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## Draft provisions on electronic transferable records

### Note by the Secretariat

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## I. Introduction

1. At its forty-fourth session, in 2011, the Commission mandated the Working Group to undertake work in the field of electronic transferable records.<sup>1</sup>
2. At its forty-sixth session (Vienna, 29 October-2 November 2012), broad support was expressed by the Working Group for the preparation of draft provisions on electronic transferable records, to be presented in the form of a model law without prejudice to the decision on the form of its work to be made by the Working Group (A/CN.9/761, paras. 90-93).
3. At its forty-seventh session (New York, 13-17 May 2013), the Working Group began reviewing the draft provisions on electronic transferable records as provided in document A/CN.9/WG.IV/WP.122 and noted that while it was premature to start a discussion on the final form of work, the draft provisions were largely compatible with different outcomes that could be achieved. Part II of this note contains the draft provisions reflecting the deliberations and decisions of the Working Group during that session (A/CN.9/768, paras. 13-111).
4. At that session, it was indicated that rules enabling the use of electronic transferable records would interact with general provisions on the use of electronic transactions, and that further harmonization of those general provisions, in particular through broader adoption of the United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005) (the “Electronic Communications Convention”), was highly desirable (A/CN.9/768, para. 15).

## II. Draft provisions on electronic transferable records

### A. General

#### *“Draft article 1. Scope of application*

- “1. This Law applies to electronic transferable records.
- “2. Nothing in this Law affects the application of any rule of law governing a [corresponding] paper-based transferable document or instrument to an electronic transferable record other than as provided for in this Law.
- “[3. This Law applies to electronic transferable records other than as provided by [law governing a certain type of electronic transferable record to be specified by the enacting State].]”

#### **Remarks**

5. Paragraph 1 of draft article 1 reflects the Working Group’s understanding that generic rules based on a functional approach should be developed encompassing various types of electronic transferable records (A/CN.9/761, para. 18).

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<sup>1</sup> *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/66/17)*, para. 238.

6. Paragraph 2 of draft article 1 states that the draft provisions should not deal with and does not affect matters governed by any rule of law governing a paper-based transferable document or instrument (hereinafter referred generally to as “substantive law”) (A/CN.9/761, paras. 20, 28, 49, 62, 68, 71, 79 and 85 and A/CN.9/768, para. 14). The Working Group may wish to consider including words such as “corresponding” in paragraph 2 of draft article 1 to clarify that the substantive law governing, for example, bills of lading would apply to electronic bills of lading and not electronic promissory notes.

7. While the main objectives of the draft provisions are to transpose what exists in a paper-based environment into an electronic environment and to achieve functional equivalence (A/CN.9/768, para. 18), the draft provisions may also provide guidance to States (and in certain cases, relevant industries) that are preparing rules on instruments that would exist only in an electronic environment (for example, Electronically Recorded Monetary Claims Act of Japan). The draft provisions could ensure the consistency of rules applicable to all instruments that exist in the electronic environment, regardless of whether a corresponding paper-based document or instrument exists or not. Yet, as the draft provisions do not intend to deal with matters of substantive law (A/CN.9/768, para. 32), States enacting legislation on instruments that exist only in an electronic environment would need to prepare more comprehensive legislation for such instruments and deal with the interaction between that legislation and the draft provisions. Paragraph 3 provides an alternative approach for such States. The Working Group may wish to proceed with this understanding rather than debating whether instruments that exist only in the electronic environment should be included in the scope of the draft provisions.

8. Questions raised with respect to the compatibility of the draft provisions with the provisions of the Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes (Geneva, 7 June 1930) and the Convention Providing a Uniform Law for Cheques (Geneva, 19 March 1931) are dealt with in document A/CN.9/WG.IV/WP.125.

***“Draft article 2. Exclusion***

“[1. This Law does not override any rule of law applicable to consumer protection.]

“2. This Law does not apply to securities, such as shares and bonds, and other financial instruments including financial derivatives.”

**Remarks**

9. Paragraph 1 of draft article 2 mirrors article 1 of the UNCITRAL Model Law on Electronic Signatures (2001) and recognizes that consumer protection law shall, in case of conflict, take precedence over the draft provisions. The Working Group may wish to consider whether there is any merit in retaining this paragraph.

