



### UK DIGITALISATION OF TRADE:

#### The New Law on Electronic Trade Documents

by Dr. Anna-Mari  
Antoniou

DCW covers the UK Act, & what it means for the industry.

### LITIGATION DIGEST

#### *EFLO Energy v. Devon Energy Corp.*

Applicant sued Beneficiary alleging wrongful LC draw.

### THE 2-in-1 STANDBY LC

A Sound Option or Specious Shortcut?

by Scott Scrosati &  
René Bricault

## Founder

Prof. James E. Byrne

## Publisher

Michael P. Byrne

## Executive Editor

Christopher S. Byrnes

## Contributing Editors

Vincent O'Brien  
Soh Chee Seng

## Correspondent Editor

Lisa V. Chin

## Case Editor

Matthew J. Kozakowski

## Scam Survey Editor

Jacob A. Manning

## Bookkeeping & A/R

Maria T. Byrne

## Chief Operations Officer

Christopher V. Sandler

## IIBLP CEO

Michael P. Byrne

## Documentary Credit World, c/o IIBLP, Inc.

20405 Rycroft Ct.  
Montgomery Village, MD  
20886 USA  
+1.301.330.1970  
info@iiblp.org  
www.doccreditworld.com

## Interested in Subscribing?

Contact [info@iiblp.org](mailto:info@iiblp.org)  
for more information

## Editorial Advisory Board

### Lena Anderson

Consultant  
(Sweden)

### A.T.M. Nesarul Hoque

VP, Mutual Trust Bank  
(Bangladesh)

### Dennis Noah

Associate, IIBLP (USA)

### Pavel Andrlé

Trade Finance Consultant  
(Czech Republic)

### Professor Katsuto Iida

Ret'd, Tezukayama Univ.  
(Japan)

### Vincent O'Brien

Director ICC-UAE  
(UAE)

### Dr. Hasan Apaydin

ICC-Turkey  
(Turkey)

### Chris Jenkins

Tanfeeth L.L.C.,  
Emirates NBD Group (UAE)

### Janis Penton

Professor, USC Gould  
School of Law (USA)

### Michael Evan Avidon

Partner, Moses  
& Singer LLP (USA)

### Jin Saibo

Partner, Beijing Jincheng  
Tongda & Neal (China)

### Annie Sebergson

Deputy Head of TF  
Handelsbanken (Norway)

### Buddy Baker

VP, Goldman  
Sachs Bank (USA)

### Ana Kavtaradze

Consultant, Basisbank  
(Georgia)

### Gabriel Sham

Trade Finance Consultant  
(Singapore)

### James G. Barnes

Ret'd, Baker McKenzie  
(USA)

### Carter Klein

Jenner & Block  
(USA)

### Kim Sindberg

Nordea Trade Finance  
(Denmark)

### Abdulkader Bazara

Trade Consultant  
(UAE)

### Michelle Kelly-Louw

Professor, Univ. Cape  
Town (South Africa)

### Donald R. Smith

President, Global Trade  
Advisory, Ltd. (USA)

### Jack Chan

(Hong Kong)

### Dr. Karl Marxen

Univ. of Johannesburg  
(Germany)

### Soh Chee Seng

Technical Consultant  
ABS (Singapore)

### Dr. Alan Davidson

University of Queensland  
(Australia)

### Khalil Matar

Ass't Gen. Mgr. Alinma  
Bank (Saudi Arabia)

### Chang-Soon Thomas Song

KEB Hana Bank (Korea)

### Roger D. Fayers, LLB

Ret'd, UK DTI  
(UK)

### David Meynell

TradeLC Advisory & ICC Sr.  
Technical Adv. (UK)

### Lorna K. Strong

Deputy General Counsel,  
GTRF, HSBC (UK)

**Xiang Gao**  
Dean, China Univ. of Pol.  
Science & Law (China)

### K. Nizardeen

CIB Bank, Dubai  
(UAE)

### Jun Xu

Bank of China,  
Jiangsu Branch (China)

### Paula Greaves

Consultant (USA)

### KK Yeung

(Hong Kong)

Documentary Credit World (DCW) is published by the Institute of International Banking Law & Practice, Inc. (IIBLP) ten times per year, and distributed electronically throughout the world. IIBLP is not responsible for any errors, inaccuracies, omission or incorrect information (or the consequences thereto) contained with the magazine or online; readers should not rely on any information contained in the magazine as providing legal, account or other professional advice. Readers should always consult with an appropriate professional for guidance.

IIBLP accepts no responsibility for the consequences of error or for any loss or damages suffered by readers of any of the information or materials appearing in DCW. The content or opinions contained in DCW do not necessarily reflect the views or opinions of IIBLP, nor the organizations with which the author is affiliated. Copyright 2023 by IIBLP. All Rights Reserved.

