

ELECTRONIC TRANSACTIONS REGULATIONS 2021



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ELECTRONIC TRANSACTIONS REGULATIONS 2021

Regulations to facilitate commerce in the Abu Dhabi Global Market by providing legal validity and certainty to Electronic Records, electronic contracts and Electronic Signatures.

Date of Enactment: **25 February 2021**

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers under section 6(1) of Law No. 4 of 2013 concerning the Abu Dhabi Global Market issued by His Highness the Ruler of the Emirate of Abu Dhabi enacts the following Regulations.

PART 1**ELECTRONIC RECORDS****1. Legal recognition of Electronic Records**

An Electronic Record has the same legal effect, validity and enforceability as if it was in tangible written form.

2. Requirement for writing

Where an Enactment requires Information to be in writing, or provides for certain consequences if Information is not in writing, an Electronic Record satisfies that requirement if the Information within it is accessible so as to be usable for subsequent reference.

3. Provision of Information in writing and presentation of Electronic Records

- (1) If parties have agreed to conduct a transaction by Electronic means or an Enactment requires a person to provide, send, or deliver Information in writing to another person, the requirement is satisfied if the Information is provided, sent, or delivered, as the case may be, in an Electronic Communication capable of retention once it is received.
- (2) For the purposes of section 3(1), Information is not capable of retention if the Originator or the Originator's Information System inhibits the ability of the Addressee to access the Information for subsequent reference or retain the Electronic Communication.
- (3) If an Originator inhibits the ability of an Addressee to access the Information for subsequent reference or retain an Electronic Record, the Electronic Record is not enforceable against the Addressee.

4. Conditions for Retention of Electronic Records

- (1) Where an Enactment requires a Record to be retained, or provides for certain consequences if it is not retained, that requirement is satisfied by retaining the Record in an Electronic Record if the following conditions are satisfied:
 - (a) the Electronic Record preserves a Record of the Information it contains and is accessible so as to be usable for subsequent reference;
 - (b) the Electronic Record is retained in the format in which it was originally created, or in a format which can be demonstrated to accurately replicate the original

Information;

- (c) Information contained in the Electronic Record, if any, is retained as enables the identification of the origin and destination of the Electronic Record, any party that sent or received the Electronic Record and the date and time the Electronic Record was sent or received; and
 - (d) any additional requirements relating to the retention of such Electronic Records specified in an Enactment are complied with.
- (2) Section 4(1) does not extend to the Electronic Communication used to send or receive the Electronic Record.
 - (3) A person may satisfy the requirements referred to in section 4(1) by using the services of a third party, if the conditions in sections 4(1) are complied with.
 - (4) If an Enactment requires a Record to be presented or retained in its original form, or provides for certain consequences if the Record is not presented or retained in its original form, that requirement is satisfied by an Electronic Record retained in accordance with section 4(1) unless the Enactment expressly prohibits the use of an Electronic Record for the specified purpose.
 - (5) If an Enactment requires the retention of a cheque, bill of exchange or promissory note, that requirement is satisfied by retention of an Electronic Record of the Information on the front of the bill of exchange or promissory note or the front and back of the cheque, in accordance with section 4(1).
 - (6) A Record retained as an Electronic Record in accordance with section 4(1) satisfies an Enactment requiring a person to retain a Record for evidentiary, audit, or similar purposes, unless the Enactment expressly prohibits the use of an Electronic Record for the specified purpose.

5. Admissibility of Electronic Records in evidence

An Electronic Record may be used as evidence of a Record in any Court proceedings.

PART 2

ELECTRONIC CONTRACTS

6. Legal recognition of Electronic contracts

An Electronic Record of a contract has the same legal effect, validity and enforceability as if it was in tangible written form.

7. Formation and validity of contracts in an Electronic Communication

- (1) In the context of the formation of contracts, an offer and the acceptance of an offer may be made in an Electronic Communication.
- (2) Where an Electronic Communication is used in the formation of a contract, that contract has the same legal effect, validity and enforceability as if it was in tangible written form.

8. Effectiveness of intent or other statement

Where an Electronic Communication is used for a declaration of intent or other statement, such intent or statement has the same legal effect, validity and enforceability as if it was made in tangible written form.

9. Invitation to make an offer

A proposal to conclude a contract made through Electronic Communications that is not addressed to any specific Addressee and is generally accessible to the public, including on a webpage, is to be considered as an invitation to make offers.

10. Use of automated message systems for contract formation

A contract is capable of being formed by the interaction of an automated message system and a natural person, or by the interaction of Automated Message Systems.

