

## Electronic Transferable Records Law

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### LAW No. 55 of 2018 WITH RESPECT TO ELECTRONIC TRANSFERABLE RECORDS

We, Hamad Bin Isa Bin Salman Al-Khalifa, the King of the Kingdom of Bahrain;

Having perused the constitution, mainly Article (38) thereof;

The Marine Law promulgated by Legislative Decree No. 23 of 1982 (as amended);

The Law of Commerce promulgated by Legislative Decree No. 7 of 1987 (as amended);

Law of Evidence in Civil and Commercial Matters promulgated by Legislative Decree No. 14 of 1996 (as amended);

The Central Bank and Financial Instructions Law promulgated by Law No. 64 of 2006 (as amended);

Law No. (54) with respect of Electronic Communications and Transactions Law;

Furthering to tabling by the Prime Minister; and

Upon approval of the Council of Ministers;

#### **We have decreed the following:**

##### **Article (1) Definitions**

In this Law, the following terms and expressions shall have the corresponding meaning provided hereunder against each unless the context requires otherwise:

- a. **Kingdom:** the Kingdom of Bahrain
- b. **Accredited Operator:** an operator accredited under Section (16) or (17);
- c. **Competent Administrative Agency:** the government agency responsible for information technology networks and systems of the State's bodies.

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- d. **Competent Authority:** the Minister or the head of the competent administrative agency, as the case may be;
- e. **Document:** any of the following:
  - i. Bills of lading;
  - ii. Letters of credit;
  - iii. Warehouse receipts; and
  - iv. Any other document of title, in respect of an obligation to deliver goods indicated in the document, specified in a regulation issued by the competent Minister for Transportation after consultation with the Governor.
- f. **Electronic record:** information generated, communicated, received or stored by electronic means and includes, where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not.
- g. **Electronic transferable record:** a transferable document or instrument in the form of an electronic record that complies with the requirements of Article 6 of this law.
- h. **Electronic transferable records management system:** an information system for the issuance, transfer, control, presentation and storage of electronic transferable records in accordance with the rules set out in this law.
- i. **Governor:** the Governor of the Central Bank of Bahrain.
- j. **Instrument:** any of the following:
  - i. Cheques;
  - ii. Bills of exchange;
  - iii. Promissory notes; and
  - iv. Any other instruments, in respect of an obligation to pay a fixed amount of money indicated in the instrument, specified in a regulation issued by the Governor.
- k. **Transferable document or instrument:** an instrument or document issued in paper that entitles its holder to claim the performance of the obligation indicated in the instrument or document and to transfer the right to performance of the obligation

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indicated in the instrument or document through the transfer of that instrument or document; and

- I. **Operator:** a person who operates an electronic transferable records management information system.

### **Article (2) Scope of Application**

1. This Law applies to electronic transferable records whether or not an operator is used in respect of these 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.

### **Article (3) Interpretation**

Where appropriate, in the interpretation of this law regard shall be had in particular to the Electronic Communications and Transactions Law and jurisprudence, issued by the United Nations Commission on International Trade Law (UNCITRAL), on the Model Law on Electronic Transferable Records produced by UNCITRAL in 2017.

### **Article (4) Additional Information in Electronic Transferable Records**

The inclusion of information in an electronic transferable record, in addition to that required under the law to be contained in a transferable document or instrument, shall be permissible.

### **Article (5) Legal Recognition of Electronic Transferable Records**

1. An electronic transferable record may not be denied legal effect, validity or enforceability on the sole ground that it is in electronic form.

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2. Nothing in this Law requires a person to use an electronic transferable record without that person's consent. For the purpose of this, such consent may be inferred from the person's conduct.

### **Article (6) Requirements for the Use of Electronic Transferable Records**

A transferable document or instrument in the form of an electronic record is recognized where:

1. The electronic record contains the information that would be required to be contained in a transferable document or instrument as the case may be; and
2. A reliable method is used:
  - a. To identify that electronic record as the authoritative electronic transferable record;
  - b. To render that electronic record capable of being subject to control from its creation until it ceases to have any effect or validity; and
  - c. To retain the integrity of the electronic record. The criterion for assessing integrity shall be whether information contained in the electronic transferable record, including any authorized change that arises from the time of 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 or display.

### **Article (7) Control**

1. Where the law requires 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 to establish exclusive control of that electronic transferable record by a person and 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.

### **Article (8)**

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### **General Reliability Standard**

For the purposes of Articles 6, 7, 9, 11, 12 and 13 of this Law, the method referred to shall be:

1. As reliable as appropriate for the fulfilment of the purpose for which the method is used, in light of all relevant circumstances, which may include:
  - a. Any operational rules relevant to the assessment of reliability of the system;
  - b. The assurance of data integrity;
  - c. The ability to prevent unauthorized access to and use of the system;
  - d. The security of hardware and software systems;
  - e. The regularity and extent of audit of the system by an independent body;
  - f. The existence of a declaration by a supervisory body, an accreditation body or a voluntary scheme regarding the reliability of the method;
  - g. Any applicable industry standards; or
2. Proven in fact to have fulfilled the purpose referred to under paragraph (1) by itself or together with further evidence.

In the course of any legal proceedings, the reliability of the method used by an accredited operator shall be presumed unless evidence to the contrary is adduced.

### **Article (9)**

#### **Indication of Time and Place in Electronic Transferable Records**

For the purposes of indicating the time and place in a transferable document or instrument, indication of time or place in an electronic transferable record is recognized if a reliable method is used to indicate the time or place with respect to that electronic transferable record.

### **Article (10)**

#### **Endorsement**

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Where the law requires or permits the endorsement 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 5 and 6 of this law.

