

United Nations Commission on International Trade Law
Colloquium on Electronic Commerce – New York, 14th to 16th of February 2011

*THE NEED FOR A LEGAL REGIME FOR ELECTRONIC
NEGOTIABLE DOCUMENTS IN INTERNATIONAL TRADE*

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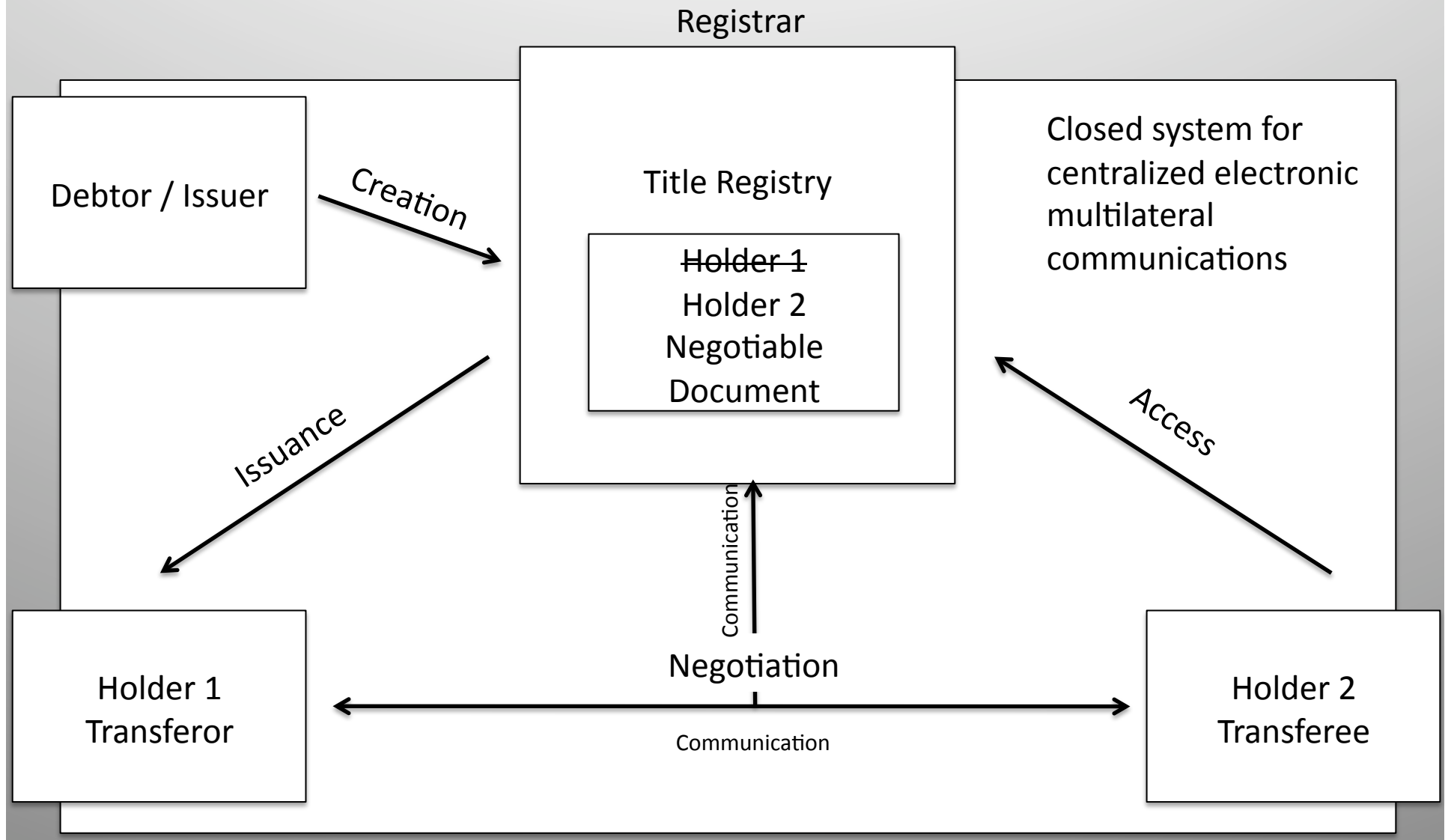
Negotiable Documents

- Legal regime based on possession (negotiable documents issued on an individual basis)
- Express recognition by the law is needed (general rules on electronic writings and signatures or contract law are not enough)
- Often used in commercial transactions, with a financial purpose in many cases.