10. Paragraph 2 of draft article 2 reflects the discussion by the Working Group on the scope of exclusion (A/CN.9/768, para. 23). The Working Group may wish to consider whether it might be more appropriate to address this issue in the definition of “electronic transferable record” (see para. 15 below). “Financial instruments” should not be understood to refer generally to electronic transferable records that

might have financial consequences and the Working Group may wish to qualify the meaning of that term.

11. The Working Group may wish to further discuss its scope of work, possibly specifying transactions (for example, foreign exchange transactions) that should be excluded from the scope of the draft provisions, possibly along the lines of article 2, paragraph 1, subparagraph (b), of the Electronic Communications Convention.

***“Draft article 3. Definitions***

“For the purposes of this Law:

**Remarks**

12. The definitions in draft article 3 have been prepared as a reference and should be examined in the context of the relevant draft articles. The terms are presented in the order they appear throughout the draft provisions (A/CN.9/768, para. 34). Remarks for consideration by the Working Group have been placed after each definition.

13. In addition to the remarks below, the Working Group may wish to consider whether (i) to include a definition of “control” by referring to the procedure set out in draft article 17 and (ii) to clarify in draft article 3 that a person may either be a natural or a legal person.

*“electronic transferable record”* means a record used in an electronic environment that is capable of transferring the right to performance of obligation incorporated in the record through the transfer of that record.

**Remarks**

14. The Working Group may wish to consider whether the drafting correctly reflects the Working Group’s conclusion that the definition should be broadened by focusing on the key function of transferability and without making reference to paper-based transferable documents or instruments (A/CN.9/768, paras. 27-31). The Working Group may wish to consider the following drafting suggestion: “a record issued in an electronic environment that can be used to transfer the right to the performance of obligation specified in the record through the transfer of that record.” The word “specified” is suggested for consistency with the definition of a “paper-based transferable document or instrument”.

15. As mentioned (see para. 10 above), the Working Group may also wish to include a further explanation to the definition of “electronic transferable record” along the following lines and delete paragraph 2 of draft article 2: “An electronic transferable record does not include securities, such as shares and bonds, and other financial instruments including financial derivatives.”

*“paper-based transferable document or instrument”* means a transferable document or instrument issued on paper that entitles the bearer or beneficiary to claim the performance of obligation specified in the paper-based transferable document or instrument.

“*electronic record*” means information generated, communicated, received or stored by electronic means.

#### Remarks

16. In considering draft articles 8 and 9, the Working Group may wish to consider including a definition of “data message” as mentioned in the UNCITRAL Model Law on Electronic Commerce and the Electronic Communications Convention or introducing a new term “electronic record” as defined above. In doing so, the Working Group may also wish to consider the definition of “electronic transport record” in the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 2008) (the “Rotterdam Rules”). If the term “electronic record” is introduced, this could also replace the phrase “a record used in an electronic environment” in the definition of an “electronic transferable record” (see para. 14 above).

“*issuance*” of an electronic transferable record means the issuance of the record in accordance with the procedure set out in draft articles 14 and 17.

“*issuer*” means a person that issues an electronic transferable record on its own behalf.

#### Remarks

17. The Working Group may wish to consider whether (i) to retain the definition of “issuer” and (ii) to include a further explanation along the following lines: “When an electronic transferable record is issued by a third-party service provider upon the issuer’s request, the third-party service provider is not considered an issuer under this Law.”

“*holder*” of an electronic transferable record is a person in control of the electronic transferable record in accordance with the procedure set out in draft article 17.

#### Remarks

18. The Working Group may wish to consider whether the definition of accurately reflects the Working Group’s conclusion (A/CN.9/768, para. 86) and clarifies that a holder of an electronic transferable record would only have de facto control of the electronic transferable record. Whether the holder is the rightful holder and the substantive rights of the holder are matters for the substantive law and the draft provisions would not endow the holder with such rights (A/CN.9/WG.IV/WP.122, paras. 29 and 31).

19. Should the Working Group wish to avoid any reference to notion of “control”, “holder” may be defined as “a person to which an electronic transferable record has been issued or transferred” or “a person who has been issued an electronic transferable record or a transferee of an electronic transferable record.”

