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International Recognition of Electronic Transferable Records

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الإعتراف الدولي بالسجلات الإلكترونية القابلة للتحويل

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Abstract

Electronic transferable record General term including electronic equivalents of different title documents and negotiable instruments bills of lading, warehouse receipts, bills of exchange, promissory notes and any document or instrument considered sufficient evidence that the person in possession has the right to receive the goods or to receive them an amount of money; Common features of electronic transferable records, most notably electronic processing of transferable documents and instrument, and transferability, uniqueness, and controllability, and the UNCITRAL Model Law on Electronic Transferable Records does not aim at creating insofar regulations as it aims to create enabling rules that deal with the use of documents and instruments in an electronic environment.

The UNCITRAL Model Law on Electronic Transferable Records established a legal basis for the international recognition of national and foreign electronic transferable records, their equality with traditional authenticity documents and instruments, and emphasized that the electronic form or place where they were issued or used should not be relied upon affecting the legal validity or enforcement of such records, comparative legislation recognized the recognition of electronic transferable records.

It is hoped that the coming years will see countries adopting laws that follow the UNCITRAL Model Law for Electronic Transferable Records. As of the time of writing this article, there are seven countries that have issued specialized legislation regulating electronic transferable records whose texts include the recognition of electronic transferable records as a functional equivalent to transferable documents and instruments in addition to the recognition and non-denial of authenticity of foreign electronic transferable records; Because of its electronic form or because it is foreign.

Keywords: Electronic Transferable Records, Transferable Documents and Instruments, UNCITRAL Model Law on Electronic Transferable Records, Electronic Commerce, International Recognition of Electronic Transferable Records.

الملخص

السجل الإلكتروني القابلة للتحويل مصطلح عام يشمل المعادلات الإلكترونية لمستندات الملكية المختلفة والصكوك القابلة للتداول، مثل سندات الشحن، وإيصالات المستودعات، والكمبيالات، والسندات الإذنيه، وأي مستند أو صك يعتبر دليل كافٍ على أن الشخص الذي في حوزته يحق له استلام البضائع أو استلام مبلغ من المال، والسمات المشتركة للسجلات الإلكترونية القابلة للتحويل أهمها المعالجة الإلكترونية للمستندات

والصكوك القابلة للتحويل، والقابلية للتحويل، والتفرد، وقابلية الخضوع للسيطرة، ولا يهدف قانون الأونسيترال النموذجي للسجلات الإلكترونية القابلة للتحويل إلى خلق قواعد تنظيمية بقدر ما يهدف إلى إنشاء قواعد تمكينه تعالج استخدام المستندات والصكوك في بيئة إلكترونية.

ووضع قانون الأونسيترال النموذجي للسجلات الإلكترونية القابلة للتحويل أساساً قانونياً للاعتراف الدولي بالسجلات الإلكترونية القابلة للتحويل الوطنية والأجنبية، والمساواة بينهما وبين المستندات والصكوك التقليدية في الحجية، كما أكد على عدم التعويل على الشكل الإلكتروني أو مكان الذي أصدر أو أستخدم فيه، للتأثير على الصلاحية القانونية أو النفاذ القانوني لتلك السجلات، وقد أقرت التشريعات المقارنة الاعتراف بالسجلات الإلكترونية القابلة للتحويل.

ومن المأمول أن تشهد السنوات القادمة إقبال الدول على إصدار قوانين تقتدي بقانون الأونسيترال النموذجي للسجلات الإلكترونية القابلة للتحويل، وحتى وقت كتابة هذا المقال هناك سبعة دول أصدرت تشريعات متخصصة منظمة للسجلات الإلكترونية القابلة للتحويل تتضمن نصوصها الاعتراف بالسجلات الإلكترونية القابلة للتحويل كمكافئ وظيفي للمستندات والصكوك القابلة للتحويل بالإضافة إلى الاعتراف بالسجلات الإلكترونية الأجنبية القابلة للتحويل وعدم جواز إنكار حجيتها؛ بسبب شكلها الإلكتروني أو بسبب أنها أجنبي

الكلمات المفتاحية: السجلات الإلكترونية القابلة للتحويل، المستندات والصكوك القابلة للتحويل، قانون الأونسيترال النموذجي للسجلات الإلكترونية القابلة للتحويل، التجارة الإلكترونية، الاعتراف الدولي بالسجلات الإلكترونية القابلة للتحويل.

Introduction

The importance of foreign transferable electronic records is related to international trade, in which goods and capital cross international borders and represent great economic and commercial value for countries. Especially the capitalist countries such as the United States of America and the industrialized countries such as the Republic of China and Japan, the countries that represent a major business center and an important commercial hub for the industrialized countries and capitals such as the United Arab Emirates.

Over the past years, the movement of national and international legislation regulating electronic transferable records and their recognition has increased in light of the legal recognition of electronic writing and signature, equating them with traditional writing and signature. As of the time of writing this research, there are seven countries that have issued specialized legislation regulating electronic transferable records whose texts include recognition of electronic transferable records.

The UNCITRAL Model Law for Electronic Records constituted a great legal value, as UNCITRAL refrained from introducing that law in the form of an international treaty and preferred to pass it within non-binding model rules to constitute the product of the work of the (UNCITRAL) Committee for a period of six continuous years in which the legal and technical aspects of transferable documents and instruments were dealt with. Internationally recognized conversion is taken from the general principles of electronic commerce established by the UNCITRAL Committee within its model rules and the agreement as its starting point to represent a guiding legal model that accommodates all different legal systems and a source of inspiration for internal laws to be followed as much as possible in accordance with internal systems in order to mitigate the disagreement and conflict between national laws.

Transferable electronic records may raise many complex legal problems. Despite the interest of some foreign legislation in the subject of electronic commerce and related matters such as proof, electronic signatures, and electronic contracts, this legal field is still thorny, as there is simply no international consensus regarding the recognition of electronic records as transferable electronic records and what may arise due to the use of electronic transferable records across borders.

Therefore, dealing with the issue of international recognition of electronic transferable records by search and study would bring down the curtain on new technical legal terms that are unknown and not used. It also opens new horizons for searching for the extent to which electronic transferable records can be relied upon, with the information they contain on an electronic medium, as an alternative to transferable documents and instruments, and also alleviates the problems that may arise from the use of records, especially across borders.

Study questions

The subject of the article raises many questions about the extent to which legal systems recognize transferable electronic records? How reliable is the electronic form of the electronic transferable record? What is the extent of recognition of the foreign electronic transferable record? What foreign standards does that record? When can that record be foreign, and when can it be national? Perhaps providing an answer to these questions will provide legal certainty for the recognition of electronic transferable records.

Objectives of the study

The article aims to indicate the extent of international recognition of electronic transferable records, define the concept of electronic transferable records, the extent of international recognition of electronic transferable records, the principles used to achieve this, and indicate when that record is foreign and when it is national, as well as criteria that can be relied upon in that regard.

The study will use a comparative analytical approach, so we will try to make some comparisons between the rules governing this subject in the instruments of the United Nations Commission on International Trade Law (UNCITRAL), whether agreement or model, and the internal legislation of other countries that have adopted electronic transferable records within their internal rules. The study will analyze those texts and find their consistency with the UNCITRAL Model Law on Electronic Transferable Records.

1. The concept of electronic transferable records

The term “electronic records” derives from the concept of “data message,” which was previously established by the UNCITRAL Model Law for Electronic Commerce in 1996 and used by the New York Electronic Communications Agreement in 2005. However, there is a difference between the concepts of “electronic records” and “data messages”, as electronic records, unlike data messages, can add information to them after their inception.

This information is related to endorsement processes, which are entered into the electronic record after its creation and on the occasion of a transfer from one person to another⁽¹⁾. The concept of an electronic transferable record is consistent with the concept of electronic transport records contained in Article 18/1 of the Rotterdam Convention of 2008⁽²⁾.

1.1. The concept of transferable electronic records from the perspective of the functional equivalence approach

The electronic transferable record expresses the functional counterpart of the transferable document or instrument and does not differ from them in anything except the electronic

⁽¹⁾Document No. A/CN.9/WG.IV/WP.124, Official Records of the United Nations, Draft Provisions Concerning Electronic Transferable Records, Forty-eighth Session, Vienna, 2013, P6. item 16; Explanatory note to the UNCITRAL Model Law on Electronic Transferable Records, Para. 34.

⁽²⁾Nader Mohamed Ibrahim. UNCITRAL Model Law on Electronic Transferable Records of 2017, Scientific Conference on Law and the Digital Age, Qatar, 2018, P14.

form that was created in order for these instruments and documents to keep pace with the developments of the times and be in line with electronic commerce⁽³⁾.

Transferable documents and instruments are important papers, The use of electronic counterparts can be very useful for facilitating electronic commerce, Their best applications are electronic bills of lading, checks, and promissory notes⁽⁴⁾.

Transferable documents (documents of title) are termed documents of carriage, bills of lading, dock orders, merchandise receipt vouchers, warehouse receipts, or merchandise delivery orders, as well as any documents deemed sufficient evidence that the person in possession of the document is entitled to receive the merchandise it is covered, kept, and disposed of (subject to any defenses to enforce that document), and transferable documents may be defined as “documents which are dealt with in the course of business as sufficiently showing that the person in possession of such a document is entitled to receive, hold, and dispose of the goods referred to in”⁽⁵⁾.

As for transferable instruments, they include promissory notes, transfers, checks, and certificates of deposit, Transferable instruments can be defined as commercial papers that allow the transfer of the instrument to persons who are not parties to the basic transaction and may contain an unconditional undertaking to pay a fixed amount of money to the holder of the instrument or an order to a third party to pay the instrument holder⁽⁶⁾.

Transferable documents and instruments are generally described as paper documents that give the holder the right to demand the performance of the obligation referred to them and to transfer the right to perform the obligation referred to through the transfer of that document or instrument⁽⁷⁾.

Transferable documents and instruments can be defined in general as “a paper document or instrument that gives its holder the right to demand the performance of the obligation

⁽³⁾Document No. A/CN.9/WG.IV/WP.122, Official Records of the United Nations, Draft Provisions for Electronic Transferable Records, New York, 2013, P4.

⁽⁴⁾Seok-Beom Chol. Compliance of Electronic Bill of Lading Regulation in Korea with Model Law on Electronic Transferable Records. Journal of Korea Trade, Volume 23, Issue 3, 2019, P70.

⁽⁵⁾Henry Deeb Gabriel. The UNCITRAL Model Law on Electronic Transferable Records Law: Streamlining Monetary Payments and the Transfer of Goods Through E-Commerce, Kilaw Journal, Volume 8, Special Supplement, Issue 4, Part 2, January 2020, P194.

⁽⁶⁾Henry Deeb Gabriel. The UNCITRAL Model Law on Electronic Transferable Records Law: Streamlining Monetary Payments and the Transfer of Goods Through E-Commerce, *ibid.* P195.

⁽⁷⁾Jung-Ho Yang. Applicability of Block chain based Bill of Lading under the Rotterdam Rules and UNCITRAL Model Law on Electronic Transferable Records. Journal of Korea Trade, Volume23, Issue 6, 2019, P121.

or transfer the right to perform the obligation by endorsing or delivering that document or instrument^{»(8)}.

The truth is that transferable documents and instruments are an open category that cannot be limited to certain types without others, because determining whether a document or instrument is transferable or not is a matter of domestic law, and what may be a transferable document or instrument in a legal system may not be as well as in another legal system, and that any attempt to limit specific categories within the concept of electronic transferable records would be a serious mistake, especially in light of the divergence of legal systems⁽⁹⁾.