**DCW**  
Documentary Credit World

# Table of Contents

## UK Digitalisation of Trade: New Law on Electronic Trade Documents

by Dr. Anna - Mari Antoniou

On 20 September 2023, the UK Electronic Trade Documents Act 2023 will enter into force. The Act provides legal status to electronic trade documents by making them equivalent to paper trade documents. In her analysis of the Act, Dr. Anna - Mari Antoniou examines what the Act does, why it is important, what it means in practice, perceived limitations, and previews the future under the Act. Many trade specialists are optimistic that the Act will usher in an era where electronic trade becomes commonplace, but the Act can only serve as an enabler for such practice. Consenting parties still need to agree to engage in electronic trade transactions. The issue now is whether implementation of the Act will inspire confidence among the stakeholders involved in trade to utilize electronic trade documents. The Act can facilitate; will electronic trade transactions flow?

After Dr. Antoniou's article, the full text of the UK UK Electronic Trade Documents Act 2023 follows.

This issue's Feature begins on  
Page 25.

### Articles:

- 33** How to Examine a Printed Electronic Insurance Policy by ZHAO Jing
- 36** To What Extent is a Confirming Bank's Undertaking Independent of the Issuing Bank's Undertaking to the Beneficiary?  
by A.T.M. Nesarul HOQUE
- 41** The 2-in-1 Standby – A Sound Option or Specious Shortcut?  
by Scott SCROSATI with René BRICAULT

### Updates:

- 4** UK's E-Trade Documents Act Finalised
- 4** Investigations into Vesttoo LC Fraud Allegations
- 6** ICC Meeting Announces & Reflects on Results
- 7** ICC Issues Briefing on Invoice Titles
- 9** EU Maintains Capital Requirements
- 9** ICC, Swift Release API Standards
- 9** Charter Party B/L Showing Two Shipping Dates
- 10** Court Reverses on Excessive LC Fees Claim
- 11** Banks Required to Arrange USDs for Import LCs
- 11** Nigeria Reports Drop in LCs for 2Q23
- 11** LC Use (or Not): Advocates Push Back against LC

### Litigation Digest:

- 13** *EFLO Energy v. Devon Energy Corp.* - Applicant sued Beneficiary alleging wrongful LC draw.
- 16** *Strabag, SpA v. Credit Agricole CIB* - Applicant sought preliminary injunction to restrain Issuer.
- 18** *Glacier Bear Retreat, LLC v. Dusek* - Judgment Debtors moved to extend temporary stay of execution.
- 19** *ERA Capital L.P. v. Soleil Chartered Bank* - Granting part of Advising Bank summary judgment motion; triable issue found regarding negligent misrepresentation
- 23** Newly-Decided LC & Guarantee Cases

### Forms:

- 45** ISP98 Form 4: Model Standby Providing for Transfer

### Conference Report:

- 53** Executive Summary of the 2023 Americas Annual LC Survey (Part 2)

### Information Digest:

- 58** Practically Speaking, What Does the Act Mean?
- 59** UCP 600 Revision Talk Resurfaces

### Scam Survey:

- 61** Court Rules on "Inherently Implausible" Transaction
- 62** Florida County Defrauded of USD 1.4 Million
- 63** Three Sentenced to Prison in Standby LC Scam

## UK DIGITALISATION OF TRADE NEW LAW ON ELECTRONIC TRADE DOCUMENTS

by Dr. Anna - Mari ANTONIOU\*

When assessing the digitalisation of trade finance, it is debatable whether the shipping and financial industries are trying to mimic an already effective paper-based system and simply move it to an electronic format or attempting to set up something entirely new. Take, for example, the place of a commercial letter of credit in international trade. Although law, practices, and standards impacting LCs can be updated, their purpose remains the same, namely, to provide the beneficiary under an LC with an assured right to payment when credit conditions are met upon a complying presentation of documents. The system is trusted by the market, it provides security for the parties, and as has often been stated by English judges, is the “lifeblood of international commerce”.<sup>1</sup> Digitalisation needs to maintain these elements; the trust, the security and ideally in the process, make things faster, smoother, and more cost-effective.



The trade system can be described as a web of contracts, most often an underlying sale agreement for the transportation of cargo from one port to another, insured under marine policies, and financed by a letter of credit. That is, a sale contract, a carriage contract, an insurance contract, and a financial contract. In practical and in legal terms, the trigger for the entire system is the financial contract, for until the letter of credit is opened, the seller is under no obligation to ship goods. It is the opening of the credit that triggers the actual shipment and thus one can argue it all begins and ends, with the money.

When considering digitalising the system, we must look at each part of the web individually, and then the web as a whole. The UK government started this process during the COVID-19 pandemic by asking the Law Commission of England and Wales to make recommendations for reform to allow legal recognition of trade documents in electronic form. The culmination of that work is the UK Electronic Trade Documents Act 2023 which received Royal Assent on 20 July 2023 and comes into force 20 September 2023.