“*transfer*” of an electronic transferable record means the transfer of control over an electronic transferable record.

**Remarks**

20. The Working Group may wish to consider whether to retain this definition.

“*amendment*” means the modification of information contained in the electronic transferable record in accordance with the procedure set out in draft article 22.

“*performance of obligation*” means the delivery of goods or the payment of a sum of money as specified in a paper-based transferable document or instrument or an electronic transferable record.

**Remarks**

21. The Working Group may wish to consider whether there is merit in retaining this definition which refers generally to the delivery of goods or the payment of a sum of money as mentioned in article 2, paragraph 2, of the Electronic Communications Convention (A/CN.9/761, para. 22).

“*obligor*” means the person specified in a paper-based transferable document or instrument or an electronic transferable record who has the obligation to perform.

**Remarks**

22. The Working Group may wish to consider whether to further clarify in the definition that the substantive law would address who the obligor is.

“*replacement*” means the change in the medium, either from a paper-based transferable document or instrument to an electronic transferable record or vice versa.

**Remarks**

23. The Working Group may wish to consider whether the definition should be limited to instances where there is change only in the medium in accordance with the procedure set out in draft article 23 or whether it should be broadened to include instances where an electronic transferable record was issued to substitute another electronic transferable record (see A/CN.9/WG.IV/WP.124/Add.1, para. 27).

“*third-party service provider*” means a third party providing services related to the use of electronic transferable records in accordance with draft articles 29 and 30.”

**“Draft article 4. Interpretation**

“1. This Law is derived from [...] of international origin. In the interpretation of this Law, regard is to be had to the international origin and to the need to promote uniformity in its application and the observance of good faith.

“2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.”

#### **Remarks**

24. Draft article 4 is intended to draw the attention of courts and other authorities to the fact that the draft provisions, while enacted as part of domestic law, should be interpreted with reference to their international origin in order to facilitate uniform interpretation in various countries (A/CN.9/768, para. 35). “General principles” mentioned to in paragraph 2 of draft article 4 refers to the general principles of electronic transactions.

25. Inspired by article 7 of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), most UNCITRAL texts, including the UNCITRAL Model Law on Electronic Commerce (article 3) as well as the Electronic Communications Convention (article 5), contain such a provision. A more recent formulation in a model law can be found in article 2A of the UNCITRAL Model Law on International Commercial Arbitration (with amendments as adopted in 2006). The Working Group may wish to reconsider draft article 4 once it had made a decision on the final form of its work.

#### ***“Draft article 5. Party autonomy***

“1. [Draft articles \*\*, \*\* and \*\* may be derogated from or their effect may be varied by agreement.][Except as otherwise provided, the parties may not derogate from or vary by agreement the provisions of this Law.]

“2. Such an agreement does not affect the rights of any person that is not a party to that agreement.”

#### **Remarks**

26. The Working Group indicated that, while the principle of party autonomy is a cornerstone of UNCITRAL texts, its operation in connection to the use of electronic transferable records would generally be limited due to the constraints in substantive law. It was also indicated that the interest of third parties should not be affected (A/CN.9/768, para. 36). The Working Group may wish to review the draft provisions and in the case that it finds that there are no draft articles from which the parties may derogate, it may wish to delete draft article 5 entirely or reformulate it.

#### ***“Draft article 6. Information requirements***

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

#### **Remarks**

27. Draft article 6 mirrors article 7 of the Electronic Communications Convention which reminds parties of the need to comply with possible disclosure obligations that might exist under other law (Explanatory note on the Electronic

Communications Convention, paras. 122-128). Draft article 6 should not be interpreted as prohibiting the issuance of an electronic transferable record to bearer, which is separately dealt with in draft article 14, paragraph 2 (A/CN.9/768, para. 39).

## **B. Provisions on electronic transactions**

28. The Working Group agreed that the following articles 7 to 10 which reproduced some of the general rules governing electronic transactions should form a separate section (A/CN.9/768, paras. 40 and 44). As noted (para. 4 above), the draft provisions would interact with general rules governing electronic transactions.

