

Discussion Questions – Roundtable About the Digitalisation of Trade Documents 29 August 2024

- Do you have practical experience in using or trying to implement electronic trade documents or other electronic transferable records? Do you recognize the challenges described in the ICC Sweden analysis?
- What specific legal obstacles do you see as the most critical in terms of recognizing electronic transferable records in Swedish law? Do you share the analysis that Swedish legislation is in theory technology neutral, but that, given the precedent established by court decisions, legal reform is still necessary to provide clarity? Are there other legal obstacles?
- When considering legal reform in Sweden, what would be the best approach: a general law recognizing the use of electronic transferable records and the criteria they need to fulfill (similar to the ones introduced in U.K. and France), amending existing legislation governing specific types of documents, or a combination of both?
- Past court decisions have taken a strict view of what constitutes “possession” and “exclusive control” of an electronic document and what is to be considered an original, effectively judging that distributed ledgers using blockchain are not an acceptable solution. Is there then a risk that the adoption of an MLETR style law in Sweden would not alleviate the problem and that a Swedish law needs to be more explicit regarding the type of technical solutions that would be acceptable?
- Are there measures that can be taken by companies, banks etc. in the short term to facilitate the digitalization of international trade, for example through choice of law clauses in contracts?
- What can we learn from other countries, both those such as the U.K. and France who have already adopted new laws, and countries such as Germany and Finland, who are in different stages of the reform process?