1.2. The concept of electronic transferable records as an electronic record

UNCITRAL did not set an explicit definition of electronic transferable records but merely referred to the definition of its functional equivalent, the transferable document or instrument, which it indicated was issued on paper in reference to the paper documents and instruments recognized in the various legal systems and which entitle its holder⁽¹⁰⁾ demand performance⁽¹¹⁾ contained therein and has the right to transfer⁽¹²⁾ in transferable documents and instruments relate to the transfer of possession from one person to another, while in electronic transferable records it means the transfer of control over the electronic transferable record from one person to another⁽¹³⁾.

The UNCITRAL Model Law on Electronic Transferable Records defines an electronic record as: “Electronic record means information generated, communicated, received, or stored by electronic means, including, where appropriate, all information logically associated with or otherwise linked together to become part of the record, whether generated contemporaneously or not” He singled out a definition of electronic transferable records

⁽⁸⁾Seok-Beom Chol. Op. Cit. P70.

⁽⁹⁾Zvonimir Šafranko. Legal aspects of the use of electronic transferable records in commercial transactions Translation, Thesis (PhD) University of Zagreb, Faculty of Law, Croatia, 2016. P50.

⁽¹⁰⁾A possessor is a person who issues an electronic transferable record in his favor or transfers to him. The UNCITRAL Model Law 2017 developed the idea of possession because it cannot be imagined in the electronic environment and replaced it with the idea of control, which means that the electronic record is subject to control, dominance and acquisition by a specific person who has the right to do so because that record is linked to his person.

⁽¹¹⁾Performance of obligation means delivery of goods or payment of an amount of money as indicated in a paper transferable document or instrument or electronic transferable record.

⁽¹²⁾Transfer in transferable documents and instruments relate to the transfer of possession from one person to another, while in electronic transferable records it means the transfer of control over the electronic transferable record from one person to another.

⁽¹³⁾Henry Deeb Gabriel. The UNCITRAL Model Law on Electronic Transferable Records Law: Streamlining Monetary Payments and the Transfer of Goods Through E-Commerce, Op. Cit. P195.

as an electronic transferable record,” which is an electronic record that complies with the requirements of Article 10; “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”⁽¹⁴⁾.

Article 10 of the UNCITRAL Model Law 2017 states: 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”.

It appears from the foregoing that there is no complete and comprehensive definition of an electronic transferable record, but there is a reference to the requirements that must be met in order to meet the conditions stipulated in the Model Law and specified in Article 10, and it follows from that definition that this term refers to the electronic equivalent document or the instrument that is transferable as provided for in domestic law⁽¹⁵⁾.

⁽¹⁴⁾UNCITRAL Model Law on Electronic Transferable Records 2017, Article 2.

⁽¹⁵⁾Maria Dragun-Gertner. UNCITRAL model law on electronic transferable records and its importance in the carriage of goods by sea. *Prawo Morskie*, 2019, XXXVII, p.22.

The UNCITRAL Model Law on Electronic Transferable Records did not explicitly define the content of the rights included in electronic transferable records because electronic transferable records are a generic term intended to cover electronic equivalents of different types of transferable documents and instruments that can embody different rights⁽¹⁶⁾.

It should be noted that the Model Law and considerations relating to private international law rules did not address the definition of the concept of certain issues within the concept of electronic transferable record in relation to its use, where it considers that they are matters of domestic law and do not require a dedicated judgment, such as the definition of performance of the obligation, issuing the electronic record to the holder, changing the transfer methods from an electronic transferable record issued to the holder to an electronic record issued to a designated person and vice versa, Nor did the Model Law address the issue of the reissuance, fragmentation, compilation or use of an electronic transferable record for security rights⁽¹⁷⁾.

There is a view that electronic transferable records are defined as “an electronic alternative functionally equivalent to transferable documents or instruments and flexible enough to include the development and use of electronic transferable records that do not have an equivalent in a paper-based system, as these records are not governed by the Model Law⁽¹⁸⁾”.

However, the previous definition is under consideration. This is because it contradicts the UNCITRAL Model Law 2017, on which the functional equivalence approach was taken as a basis, and therefore this definition expands to include all types of transferable electronic records, whether they have a functional counterpart or do not have a functional equivalent, and therefore it falls within the scope of that definition non-equivalent electronic transferable records.

Another view goes to the definition of electronic transferable records as an electronic record issued individually to which the right to claim the delivery of the goods or to claim the payment attaches in such a manner that the right indicated in the electronic record cannot be claimed without the demonstration of control over the electronic record, nor can it be transferred to another person without the simultaneous transfer of control over the electronic record to that person⁽¹⁹⁾.

⁽¹⁶⁾Zvonimir Šafranko. The Notion of Electronic Transferable Records. *InterEULawEast: journal for the international and European law, economics and market integrations*, Volume3, Issue 2, 2016. P19.

⁽¹⁷⁾Explanatory Note to the UNCITRAL Model Law for Electronic Transferable Records, Para. 24.

⁽¹⁸⁾Seok-Beom Choi. *Op. Cit.* P70.

⁽¹⁹⁾Zvonimir Šafranko. The Notion of Electronic Transferable Records, *Op. Cit.* P27.

The definition of the second opinion is consistent with the approach followed by the UNCITRAL Model Law 2017. That definition was based on the electronic form and gave special attention to the idea of control. However, at the same time, the definition neglected to refer to the paper equivalent of electronic transferable records, which differs from one country to another and is determined according to the internal laws of countries, in addition to limiting the functional equivalence approach to the idea of control, forgetting that this approach depends on several requirements, including writing and signing, and the electronic transferable record can be defined as “the electronic equivalent of transferable documents and instruments.”

1.3. The concept of electronic transferable records in comparative legislation

The legislation of the Kingdom of Bahrain

The Bahraini legislator did not define the concept of a transferable document or instrument and at the same time used the term bond to denote transferable documents and indicated that a transferable document could be bills of lading, letters of credit, or warehouse receipts, It also allowed the Minister of Communications, in consultation with the Governor of the Central Bank of the Kingdom of Bahrain, to add other types of documents, provided that the subject matter of the obligation is the delivery of goods and negotiable⁽²⁰⁾.

The Bahraini legislator also indicated that the transferable instrument could be checks, bills of exchange, or promissory notes, and it allowed the Governor of the Central Bank of the Kingdom of Bahrain the possibility of adding other types of instruments, provided that the object of commitment is in them. Payment of a negotiable amount of money⁽²¹⁾.

The Bahraini legislator favored the use of the term negotiable as a substitute for transferability, which was adopted by UNCITRAL, as the electronic negotiable record was defined in Article 1 of Decree Law No. 55 of 2018 regarding electronic negotiable records as “a negotiable bond or instrument, in the form of an electronic record, complete with the conditions stipulated in Article 6 of this law”, and that article specified the conditions that must be met in order for a bond or transferable instrument to be valid in its electronic form⁽²²⁾.

⁽²⁰⁾Decree Law No. 55 of 2018 regarding negotiable electronic records, Official Gazette, State of Bahrain, Issue 3395, Thursday 29 November 2018, Article.1.

⁽²¹⁾Decree Law No. 55 of 2018 regarding negotiable electronic records, Official Gazette, State of Bahrain, Issue 3395, Thursday 29 November 2018, Article.1.

⁽²²⁾Decree-Law No. 55 of 2018 regarding negotiable electronic records, Official Gazette, State of Bahrain, Issue 3395,

Whereas, Article 6 of the aforementioned law stipulates that “a negotiable bond or instrument that is in the form of an electronic record shall be considered when it meets the following conditions: (1) If the electronic record includes the information that the negotiable bond or instrument must contain, as the case may be (2) If a reliable method is used to: (a) indicate that the electronic record is the negotiable electronic record to be relied upon. (b) ensure that the electronic negotiable record is subject to control from its creation until its expiration or validity. (c) ensure that the integrity of the electronic record is maintained...”

Abu Dhabi Global Market Legislation (United Arab Emirates)

Whereas, the UAE legislator in the Abu Dhabi Market Electronic Transactions Regulations 2021 referred to the concept of a transferable document or instrument in Article 28, as it stipulated, “Transferable Document or Instrument” means a document or instrument capable of being created 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”.

The aforementioned regulation also stated that an electronic transferable record must meet several conditions, as set forth in Article 17 of the same law, where Article 28/9 stipulates that “electronic transferable record” is an electronic record that complies with the requirements of Article 17”. While Article 17 specified the requirements that must be met in transferable documents and instruments, as Article 17 stipulated:” Where an enactment requires or permits 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”.

Thursday 29 November 2018, Article.6.

The legislation of the Republic of Kiribati

Whereas, the State of Kiribati⁽²³⁾ in the Electronic Transactions Law No. 11 of 2021 defined the concept of a transferable document or instrument in Article 3, as it stipulated “transferable document or instrument” means a document or instrument issued on paper that entitles the holder to; (a).claim the performance of the obligation indicated in the document or instrument; and(b).transfer the right to performance of the obligation indicated in the document or instrument through the transfer of that document or instrument”.

Also, the aforementioned law did not define the concept of transferable electronic records and indicated that they are those transferable electronic records that comply with the stipulated legal requirements, as Article 3/6 stipulates: “electronic transferable record” means computer data that complies with the requirement of Article 27”. While Article 27 dealt with the requirements that must be met, as it stipulated, “A written law that requires a transferable document or instrument is met by particular computer data if: (a) the computer data contains the information that would be required to be contained in a transferable document or instrument; and (b) a reliable method is used to:

- i. Identify that computer data as the electronic transferable record;
- ii. Render that computer data capable of being subject to control from its creation until it ceases to have any effect or validity; and
- iii. Retain the integrity of that computer data...”.
- iv. The legislation of the Kingdom of Belize

In the same direction, the Kingdom of Belize⁽²⁴⁾ followed Electronic Transactions Law No. 25 of 2021, as it stipulated in Article 3” transferable document or instrument” means a document or instrument issued on paper that entitles the holder to:

- a. claim the performance of the obligation indicated in the document or instrument; and

⁽²³⁾The Republic of Kiribati is a state with a republican system of government, consisting of a group of islands of approximately 32 islands, located in the Pacific Ocean, its capital (South Tarawa), independence from Britain in 1979, and becoming a member of the United Nations in 1999, and the legal system Its dominant derives from English common law.

⁽²⁴⁾The Kingdom of Belize is a country with a constitutional monarchy system of government, located in northern Central America, south of Mexico, with its capital (Belmopan), independence from Britain in 1981, and becoming a member of the United Nations in 1981, and the prevailing legal system is derived from English common law.

- b. transfer the right to performance of the obligation indicated in the document or instrument through the transfer of that document or instrument”.

As well as the text of the aforementioned law in Article 3” electronic transferable record” means an electronic record that complies with the requirements of Article 33”. while Article 33 stipulated,” (1) A rule of law that requires a transferable document or instrument is met by a data message if (a) the data message contains the information that would be required to be contained in a transferable document or instrument; and (b) a reliable method is used to:

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

The legislation of the Republic of Singapore

While the legislator of the Republic of Singapore singled out, in the amendment he made to the Electronic Transactions Law, Law No. 5 of 2021, a special definition of transferable documents and instruments and set examples for them, as he defined them in Article 16/a as “transferable document or instrument” means a document or an 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, and includes:

- a. a bill of exchange;
- b. a promissory note; and
- c. a bill of lading”.

Likewise, the aforementioned law did not specify the concept of electronic transferable records. Article 16/a stipulates that “electronic transferable record means an electronic record that complies with all the requirements of Article 16/H”. While it was stipulated in Article 16/h on (1) where a rule of 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 the transferable document or instrument; and
- b. A reliable method is used:
 - i. To identify that electronic record as the authoritative electronic record constituting 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...”.