29. The Working Group may wish to consider whether to keep these draft articles in a separate section or to combine them with the previous section. The Working Group may also wish to consider whether rules on time and place of dispatch and receipt of electronic communication along the lines of article 10 of the Electronic Communications Convention should be included in this section.

### ***“Draft article 7. Legal recognition of an electronic transferable record***

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

### **Remarks**

30. Draft article 7 states the principle of non-discrimination and is formulated on the basis of existing UNCITRAL provisions that have received numerous enactments (A/CN.9/768, para. 39).

### ***“Draft article 8. Writing***

“Where the law requires that [a communication] [information] should be in writing or provides consequences for the absence of a writing, that requirement is met with respect to the use of an electronic transferable record by [an electronic communication] [an electronic record] if the information contained therein is accessible so as to be usable for subsequent reference.”

### ***“Draft article 9. Signature***

“Where the law requires [that a communication should be signed by a person] [a signature of a person] or provides consequences for the absence of a signature, that requirement is met with respect to the use of an electronic transferable record if:

(a) A method is used to identify that person and to indicate that person’s intention in respect of the information contained in [the communication][an electronic record]; and

(b) The method used is either:

(i) As reliable as appropriate for the purpose for which [the communication] [an electronic record] was generated, in the light of all the relevant circumstances, including any relevant agreement; or

- (ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.”

### Remarks

31. Based on articles 6 and 7 of the UNCITRAL Model Law on Electronic Commerce and article 9 of the Electronic Communications Convention (paragraphs 2 and 3), draft articles 8 and 9 establish minimum standards on form requirements that may exist under the substantive law.

32. While the Working Group had agreed that the word “communication” should be used in draft article 8 (A/CN.9/768, para. 44), the word “information” may be more appropriate as it is broader in scope and may cover instances whereby information may not necessarily be communicated.

33. If the Working Group wishes to proceed with this understanding, the latter part of the draft article would need to be revised to refer to an electronic record instead of an electronic communication (see draft article 3 and para. 16 above). Similar changes will be necessary for draft article 9.

34. The Working Group may also wish to consider incorporating the two-tier approach in the UNCITRAL Model Law on Electronic Signatures, which sets out the objective criteria of reliability of electronic signatures. This could create more certainty by recognizing certain techniques as being particularly reliable, irrespective of the circumstances in which they are used. Article 6, paragraph 3, states that an electronic signature is considered to be reliable for the purposes of satisfying the requirement in paragraph 1 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 for 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.

### *“Draft article 10. Original*

“1. Where the law requires [information to be presented/available or retained in its original form] [an original], or provides consequences for the absence of an original, that requirement is met with respect to the use of an electronic transferable record if:

- (a) ... ; and
- (b) ...”

### Remarks

35. Draft article 10 establishes a minimum standard on form requirement of an original. The Working Group noted that article 8 of the UNCITRAL Model Law on Electronic Commerce and article 9, paragraph 4, of the Electronic Communications Convention, which formed the basis of draft article 10, were drafted to address matters such as originality of contracts, and that the life cycle of an electronic transferable record deserved a different approach (A/CN.9/768, para. 48). The

Working Group also noted that the functional equivalent of the paper-based notion of original was of limited practical use with respect to the use of electronic transferable records since all related legal needs could be satisfied by establishing the functional equivalents of the paper-based notions of authenticity, uniqueness, and integrity, which were addressed respectively in draft articles 9, 11 and 12 (A/CN.9/768, paras. 49 and 50). The Working Group may wish to consider how the original form requirement, if any, would be met after considering the relevant draft articles (A/CN.9/768, para. 50), upon which it may decide to remove the draft article entirely.

### **C. Use of electronic transferable records**

#### ***“Draft article 11. Uniqueness of an electronic transferable record***

- “1. A reliable method shall be employed to render an electronic transferable record unique.
- “2. A method satisfies paragraph 1, if it:
  - (a) Designates an authoritative copy of an electronic transferable record, which is readily identifiable as such; and
  - (b) Ensures that the authoritative copy of an electronic transferable record cannot be reproduced.”

