD

Documentary Credit

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■ INCOTERMS AND LCs

Since first coming into existence in 1936, the ICC Rules for use of international trade terms have been periodically updated. The next revision will be released later this year and new Incoterms 2020 will enter into force January 2020. It has been suggested that bankers are not expected to be intimately familiar with non-banking trade term specifics, however trade finance specialists who are highly knowledgeable of Incoterms are in an advantageous position to identify problems arising from use of incorrect Incoterms. In shining a spotlight on the relationship between Incoterms and letters of credit, Pavel Andrle contends it is incumbent on parties to properly specify the details to be examined by banks and use of the relevant Incoterm is vital. To make his case, Andrle then presents and analyzes several common issues and pitfalls.

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Documentary Credit World
20203 Goshen Road., No. 343
Gaithersburg, MD 20879 USA
phone: +1-301-330-1970
fax: +1-301-926-1265
e-mail: info@doccreditworld.com
website: www.doccreditworld.com

Founder

Professor James E. Byrne

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 Vincent O'Brien
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INTERVIEW

DCW SPEAKS WITH LARS HANSÉN AND GUNNAR COLLIN

Enigio, a fintech company based in Sweden, is focused on providing a means for creating and managing digital original documents. What sets it apart from other fintechs is its claim that it has already developed technology which makes it possible to substitute any paper document with a digital original. To learn more about its work thus far and potential application in the area of trade documents, DCW Executive Editor Christopher Byrnes spoke with Enigio CSO Lars Hansén and Trade Technology Executive Gunnar Collin.

CB: Enigio's objective of making any paper document a digital original is quite ambitious. Can you give us an overview of this initiative?

LH: We do not see this as necessarily a very ambitious task. It is more about the fact that we are a technology provider and we could not identify any provider of digital negotiable documents. Our team members with backgrounds in banking saw significant areas in banking and logistics that are still labour intensive as no digital solution could mimic the unique properties of a paper based original document.



Hansén

As middle aged men, we identified this void and decided to do something about it. We set out to start inventing a digital asset that mimics all the necessary properties for a negotiable document. Our credo was: "Just like paper but much better!" After many workshops we came up with the trace:original solution based on: a) a cryptographically secured document readable by both man and machine linked to; b) an asymmetric key pair defining the holder of the document; and c) evidenced on a publicly available distributed ledger. By using our solution, it is finally possible to digitalise any type of paper document.

So our solution is the "final jigsaw piece", an information carrier, in the puzzle to digitalise information requiring authoritative originals.

We hope that this invention will not only enable electronic distribution and remote signing of negotiable instruments, but also enable straight-through processing, improve turnaround times, and reduce fraud and many other types of operational risks.

We can, and will, make this available to any participant or stakeholder in global trade and trade finance who is interested in substituting the paper process with a digital alternative. We simply believe this is a very useful invention that's beneficial to all.

If you find that ambitious, so be it, but without the vision of solving something that no one else had solved, this would never have happened.

CB: Well, I stand by my remark that this goal is ambitious! What makes your effort different from other attempts?

GC: The solution is unique and differs from other documents and has a different thinking compared to current blockchain and distributed ledger solutions as it introduces a new digital asset or information class; the trade:original document. The document, the asset, is a cryptographically secured file stored "off chain". The holder of the original document has complete and exclusive control of the asset. All business information is contained in the document and stored "off chain" by the document holder. That is, no business details are stored on the blockchain. When registering the document in the ledger, only the cryptographic hash-references – think of them as digital fingerprints — of the document identity, document properties, any evidence of amendments, and the holder's public key of the document are stored "on chain". Therefore, the blockchain is only a "publicly available digital notary service". A holder in possession of the correct document and the correct cryptographic key has full control of the document is allowed to register amendments to the document in the ledger. Anyone with a copy of the document can verify if the received copy corresponds to the current version of the original against the ledger.



Collin

It was stated in that the invention is not trivial, even for a person skilled in the art, in September 2018 response to our PCT (Patent Cooperation Treaty) application, where we received the following positive response: that "the claimed invention is not obvious to a person skilled in the art. Accordingly, the invention ... is novel and is considered to involve an inventive step. The invention is industrially applicable".

Even though the invention is not trivial, the possible ways of applying a true digital original is very easy to understand.

CB: Enigio has already proven particularly strong in the area of electronic archiving and you have created a crypto asset storage mechanism. How have these successes positioned you to develop trade:original?

LH: We have a strong legacy when it comes to archiving and have built one of the largest archiving systems for medical records. We used this experience when we designed our cloud-based *e:Archiver* solution. It is an easy-to-deploy solution used to efficiently and mostly automatically prepare, load, organise, and convert structured and unstructured data to a long-term perceivable format using a web-browser. The purpose of the *e:Archiver* solution is to deliver a modern take on digitalisation and archiving. We also have a third product, *time:beat*, which is a digital notary service to secure the existence of digital data. This timestamping service makes it possible to verify the integrity and traceability of all types of digital data such as archives, databases, text documents, images, audio files, movies, etc., while adhering to the standards of the EU's eIDAS [Electronic Identification and Trust Services] Regulation. One of our users is the Syrian Archive, an NGO that collects and archives independent data, mostly digital, about the current Syria conflict.