Based on the foregoing, the definitions provided by the aforementioned laws indicate that they did not set an explicit and direct definition of transferable electronic records as electronic records, and at the same time adopted the principle of functional equivalence for transferable documents and instruments, and only referred to the requirements that must be met in electronic transferable records. As a functional counterpart to a transferable document or instrument, it is the same approach previously established by the UNCITRAL Model Law on Electronic Transferable Records.

It is also clear that the comparative legislation, which issued laws regulating transferable electronic records and granting them legal recognition, followed the same approach taken by UNCITRAL, and those laws are compatible with it in defining the concept of transferable documents and instruments and electronic transferable records. Transferable or not, it does not have the slightest resonance or importance, as it is a matter that falls within the scope of the relevant law.

The Legislation of the Arab Republic of Egypt

Egyptian laws did not address Egypt's Electronic Signature Law No. 15 of 2004 in recognition of electronic transferable records. And it did not define the concept of transferable documents, instruments, and their possible issuance in electronic form. General rules of Egyptian law will be reviewed to determine the extent to which electronic transferable records can be used in the country. And to search for the existence of legal rules prohibiting the electronic processing of transferable documents or instruments.

The Egyptian legislator used the term instrument in several places in the Egyptian Commercial Law No. 17 of 1999, where it stipulated in Article 65: “Every instrument whose subject is the payment of a sum of money or the delivery of goods may be negotiated by endorsement if it is to the creditor’s order or by handling if it is to bearer,” while it was rumored that the term instrument is used in other places in the commercial law, where the term instrument was used in relation to the deposit contract in public warehouses and the possibility of trading that instrument whenever the conditions are met, in the text of Article 136, while the Egyptian legislator, when he reviewed the organization of the transport document, did not use the term instrument, as it stated In Article 220 of the Commercial Code, it is stipulated that “the transfer document may be drawn up in the name of a specific person, his ordering person, or the bearer, and the document shall be circulated in accordance with the rules of transfer of rights stipulated in the Civil Code if it is in nominal terms, by endorsement if it is to order, and by handling if it is to the bearer.”

The Egyptian legislator also addressed the term instrument when he spoke about the bill of exchange in Article 379 of the Egyptian Commercial Law 1999 and stated that it could be traded by endorsement under certain conditions. He also addressed the promissory note, describing it as an instrument in Article 469 of the Egyptian Commercial Law 1999, and he expanded in Article 470 and confirmed the promissory note is subject to the same provisions as the bill of exchange, including the circulation process. Finally, the Egyptian legislator dealt with regulating the process of issuing checks and also describing the instrument in Article 473, paragraph A, where it states: “The word check is written in the body of the instrument and in the language in which it is written.” While articles 486 and 496 dealt with the process of regulating the circulation of a check.

The Egyptian legislator also dealt with the term “check deposit” in articles 310, 311, and 312. The check deposit is the deposit of a sum of money in banks for a specific period in exchange for a profit value that is credited to the depositor’s account, and the Egyptian Commercial Law did not mention the possibility of trading the instrument deposit.

The truth is that the Egyptian legislator used the term instrument and document in the Egyptian Commercial Law No. 17 of 1999 in several places, and it was not limited to commercial papers only but rather described several other documents that are negotiable with instruments, including the public warehouse receipt, which includes an obligation to deliver goods, while he used documents that are negotiable by instruments. transfer when talking about the transport document in Article 220 of the Commercial Law, and therefore

the distinction between the document and the instrument has no echo in Egyptian law, and we will use the term documents and instruments to refer to all documents and instruments mentioned in Egyptian law, whether in the 1999 Trade Law or in any legal regulation.

The Egyptian legislator approved in the Electronic Signature Law No. 15 of 2004 the same principle established by the UNCITRAL Model Law on Electronic Commerce 1996 regarding the legal recognition of data messages, as the Egyptian law stated in Article 5 that “information does not lose its legal effect, validity, or enforceability simply because it is in the form of a data message,” and the electronic editor was defined as “a data message that includes information that is generated, merged, stored, sent, or received, in whole or in part, by electronic, digital, optical, or any other similar means.” The Egyptian legislator elaborated and decided that electronic writing and electronic documents are within the scope of transactions. Civil, commercial, and administrative documents with the authenticity prescribed for official and customary documents in the provisions of the Evidence Law in civil and commercial matters, as long as they meet their conditions stipulated in this law in accordance with the technical and technological controls specified by the executive regulations of this law, and therefore the electronic signature law has settled that issue, and it has become the editor’s electronic document, which has the same legal value as a paper document⁽²⁵⁾.

The question that arises is whether it is permissible to process the paper instruments referred to in the Egyptian Commercial Law into electronic transferable records? so that we can say that Egyptian law is prepared to issue the Electronic Transferable Records Law based on the Model Law 2017, and it is possible to carry out a legislative reform process targeting the Commercial Law. Is Egyptian e-commerce consistent with international legal texts and keeping pace with the development that has occurred in the international legal system for e-commerce, especially the UNCITRAL Model Law for Electronic Transferable Records 2017, or not? The answer to this question is that there is no legal text that prevents this, and it is permitted by general legal rules, and legal authority is granted to electronic records (electronic documents) as stated in the previously mentioned Egyptian Electronic Signature Law. However, from a technical standpoint, this is impossible at the present time. This is because there is a technological gap that Egypt is experiencing, especially in these areas, due to weak infrastructure and a lack of expertise in that field, especially since Egypt is not a fertile country for attracting investments in general.

⁽²⁵⁾Mustafa Kamal Taha, Wael Anwar Bunduq, *Commercial Papers and Modern Electronic Payment Methods*, Al-Wafa Legal Library, Alexandria, 2016, P492.

2. International recognition of electronic transferable records

The basis for the international recognition of electronic transferable records is governed by two basic ideas. The first idea stems from non-discrimination against the electronic form of electronic transactions. The second idea, which is related to cross-border electronic transactions and non-discrimination against them, is that the place of their origin or use is not the only reason for denying their validity or enforceability.

2.1. Non-discrimination against electronic transferable records due to their electronic form.

This principle finds its basis in what was decided by the International Trade Law Commission, known as UNCITRAL, in its model laws and agreements issued by it in order to root out the idea of electronic form and its acceptance in commercial transactions. Its legal recognition and validity are simply because it was mentioned in an electronic form. The other provisions of this law attempt to embody this principle with a series of enabling rules that grant legal recognition to electronic forms of transferable documents and instruments⁽⁽²⁶⁾⁾.

UNCITRAL has established that electronic commerce will not be accepted internationally if the legal authenticity of the data message, the legal recognition of it and the data and information it contains are not affirmed, and that it is not permissible to deny its validity, legal effect, or validity because it was found in electronic form. Therefore, this important principle is always recalled. in all texts issued by UNCITRAL in the scope of electronic commerce, until it became one of the basic pillars of electronic commerce.

2.1.1. Position of the United Nations Commission on International Trade Law From the principle of non-discrimination against the electronic form

The position of the UNCITRAL Model Law on Electronic Commerce 1996:

This principle is considered one of the most important principles adopted by the UNCITRAL Committee and sought to confirm it in its subsequent works on the Electronic Commerce Law of 1996. It also stressed the lack of reliance on traditional rules of evidence, which may conflict or prevent the acceptance of a data message as evidence of proof because of its electronic form, provided that reliability is authentic. Data message or not regarding the acceptability of the procedures followed in creating, storing and sending the data

⁽²⁶⁾Henry Deeb Gabriel. 'The UNCITRAL Model Law on Electronic Transferable Records Law: Streamlining Monetary Payments and the Transfer of Goods Through E-Commerce' Op. Cit. P193.

message and the integrity of the information contained therein, in addition to determining the identity of the originator and any other procedures related to the credibility of the message⁽²⁷⁾.

The explanatory note to the UNCITRAL Model Law on Electronic Commerce 1996 indicates that the text of Article 5 of this law embodies the basic principle that no discrimination should be made against a data message and that there should be no distinction in treatment between a data message and paper documents, and that principle confirms that the form should not be sole reason for denying legal force or enforceability means legal force regardless of any legal requirements necessitating the existence of the original writing or editor and for this principle to have general application and that principle indicates that the form may not be the only reason for denying legal force or enforceability at the same time, this should not be misinterpreted as the acceptance and validity of all data messages⁽²⁸⁾.

Orientation of the UNCITRAL Model Law on Electronic Signatures 2001:

And at the same pace, the UNCITRAL Model Law on Electronic Signatures 2001 adopted in Article 5 the same concept, which emphasized the inadmissibility of denying the authenticity of the electronic signature because it was made in electronic form and also confirmed that there is no difference in the treatment between electronically signed messages and traditional messages that bear a written signature UNCITRAL followed this with an exception to that principle, according to which this principle does not affect the freedom of the parties, who have absolute freedom in determining a certain type of electronic signature technology without the other⁽²⁹⁾.

Orientation of the Electronic Communications, Convention New York, 2005:

It is worth noting that UNCITRAL used the same principle in the United Nations Convention on the Use of Electronic Communications, New York 2005, with the aim of establishing a legal basis for the authenticity of electronic communications used in international trade. The text of Article 8, which stipulates: “1- It is not permissible to deny the validity of the letter or the contract or the possibility of its enforcement just because it is in the form of an electronic letter”.

⁽²⁷⁾UNCITRAL Model Law on Electronic Commerce 1996, Articles.5&9.

⁽²⁸⁾Explanatory note to the UNCITRAL Model Law on Electronic Commerce, P30. Item 46.

⁽²⁹⁾UNCITRAL Model Law on Electronic Signature 2001, Articles 3 and 5 of; The explanatory memorandum of the same law, P58. Item 107.

Orientation of the UNCITRAL Model Law for Electronic Transferable Records 2017:

It is from this principle that UNCITRAL, in its law on electronic transferable records, proceeded with the legal text on the inadmissibility of discrimination against electronic transferable records, as the UNCITRAL Law of 2017 stipulated in Article 7/1 that “the legal effect, validity, or enforceability of an electronic transferable record may not be denied.” for no reason other than its electronic form.

The aforementioned text of Article 7 gives full authoritativeness to electronic transferable records and their legal recognition, and it is not permissible to deny the authoritativeness of transferable documents and instruments because they were received in electronic form, but the text of that article should not be misunderstood as an absolute legal recognition, since the purpose of one of the stipulations to recognize the legal validity of the electronic record is to dissolve the difference between the traditional document and the electronic record because of the support it contains.

That principle also indicates that reliance on the electronic form alone should not be the basis for denying the electronic record, its validity, or the necessity of its expiration, and this principle should not be misunderstood or interpreted by referring to the authenticity of the evidence of the electronic record and the information contained therein⁽³⁰⁾.

The principle of non-discrimination against electronic records indicates that electronic transferable records should not be discriminated against on the grounds that their electronic form cannot be grounds for denying legal effectiveness, validity or enforceability, and the legal validity of the electronic form is derived from substantive law (domestic law), which often includes legal recognition of the electronic form of the data message, which includes the implementation of the aforementioned principle of non-discrimination⁽³¹⁾.

2.1.2. The position of comparative legislation From the principle of non-discrimination against the electronic form

Many countries have hastened to endorse that principle, regulate the recognition of electronic records in general, and emphasize their authority in evidence and their being equal to traditional documents in evidence as complete written evidence recognizes the legal authority of electronic records, such as in France. other legal systems have preferred to issue

⁽³⁰⁾Explanatory Note to the UNCITRAL Model Law on Electronic Transferable Records, P26, Item 60.