#### **Remarks**

36. Draft article 11 reflects the understanding of the Working Group that uniqueness should aim at entitling only one holder of the electronic transferable record to performance of obligation and preventing circulation of multiple records relating to the same performance obligation (A/CN.9/761, paras. 33-37 and A/CN.9/768, paras. 51 and 76). It was prepared with the understanding that uniqueness, like integrity of an electronic transferable record, is a quality that should be assured throughout the life cycle of the electronic transferable record (see para. 37 below).

#### ***“Draft article 12. Integrity of an electronic transferable record***

- “1. A reliable method shall be employed to provide assurance that an electronic transferable record retains its integrity from its issuance.
- “2. For the purposes of paragraph 1:
  - (a) The criteria for assessing integrity shall be whether the information contained in the electronic transferable record has remained complete and unaltered, apart from the addition of any change that arises throughout the life cycle of the electronic transferable record; and
  - (b) The standard of reliability required shall be assessed in the light of the purpose for which the information contained in the electronic transferable record was generated and in the light of all the relevant circumstances.”

### Remarks

37. The Working Group noted that integrity of an electronic transferable record was a quality not necessarily linked with the paper-based notion of “original” and one that should be assured throughout the life cycle of the electronic transferable record (A/CN.9/768, para. 55). It was further agreed that draft articles 10 and 12 should be retained separately (A/CN.9/768, para. 56).

38. Accordingly, draft articles 11 and 12 have been placed at the very beginning of the section on the use of electronic transferable records. The Working Group may wish to consider whether the placement of these draft articles is appropriate or whether they should follow draft article 14 on issuance.

39. Changes of purely technical nature, for instance, modifications due to data migration, would not affect the integrity of an electronic transferable record and thus should fall under the “addition of any change” referred to in paragraph 2, subparagraph (a), of draft article 12 (A/CN.9/768, para. 54) (see also A/CN.9/WP.IV/WP.124/Add.1 paras. 22-24).

#### *“Draft article 13. Consent to use an electronic transferable record*

“1. Nothing in this Law requires a person to use an electronic transferable record [without its consent].

“2. The use of an electronic transferable record requires the consent of the parties.

“3. The consent of a person to use an electronic transferable record may be inferred from the person’s conduct.”

### Remarks

40. Draft article 13 is based on article 8, paragraph 2, of the Electronic Communications Convention. Paragraph 1 of draft article 13 states the general principle that a person would not be obliged to use an electronic transferable record.

41. Paragraph 2 of draft article 13 addresses the requirement that parties involved in the use of electronic transferable records would need to consent to their use. Paragraph 2 also reflects the suggestion that the paragraph should be formulated as a general requirement without making any reference to individual draft articles (for example, draft articles 14, 21, 22, 23 and 25) (A/CN.9/768, paras. 57 and 58). It should, however, be noted that draft article 23 on replacement would require not only the consent of the parties to use an electronic transferable record but also their consent to the replacement.

42. The word “parties” in paragraph 2 is used in a generic manner to encompass all those involved in the use of electronic transferable records, for example, the issuer, the first holder, the transferee, the obligor, the grantor or the secured creditor (A/CN.9/768, para. 57).

43. With respect to paragraph 2 of draft article 13, the Working Group may wish to consider whether adding the words “without its consent” in paragraph 1 would suffice and whether individual draft articles should respectively contain consent requirements.

44. Paragraph 3 of draft article 13 deals with instances where the consent of the party would be implied, for example, when the transferee of the electronic transferable record obtained control of that record (A/CN.9/768, para. 57).

***“Draft article 14. Issuance of an electronic transferable record***

“1. The issuance of an electronic transferable record shall require the consent of the issuer and the first holder to use an electronic medium.

“2. Nothing in this Law precludes the issuance of an electronic transferable record to bearer. [Nothing in this Law requires the identity of the holder to be disclosed.]

“3. Upon issuance, an electronic transferable record shall be subject to control until it ceases to have any effect or validity.

“4. Where any rule of law governing a [corresponding] paper-based transferable document or instrument permits the issuance of more than one original of a paper-based transferable document or instrument and more than one original is issued, this may be achieved with respect to the use of electronic transferable records by ....”