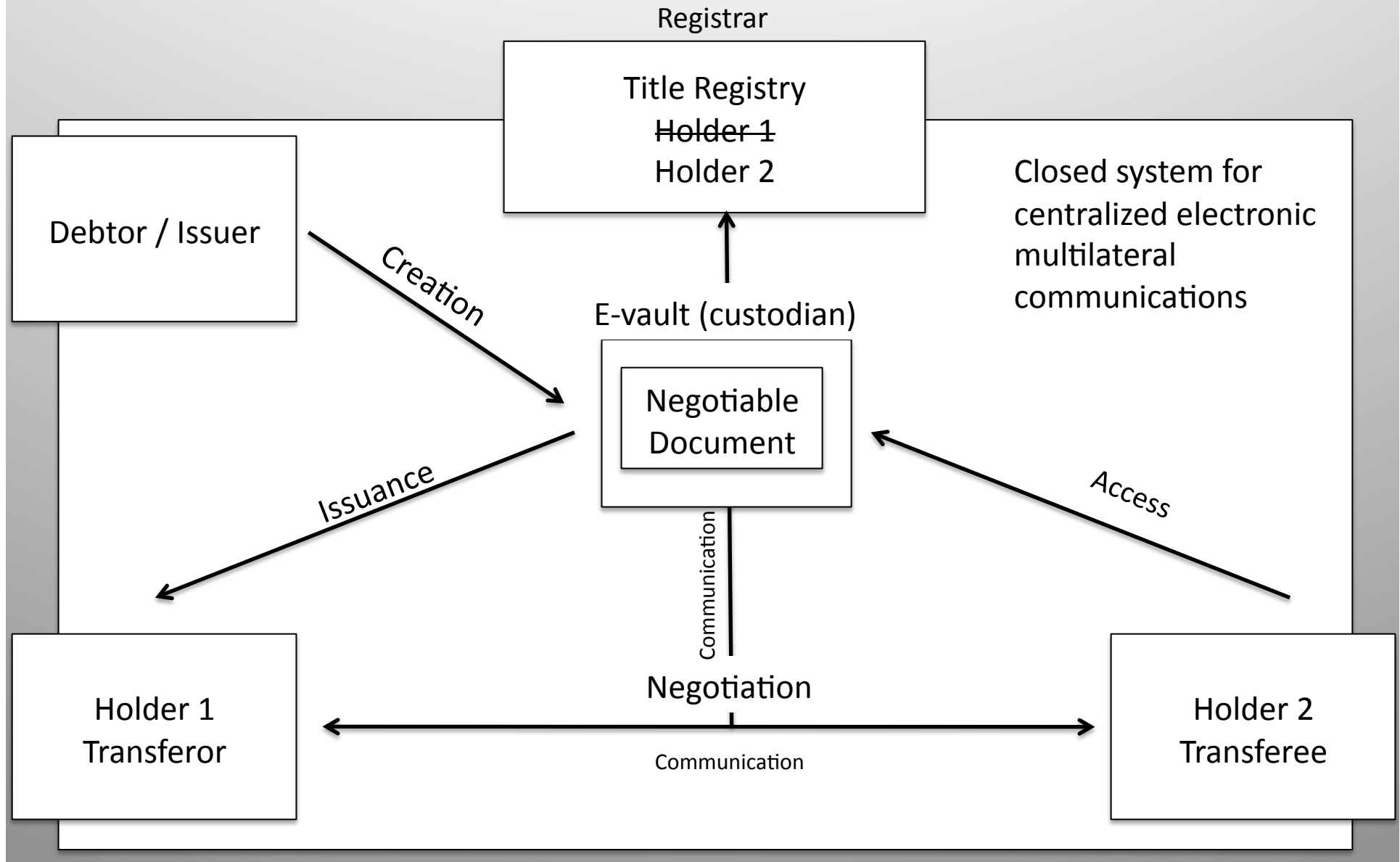
Existing rules

- Few examples in legislation
- Most recent approach: based on “control” of the document as the functional equivalent to possession
- “Control” of the negotiable document: sufficiently reliable proof of title