⁽³¹⁾Niels-Philip Abdellatif. An Ethereum bill of lading under the UNCITRAL MLETR.” Maastricht journal of European and comparative law, Volume 27, Issue 2, 2020,P 265.

laws specific to electronic commerce, such as Egypt⁽³²⁾.

Although most countries did not explicitly adopt the Model Law for Electronic Transferable Records, the idea of recognizing the electronic form of electronic records is at the heart of those laws. Accordingly, many countries have embraced the principle of equality between electronic records and paper documents with regard to evidence.

The legislation of the Kingdom of Bahrain

The Bahraini legislator has approved the legal recognition of electronic transferable records in Decree Law No. 55 of 2018 regarding electronic negotiable records. In that law, the legal recognition of the electronic transferable record and the inadmissibility of denying its authenticity due to its electronic form were explicitly addressed in the text of Article 5, which states, “It is not denied the legal effect, validity, or enforceability of an electronic negotiable record merely because it is in electronic form.”

Abu Dhabi Global Market Legislation (United Arab Emirates)

In the same direction, the UAE legislator adopted the principle of non-discrimination against the aforementioned electronic form, so he decided not to discriminate against the electronic record because of its electronic form and its equality with regard to the legal validity of traditional documents in the Abu Dhabi Global Market (ADGM), represented by the Electronic Transactions Regulations for the year 2021, as it dealt with the first part of the regulation Article 1 under the name of legal recognition of electronic records.”¹Legal recognition of electronic records “An electronic record has the same legal effect, validity, and enforceability as if it were in tangible written form”.

The legislation of the Republic of Singapore

And the Republic of Singapore has followed in the same direction in Law No. 5 of 2021 amending the Electronic Transactions Law, as it affirmed the inadmissibility of distinguishing between the electronic and paper record due to the electronic form and the full legal validity of the electronic transferable records, as it stipulated in Article 16/e that “To avoid doubt, an electronic transferable record is not to be denied legal effect, validity, or enforceability solely on the ground that it is in the form of an electronic record”.

⁽³²⁾Khaled Hassan Ahmed. *The Legal Authenticity of Electronic Documents Between Islamic Jurisprudence and Positive Law, A Comparative Study*, Center for Arab Studies, Cairo, 2016, P158; The Egyptian legislator issued Law No. 15 of 2004 on electronic signature, which includes regulations for electronic signature and electronic authentication, and the establishment of the Industries Development Authority.

The legislation of the Republic of Kiribati

The Republic of Kiribati adopted the same principle in the Electronic Transactions Law No. 11 of 2021, as stipulated in Article 9” Information shall not be denied legal effect, validity, enforceability, or admissibility solely on the ground that it is; (a). in the form of electronic communication or computer data; or (b).not contained in the electronic communication or computer data purporting to give rise to such legal effect but is merely referred to in that electronic communication or computer data”.

The legislation of the Kingdom of Belize

The same principle was approved by the Kingdom of Belize, as Electronic Transactions Law No. 25 of 2021 referred to the same principle in the text of Article 7 on “An electronic communication shall not be denied legal effect, validity, admissibility, or enforceability solely on the ground that it is:

(a) rendered or made available in electronic form”.

The legislation of the Republic of Paraguay

The Republic of Paraguay has adopted the same principle in Law No. 6822/2021 regarding reliable services for electronic transactions, electronic documents, and electronic transferable records, as it stipulated in Article 62/1 on Legal effects and admissibility of electronic documents. “1. Legal effects or admissibility in private, judicial, and administrative proceedings will not be denied to an electronic document for the mere fact of being in electronic format”.

The Legislation of the Kingdom of Papua New Guinea

The State of Papua New Guinea (Papua New Guinea) approved the same idea and followed the same steps in the Electronic Transactions Law No. 38 of 2021 issued on February 23, 2022, as it stipulated in Article 9/1 “(1)An information shall not be denied legal effect, validity, or enforceability solely on the grounds that: (a)it is in the form of an electronic record”.

Based on what was previously presented, it is clear that there is an international consensus on adopting the UNCITRAL Model Law for Electronic Transferable Records and stipulating the recognition of the full authenticity of electronic records in general and

electronic transferable records in particular, with an emphasis on the inadmissibility of distinguishing between them and their traditional counterparts because they are mentioned in Electronic form with the possibility of reliability in mind as evidence of proof.

In addition to the foregoing, the comparative legislations, which has not yet issued a law dealing with electronic transferable records. and if the terms that I used differed in expressing the electronic record, such as the electronic document, the electronic document, or the electronic writing, it expresses a common meaning that does not deviate from the concept of the data message. Which consists of information generated, sent, received, or stored electronically⁽³³⁾.

Accordingly, the electronic record that meets the technical and legal requirements has the same legal authority as the paper document, and there is no difference between them because they have the same legal value, so there is no difference between the paper document and the electronic record, and it has all the legal effects of the paper document in addition to being considered evidence and argument in proof⁽³⁴⁾.

And that the electronic record has become impossible to limit in all of its forms, as it has become synonymous with the traditional document and enjoys the same authoritative and legal recognition granted to the traditional document, which is considered the only way to deal in commercial and civil life, such as electronic letters, electronic contracts, financial and administrative records, and transferable electronic records⁽³⁵⁾.

2.2.Non-discrimination against foreign electronic transferable records

UNCITRAL has established a basic principle to combat discrimination against foreign electronic transactions. Its content is that the place of origin of the electronic transaction should not in any way be a basis for discrimination or recognition against it. This principle includes the legal recognition of foreign electronic signatures or foreign document certificates without relying on any of them. Therefore, the consideration of the authenticity of those records, signatures, or certificates and the extent to which they can be recognized the place of their issuance should not be a factor in determining this⁽³⁶⁾.

⁽³³⁾Safwan Hamza Ibrahim Issa. Legal Provisions for Electronic Commerce Contracts, Dar Al-Nahda Al-Arabiya, Cairo, 2016, P148.

⁽³⁴⁾Khaled Hassan Ahmed. Op. Cit. P220.

⁽³⁵⁾Alaa Hussain Mutlaq. The Electronic Archive, A Comparative Study, Dar Al-Nahda Al-Arabiya, Cairo, 2010, P142.

⁽³⁶⁾Emad Magdy Abdel-Malik. E-commerce, Arab and International, New Publications House, Alexandria, 2011, P585.

2.2.1. The position of the United Nations Commission on International Trade Law (UNCITRAL) on the principle of non-discrimination against foreign electronic transactions

The UNCITRAL Model Law on Electronic Signatures 2001 adopted that principle by recognizing the cross-border electronic signature and emphasized its importance in the text of Article 12 “Recognition of foreign certificates and electronic signatures”¹. In determining whether, or to what extent, a certificate or an electronic signature is legally effective, no regard shall be had: (a) To the geographic location where the certificate is issued or the electronic signature created or used; or (b) To the geographic location of the place of business of the issuer or signatory.² A certificate issued outside [the enacting State] shall have the same legal effect in [the enacting State] as a certificate issued in [the enacting State] if it offers a substantially equivalent level of reliability³. An electronic signature created or used outside [the enacting State] shall have the same legal effect in [the enacting State] as an electronic signature created or used in [the enacting State] if it offers a substantially equivalent level of reliability”.

Article 12 of the Electronic Signatures Model Law 2001 embodies a general principle of non-geographical non-discrimination in cross-border electronic transactions⁽³⁷⁾. The Explanatory Note to the UNCITRAL Model Law on Electronic Signatures 2001 sets out the general rule of non-discrimination: place of origin, in and of itself, should in no way be a factor determining whether and to what extent foreign electronic certificates or electronic signatures should be recognized and deemed to be legally valid, and the legal validity of the certificate or electronic signature should not depend on the place where it was issued⁽³⁸⁾.

From the aforementioned standpoint, the UNCITRAL Committee stressed the importance of recognizing foreign electronic transferable records. The main objective of the report on the principle of non-discrimination against foreign electronic transferable records is to support the expansion of commercial practices using electronic transferable records on an international level. Recognition of cross-border electronic records⁽³⁹⁾. And to prevent the place of creation of the transferable electronic record in itself as a reason to deny its legal

⁽³⁷⁾Document No. A/CN.9/WG.IV/WP.118/Add.1, Official Document of the United Nations, Legal Issues Relating to the Use of Electronic Transferable Records, Forty-sixth Session, Vienna, 2012, p.19. Item 66.

⁽³⁸⁾Guide to Enactment for the Electronic Signature Model Law 2001, Article 152; Document No. A/CN.9/483, Official Records of the United Nations, entitled Report of the Working Group on Electronic Commerce on the Work of its Thirty-seventh Session, Vienna, 2001, p.9. Item 27.

⁽³⁹⁾Document No. A/CN.9/863, Official Records of the United Nations, entitled Report of Working Group IV (On Electronic Commerce), on the work of its fifty-second session, New York, 2016, p. 19. Item 81.

validity or legal effect, but in all cases, the electronic transferable record must meet the legal requirements imposed by the applicable law in order to acquire legal validity therein⁽⁽⁴⁰⁾⁾.

The Model Law for Electronic Transferable Records 2017 paid great attention to the principle of non-discrimination against foreign electronic transferable records, which affirms the non-discrimination against the foreign electronic record because it is not national and there is no difference in treatment or recognition because the electronic transferable record is foreign to the law applicable because it was issued outside the geographical scope of the country whose law must be applied, which is known as the foreign electronic transferable record. UNCITRAL sought, behind this concern, to emphasize the future importance of cross-border electronic transferable records in international trade in general and international trade payments in particular⁽⁽⁴¹⁾⁾.

The Model Law provides limited guidance on cross-border transactions in Article 19 of the 2017 Model Law. Although the Model Law is intended to serve as a model for domestic legislation, it is expected that there will be a significant number of cross-border electronic transferable records transactions, and this does not apply only on bills of lading, which by their nature often create cross-border rights, given that they often cross the internal borders of states, but also when warehouse receipts and promissory notes are used for financing by international companies across international borders⁽⁽⁴²⁾⁾.

Chapter IV of the UNCITRAL Model Law 2017 has dealt with the issue of cross-border recognition of electronic transferable records. Article 19 stipulates, “An electronic transferable record shall not be denied legal effect, validity, or enforceability on the sole ground that it was issued or used abroad”.

This principle reflects the encouragement of international cooperation in electronic commerce as it transcends geographical borders, which justifies the need to recognize the legal effect of foreign electronic records in order to preserve rights and commercial transactions that take place electronically across borders. The terms “issued” or “use abroad” indicate that they include all procedures relating to the record that extend to the life cycle of the electronic transferable record and include the determination of the place of business

⁽⁴⁰⁾Document No. A/cn.9/wg.lv/wp135/Add.1, Official United Nations Records, Draft Model Law on Electronic Transferable Records, Fifty-second Session, Vienna, 2015, p.17. Item 62.

⁽⁴¹⁾Explanatory Note to the UNCITRAL Model Law for Electronic Transferable Records Article 183, P50.

⁽⁴²⁾Henry Deeb Gabriel. The UNCITRAL Model Law on Electronic Transferable Records Law: Streamlining Monetary Payments and the Transfer of Goods Through E-Commerce, Op. Cit. P211.

⁽⁴³⁾. The terms “issued” or “use abroad” indicate that they include all procedures related to the record that extend to the life cycle of the electronic transferable record and include the identification of the place of business⁽⁴⁴⁾. It also includes the endorsement and modification operations that may appear on the record at a later stage of its creation and on the occasion of the life cycle of the electronic transferable record⁽⁴⁵⁾.