### **Article (11) 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 (12) Replacement of a Transferable Document or Instrument with an Electronic Transferable Record**

An electronic transferable record may replace a transferable document or instrument if a reliable method for the change of medium is used. For a change of medium to take effect, a statement indicating a change of medium shall be inserted in the electronic transferable record.

Upon issuance of the electronic transferable record, the transferable document or instrument shall become inoperative and ceases to have any effect.

In all circumstances, a change of medium shall not in any way affect the rights and obligations of the parties or any third party.

### **Article (13) Replacement of an Electronic Transferable Record with a Transferable Document or Instrument**

A transferable document or instrument may replace an electronic transferable record if a reliable method for the change of medium is used. For a change of medium to take effect a statement indicating a change of medium shall be inserted in the transferable document or instrument.

Upon issuance of the transferable document or instrument, the electronic transferable record shall become inoperative and ceases to have any effect.

In all circumstances, a change of medium shall not affect the rights and obligations of the parties or any third party.

### **Article (14)**

#### **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 outside the Kingdom.
2. Nothing in this Law affects the application to electronic transferable records of rules of private international law governing transferable documents or instruments.

### **Article (15)**

#### **Accreditation of Operators**

1. An operator which is incorporated in the Kingdom of Bahrain, or has a place of business in the Kingdom, may apply to the competent administrative agency to approve its accreditation as an accredited operator. The operator shall specify the scope of accreditation in the application. A resolution approving the accreditation and specifying its scope shall be issued by the competent administrative agency and published in the Official Gazette upon ascertaining that the operator meets the conditions and relevant criteria prescribed in this respect, including the standardization criteria to be used.
2. The competent authority shall issue a regulation specifying the conditions and relevant criteria for the accreditation of any operation and procedure for submitting and processing the application provided that such conditions and criteria may not include a requirement to use a specific type of software or hardware.
3. A fee shall be payable in respect of applying for the accreditation and an annual fee where accreditation is granted. Categories of the payable fees shall be prescribed in a regulation by the competent authority upon the approval of the Council of Ministers.
4. Accredited operators shall be subject to oversight by the competent administrative agency and such audit requirements as the competent authority may prescribe in a regulation.
5. The competent authority may by virtue of a resolution withdraw, either fully or in respect of a particular service forming part of the scope of the accreditation, the accreditation of

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an operator where the operator no longer meets the prescribed conditions and relevant criteria.

6. Before withdrawing an accreditation, the competent administrative agency shall give notice in writing, by way of a registered letter with acknowledgement of delivery, to the accredited operator of its intention to do so and specifying the reasons for the proposed withdrawal. The accredited operator may, within fourteen (14) days of receipt of the notice, submit written representations as to why the accreditation should not be withdrawn and such representations shall be considered within thirty (30) days of its receipt. Where the representation is rejected, the resolution withdrawing the accreditation shall be published in the Official Gazette.

### Article (17)

#### Accreditation of External Operators

1. An operator which is incorporated outside the Kingdom of Bahrain and does not have a place of business in the Kingdom may apply to be accredited specifying the scope of accreditation in the application. The procedure for submitting the application and its processing shall be subject to the regulation provided under paragraph (2) of Article (15) of this law.
  2. The competent authority shall issue a resolution published in the Official Gazette approving the application for accreditation and identifying its scope if the Service Provider meets the following requirements:
    - a. The operator operates in accordance with a criteria, including standardization to be used, of no lesser standard than the criteria referred to under paragraph (1) of Article (15) of this law;
    - b. The operator is accredited for the purpose of providing the scope of accreditation in a foreign jurisdiction acceptable to the competent authority; and
    - c. Any other conditions specified by the competent authority in a regulation.
  3. A fee shall be payable in respect of the application for accreditation and an annual fee for the accreditation if approved. The regulation of the competent authority provided for under paragraph (3) of Article (15) shall apply in this respect.
  4. The provisions of paragraphs (5) and (6) of Article (15) shall apply in respect withdrawing the accreditation of external operators.
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### **Article (17) Liability of Accredited Operators**

1. Subject to paragraph (3) of this Article, an operator shall be liable for damage caused to any person who reasonably relied on an electronic transferable record, for which the electronic transferable records management system of that operator has been used, where the damage is due to the operator's use of a method which does not satisfy the requirements provided under Articles 6 and 7 of this law, provided that the damage was the result of the operator's intention or negligence.
2. For the purposes of paragraph (1), if the operator is accredited, it shall be presumed that the damage was due to the accredited operator's intention or negligence unless otherwise proven.
3. Where an operator duly informs its customers in advance of any limitations on the use of its services, which may include a limitation on the value of transactions in respect of which the electronic transferable record may be used, and those limitations are recognizable to third parties, the operator shall not be liable for damage arising from the use of its services which exceeds the indicated limitations.

### **Article (18) Implementing Regulations**

Save where this law provides that it is within the competence of the competent authority, the Minister responsible for transportation or the Governor, the necessary implementation regulations related to the accreditation of operators shall be issued by the competent authority, the implementation regulations related to the transferable documents shall be issued by the Minister responsible for transportation, and the implementing regulations related to the transferable instruments shall be issued by the Governor.

### **Article (19) Coming into Force**

The Prime Minister and the Ministers shall - each in his respective capacity - be charged with the implementation of this Law which shall come into force on the first day of the month that follows sixty (60) days after the date of its publication in the Official Gazette.

*Issued in Rifa'a Palace:*

*Date: 20 Rabee'a Al'Awal 1440H*

*Corresponding: 28 November 2018*