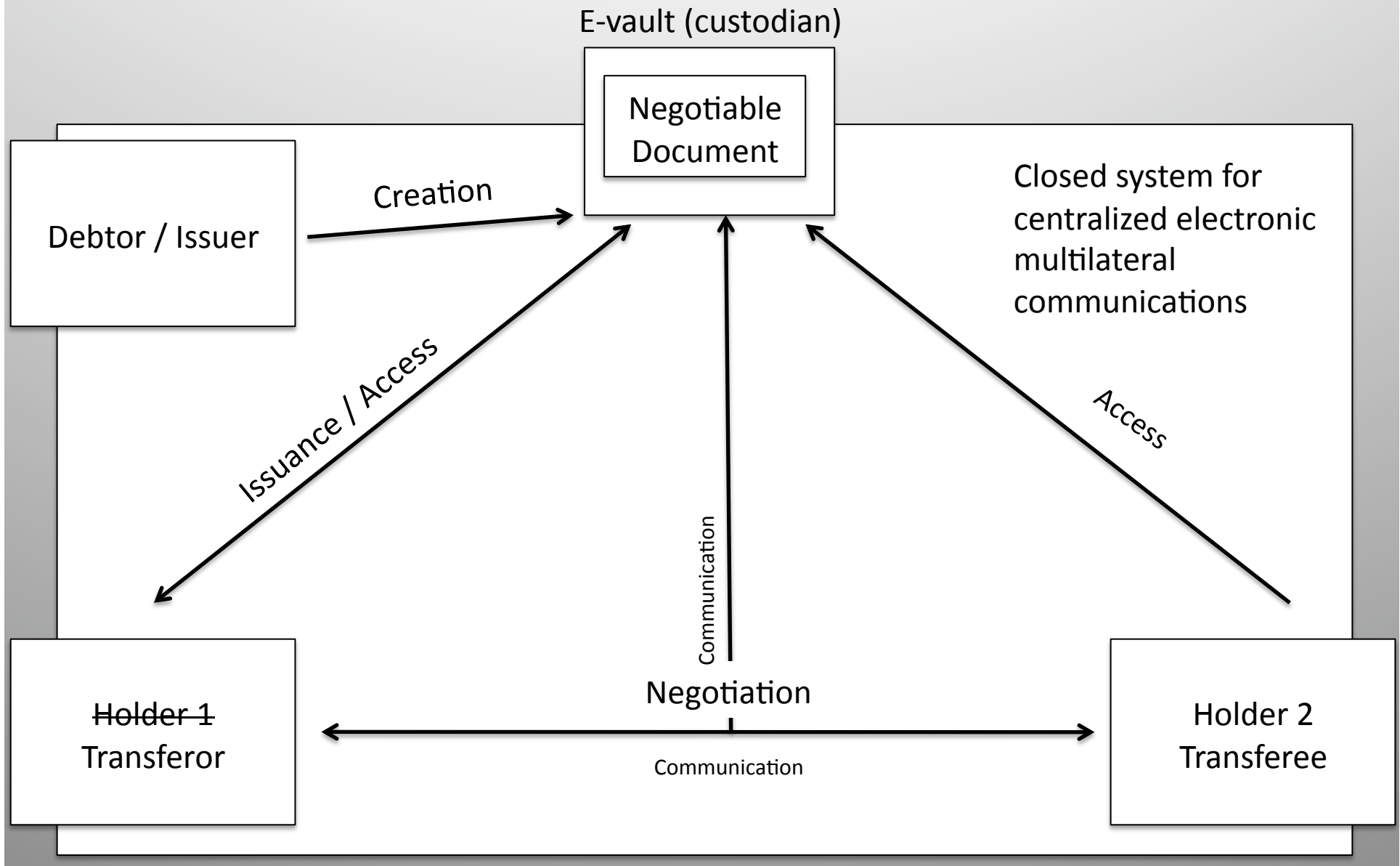
Systems for the issuance and use of electronic negotiable documents: registry systems