2.2.2. The position of comparative legislation on the principle of non-discrimination against the foreign transferable electronic record

the legislation of the Kingdom of Bahrain

Given the importance of this principle in facilitating cross-border electronic commerce, it has been adopted by many laws regulating electronic transferable records. The Bahraini legislator approved it in a text in Article 14 of Decree Law No. 55 of 2018 regarding electronic negotiable records, which refers to non-discrimination regarding foreign negotiable records. Where it stipulated: “1- The legal effect, validity, or enforceability of the negotiable electronic record is not denied that it was issued or used outside the Kingdom”.

Abu Dhabi Global Market Legislation (United Arab Emirates)

Likewise, the status of the UAE legislator was in the Abu Dhabi Market legislation for electronic transactions 2021, in the eighth part of Article 30, which stipulates “Cross-border recognition (1) Electronic Records of contracts, Electronic Signatures and Electronic Transferable Records have legal effect, validity or enforceability even if they were created, issued, used or performed either outside Abu Dhabi Global Market or the United Arab Emirates”.

The legislation of the Republic of Singapore

The Republic of Singapore has settled on adopting the principle of non-discrimination against foreign transferable electronic records, in Article 5 of Law No. 5 of 2021 Electronic Transactions Law (Amendment), as it stipulates in Article 16/p that “(1) An electronic transferable record is not to be denied legal effect, validity or enforceability solely on the ground that it was issued or used outside Singapore”.

⁽⁴³⁾ Abdel Fattah Bayoumi Hijazi, Introduction to Arab Electronic Commerce, the 2nd book, Dar Al-Fikr Al-Jami'i, Alexandria, 2004, P191.

⁽⁴⁴⁾ Document No. A/CN.9/WG.IV/WP.139/Add.2, Official United Nations Records, Draft Model Law on Electronic Transferable Records, Fifty-fourth Session, Vienna, 2016, P20. Item 67.

⁽⁴⁵⁾ Explanatory note to the UNCITRAL Model Law on Electronic Transferable Records, Item 184.

The legislation of the Kingdom of Belize

And the Kingdom of Belize has approved in Electronic Transactions Law No. 25 of 2021 the principle of non-discrimination against foreign transferable electronic records, as stipulated in Article 40 of the Law on“(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”.

The legislation of the Republic of Kiribati

The Republic of Kiribati followed the same principle endorsed by the UNCITRAL rules, as Article 34 of the Electronic Transactions Law No. 11 of 2021 dealt with that principle and stipulated “.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”.

The legislation of the Republic of Paraguay

In the same direction, Paraguayan law recognized the inadmissibility of denying the legal authority of electronic transferable records because they cross borders in the text of Article 94 of Law No. 6822/2021 regarding reliable services for electronic transactions, electronic documents and electronic transferable documents, which stipulates, “Non-Discrimination Against Foreign Electronic Transferable Records: 1- A legal effects, validity, or enforceability of an electronic transferable record shall not be denied merely because it was issued or used abroad”.

The Legislation of the Kingdom of Papua New Guinea

The Kingdom of Papua New Guinea followed what the countries that adopted the UNCITRAL Model Rules of 2017 settled on in the same content and idea, as it affirmed the same principle in the text of Article 34 of the Electronic Transactions Law No. 38 of 2021, which states:“(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 of Papua New Guinea”.

Through the aforementioned legal texts, which together form comparative legal rules that dealt with the issue of recognition of foreign transferable electronic records, these laws adopted the principle of non-discrimination against foreign transferable electronic records and ignored relying on the place of their issuance or use as a basis upon which to question

or deny their validity or legal effect. The legal texts of the previously mentioned countries also included the legal recognition of foreign transferable electronic records and equality between them and the national electronic transferable record.

However, the legal recognition of foreign electronic transferable records is not absolute but is provided with an exception in the sense of not prejudice the applicable rules of private international law that may have a different opinion regarding the validity of foreign electronic transferable records.

The final say regarding the recognition of the authenticity of the electronic transferable record is for the applicable law, and it is not possible to rely on the text of Article 19/1 to extend absolute recognition to the foreign electronic transferable record. The foreign electronic record in a country that does not recognize electronic transferable records, in the event that the electronic record was issued or used in a country that does not recognize the electronic transferable record, while the rules of attribution in that country refer to the law of another country that it recognizes⁽⁴⁶⁾.

Accordingly, the application of the rules of private international law may lead to discrimination against foreign transferable electronic records. The UNCITRAL rules indicated that this matter is left to the applicable (substantive law), and the aim is that the UNCITRAL Model Rules are non-binding model rules that guide countries when preparing and revising their laws. UNCITRAL does not want to include its model rules for material rules that may affect the rules of private international law. If it wanted to, it made the matter into an agreement that binds its parties, but it refused to do so and preferred to pass those rules in the form of a model law. The aforementioned legal frameworks, which together constitute the Comparative Law of Electronic Transferable Records.

3. Cross-border electronic transferable records

UNCITRAL favored the use of the term foreign electronic record as a denotation for cross-border transferable electronic records and did not address the statement or definition of the concept of foreign electronic record, as this is a release of the applicable law, which the UNCITRAL rules previously indicated is not intended to prejudice the rules of private international law. Examining a foreign determine, whether the electronic record is within the scope of the applicable law⁽⁴⁷⁾.

⁽⁴⁶⁾Document No. A/CN.9/WG.IV/PW139/Add.2, Official Records of the United Nations, Op. Cit. P20. Items 66&68.

⁽⁴⁷⁾UNCITRAL Model Law on Electronic Transferable Records, Article 19/2; The explanatory memorandum of the same

But what are the criteria that can be relied upon to determine foreign electronic transferable records? Especially in light of the constant emphasis on not prejudice the rules, the answer to this question calls for addressing the criteria dealt with by UNCITRAL law and their validity for application.

3.1. Criterion foreign electronic transferable records

There is almost a legal consensus that the transactions and contracts that take place on the internet are transactions of an international nature, and it is agreed that the transaction falls within the regulatory scope of the rules of private international law and is contingent on the inclusion of a foreign element in the relationship according to the legal standard or the flow of goods, services, and values back and forth through international borders, according to the economic Criterion⁽⁽⁴⁸⁾⁾.

In fact, there is no explicit guiding text that defines the appropriate standard that should be used to determine the difference between the foreign electronic register and the national electronic register. However, in order to discuss this, the study will touch on the standards on which the UNCITRAL rules have settled, whether the model or the Convention, in order to find out about them and indicate the extent of their validity to be adopted in Find an appropriate criterion to distinguish between foreign electronic transferable records and national electronic transferable records.

Position of the UNCITRAL Model Law on Electronic Signature 2001

The UNCITRAL Model Law for Electronic Signature 2001 decided to define a number of situations in which the electronic signature or electronic certificate is foreign, as it relied on the consideration of the geographical location in which the electronic signature and certificate were issued to distinguish between the foreign electronic signature and certificate, the electronic signature and the national electronic certificate, as he indicated that the electronic signature is considered foreign if it is issued, used, or the place of work of the source or site is in a geographical location in a foreign country⁽⁽⁴⁹⁾⁾.

The United Nations Convention on the Use of Electronic Communications in International Contracts, 2005

law, P50. Item 182.

⁽⁴⁸⁾Jamal Mahmoud Al-Kurdi. Electronic commerce and international jurisdiction over its disputes, an applied study on consumer contracts via the Internet, second edition, Dar Al-Nahda Al-Arabia, Cairo, 2010, P23.

⁽⁴⁹⁾UNCITRAL Model Law on Electronic Signature 2001, Article 12.

As for the 2005 United Nations Convention on Electronic Communications, it adopted the criterion of the influential international element⁽⁵⁰⁾. It relied on the difference in the location of workplaces while neutralizing the nationalities of the parties, as it stipulated in Article 1 that “1- This agreement applies to the use of electronic communications in the context of forming or executing a contract between parties whose workplaces are located in different countries. 2- The fact that the parties workplaces are located in different countries is disregarded when this fact is not evident from the contract, from any dealings between the parties, or from the information disclosed by the parties at any time before or upon the conclusion of the contract. 3- Neither the nationality of the parties nor the civil or commercial capacity of the parties or the contract shall be taken into consideration when determining the applicability of this agreement”.

Rotterdam Convention Position 2008

If we look closely at the Rotterdam Convention of 2008, the Convention has dealt with the internationalization of electronic transport records as one of the types of electronic transferable records. It has established material rules to indicate the extent to which the electronic transferable record is foreign or not, as Article 5 deals with “the scope of application of the Convention subject to the provisions of Article 6. The Convention applies. “Contracts of carriage in which the place of delivery and receipt are located in two different states and where the port of loading in a sea transport operation and the port of discharge in a sea transport operation are in two different states if any of the following places according to the contract of carriage are located in a contracting state: a- the place of delivery; or b- the port of loading; or C- the place of delivery; or D- the port of discharge. This agreement applies without regard to the nationality of the vessel, the carrier, the executing parties, the shipper, the consignee, or any other interested parties”.

The Rotterdam Convention 2008 tended to rely on the place of delivery and receipt, located in two different countries, as a basis for the internationality of the contract, while it did not rely on the place of issuance of the bill of lading, in violation of previous international trends and texts such as the Brussels Treaty 1968 and the Hamburg Convention 1978, which was the place of issuance of the bill of lading that can be relied upon in specifying an international bill of lading⁽⁵¹⁾.

⁽⁵⁰⁾Nader Muhammad Ibrahim, Op. Cit. P39.

⁽⁵¹⁾Wael Hamdi Ahmed. International Electronic Maritime Carriage Contract for Goods, Dar Al-Nahda Al-Arabia, Cairo, 2013, P35.

Position of the UNCITRAL Model Law on Electronic Transferable Records, 2017

As for the UNCITRAL Model Law 2017, it had a different position from the guarantees that it had previously settled on in its previous versions, due to the specificity of the electronic transferable record and the practical and legal difficulties it raises. The rules of private international law, however, at the same time, adopted objective rules in that law related to the foreignness of the transferable electronic record, which was described in the explanatory memorandum as cross-border electronic records, where the model law settled that the electronic record should be foreign if it were issued or used outside the borders of the country in which the dispute arises in front of its judgment⁽⁵²⁾.

Article 19 of the 2017 Model Law emphasizes that an electronic transferable person should not be deprived of legal effect simply because it was issued or used abroad. In this latter case, recognition may be restricted by any mandatory domestic law that may not recognize an electronic transferable record and therefore requires that the place where the electronic transferable record is created be a place that recognizes the legality of electronic transferable records that are supposed to originate in a country that recognizes it by origin⁽⁵³⁾.

In any case, the UNCITRAL Model Law on Electronic Transferable Records in determining the foreignness of the electronic transferable record relied on the two processes of issuance or use based on the provision of Article 19, which addresses issues relating to the cross-border recognition of the electronic transferable record when the electronic transferable record is issued or used outside⁽⁵⁴⁾.

In addition, the UNCITRAL Model Law for Electronic Transferable Records has decided to consider the place of work as one of the elements that do not affect the foreignness of the electronic record, contrary to what was previously established in the Electronic Communications Convention 2005, in application of the principle of technological neutrality, which adopts the idea of neutralizing the foreign elements that are related to the electronic record by having no effect on the international nature of the electronic record, and therefore the workplace cannot be relied upon when searching for the extent of foreignness of the electronic transferable record⁽⁵⁵⁾.

⁽⁵²⁾Nader Muhammad Ibrahim. Op. Cit. P40.

⁽⁵³⁾Henry Deeb Gabriel. The UNCITRAL Model Law on Electronic Transferable Records Law: Streamlining Monetary Payments and the Transfer of Goods Through E-Commerce, Op. Cit. P211.