Regarding storage, we offer users of *trace:original* a document and key storage solution but we know that many financial institutions and large companies already have that available in-house. Storage of an actual asset is not within our core offering, but we offer it as an option with *trace:original*.

CB: There seems to be a degree of frustration regarding successful application of blockchain to trade finance and in a past conversation you indicated you attribute this to people attempting to solve today's problems in an outdated way. Can you explain?

GC: Blockchain technology has definitive advantages in the trade finance process as the blockchain can initiate smart contracts that can be executed if all contractual requisites are met. On the other hand, blockchains containing contractual information might, although the information is encrypted, carry personal information that could be a reason for concern from a personal data privacy perspective. More specifically, as Europe's General Data Protection Regulation states that any person has "the right to be forgotten" and since data in a blockchain cannot be erased, there clearly is an unsolved contradiction.

When it comes to possible implementation of blockchain in Trade Finance and international logistics, or any platform built on more traditional technology, the common idea is to provide a single, central repository of documents which are made available to the defined parties: sellers, buyers, banks, carriers, insurance companies, etc. All parties that have signed a common agreement form a "club" where club members exchange data and transact. If one stakeholder of the transaction is not a member of the "club", the "non-member" is presented with paper documents instead. That creates interoperability problems between "club" systems and with parties outside of clubs, is one problem that until now has been digitally unsolved. This problem, for instance, is outlined in the ICC Report on "Legal Status of Electronic Bills of Lading". Against this backdrop, the rhetorical question we asked ourselves was:

"Would it not be practical if an exporter could issue one set of documents, both 'readable by man and machine', that could service all these clubs and at the same time meet all the practical and legal demands from all the other participants in the supply chain: the customs, the insurer, and even be presented to a bank under a Letter of Credit?"

We think that our solution solves all this and at the same time the problem of interoperability between all trade finance and logistic systems such as TradeLens, We-Trade, Voltron, Marco Polo, Bolero, etc. What we offer is a full substitute to paper and an easy-to-use complement to all current ecosystems in global trade.

CB: You mentioned the report concerning the Legal Status of Electronic Bills of Lading. Could you elaborate on how Enigio views the challenges set forth? In particular, how can the legal status of electronic documentation be brought on par with traditional paper documents?

GC: This report states that ‘Replicating in electronic form the transferable nature of an original bill of lading is both technically and legally more complex than replicating the function of ... a non-negotiable sea waybill’. This statement is very much true if you substitute a paper document with a system or a platform as already explained. However if you substitute a paper document with a transferable digital original document, you will not have these challenges and difficulties provided that the digital document is as good as (or better than) the paper document and that it can be handled and performs in the same way.

In our opinion the legal status of a digital document would be exactly the same as a paper document provided that both are documents. Our research has so far shown that the important thing is the actual document and not the paper. We have also noticed that lawmakers usually prefer and encourage digitalization which is all good, in this context, as long as you do not create something different like substituting a paper document with data extracts. European legislation states that: ‘Electronic documents are important for further development of cross-border electronic transactions in the internal market. This Regulation should establish the principle that an electronic document should not be denied legal effect on the grounds that it is in an electronic form in order to ensure that an electronic transaction will not be rejected only on the grounds that a document is in electronic form.’ [Paragraph 63 of EU Regulation No. 910/2014 on Electronic Identification]

In our view, our invention for creating digital originals is not only on par with, from a legal stand point, but much better as you have a full audit trail. They are impossible to tamper with and therefore impossible to forge. We have also made a high-level review of the US Uniform Commercial Code Article 3 [Negotiable Instruments] and we can conclude that the word ‘paper’ is only mentioned once and is not a definition of what a document or instrument has to be made of, i.e. no mention that it cannot be digital.

CB: Understandably, there will be skepticism about claims of digital original creation until tangible results are shown. What steps have been taken with trace:original toward this aim thus far?

GC: Usually a document is defined as a record or the capturing of some event or thing, where its authenticity is often evidenced by a signature to ensure that the information can be trusted or will not be lost. A document is normally written and usually adheres to some convention based on similar or previous documents or specified requirements. Examples of documents are invoices, contracts wills, deeds, etc. A document is a form of information. As we said earlier, a document can be put into an electronic form and stored in a computer as one or more files. Usually a single document becomes a single file, but an entire document or individual parts may be treated as

individual data items. Bearing this in mind there are several types of documents considering their attributes from a security and integrity point of view but also considering who controls the document or if it is an original or copy. When thinking about paper documents we know these things intuitively, but it is not all that clear considering electronic or digital documents. Our thinking and development has therefore been around how to create a digital document that can mimic and have all the qualities of a paper document but be digital?

So far, we have developed our *trace:original* invention to be used for the biggest asset class in Sweden, that is paper-based mortgage loans. We are currently implementing our solution with one bank and one mortgage institute. The main drivers are obviously that they can now create 100% digital journeys for their mortgage customers and the back-end processing will also be fully automated. In addition, the very cumbersome and very costly managing, archiving and storing of papers will completely disappear, usually resulting in a cost saving of more than USD 300 per mortgage.

