

Bahrain's ETR Law

WTO MSME Working Group

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Scope of the Law

- **ETR: Transferable Document + Instrument**
- **ETR as Defined under MLETR as** “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”.
- **Bahrain did not adopt MLETR’s definition. Why?**
- **What did Bahrain do instead?**
- **Bahrain named specific documents and instruments to which the law applies.**

These are:

- **Documents:** Bills of Lading, Letters of Credit, Warehouse Receipts + **Other Documents** (in respect of delivering goods) specified in a regulation.
- **Instruments:** Cheques, Bills of Exchange, Promissory Notes + Other Instruments (in respect of paying a fixed amount of money) specified in a regulation.

The Legislative Approach

- Standalone law for ETR, why?
- Revamping complementary law ETL of 2002, Why?
- Accession to UNCITRAL Convention on the Use of Electronic Communications in International Contracts.
- New **Electronic Communications and Transactions Law (ECTL)** developed and issued simultaneously with ETR Law.
- Ensured consistency of terms and definitions between ETRL Law and with the Electronic (ECTL).
- Avoided duplication with ECTL e.g. functional equivalence of electronic writing and electronic signature are covered under the ECTL.
- Recognized the weight of the literature published by UNCITRAL for purposes of interpretations, why?

Electronic Transferable Records Management System

- ETR Law provides for a Management System. **BUT** a Management System not Mandatory.
- Why the ETR Law introduced the concept of Management System?
- The Management System is referred to in the law as “**Electronic Transfer Records Management System**” or ETRMS.
- **ETRMS for:** Issuance, Transfer, Control, Presentation and Storage of ETR in accordance with the rules set out in the ETR Law.
- ETRMS is defined as “an information system for the **issuance, transfer, control, presentation and storage** of electronic transferable records in accordance with the rules set out in this law”.
- ETRMS is operated by an “**ETRMS Operator**”.
- **ETRMS Operators** may apply for accreditation by a designated government agency.
- Regulation is being developed for the accreditation of **ETRMS Operators**.

Accreditation of ETRMS Operators

- Accreditation is not mandatory
- **Advantage of accreditation:** PRESUMPTION of reliability of the method referred to in the law for the ETR's integrity, achieving control, indication of time and place, identifying amendments in the ETR and replacement of the ETR with a paper instrument or document (and vice versa).
- **Accreditation of ETRMS Operators established in Bahrain:** Must comply with accreditation standards drawn up by the competent government agency.
- **Accreditation of External ETRMS Operators:** They may also be accredited.
- **Accredited External ETRMS Operators:** They do not have to comply with the domestic regulation provided they are already accredited in an acceptable foreign jurisdiction **PLUS** they operate in accordance with standards at least as robust as those of Bahrain.

Liability of ETRMS Operators

- Operator liable for negligence or willful misconduct.
- Negligence or willful misconduct is presumed if operator is accredited.
- Limitation of liability by the operator is possible upon advance notice i.e. contract.

The ETR Law Legislation Journey

- ETR Law was not an isolated initiative.
- Other complementary initiatives in the journey of digital transformation include:
 - ✓ Issuing a Personal Data Protection Law
 - ✓ Accession to UNCITRAL Convention on the Use of Electronic Communications in International Contracts.
 - ✓ Revamping the Electronic Transactions Law 2001
 - ✓ Providing 500+ government services online.
 - ✓ Attracting Cloud Computing Centers.
 - ✓ Government Adopting Cloud First Policy.
 - ✓ Promoting the use of cloud (including providing financial support and setting up cloud innovation centers and cloud skills)
 - ✓ Promulgating an innovative Data Jurisdiction Law (enables foreign companies from designated countries to maintain their home jurisdiction over their data located in Bahrain cloud data centers).
 - ✓ Substantially easing requirement of data localization
 - ✓ Promoting and fostering Fintech.
 - ✓ Developing and promoting specialized training programs for emerging industries.
 - ✓ Promoting and supporting Industry 4.0 initiatives.
 - ✓ Pursuing Open Data approach for a wide range of multi-sectorial government data.
 - ✓ Continued modernizing and digitalization of customs procedures .