⁽⁵⁴⁾Mark L Shope. The bill of lading on the block chain: an analysis of its compatibility with international rules on commercial transactions. Minn. JL Sci. & Tech, Volume 22, Issue1, 2020. P199.

⁽⁵⁵⁾Nader Muhammad Ibrahim. Op. Cit. P40.

This may raise a question regarding the extent to which the description of the electronic transferable record can change from being international to describing it nationally and vice versa after some changes have occurred to it? In fact, this question is very important, and in order to answer this question, it is possible to distinguish between two cases, the first of which is related to the issuance process, and it is not envisaged that an amendment will be made to it. Wherever the electronic record was issued in a country other than that of the judge, that record became foreign. As for the second case, which is related to the process of using the record, it is envisaged that the electronic record is established nationally and then used across international borders, and thus its description changes from a national transferable electronic record to a foreign transferable electronic record.

The position of comparative legislation

The legislation of the Kingdom of Bahrain

The model law was followed by many national legislations, including Arab legislation, the Bahraini legislator, who decided the same principle on which the rules of the UNCITRAL Model Law settled in electronic transferable records by considering the electronic transferable record as cross-border if it was issued or used outside the borders of the state, as stipulated in Article 1/14 of Decree-Law 55 of 2018, stipulates that “the legal effect, validity, or enforceability of the negotiable electronic record is not denied once it was issued or used outside the Kingdom”.

Abu Dhabi Global Market Legislation (UAE)

The UAE approved the same content in the Electronic Transactions Regulations 2021 of the Abu Dhabi Global Market (ADGM), as it stipulated in Article 30 that “Cross-border recognition(1) Electronic Records of contracts, Electronic Signatures and Electronic Transferable Records have legal effect, validity or enforceability even if they were created, issued, used or performed either outside Abu Dhabi Global Market or the United Arab Emirates”.

It is clear that the Abu Dhabi Global Market Law dealt with the same content approved by the 2017 Model Law, except that it expanded the number of cases in which the electronic record is foreign, which refers to one content and revolves around the two processes of issuance or use outside the borders of the state.

The legislation of the Republic of Singapore

Legislation of the Republic of Singapore

Also, among the legislations that followed the same approach was the law of the Republic of Singapore, in the amendment it made to the Electronic Transactions Law No. 5 of 2021, as it referred to this in Article 16/p:” (1) An electronic transferable record is not to be denied legal effect, validity or enforceability solely on the ground that it was issued or used outside Singapore”.

The Legislation of the Republic of Paraguay

In the same context, the Republic of Paraguay addressed the same issue in Law No. 6822 of 2021 regarding reliable services for electronic transactions, electronic documents, and electronic transferable documents, which stipulated in Article 94/1 that “the legal effects, validity, or enforceability of the electronic transferable record may not be denied simply because it is issued or used abroad”.

The Legislation of the Kingdom of Papua New Guinea

The State of Papua New Guinea followed the same steps in the Electronic Transactions Law No. 38 of 2021, as stipulated in Article 34/1: “(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 of Papua New Guinea”.

The Legislation of the Kingdom of Belize

This idea was referred to by the Kingdom of Belize, as Electronic Transactions Law No. 25 of 2021 in the text of Article 40: “(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”.

The Legislation of the Republic of Kiribati

And the Republic of Kiribati has approved in Law No. 11 of 2021 the Electronic Transactions Law of 2021 with the same standards, as stipulated in Article 34, “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”.

And by looking closely at the comparative legislation of those issued laws in which electronic transferable records were adopted, guided by the UNCITRAL Law 2017, the criteria were defined by which it is possible to distinguish between national and foreign records in order to limit a very significant problem related to defining the rules of international legal jurisdiction by determining whether the transaction was a national transaction or a foreign transaction, and UNCITRAL resolved that issue, addressed that pretext, and adopted a clear criterion by which to distinguish between the national and foreign electronic transferable record. In any case, the texts of this legislation included the same principle approved by the UNCITRAL Model Law for Electronic Transferable Records.

The phrase “issue or use” expands to include all stages of the life cycle of the electronic transferable record and all operations that occur on the record, including its creation, transfer, and demand for performance. For these events, the Model Law does not contain special substantive rules because it focuses only on aspects of the life cycle in electronic record may differ from traditional transferable documents and instruments⁽⁵⁶⁾.

As a result, if a dispute related to the electronic record occurred during the life cycle of the record and the dispute was brought before the judiciary, the judge first searches whether the transferable electronic record is national or foreign by searching whether the electronic record was issued or used outside the borders of his country or not. It had been issued or used abroad, so it is in front of a foreign transferable electronic record, which requires the judge to work on the customary rules of conflict to determine the applicable law. In a traditional national dispute that does not require raising the rules of conflict, the national law applies to it.

Based on the foregoing, the criterion adopted by UNCITRAL law in determining the foreignness of the electronic transferable record and adopted by comparative laws is a special criterion represented in crossing international borders, as the 2017 Model Law referred to relying on the two processes of issuance or used to determine the foreign electronic transferable record, based on the text of Article 19, which deals with issues related to the cross-border electronic record, and the two phrases “issued or used abroad” refers to the choice, which states that the foreign electronic record does not require that the processes of issuance and use together be available outside the territorial borders of the judge’s country, but rather it is sufficient for it to be characterized by an international character, the

⁽⁵⁶⁾Henry Deeb Gabriel: The UNCITRAL model law on electronic transferable records. *Uniform Law Review*, Volume 24, Issue 2, 2019. P267.

availability of one of them by being issued abroad or issued nationally and was subsequently used outside the national borders. In the event that either of the two cases is available, dealing with a foreign electronic transferable record would raise the rules of conflict of laws.

3.2. Not to prejudice the substantive rules of the organization Transferable documents and instruments

Consistent with the UNCITRAL instruments on electronic commerce, the Model Law does not, as far as possible, create any substantive rights or duties that override the rights or duties contained in existing laws governing transferable instruments and documents, except in respect of possible modifications to electronic transferable records and procedures for the substitution of a document or transferable instrument with an electronic transferable record and vice versa, the objective of the Model Law is merely to enable transferable instruments and documents to be in electronic form and therefore the UNCITRAL Electronic Transferable Records Model Law is designed to enable parties to conduct transactions on paper-based transferable documents and instruments but in a form electronic⁽⁵⁷⁾.

3.2.1. Do not prejudice the internal law

The 2017 Model Law refers to the general principle of not prejudice the internal law regulating transferable documents and instruments, including the rules of private international law, and the Model Law does not aim to create electronic transferable records that have no equivalent to transferable documents or instruments. This principle followed by UNCITRAL indicated that some provisions do not need a special provision for them, but rather the provisions contained in the internal law apply to them because they are considered among the matters that are specific to the internal law and fall within its scope. Its scope includes defining the performance of obligations, types of documents and instruments, and dividing and assembling transferable electronic records⁽⁵⁸⁾.

It should be emphasized that the Model Law 2017 does not aim to create new substantive rules but rather to create rules for an electronic environment equivalent to the traditional rules applicable to transferable documents and instruments, and therefore it does not specify the rights subject to transfer or deal with the conditions that must be met to enable the transfer of the right but rather refers to the statement and regulation governing those

⁽⁵⁷⁾Henry Deeb Gabriel. *The UNCITRAL Model Law on Electronic Transferable Records Law: Streamlining Monetary Payments and the Transfer of Goods Through E-Commerce*, Op. Cit. P196.

⁽⁵⁸⁾UNCITRAL Model Law on Electronic Transferable Records, Article 1/2; The explanatory memorandum of the same law, P18.

matters of domestic law governing transferable documents and instruments⁽⁵⁹⁾.

The UNCITRAL Model Law on Electronic Transferable Records has emphasized that an electronic transferable record must comply with the substantive law governing paper-based transferable instruments and documents, and since the domestic law on transferable documents and instruments contain specific requirements for determining the data it must contain, the record must therefore contain the electronic transferable document, contains the same information required in a paper transferable document or instrument⁽⁶⁰⁾.

3.2.2. Not to prejudice private international law

The Model Law, in its examination of the international issue of whether or not the transferable electronic record is international, adopted the rule of not prejudice, the substantive law, and the rules of private international law. However, in the same context, it established objective rules related to defining the foreign standard of the electronic transferable record, which is a departure from the functional counterpart approach that was adopted by the 2017 Model Law, the rule of inviolability of substantive law, and the rules of private international law⁽⁶¹⁾.

The 2017 Model Law does not affect the rules of private international law governing electronic transferable records because the Model Law does not govern transferable paper instruments and documents, and it is not intended to provide new rules for private international law, it should be taken into account that electronic transferable records are governed by the rules it international of private international; Saying otherwise would lead to the existence of a dual system of private international law, which would make the matter more difficult and inconsistent⁽⁶²⁾.

The comparative laws that adopted the 2017 Model Law followed the same principle and explicitly stipulated it, as that principle was approved by the Kingdom of Bahrain in Decree Law No. 55 of 2018 regarding negotiable electronic records, as it stipulated in Article 2/2 that “what is not mentioned in a special provision in this law, no the provisions of this law

⁽⁵⁹⁾Nisreen Mahasneh. Electronic Transferable Records: A Gap in Qatari Law That Urgently Needs Filling. *Uniform Law Review*, 2021, 26:3. P536.

⁽⁶⁰⁾Henry Deeb Gabriel. The UNCITRAL Model Law on Electronic Transferable Records Law: Streamlining Monetary Payments and the Transfer of Goods Through E-Commerce, Op. Cit. P198.

⁽⁶¹⁾Nader Muhammad Ibrahim. Op. Cit. P39& 40.

⁽⁶²⁾Henry Deeb Gabriel. The UNCITRAL Model Law on Electronic Transferable Records Law: Streamlining Monetary Payments and the Transfer of Goods Through E-Commerce, Op. Cit. P212.

do not prejudice the application of any of the provisions of the laws regulating negotiable bonds and instruments to electronic negotiable records, including provisions related to consumer protection. It also included provisions related to non-prejudice to the rules of private international law, as Article 14/2 stipulated that “the provisions of this law do not prejudice the application of the rules of private international law, which apply to negotiable bonds or instruments on negotiable electronic records”.

The UAE has approved the Abu Dhabi Global Market (ADGM) with the same content regarding the rules of private international law, Regulation 202 of Electronic Transactions, as stipulated in Article 30/2: that “Cross-border recognition (2) Nothing in these Regulations affects the application to Electronic Records of contracts, Electronic Signatures and Electronic Transferable Records of rules of private international law governing contracts, signatures or Transferable Documents or Instruments”.

This was followed by the Kingdom of Belize, as the Electronic Transactions Law No. 25 of 2021 referred to the same content in Article 30/1, as it stipulated “(1) Other than as provided for in this Act, nothing in this part 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 40/2 also stipulates, “40.(2) Nothing in this Part affects the application to electronic transferable records of rules of private international law governing a transferable document or instrument”.

And the Republic of Paraguay approved the same meaning in Law No. 6822/2021 regarding reliable services for electronic transactions, electronic documents, and electronic transferable documents, as it stipulated in Article 78 that “nothing in this law other than what is stipulated in its provisions affects the applicability of any legal rule governing documents.” transferable instruments on electronic transferable records, including any applicable consumer protection legal rule.” Whereas, Article 94/2 states: “Nothing in this law affects the application of the rules of private international law that govern transferable documents and instruments issued on paper to electronic transferable records.”