---

\* Dr. Anna - Mari ANTONIOU is Associate Professor in Law, School of Business and Law, University of Brighton, UK. She can be contacted at: A.M.Antoniou@brighton.ac.uk.

1. Lord Justice Kerr in *R.D. Harbottle (Mercantile) Ltd v. National Westminster Bank Ltd* [1978] Q.B. 146 [England], Lord Justice Griffiths in *Power Curber International Ltd v National Bank of Kuwait S.A.K.* [1981] 1 W.L.R. 1233 [England], Lord Justice Donaldson in *Intranco Ltd v Notis Shipping Corp of Liberia* [1981] 2 Lloyd's Rep 256 [England] and Lord Justice Stephenson in *United City Merchants (Investments) Ltd v Royal Bank of Canada* [1982] Q.B. 208 [England].

## What Does the Act Do?

At its core, the Act does something incredibly simple: it provides legal status to electronic trade documents, making them equivalent to their paper counterparts.<sup>2</sup> Whereas before the law only recognised as “possessable” documents which were tangible, and thus in paper form, now the 2023 Act recognises that the electronic equivalent of certain trade documents are “possessable” under the law. The importance of this minor, but very effective update can be illustrated by considering a bill of lading. Certain rights relating to the goods are tied to physical possession of the bill of lading document and these rights transfer upon physical transfer of the document itself, by law.<sup>3</sup> If in legal terms, only hard copy documents were possessable, it meant that an electronic bill of lading could not operate in the same way as its paper counterpart. The law did not recognise that an electronic bill of lading could be possessable, and consequently it could not recognise that its transfer from one party to another, also transferred rights to the goods. The Act refers to a range of documents used in trade, the transport of goods and financing thereof, including bills of exchange, promissory notes, bills of lading, ship’s delivery orders, warehouse receipts, mate’s receipts, marine insurance policies, and cargo insurance certificates.<sup>4</sup>

## Why is It Important?

The Law Commission estimates<sup>5</sup> that international trade is worth GBP 1.266 trillion (USD 1.6 trillion) to the UK<sup>6</sup> and that global container shipping generates billions of paper documents a year.<sup>7</sup> Therefore, the potential positive impact of using electronic trade documents including in terms of efficiency, cost, and environment, is vast. The ICC UK estimated that digitalising trade documents could generate GBP 25 billion in new economic growth for the UK by 2024 and free up GBP 224 billion in efficiency savings.<sup>8</sup>

The Act is hailed by many as a “gamechanger” including ICC United Kingdom Secretary General Chris Southworth<sup>9</sup> who said “this is a great piece of law ... we are not changing the big picture of the legal framework of trade here; we are just going digital”.<sup>10</sup> Southworth added in a LinkedIn post his prediction that when the Act comes into force it “will have enabled 80% of bills of lading, 60% of global trade finance, the lion share of marine insurance and shipping as well as every company in the

2. Section 3, UK Electronic Trade Documents Act 2023.

3. For example, the UK Carriage of Goods by Sea Act 1924 transfers rights of suit.

4. Section 1 UK Electronic Trade Documents Act 2023.

5. In 2022. Annual value of UK total trade (imports and exports) to May 2023 is GBP 1,758.7 billion. See: <https://www.gov.uk/government/statistics/uk-trade-in-numbers/uk-trade-in-numbers-web-version>

6. Other estimates say in excess of GBP 1.4 trillion, see HL Deb 7 November 2022, vol 825, col 145GC.

7. <https://www.lawcom.gov.uk/project/electronic-trade-documents/>

8. ICC, Aligning national laws to the UNCITRAL Model Law on Electronic Transferable Records, UK Business Case (2021).

9. International Trade Committee, Oral Evidence: UK Trade Negotiations, 18 May 2022, HC 78 2022-23, Q20

10. Electronic Trade Documents Bill [HL] Special Public Bill Committee Oral Evidence, 19 January 2023, Evidence Session 2, Q11.

world which uses English law to now begin removing paper and digitalise trade transactions.” Lord Holmes, a member of the UK House of Lords, during the Lords’ second reading of the legislation said the “Bill is one of the most significant pieces of legislation which most people have not heard of. It is trade-transforming, tech-enabling, economic growth-generating, carbon-cutting legislation”.<sup>11</sup> Viscount Camrose in the last House of Lords debate on the legislation called it “a brilliant and transformational Bill.”<sup>12</sup>

There are a small number of other jurisdictions that recognise electronic trade documents but it is undeniable that, as one of the leading maritime service centres, the UK in taking this step will no doubt add a push to digitalisation as well as influence other jurisdictions to adopt similar legislation, particularly considering the existence of the UN MLETR<sup>13</sup> and the desire of governments to make sure their country’s market remains competitive. English law is frequently the applicable law of maritime contracts and trade finance undertakings, and the law recognising electronic equivalents lends trust to electronic documents and weight to the security they can provide.