CB: The country of Georgia has converted its land registry to blockchain. Can any comparisons be drawn?

LH: There are some similarities between what we do and Georgia. We both use the distributed ledger as an incorruptible notary service to create the legal certainty and one common truth, but we are not working with an asset registry as such as we are creating and evidencing the existence and state of bearer instruments. Nevertheless, we have one thing in common - we are providing proof of the truth – but in different contexts.

CB: Beyond use in the mortgage loan market, in what other areas are you pursuing use of *trace:original*?

LH: The most obvious would be any other area where documents of title or paper originals are still used and required as there is no adequate electronic alternative available. In many cases the problems with bearer instruments have already been resolved by creating a central system that keeps track of who is the owner at any point. In the land registry in Georgia as discussed, normal bank accounts or clearing houses would be good examples of this. However, there are many areas where our solution could work really well like bills of lading, bills of exchange, guarantees, testaments, etc.

CB: Clearly, confidentiality and security are vitally important. How is Enigio approaching these crucial areas?

GC: This is obviously crucial for us and since nothing is published publicly or on a blockchain (all information stays within the document), the confidentiality and security aspects are dramatically enhanced compared to all other available options. There are several key attributes that we are addressing in this area of confidentiality and security:

The blockchain can be used, free of charge, by anybody with full access to the internet, to verify if a copy of a *trace:original* document corresponds to the current version of the *trace:original* document.



Any holder of a valid *trace:original* original can make amendments or transfer the document to a new holder with access to the internet by registering the new state of the document or the transfer to a new holder in the *trace:original* blockchain, free of charge.

If anyone attempts to register a document where the previously registered document content is altered, they will be denied the right to register such a document. Hereby the document is fully guaranteed and incorruptible provenance.

Only members (or customers) of a *trace:original* blockchain network are allowed to create new *trace:original* original documents.

The solution also caters to other benefits and reductions in risk.

Having broken processes, i.e. manual and automated process steps mixed, which is impossible to avoid when working with papers and 'data extracts', creates difficulties in maintaining a clear 'paper' and audit trail. This fact often comes to light when sequences of events need to be recreated for audit, legal, or compliance reasons. This can be extremely difficult, time consuming, and costly and could also imply that one or more parties in the end-to-end process may not be able to meet their legal, commercial, or regulatory requirements or timelines. With our solution, everything that relates to the document, is registered in the document. Regulatory requirements are also constantly increasing and having all business records stored in a fully digital format (not only as data extracts from physical documents in ledgers) gives several advantages. Dealing with the General Data Protection Regulation [GDPR] and Anti Money Laundering [AML] are two examples.

GDPR requires that any party must 'provide a copy of the personal data, free of charge, in an electronic format' and be able to erase the documents, ensuring that "the consumer has been forgotten" under circumstances stipulated in GDPR. From an AML point of view, having paper-based records is a problem when making sure the company is not dealing with any sanctioned party. Lists of sanctioned parties change frequently over time and all records, digital and paper, must be checked each time. It is likely that currently no one can say that they are fully compliant with all AML requirements as, from time to time, it is impossible to search all paper documents immediately on an ongoing basis. Fraud is also a major concern. As *our* documents cannot be forged, document fraud can be fully avoided. Continuous reconciliation can be performed, when instruments are digital, ensuring that they are in sync with all related records and data representations in other systems.

CB: Bottom Line: What you have actually created is a true bearer instrument that is 100% digital and is superior to a paper original?

LH: Yes, simple as that! ■

THE INSTITUTE OF INTERNATIONAL BANKING LAW & PRACTICE

20405 Ryecroft Court • Montgomery Village, MD 20886 USA
Phone: +1-301-869-9840 • Telefax: +1-301-926-1265 • www.iiblp.org

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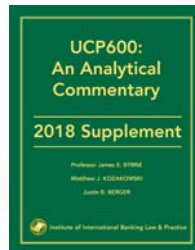
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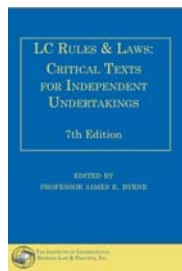
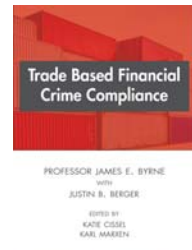
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CHINA: July 2019
AMERICAS: New York – October 2019

Letter of Credit Law Summit

SEASIA: Singapore – 18 July 2019
AMERICAS: New York – October 2019

Annual Trade Finance Compliance Conference

MIDDLE EAST: Dubai – 12-13 March 2019
EUROPE: London – 16-17 May 2019

Additional 2019 events, dates, and locations are pending and will be announced. For the most current information, visit: www.iiblp.org For a complete list of resources available, please contact the Institute.

Documentary Credit

20203 Goshen Road, No. 343; Gaithersburg, MD 20879 USA
fax +1-301-926-1265 • phone +1-301-330-1970
info@doccreditworld.com • www.doccreditworld.com