The Republic of Singapore has followed in the same direction in Law No. 5 of 2021 of the amended Electronic Transactions Law, as Article 16/b stipulates, “Unless otherwise provided, nothing in this Part affects the application to an electronic transferable record of

any rule of law governing a transferable document or instrument “While Article 16/p “(2) Nothing in this part affects the application to an electronic transferable record of any rule of private international law governing a transferable document or instrument”.

The Republic of Kiribati, in Law No. 11 of 2021, the Electronic Transactions Law of 2021, adopted the same idea, as stipulated in Article 24/1 “ (1). Other than as provided for in this Act, nothing in this part affects the application to an electronic transferable record of any written law governing a transferable document or instrument, including any written law applicable to consumer protection “Article 34/2 also stipulates, “Nothing in this Part affects the application to electronic transferable records of the rules of private international law governing a transferable document or instrument”.

The Kingdom of Papua New Guinea followed in the same footsteps in Electronic Transactions Law No. 38 of 2021, as it stipulated in Article 31/1: “Nothing in this Act affects the application to an electronic transferable record of any other law governing a transferable document or instrument including any other law applicable to consumer protection. “Article 34/2 also stipulated that the rules of private international law that apply to transferable documents and instruments should not be prejudiced, as it stipulated, “Nothing in this part affects the application to electronic transferable records of the rules of private international law governing a transferable document or instrument”.

A question arises what is the nature of existing rules of private international law applicable to electronic transferable records? There is a view that the parties should not assume that the rules of conflict governing transferable paper documents and instruments will govern electronic transferable records because paper transferable instruments and documents are tangible property, and in this capacity they are governed by the law governing tangible property and electronic transferable records are intangible and therefore have no specific place and the applicable law should derive from the law governing rights to intangible property and not from the law governing tangible property, and the issue of applicable law may best be addressed through the choice of law requirement in the electronic transferable record and should this condition is enforceable within the limits of not conflicting with the relevant law⁽⁶³⁾.

However, the previous opinion is considered in that the examination of the issue of law applicable to electronic records should be dealt with in the light of the internal legislation

⁽⁶³⁾Henry Deeb Gabriel. The UNCITRAL Model Law on Electronic Transferable Records Law: Streamlining Monetary Payments and the Transfer of Goods Through E-Commerce, Op. Cit. P213.

of countries related to regulating the issue of conflict of laws, as the Model Law of 2017 and comparative laws have settled that their provisions do not replace the rules of private international law, that apply On transferable documents and instruments, which are considered substantive law for electronic transferable records, and it was intended behind this to apply the rules of traditional private international law in order to avoid the creation of special provisions for conflict of laws that differ from the traditional rules recognized in a way that leads to duplication of the rules of private international law⁽⁶⁴⁾.

From the foregoing, it is clear that the comparative laws that approved the 2017 Model Law adopted the approach established by UNCITRAL regarding not prejudice the rules of private international law. Accordingly, in any dispute arising on the occasion of the use of foreign transferable electronic records, the judge in question determines the law applicable to the dispute through The traditional rules of private international law applicable to transferable documents and instruments, except for the law of the Emirate of Abu Dhabi, and the comparative laws that approved the 2017 Model Law adopted the principle of non-prejudice to substantive law, which is meant by the internal legal rules that apply to transferable documents and instruments.

3.3. Foreign transferable electronic record

The Model Law, in its examination of the international issue of the transferable electronic record or not, adopted the rule of not prejudice the substantive law and the rules of private international law. However, in the same context, it established objective rules related to defining the foreign standard of the electronic transferable record, which is a departure from the functional counterpart approach adopted by the law. Model 2017 and the rule of inviolability of substantive law and the rules of private international law⁽⁶⁵⁾.

However, this can be justified by the fact that UNCITRAL desires to seek to mitigate the intensity of the dispute and considers that this issue will be the subject of great controversy and must be resolved so that it is not a stumbling block in the way of the growth of international trade. The first case is the issuance of the electronic record outside the borders of the state before which the dispute is raised, and the second case is if that record is used in a country other than the judge's.

⁽⁶⁴⁾Explanatory note to the UNCITRAL Model Law on Electronic Transferable Records, Item 187.

⁽⁶⁵⁾Nader Muhammad Ibrahim. Op. Cit. P39&40.

The 2017 Model Law does not affect the rules of private international law governing electronic transferable records because the Model Law does not govern transferable paper instruments and documents and is not intended to provide new rules for private international law, it should be taken into account that electronic transferable records are governed by the rules of private international law, the list, as said otherwise would lead to the existence of a dual system of private international law, which makes the matter more difficult and inconsistent⁽⁽⁶⁶⁾⁾.

3.3.1. Issuance of electronic transferable records abroad

The issuance process takes place by offering the electronic transferable record through the technical means used in that, which in turn puts the electronic transferable record under transfer. While the matter is done smoothly in the paper environment by issuing a title document or a transferable deed, the matter is otherwise done in its functional counterparts, where the issuance process takes place through purely technical systems. In the coding system, transferable electronic records can be issued directly from the source without the use of a third party, while the registration facility system depends entirely on a third party that handles and supervises the technical process of issuance, which is based on a notification from the issuer to the registration facility for it to release the electronic transferable record⁽⁽⁶⁷⁾⁾.

Under the Registry Facility System, the identity of the holder of the electronic transferable record is established in a separate, independent record. The electronic transferable records managed by the system contain only an indication of the location of that record where the information needed to identify the controlling party can be found. This system is based on the idea of control and associated concerns. It uses the concept of control to define the holder and the person who can exercise the rights embodied in the electronic transferable record⁽⁽⁶⁸⁾⁾.

The issuance process must include identifying the person issuing the electronic transferable record and the first holder of that record. The importance of identifying both the issuer and the first holder reliably so that unreliable performance claims can be excluded, in addition to the critical importance of that reliability that supports instilling confidence, motivating,

⁽⁶⁶⁾Henry Deeb Gabriel. The UNCITRAL Model Law on Electronic Transferable Records Law: Streamlining Monetary Payments and the Transfer of Goods Through E-Commerce, Op. Cit. P212.

⁽⁶⁷⁾Document No. A/CN.9/WG.IV/WP.118, Official Records of the United Nations, Forty-sixth Session, Note by the Secretariat on Legal Issues Concerning the Use of Electronic Records, Vienna, 2012, P10. Item 29.

⁽⁶⁸⁾Jung-Ho Yang. Op. Cit. P114.

and ensuring the acceptance of transferable electronic records in commercial transactions in some transferable electronic records management systems, identification of the issuer and holder, such as the registration facility, is one of the requirements for entry into the system. However, some other systems, such as the coding system, do not require prior identification but do require identification at the time of registration. Perform an operation on the electronic transferable record⁽⁶⁹⁾.

There is a very important question about what elements can be relied upon in the issuance process so that we are entering into a commercial relationship of an international nature, especially since this process takes place in a virtual environment? Is it the same person? Or the third party? That is, can we rely on the presence of the person himself at the time of issuance abroad, or can we rely on the transferable electronic records management system located outside the judge's country?

The truth is that the matter requires more research, especially in light of the absence of a legal text that can be used as guidance to resolve this issue, especially since the text regulating this issue was ambiguous, so the word issuance was used without specification, but it is possible, with some degree of certainty, to rely on the presence of the person himself outside the jurisdiction of the judge to give the records an international character. The electronic transferable record, in that when the person proceeds to issue an electronic transferable record, he sends a data message to the concerned system that includes a notice that the electronic record has been submitted to the transfer. Therefore, the data message issued by the source is the basis that can be relied upon in the issuance process, especially since that message is considered approval implicit from the issuer on the use of electronic transferable records, and the subsequent procedures and implementation are only legal consequences of what was done by the source person.

The UNCITRAL Model Law 2017 confirmed the applicability of the legal rules regulating transferable documents and instruments to electronic transferable records in what was not stipulated in the 2017 Model Law and that the model law does not in any way affect the substantive law (the legal rules regulating transferable documents and instruments), which in turn apply to electronic transferable records, including the rules of international law⁽⁷⁰⁾.

The explanatory memorandum of the 2017 Model Law confirmed that the creation of transferable electronic records is intended to take place in light of the principle of functional

⁽⁶⁹⁾Document No. A/CN.9/WG.IV/WP.118, Official Records of the United Nations, Op. Cit. P21. Item 62&67.

⁽⁷⁰⁾UNCITRAL Model Law on Electronic Transferable Records, Article 1/2.

equivalence, which requires those transferable electronic records have an equivalent of traditional transferable documents and instruments. The Model Law 2017 does not aim to create records There is no equivalent in terms of functionality, and therefore the law has settled that the requirements for the process of issuing the electronic transferable record and its effects do not require a provision dedicated to it, as it is a matter within the scope of the jurisdiction of the applicable law⁽⁷¹⁾.

3.3.2. Use of electronic transferable records abroad

The process of using transferable electronic records represents the next stage of the issuance process. The process of using transferable electronic records includes all procedures that can be taken on the electronic transferable record from its issuance until its implementation. It includes all stages of the life cycle of the electronic transferable record, and includes in particular endorsement and modification processes⁽⁷²⁾.

Endorsement of the electronic transferable record

The Model Law for Electronic Transferable Records requires that the endorsement process be performed whenever the law requires it in the paper system, as documents or instruments can be transferred by endorsement to the assignee, and this can be met through a functional equivalent to the endorsement process in an electronic environment. This requirement is met by fulfilling the writing and signature requirements contained in articles 8 and 9 of the Model Law, and when this provision applies, the electronic endorsement shall have the same legal effect as the paper endorsement⁽⁷³⁾.

The endorsement is a statement written on the deed with the aim of assigning the right contained therein in order to achieve one of the purposes, whether transferring its ownership to another person, authorizing another person to fulfill the right fixed in the deed, or using the endorsement as a means of mortgaging the right fixed in the deed to guarantee another right⁽⁷⁴⁾. The basis for instruments and documents is that they remain in the possession of the original creditor until their maturity date, and he is considered the sole holder of the instruments. However, the holder of the instruments may transfer it by assigning the obligation contained therein to a third party in return for obtaining its value⁽⁷⁵⁾.

⁽⁷¹⁾Explanatory Note to the UNCITRAL Model Law on Electronic Transferable Records, Item 22-24.

⁽⁷²⁾Explanatory note to the UNCITRAL Model Law on Electronic Transferable Records, Item 184.

⁽⁷³⁾Seok-Beom Choi. Op. Cit. P73.

⁽⁷⁴⁾Mustafa Kamal Taha, Wael Anwar Bunduq, Op. Cit. P60.

⁽⁷⁵⁾Mustafa Kamal Taha &Wael Anwar Bunduq, ibid. P60.

In electronic transferable records, exclusive control is transferred from one person to another through a technical process that crystallizes in two main axes. He shall be responsible to the transferor and the transferee for the technical aspects related to the transaction and its implementation, as third party may be⁽⁽⁷⁶⁾⁾.

The controlling parties can demand delivery of the goods referred to in the bond and may transfer the bond to another person through an application submitted to the registration facility. In the registration facility system, the transferee must register with the registration facility so that he can exercise control over the bond. The transfer of an electronic bill of lading in the manner described produces the same legal effects as the transfer of a paper bill of lading by endorsement, and the controller of the electronic bill of lading acquires the same rights as the endorser will acquire with respect to the paper bill of lading⁽⁽⁷⁷⁾⁾.

The controlling party in that process enjoys wide authority, and acts as the owner of the right contained in the electronic record, and has the right to transfer that right to another person, provided that he proves his identity as the holder. On the high seas, by issuing instructions to the carrier related to the goods and disposing of them, whether by changing the consignee or delivering them to one of the ports, In all cases, the idea of control has a great and positive role that harmonizes the provisions of electronic commerce⁽⁽⁷⁸⁾⁾.

