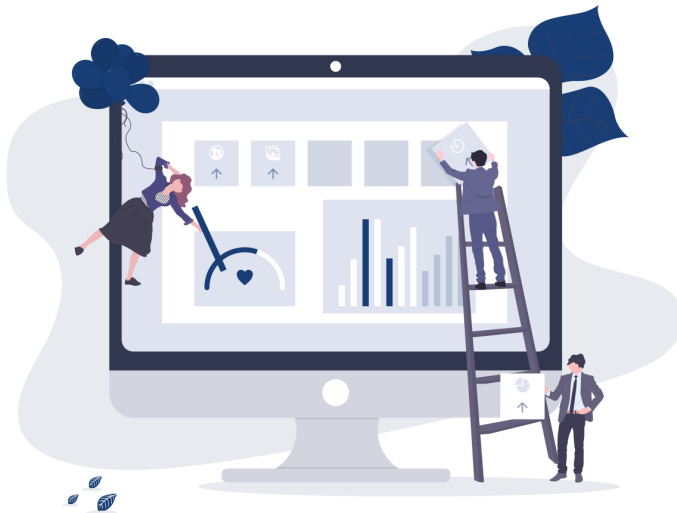


UNCITRAL WEBINAR

International Experiences with the dematerialisation of negotiable transport documents

14 April 2021

About Bolero



Bolero

Bolero International is the leading cloud-based platform driving the digitisation of global trade. With over 20 years of experience, we have the knowledge, experience, tools and proven track record of helping organisations make the transition and capitalise on the benefits of digitisation.

Trusted by the world's leading financial institutions, carriers and corporates our solutions seamlessly connect corporates with their logistics partners and financial institutions.

Bolero proudly supports:



Banks



Insurance
Companies



Alternate Funders



Buyers



Sellers



Carriers



Logistics



Customs

Origins of Bolero Legal Solution

Overriding Objective

To replace paper documents with electronic documents/data in international trade. The benefits of doing so were clear and remain so.

Legal Objective

To replicate the legal results on an 'as if' basis. The rights and obligations of the parties using electronic documents/data would remain the same as they would have done had the transaction been accomplished using paper documents.

Legal Feasibility

Bolero commissioned the most extensive legal survey of its kind with two objectives

1. Was it possible to achieve the legal objective such that a viable product could be created?
2. Determining the optimal legal structure

The Bolero logo is located in the upper right quadrant of the slide. It features the word "Bolero" in a blue, sans-serif font, with a small yellow swoosh above the letter 'o'. The logo is positioned over a faint, light gray background graphic that consists of a network of interconnected circles and lines, resembling a molecular or network structure. The circles vary in size, and the lines are thin and light gray.

Legal Feasibility

Global Approximation Method

There a limited number of law systems in the world which have similar legal roots and thus share similar characteristics. Positive (or negative) results in a jurisdictional type would be indicative of the results in jurisdictions sharing the same legal roots.

- Traditional English and US common law
- Mix of Roman and civil law
- Germanic/Scandinavia
- Mix of Roman and Germanic
- Napoleonic/civil
- Islamic

Survey

We posed a number of focused questions including

- Choice of law and jurisdiction
- Writing requirements for trade documents
- Transfer of property in goods
- Taking security over assets
- Admissibility of evidence

The Bolero logo is located in the top right corner of the slide. It consists of the word "Bolero" in a blue, sans-serif font, with a small yellow swoosh above the letter 'o'. The background of the slide features a faint, light gray geometric pattern of interconnected circles and lines, resembling a network or a stylized molecular structure.

Feasibility Results

Main Challenges

Most documents were relatively easy to replicate in electronic form. The most taxing document was the bill of lading in relation to its function of transferring property rights (constructive possession and thus the right to delivery of the goods) and, to a lesser extent, its function of transferring contractual rights (consignee's right of suit, carrier's right to rely on traditional exclusions and limitations of liability).