## What Does It Mean in Practice?

The maritime industry is one of the oldest and rules that govern its operation can trace their roots back to the ancient Greeks so naturally, changes to well-established traditional systems may raise concerns in some quarters. The reality is that electronic documents have been in use for a couple of decades and if individual trading parties wished for them to function legally as their paper counterparts, they could have done so even before 2023. UK law will always yield to parties’ specifically negotiated terms and if traders had agreed in their sale contract that an electronic bill of lading (eB/L) could be used and that its transfer operated in the same way as paper, then so be it. The limit was that such function of the eB/L was only recognisable between the parties involved in that specific trade contract.

The 2023 Act on the other hand means that UK law will recognise eB/Ls as equivalent to paper B/Ls without the need to specify this in the contract. But again, the law will yield to parties’ negotiated terms, if they do not want eB/Ls to have the status now given to them by the 2023 Act, the Act itself gives exceptions.<sup>14</sup> In particular, Section 5 states “If an intention that section 3 should not apply in relation to an electronic trade documents appears in, or can reasonably be inferred from, the document or terms that have effect in relation to the document - (a) that section does not apply in relation to the document, and (b) section 4 also does not apply in relation to it”. Therefore, parties may choose whether or not they wish the law to apply to the electronic documents used. As with other matters, those involved in a trade transaction should make sure that all parts of the ‘web’ reflect this choice, so where the underlying sale contract envisages use of an eB/L and other electronic transferable documents, this should be reflected in the LC conditions and other undertakings relating to the underlying sale.

11. HL Deb 7 November 2022, vol 825, col 155GC.

12. HL Deb 19 July 2023, vol 831, col 2327.

13. UNCITRAL Model Law on Electronic Transferable Records 2017. For a current list of jurisdictions who have adopted legislation based on or influenced by the Model Law, see: [https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic\\_transferable\\_records/status](https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_transferable_records/status)

14. Section 5, UK Electronic Trade Documents Act 2023.

What has happened therefore is simply that the default position has changed – electronic trade documents are recognised as equivalent to their paper counterparts in UK law but if parties do not wish to use them in this way, that is perfectly possible. One supposes that the real progress is in effect that the UK government endorses electronic trade documents and is encouraging the industry to use them.

## **Are There Limitations?**

The very nature of international trade means it is a cross-border activity and therefore we must be realistic about what the Act can achieve. While the UK is an important jurisdiction no doubt, industry in various jurisdictions must move as a whole to embrace electronic trade documents. UK businesses trade with parties across the globe and therefore the ‘web’, involves parties and logistics providers in different jurisdictions, goods crossing international borders and financial institutions operating under various applicable laws. The system must all be in sync; it must recognise electronic documents along with the UK, though it should be noted that if the applicable law across the contracts is English, then electronic documents could be accepted irrespective of the location of the parties. We must also be careful not to cause a digital trade divide where developed economies with a strong fintech infrastructure are effectively barring emerging markets from full engagement in global trade. It is a delicate balance where information and knowledge must be shared and although the UK lead may influence other jurisdictions to follow, on an international level organisations such as the UN and the ICC will have an important role to play, to ensure a level playing field and equal access to the digital trade ecosystem.

## **What’s Next?**

One cannot help but wonder though, that if what the 2023 Act does is very simple, and electronic trade documents, e-bills of lading for example, have been around for years, then why was this simple step not taken before? If that was all that was needed, then why did it not happen earlier? COVID-19 forced the issue of electronic equivalents no doubt, but with this pressure now lifted, will the industry just revert back to reliance on paper documents?

The issue now therefore is whether implementation of the Act will inspire confidence among trade partners, trade finance providers, and other stakeholders to utilize electronic trade documents. Maritime law is often reactive rather than proactive. In other words, legislative bodies construct law to support practices that the industry has been using for some time, rather than first formulating law and expecting the industry to follow. It seems to be the case that the law is now being proactive, so we need the industry to move. We need the electronic platforms, the guarantee of security for these platforms, parties to understand expectations as to these e-documents and new formats. Most of all, we need recognition of electronic documents in the law across jurisdictions and we need the industry to trust the electronic system as reliable and secure.

The Act will help in this regard; it should certainly build confidence in use of electronic alternatives. The fact that it covers different types of trade documents means that we could see a fully digital trade transaction subject to UK law. This could lead to an increase in the use of commercial letters of credit subject to eUCP or possibly use of transactions under URDTT.<sup>15</sup> ■

---

15. International Chamber of Commerce, Uniform Rules for Digital Trade Transactions 2021, Publication No. KS103E.