

# UNCITRAL Model Law on Electronic Transferable Records

## Chapter I. General provisions

### Article 1. Scope of application

1. This Law applies to electronic transferable records.
2. Other than as provided for in this Law, nothing in this Law affects the application to an electronic transferable record of any rule of law governing a transferable document or instrument including any rule of law applicable to consumer protection.
3. This Law does not apply to securities, such as shares and bonds, and other investment instruments, and to [...].<sup>1</sup>

### Article 2. Definitions

For the purposes of this Law:

“*Electronic record*” means information generated, communicated, received or stored by electronic means, including, where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not;

“*Electronic transferable record*” is an electronic record that complies with the requirements of article 10;

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<sup>1</sup>The enacting jurisdiction may consider including a reference to: (a) documents and instruments that may be considered transferable, but that should not fall under the scope of the Model Law; (b) documents and instruments falling under the scope of the Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes (Geneva, 1930) and the Convention Providing a Uniform Law for Cheques (Geneva, 1931); and (c) electronic transferable records existing only in electronic form.

“*Transferable document or instrument*” means a document or instrument issued on paper that entitles the holder to claim the performance of the obligation indicated in the document or instrument and to transfer the right to performance of the obligation indicated in the document or instrument through the transfer of that document or instrument.

### **Article 3. Interpretation**

1. This Law is derived from a model law of international origin. In the interpretation of this Law, regard is to be had to the international origin and to the need to promote uniformity in its application.
2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

### **Article 4. Party autonomy and privity of contract**

1. The parties may derogate from or vary by agreement the following provisions of this Law: [...].<sup>2</sup>
2. Such an agreement does not affect the rights of any person that is not a party to that agreement.

### **Article 5. Information requirements**

Nothing in this Law affects the application of any rule of law that may require a person to disclose its identity, place of business or other information, or relieves a person from the legal consequences of making inaccurate, incomplete or false statements in that regard.

### **Article 6. Additional information in electronic transferable records**

Nothing in this Law precludes the inclusion of information in an electronic transferable record in addition to that contained in a transferable document or instrument.

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<sup>2</sup>The enacting jurisdiction may consider which provisions of the Model Law, if any, the parties may derogate from or vary by agreement.

## **Article 7. Legal recognition of an electronic transferable record**

1. An electronic transferable record shall not be denied legal effect, validity or enforceability on the sole ground that it is in electronic form.
2. Nothing in this Law requires a person to use an electronic transferable record without that person's consent.
3. The consent of a person to use an electronic transferable record may be inferred from the person's conduct.

# **Chapter II. Provisions on functional equivalence**

## **Article 8. Writing**

Where the law requires that information should be in writing, that requirement is met with respect to an electronic transferable record if the information contained therein is accessible so as to be usable for subsequent reference.

## **Article 9. Signature**

Where the law requires or permits a signature of a person, that requirement is met by an electronic transferable record if a reliable method is used to identify that person and to indicate that person's intention in respect of the information contained in the electronic transferable record.

## **Article 10. Transferable documents or instruments**

1. Where the law requires a transferable document or instrument, that requirement is met by an electronic record if:
  - (a) The electronic record contains the information that would be required to be contained in a transferable document or instrument; and
  - (b) A reliable method is used:

- (i) To identify that electronic record as the electronic transferable record;
- (ii) To render that electronic record capable of being subject to control from its creation until it ceases to have any effect or validity; and
- (iii) To retain the integrity of that electronic record.

2. The criterion for assessing integrity shall be whether information contained in the electronic transferable record, including any authorized change that arises from its creation until it ceases to have any effect or validity, has remained complete and unaltered apart from any change which arises in the normal course of communication, storage and display.

### **Article 11. Control**

1. Where the law requires or permits the possession of a transferable document or instrument, that requirement is met with respect to an electronic transferable record if a reliable method is used:

- (a) To establish exclusive control of that electronic transferable record by a person; and
- (b) To identify that person as the person in control.

2. Where the law requires or permits transfer of possession of a transferable document or instrument, that requirement is met with respect to an electronic transferable record through the transfer of control over the electronic transferable record.

## **Chapter III. Use of electronic transferable records**

### **Article 12. General reliability standard**

For the purposes of articles 9, 10, 11, 13, 16, 17 and 18, the method referred to shall be:

- (a) As reliable as appropriate for the fulfilment of the function for which the method is being used, in the light of all relevant circumstances, which may include:

- (i) Any operational rules relevant to the assessment of reliability;
  - (ii) The assurance of data integrity;
  - (iii) The ability to prevent unauthorized access to and use of the system;
  - (iv) The security of hardware and software;
  - (v) The regularity and extent of audit by an independent body;
  - (vi) The existence of a declaration by a supervisory body, an accreditation body or a voluntary scheme regarding the reliability of the method;
  - (vii) Any applicable industry standard; or
- (b) Proven in fact to have fulfilled the function by itself or together with further evidence.

### **Article 13. Indication of time and place in electronic transferable records**

Where the law requires or permits the indication of time or place with respect to a transferable document or instrument, that requirement is met if a reliable method is used to indicate that time or place with respect to an electronic transferable record.

### **Article 14. Place of business**

1. A location is not a place of business merely because that is:
  - (a) Where equipment and technology supporting an information system used by a party in connection with electronic transferable records are located; or
  - (b) Where the information system may be accessed by other parties.
2. The sole fact that a party makes use of an electronic address or other element of an information system connected to a specific country does not create a presumption that its place of business is located in that country.

### **Article 15. Endorsement**

Where the law requires or permits the endorsement in any form of a transferable document or instrument, that requirement is met with respect to an electronic transferable record if the information required for the endorsement is included in

the electronic transferable record and that information is compliant with the requirements set forth in articles 8 and 9.

### **Article 16. Amendment**

Where the law requires or permits the amendment of a transferable document or instrument, that requirement is met with respect to an electronic transferable record if a reliable method is used for amendment of information in the electronic transferable record so that the amended information is identified as such.

### **Article 17. Replacement of a transferable document or instrument with an electronic transferable record**

1. An electronic transferable record may replace a transferable document or instrument if a reliable method for the change of medium is used.
2. For the change of medium to take effect, a statement indicating a change of medium shall be inserted in the electronic transferable record.
3. Upon issuance of the electronic transferable record in accordance with paragraphs 1 and 2, the transferable document or instrument shall be made inoperative and ceases to have any effect or validity.
4. A change of medium in accordance with paragraphs 1 and 2 shall not affect the rights and obligations of the parties.

### **Article 18. Replacement of an electronic transferable record with a transferable document or instrument**

1. A transferable document or instrument may replace an electronic transferable record if a reliable method for the change of medium is used.
2. For the change of medium to take effect, a statement indicating a change of medium shall be inserted in the transferable document or instrument.
3. Upon issuance of the transferable document or instrument in accordance with paragraphs 1 and 2, the electronic transferable record shall be made inoperative and ceases to have any effect or validity.

4. A change of medium in accordance with paragraphs 1 and 2 shall not affect the rights and obligations of the parties.

## **Chapter IV. Cross-border recognition of electronic transferable records**

### **Article 19. Non-discrimination of foreign electronic transferable records**

1. An electronic transferable record shall not be denied legal effect, validity or enforceability on the sole ground that it was issued or used abroad.
2. Nothing in this Law affects the application to electronic transferable records of rules of private international law governing a transferable document or instrument.