Amendment of the electronic transferable record

After issuing the electronic transferable record and putting it into circulation, it may happen that necessity requires an amendment to it, and just as the amendment may be made to the transferable documents and instruments equivalent to the electronic transferable record, such as adding some conditions that the UNCITRAL Model Law 2017 permitted the possibility of making amendments to give flexibility in dealing with records, The model law did not specify the modifications that are allowed to be made, or who has the authority to amend, or the circumstances in which this is permissible and left the matter to the applicable internal law, but it stipulated that the modification process be carried out according to reliable procedures⁽⁽⁷⁹⁾⁾.

⁽⁷⁶⁾Document No. A/CN.9/WG.IV/WP118/Add.1 Official Records of the United Nations, Op. Cit. P4. Item 6.

⁽⁷⁷⁾Zvonimir Šafranko. Legal aspects of the use of electronic transferable records in commercial transactions Translation, Op. Cit. P97.

⁽⁷⁸⁾Saadia Ben Doumieh. Dimensions of the Rotterdam Rules for Shipping Countries, (PhD). thesis, University of Oran 2, Mohamed Ben Ahmed, Algeria, 2018, P134 &135.

⁽⁷⁹⁾Nader Muhammad Ibrahim. Op. Cit. P38.

Amendment is an important procedure in the life cycle of an electronic transferable record and is related to the use of an electronic record but requires that such modifications are permitted under national law, as well as made using a reliable method that allows them to be identified as such, unlike a paper environment, where modifications can be detected and easily proven the aim of that provision is that the electronic environment is exposed to processes that may not be obvious or detectable, so the modification requirements must be done within the limits of the text of Article 12 to prove the reliability of the method used to determine the modifications⁽⁸⁰⁾.

The issue of the amendments authorized by the Model Law 2017 focuses on legal amendments and does not include technical amendments, which is an issue that has no equivalent in the paper environment and is related to electronic use. In light of the general reliability standard referred to in Article 12 of the Model Law⁽⁸¹⁾.

The replacement

Replacing the electronic record with a transferable document or instrument is not a new idea. Rather, it is a dedication to concepts previously settled on by the rules of electronic commerce. The rules of the Model Law of Electronic Commerce 1996 were organized. In article 6, an embodiment of the idea of functional equality between electronic and paper documents, and in article 17/5 of the same laws, to the possibility of substituting between electronic documents and traditional documents, as well as what was stated in the Rotterdam Convention 2008 regarding the possibility of replacing the negotiable transport document as well as the negotiable electronic transport record, in the event that there is an agreement between the person in control of the electronic transferable record and the carrier, and the possessor or controller hands over or transfers control to the carrier, and that document or record shall be terminated and its validity shall be revoked, provided that the carrier shall issue a new document or electronic transport record in accordance with the previous agreement, indicating that it has been replaced by the previous one⁽⁸²⁾.

The UNCITRAL Model Law 2017 recognized the possibility of replacing the transferable document or instrument with the electronic transferable record in the context of embodying the idea of equivalence, and in order for the replacement process to take place, it required that the replacement process be carried out in a reliable manner, and the electronic

⁽⁸⁰⁾Nisreen Mahasneh. Op. Cit. P551.

⁽⁸¹⁾Explanatory Note to the UNCITRAL Model Law on Electronic Transferable Records, Items. 156&159.

⁽⁸²⁾Document No. A/CN.9/WG.IV/WP118/Add.1 Official Records of the United Nations, Op. Cit. P13. item. 44-45.

transferable record, document, or instrument must also be included in any case, a statement of the replacement process the replacement process results in two very important results. The first is that the electronic record, document, or transferable instrument from which it is transferred is disabled by the validity of the transferee. The second result is that the aforementioned replacement process does not affect in any way the rights of the parties or their obligations towards each other some⁽⁸³⁾.

Implementation of the electronic transferable record

At the end of the life cycle of the electronic transferable records, the electronic record is presented in order to perform the commitment mentioned in it, just like transferable documents and instruments, nominally. And because it is a tool for fulfillment that takes the place of money, and the internal legislation has given it great care and extended protection to it that makes its holder confident in the monetary value it represents, the transfer of that reassurance from internal transactions to international transactions raises people's suspicion and doubt about the availability of legal protection and its dimensions when a legal dispute arises regarding it⁽⁸⁴⁾.

Once the rights and obligations under the registry have been discharged, the electronic transferable record needs to be terminated to avoid further generalization and the possibility of multiple requests for performance. For example, an electronic transferable record in a registration-based system is terminated by recording the full performance of the obligation contained in that record⁽⁸⁵⁾.

There is no doubt that the implementation process, which takes place in a foreign country, is considered one of the issues that raises the conflict of laws and the implementation of the rules of attribution and an important factor in determining the applicable law due to the availability of the international nature of the transaction, which was associated with a country that is likely to be more related to the contract, which is what is decided by the rules of international law private⁽⁸⁶⁾.

⁽⁸³⁾ UNCITRAL Model Law on Electronic Transferable Records, Articles 17&18.

⁽⁸⁴⁾ Nayef Abdel-Al Hanoun Farra. Conflict of Laws in Commercial Papers, A Comparative Study, (PhD) Thesis, Faculty of Law, Ain Shams University, Cairo, 2015, P32& 33.

⁽⁸⁵⁾ Israel Woldekidan Haileyesus. Appraisal of the Ethiopian Legal Environment in Light of Its Compatibility for Introduction of Electronic Bill of Lading, *Journal of International Trade, Logistics and Law*, Volume 6, Issue 1, 2020, P80.

⁽⁸⁶⁾ Hisham Khaled. The Law of the Will between Release and Restriction in the Scope of International Commercial Contracts, Dar Al-Nahda Al-Arabiya, Cairo, 2016, P393.

The electronic transferable record is provided for enforcement through proof of control, i.e, when the law requires that the document be handed over to the issuer, this is done by transferring control to the issuer of the electronic transferable record. In this sense, control of the electronic transferable record must be established so that, at any time, the identity of the electronic transferable record must be established. The person who controls the electronic transferable record The same rules apply to requests to exercise rights from an electronic transferable record as they apply to requests to exercise rights in transferable documents and instruments⁽⁸⁷⁾.

As a result of the foregoing, the implementation of the obligation contained in the electronic transferable records, whether it is an obligation to pay a sum of money or an obligation to deliver goods, does not raise the slightest difficulty if it takes place within the geographical framework of the borders of the state, which entails that the internal law of the judge's country should be applied to the disputes arising from it. Execution is outside the borders of the judge's country, so the transferable electronic record is considered foreign, and the rules of private international law regarding it must be raised, which necessitates the search for the legal rule applicable to it.

Conclusion

The UNCITRAL Model Law on Electronic Transferable Records dealt with the legal and technical treatment and recognition of electronic transferable records in the same way as transferable documents and instruments.

In order to achieve the objectives of the Model Law on Electronic Transferable Records, UNCITRAL faced several obstacles resulting from achieving the same functions as using the paper document, the requirements of internal laws, the use of technologies at all levels, the recognition of electronic forms, and the use of electronic transferable records across borders. These obstacles were overcome through several principles, the law is based on the principles of functional equivalence, technical neutrality, non-discrimination, the principle of unity of interpretation, and freedom of parties, which together represent the general principles of electronic commerce.

The study also dealt with the foreign transferable electronic record and indicated the accepted standard to rely on in determining its internationality and its validity. The study also

⁽⁸⁷⁾Zvonimir Šafranko. Legal aspects of the use of electronic transferable records in commercial transactions Translation, Op. Cit. P228.

referred to the standard adopted by UNCITRAL in that law, followed by comparative laws. Determined by internal laws that apply to transferable paper documents and instruments and the possibility of appealing against them.

It is hoped that the following years will witness countries adopting laws emulating the UNCITRAL Model Law for Electronic Transferable Records, As of the time of writing this research, there are seven countries that have issued specialized legislation regulating electronic transferable records whose texts include the recognition of electronic transferable records as a functional equivalent to transferable documents and instruments, in addition to recognition of foreign transferable electronic records and the inadmissibility of denying their authenticity.

Results

There has been legal recognition of electronic transferable records, as the UNCITRAL Model Law for Electronic Records and some comparative legislation included provisions recognizing the equality between transferable documents and instruments and electronic transferable records in terms of legal authenticity, in addition to emphasizing that the electronic transferable record may not be deprived of legal effect, or validity, or enforceability due to being stated in electronic form.

The legal recognition of transferable electronic records in electronic form has opened other horizons for their adoption across borders so that they gain legal authority, such as national transferable electronic records. In no case can the place of their origin or issue be a reason for rejecting them.

The UNCITRAL Model Law for Electronic Transferable Records adopted substantive rules related to the internationality of the electronic transferable record, which was described in the explanatory note as cross-border electronic records. The Model Law stipulated that a record is foreign if it is issued or used outside the borders of the country in which it was filed, and comparative laws were approved to the same standards. The processes of issuance and use include all events that take place on the electronic transferable record, starting from the process of issuing the electronic record through the endorsement and amendment processes that may occur during the life cycle of the electronic record in any country until the implementation of the obligations contained therein.

The transferable electronic records shall be subject to the substantive rules stipulated by the internal law on transferable documents and instruments. The electronic transferable record shall be subject to appeal, as is the case with transferable documents and instruments. The transferable electronic records shall in no way affect the rules of private international law established in the law procedure.

Until writing the words of this research, there are seven countries that followed the UNCITRAL Model Law for Electronic Transferable Records and issued special laws regulating this issue and the legal recognition of electronic transferable records, whether national or international. These countries are represented in the Kingdom of Bahrain and the United Arab Emirates (Abu Dhabi Global Market Law), the Kingdom of Belize, the Republic of Singapore, the Republic of Kiribati, the Kingdom of Papua New Guinea, and the Republic of Paraguay.

Suggested recommendations

In light of the article on the international recognition of electronic transferable records, we draw attention to the following recommendations:

The United Nations Commission on International Trade Law (UNCITRAL) holds conferences and seminars to introduce electronic transferable records and their economic and commercial importance at the national level in order to urge countries to carry out legislative reform and adopt regulatory legal rules for these transactions, following the UNCITRAL Model Law for Electronic Transferable Records.

The need for UNCITRAL to issue a complementary instrument that includes a detailed treatment of issues related to cross-border transferable electronic records, which are considered among the thorny and ambiguous issues, With the same clarity in cross-border ones, which may impede or affect the use of electronic transferable records across borders, which leads to a lack of legal certainty regarding this type of record, which impedes the full enforcement of the UNCITRAL law.

We hope that countries will carry out legislative reform on their laws regulating electronic commerce, including legal recognition of electronic transferable records, given the importance of those economic and commercial records that allow the use of transferable documents and instruments in electronic form, whether internally or internationally, given that these documents and instruments are some of the most important commercial tools.

domestic and international, and the most important tools of payment and transfer of money and goods.

Examining the issue of the law applicable to electronic transferable records should be carried out in light of the rules of private international law that apply to transferable documents and instruments, without any prejudice to the rules of private international law, and not to rely on the electronic form of electronic transferable records, as UNCITRAL law did not single out it has special conflict rules and no special approaches have been adopted.

We also recommend that people coming to deal with these cross-border records use their right to freely choose the predetermination of the applicable law by including a clause agreed upon by the parties related to assigning legislative jurisdiction to the law of a particular country in order to prevent the occurrence of a potential legal conflict that would undermine confidence in such transactions or prejudice the rights of one of the parties at the expense of the other parties.