PART 3

ELECTRONIC COMMUNICATIONS

11. Time and place of despatch and receipt

- (1) Unless otherwise agreed between the Originator and the Addressee, the time of despatch of an Electronic Communication is the time when it enters an Information System outside the control of the Originator or of the party who sent it on behalf of the Originator.
- (2) Unless otherwise agreed between the Originator and the Addressee, the time of receipt of an Electronic Communication is:
 - (a) if the Addressee has designated an Information System for the purpose of receiving data messages, receipt occurs:
 - (i) at the time when the data message enters the designated Information System; or
 - (ii) if the data message is sent to an Information System of the Addressee that is not the designated Information System, at the time when the data message is retrieved by the Addressee, or
 - (b) if the Addressee has not designated an Information System, receipt occurs when the data message enters an Information System of the Addressee.
- (3) Unless otherwise agreed between the Originator and the Addressee, an Electronic Communication is deemed to be despatched at the place where the Originator has its place of business and is deemed to be received at the place where the Addressee has its place of business. For the purposes of this section:

- (a) if the Originator or the Addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the registered office; or
 - (b) if the Originator or the Addressee does not have a place of business or registered office, reference is to be made to its habitual residence.
- (4) Section 11(3) applies even if the place where the Information System supporting an electronic address is located in a place that may be different from the place where the Electronic Communication is deemed to be despatched or received under section 11(3).
- (5) Nothing in this section will affect the deemed time for the service of documents under the ADGM Court Procedure Rules 2016, or any deeming provisions for the service of documents contained in an Enactment.

PART 4

ELECTRONIC SIGNATURES

12. Legal recognition of Electronic Signatures

Where an Enactment requires the signature of a person, or provides for certain consequences if a document or a Record is not signed, that requirement is satisfied if an Electronic Signature is used, unless the Enactment expressly prohibits the use of an Electronic Signature.

13. Validity of Electronic Signatures

- (1) An Electronic Signature is valid provided that the type of Electronic Signature used is, either:
- (a) reliable and appropriate for the purpose for which the Electronic Record was generated or communicated, in light of all the circumstances, including any relevant agreement between the parties; or
 - (b) proven to have fulfilled the functions described in section 13(1)(a), by itself or together with further evidence,
- (2) For the avoidance of doubt, any Electronic Signature which complies with this Part will have the same legal effect as a handwritten signature.

14. Reliability of Electronic Signature

- (1) An Electronic Signature is reliable for the purposes of satisfying the requirement referred to in section 13(1)(a) if:
- (a) the signature creation data are, within the context in which they are used, linked to the signatory and to no other person;
 - (b) the signature creation data were, at the time of signing, under the control of the signatory and of no other person;
 - (c) any alteration to the Electronic Signature, made after the time of signing, is

detectable; and

(d) where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

(2) Section 14 (1) does not limit the ability of any person to:

(a) establish in any other way, for the purpose of satisfying the requirements referred to in section 13(1)(a), the reliability of an Electronic Signature; or

(b) adduce evidence of the non-reliability of an Electronic Signature.

15. Admissibility of Electronic Signatures in evidence

In any proceedings before the Court, evidence of a signature includes an Electronic Signature.

PART 5

ELECTRONIC TRANSFERABLE RECORDS

16. Electronic Transferable Records

An Electronic Transferable Record has the same legal effect, validity and enforceability as if it was in tangible written form.

17. Transferable Document or Instrument

(1) 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.

(2) The criterion for assessing integrity of an Electronic Record will be whether Information contained in the Electronic Transferable Record, including any authorised 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 of an Electronic Record.

18. Control of Electronic Transferable Records

- (1) Where an Enactment requires or permits the possession of a Transferable Document or Instrument, that requirement is met with respect to an Electronic Transferable Record if a reliable method is used:
 - (a) to establish exclusive control of that Electronic Transferable Record by a person; and
 - (b) to identify that person as the person in control.
- (2) Where an Enactment requires or permits transfer of possession of a Transferable Document or Instrument, that requirement is met with respect to an Electronic Transferable Record through the transfer of control over the Electronic Transferable Record.

19. Time or place

Where an Enactment requires or permits the indication of time or place with respect to a Transferable Document or Instrument, that requirement is met if a reliable method is used to indicate that time or place with respect to an Electronic Transferable Record.

20. Endorsement

Where an Enactment requires or permits the endorsement in any form of a Transferable Document or Instrument, that requirement is met with respect to an Electronic Transferable Record if the Information required for the endorsement is included in the Electronic Transferable Record and that Information is compliant with the requirements in sections 2 and 13(1).

21. Amendment

Where an Enactment requires or permits the amendment of a Transferable Document or Instrument, that requirement is met with respect to an Electronic Transferable Record if a reliable method is used for amendment of Information in the Electronic Transferable Record so that the amended information is identified as such.

22. Replacement of a Transferable Document or Instrument with an Electronic Transferable Record

- (1) An Electronic Transferable Record may replace a Transferable Document or Instrument if a reliable method for the change of medium is used.
- (2) For the change of medium to take effect, a statement indicating a change of medium will be inserted in the Electronic Transferable Record.
- (3) Upon issuance of the Electronic Transferable Record in accordance with sections 22(1) and (2), the Transferable Document or Instrument will be made inoperative and ceases to have any legal effect, validity or enforceability.
- (4) A change of medium in accordance with sections 22(1) and (2) will not affect the rights and obligations of the parties under the Transferable Document or Instrument.