Separation of property and contractual rights

We established that the transfer of property and contractual rights could be separated such that a party financing the transaction could take security over the goods through constructive possession without becoming a party to the contract of carriage. However, if the financing party wished to enforce its security it would be required to become a party to the contract of carriage.

Choice of Transfer Mechanism and contractual rights

There were two options for the transfer of rights. Assignment and novation. Because of more extensive writing formalities for assignment in civil law jurisdictions the solution adopted was novation (transfer of contractual rights) combined with attornment (transfer of property rights). Bolero produced a multi-lateral agreement (Rulebook) that all users sign up to. Amongst other things it prescribes the process and legal result of parties in roles performing functions.

Functional Matrix



Functions	Parties						
	Carrier	Shipper and Holder	Holder-to-order	Pledge Holder	Bearer Holder	Holder	Consignee Holder
Create Bill	Yes	No	No	No	No	No	No
Designate Holder	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Designate To Order	Yes	No	Yes	Yes	Yes	No	No
Blank Endorse	Yes	No	Yes	No	No	No	No
Designate Bearer Holder	Yes	No	Yes	Yes	Yes	No	No
Designate Consignee	Yes	No	Yes	Yes	Yes	No	No
Designate Pledge Holder	No	Yes	Yes	Yes	Yes	Yes	No
Enforce pledge	No	No	No	Yes	No	No	No
Surrender Bill	No	No	Yes	No	No	No	Yes
Request Amendment	No	Yes	Yes	Yes	Yes	Yes	Yes
Grant Amendment	Yes	No	No	No	No	No	No
Deny Amendment	Yes	No	No	No	No	No	No
Switch to Paper	No	Yes	Yes	Yes	Yes	Yes	Yes

Challenges for Adoption

Commercial not legal

The main challenges to wider adoption have not been legal but rather the extremely complex, multi-functional and, by definition, global nature of international trade. Digitisation of trade documentation produces benefits for all but those benefits are not necessarily equal. The main competition is inertia. Other challenges include standards and interoperability.

Legal Impediments

Large corporates, carriers and trade banks are able to understand the contractual structure. They recognise that in certain conservative jurisdictions (those that have high requirements for formalities) there is risk (e.g. application of choice of law, re-characterisation of substantive provisions as a formality governed by local law) but the risks are small and the benefits substantial. Then again, there are risks (arguably greater) in dealing with paper based transactions. Smaller organisations tend to look for more certainty either through legislative intervention or decided cases.

Precise Functional Descriptions Essential

It is important to be very clear about the functions that the document is performing. Avoid short-hand descriptions as these can mislead (e.g. 'document of title', 'negotiable instrument'). Bills of lading do not confer ownership per se. They confer the right to delivery (constructive possession). Bills of lading are not negotiable in the way that a bills of exchange are. Maritime lawyers and banking lawyers are sometimes at cross-purposes on the important details.

Market drivers & challenges in trade

Market drivers

Digitisation

- Worldwide **prioritisation of the digitisation** agenda
- **Paperless trade**: eBL, eLC, blockchain becoming a reality
- Evolution of new technologies; big data, AI, smart contracts, smart objects, IoT
- **Increased collaboration and open connectivity**; open APIs and microservices

Centralisation

- **Globalisation of Trade driving centralisation** of processes and systems

Regulations and Compliance

- **Significant spend on compliance** by banks and corporates
- **Technology helping to reduce** regulatory and compliance cost

Geopolitical, Economic, Environmental and Health Factors

- Unforeseen events such as political unrest or health concerns like the COVID-19 pandemic.

Challenges

Complex Processes

- Trade processes are **document intensive and complex**
- Multi party communication resulting in **high operations cost**
- **Lack of visibility** for all trading parties

Lack of standardisation

- **Lack of uniform standards**, open APIs in Trade resulting in creation of digital silos
- **Heterogeneous systems and platforms** not connected to each other

Accessibility of Trade Finance

- **Compliance and regulatory risks** hindering access to Trade for SMEs

Lack of digitisation

- Barriers remain which will require willingness on all parties to embrace full transformation.



Bolero

Thank you for your time!



www.bolero.net