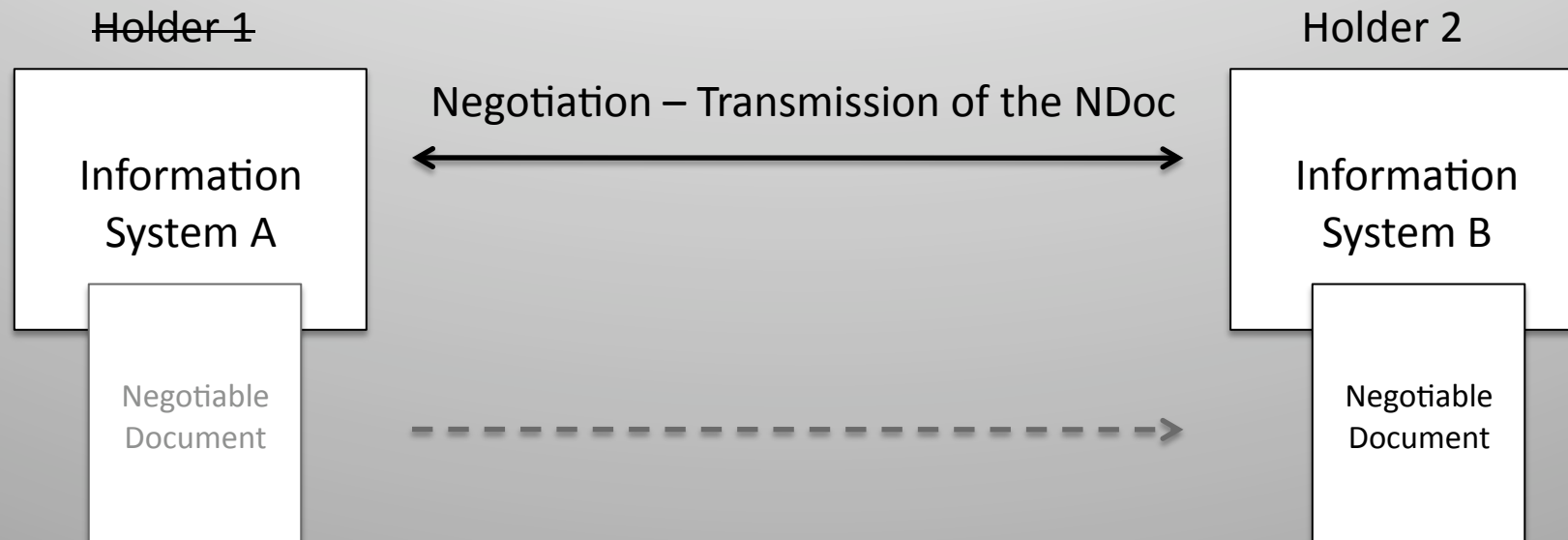
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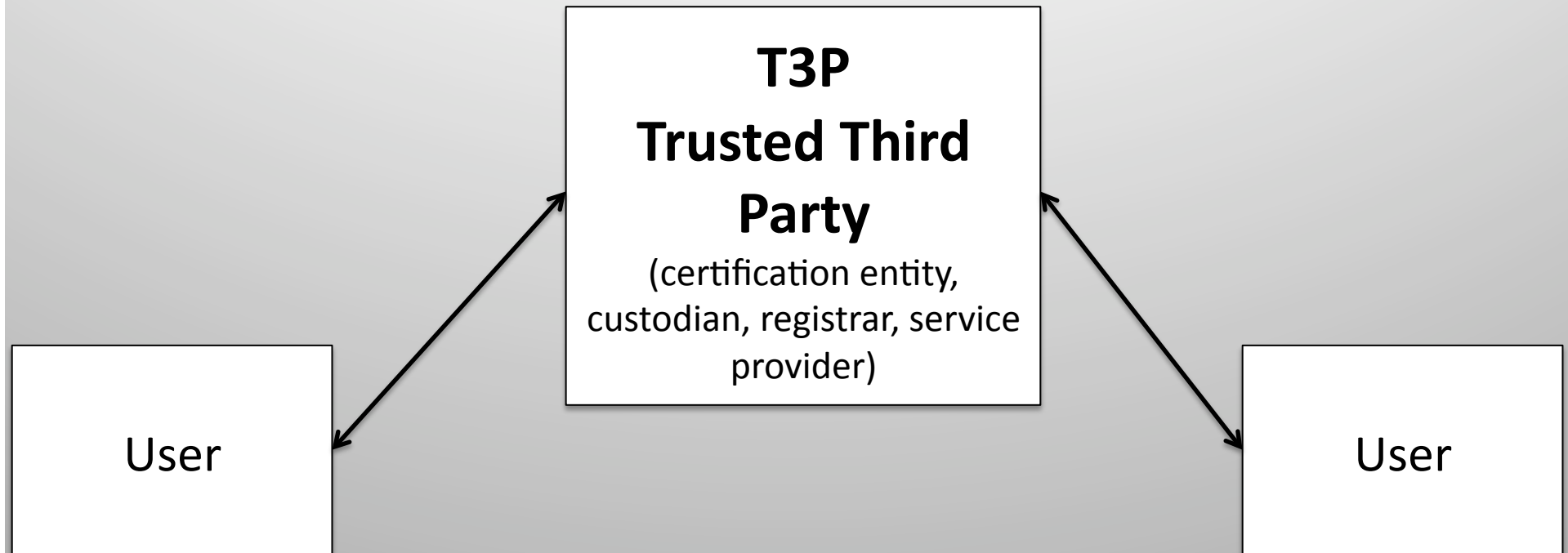
Systems for the issuance and use of electronic negotiable documents: token systems



Systems for the issuance and use of electronic negotiable documents: token systems



What do all these systems have in common?



“Control” of the document is achieved in all its aspects through:

- Technology
- Reliability
- Intermediation
- Trust

Legal policy and strategy

- Harmonized scheme allowing the issuance of electronic negotiable documents
- Relevant matters (only adjective or formal aspects):
 - Functional equivalence (possession and control): title, transfer
 - The role of Trusted Third Parties: legal approach and policy thereon (accreditation, liability, insurance).
 - Conditions for cross-border recognition
- Strategy: Model Law

Feasible benefits

- Impact on national and international markets
- Removal of barriers to the use of electronic negotiable documents
- Enhancement to the development of electronic trading systems and e-marketplaces dependent or based (at least partially) on the use of this type of documents

New York, 15th of February 2011