23. Replacement of an Electronic Transferable Record with a Transferable Document or

Instrument

- (1) A Transferable Document or Instrument may replace an Electronic Transferable Record if a reliable method for the change of medium is used.
- (2) For the change of medium to take effect, a statement indicating a change of medium must be inserted in the Transferable Document or Instrument.
- (3) Upon issuance of the Transferable Document or Instrument in accordance with sections 23(1) and (2), the Electronic Transferable Record will be inoperative and ceases to have any legal effect, validity or enforceability.
- (4) A change of medium in accordance with sections 23(1) and (2) will not affect the rights and obligations of the parties under the Electronic Transferable Record.

PART 6**ELECTRONIC WITNESSING****24. Electronic witnessing**

- (1) Unless any applicable law otherwise provides, where an Enactment requires a witness to a signature of a person and provides for certain consequences if a signature of a person on a document or a Record is not appropriately witnessed, that requirement can be satisfied if the required witness is able to observe the affixture of the signature of that person on the document or Record in real-time by audio-visual Electronic means.
- (2) The witness under section 24(1) must subsequently attest to the affixture of the signature on the document or Record in accordance with the requirements of the Enactment.
- (3) Section 24(1) applies whether the signature is an Electronic Signature or not and whether the document or Record is in Electronic form or not.

PART 7**EXCLUSIONS****25. Excluded matters**

The provisions of Parts 1, 2, 3 and 4 of these Regulations do not apply to any Enactment or any applicable law requiring writing or signatures in any of the following matters:

- (a) the creation, performance or enforcement of a power of attorney;
- (b) the creation and execution of wills, codicils or testamentary trusts;
- (c) transactions involving the sale, purchase, lease (for a term of more than 10 years) and other disposition of immovable property and the registration of other rights relating to immovable property; or
- (d) any document to be notarised before a notary public.

26. Consistency with applicable laws

Nothing in section 25 restricts parties from complying with any subsequent amendment to an Enactment or applicable law that permits such Records in Electronic form.

27. Exclusion or modification by the parties

- (1) The parties to a contract or transaction may exclude, derogate from or vary the application of any provisions of these Regulations unless an Enactment or any applicable law otherwise provides.
- (2) The parties to a contract or transaction may impose additional requirements to the form or authentication of the contract or transaction by agreement unless an Enactment or any applicable law otherwise provides.

PART 8

GENERAL PROVISIONS

28. Interpretation of certain words and expressions

In these Regulations:

“**Addressee**” means the party who is intended by the Originator to receive an Electronic Communication.

“**Automated Message System**” includes a computer program or an electronic or other automated means used to initiate an action or respond to data messages or performances in whole or in part, without review or intervention by a natural person each time an action is initiated or a response is generated by the system;”

“**Court**” means any of the courts established pursuant to Article 13 of the ADGM Founding Law.

“**created**” includes generated, sent, communicated, or received.

“**Electronic**” relates to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“**Electronic Communication**” means any communication made by means of an Electronic Record.

“**Electronic Record**” means a Record created, generated, sent, communicated, received or retained in Electronic form.

“**Electronic Signature**” means an Electronic sound, symbol or process attached to or logically associated with an Electronic Record, which may be used to identify the signatory and to indicate the signatory’s approval of the Information contained in the Electronic Record.

“**Electronic Transferable Record**” is an Electronic Record that complies with the requirements of section 17.

“**Enactment**” means an “enactment” or “subordinate legislation”, within the meaning given to these terms in the Interpretation Regulations 2015.

“**Information**” includes data, text, images, sounds, codes, computer programs, software, databases, symbols or processes.

“**Information System**” means a system for generating, sending, receiving, storing or otherwise processing Electronic Records.

“**Originator**” means the party who sent an Electronic Communication.

“**Record**” means Information that is capable of retention in tangible or Electronic form.

“**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.

29. General reliability standard

For the purposes of sections (1)(a), 17(1)(b), 18(1), 19, 21, 22(1) and 23(1) the method referred to will be:

- (a) as reliable as appropriate for the fulfilment of the function for which the method is being used, in the light of all relevant circumstances, which may include:
 - (i) any operational rules relevant to the assessment of reliability;
 - (ii) the assurance of data integrity;
 - (iii) the ability to prevent unauthorized access to and use of the system;
 - (iv) the security of hardware and software;
 - (v) the regularity and extent of audit by an independent body;
 - (vi) the existence of a declaration by a supervisory body, an accreditation body or a voluntary scheme regarding the reliability of the method; or
 - (vii) any applicable industry standard, or
- (b) proven in fact to have fulfilled the function by itself or together with further evidence.

30. 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.
- (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.

31. Information requirements

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

32. Short title, extent and commencement

- (1) These Regulations may be cited as the Electronic Transactions Regulations 2021.
- (2) These Regulations apply in the Abu Dhabi Global Market.
- (3) These Regulations come into force on the date of their publication.