**Remarks**

45. Paragraph 1 of draft article 14 states that parties involved in the issuance of an electronic transferable record (the issuer and the first holder) would need to agree to use an electronic medium (A/CN.9/761, para. 32). The Working Group may wish to consider whether to retain paragraph 1 or to delete it, as draft article 13, paragraph 2, would state a general requirement for consent (see paras. 41-43 above). The Working Group may also wish to consider how this paragraph will operate when an electronic transferable record is issued to bearer.

46. The question of who the first holder is would be a matter of substantive law. For example, article 35 of the Rotterdam Rules allows the issuance of an electronic transport record to the shipper or the documentary shipper, if the shipper consents and in such circumstances, the party whose consent is required under paragraph 1 of draft article 14 would be the person to whom the electronic transport record is to be issued (the shipper or the documentary shipper, as the case might be) (A/CN.9/768, para. 60).

47. Paragraph 2 of draft article 14 reflects the discussion of the Working Group that the draft provisions should enable the use of electronic transferable records issued to bearer (A/CN.9/761, para. 26) and clarifies that an electronic transferable record may be issued to bearer in circumstances where the same would be allowed under the substantive law (A/CN.9/768, para. 67). The Working Group may wish to consider a more general formulation as provided in square brackets.

48. Paragraph 3 of draft article 14 is a general statement that an electronic transferable record should be subject to control from the time it is issued until when it ceases to have any effect or validity (A/CN.9/768, para. 70). The Working Group may wish to consider whether the paragraph is better placed in draft article 17 on control.

49. Paragraph 4 of draft article 14 deals with circumstances where the substantive law permits the issuance of multiple originals and there exists such business practice. It is rare that the issuance of multiple originals is required and thus, the Working Group felt that there was no need to achieve the functional equivalence for such requirement (A/CN.9/768, para. 71). The Working Group may wish to first discuss whether there would be a need to issue multiple originals in an electronic environment. Multiple originals had been issued in a paper-based environment to achieve various functions (to prepare for loss, to endow holders different authorities, to expedite transactions and so on), which may be achieved quite differently in an electronic environment (A/CN.9/768, para. 72). For example, when a paper-based transferable document or instrument issued in multiple originals is to be replaced with an electronic transferable record, all holders of the paper-based originals may establish control over the electronic transferable record (A/CN.9/768, para. 73) or the holders may be given limited access to the electronic transferable record (for example, one holder would be able to “amend” the record using one password and another holder would be able to “transfer control” using another password).

50. The Working Group may wish to consider whether to retain paragraph 4 with this understanding or delete paragraph 4 leaving the “multiple original” situation to the parties or the relevant electronic transferable record management system.

***“Draft article 15. Additional information in an electronic transferable record***

“1. Nothing in this Law requires additional information for the issuance of an electronic transferable record beyond that required for the issuance of [a paper-based transferable document or instrument performing the same functions] [a corresponding paper-based transferable document or instrument].

“2. Nothing in this Law precludes the inclusion of information in an electronic transferable record in addition to that contained in [a paper-based transferable document or instrument performing the same functions] [a corresponding paper-based transferable document or instrument].”

**Remarks**

51. Paragraph 1 of draft article 15 reflects the understanding of the Working Group that information required for the issuance of an electronic transferable record should generally be the same as that required for the issuance of a paper-based transferable document or instrument with corresponding functions, as requiring additional information could lead to discrimination against the use of electronic means (A/CN.9/768, paras. 62-64).

52. As noted in draft article 1 (see para. 6 above), the Working Group may wish to consider using the words “a corresponding paper-based transferable document or instrument” in draft article 15 to refer to a paper-based transferable document or instrument, the functions of which an electronic transferable record aims to perform.

53. Paragraph 2 of draft article 15 reflects the understanding of the Working Group that throughout its life cycle, an electronic transferable record may contain information (for example, the consent of the parties, information to uniquely identify the electronic transferable record) in addition to that contained in a

corresponding paper-based transferable document or instrument (A/CN.9/768, para. 66).

54. The Working Group may wish to note that paragraph 1 of draft article 15 deals with substantive information requirements (which should not be more burdensome for electronic transferable records), while paragraph 2 deals with information that may be included exclusively due to the dynamic nature of “electronic” transferable records.

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