

# **The Information Technology (Recognition of Foreign Certifying Authorities not Operating under any Regulatory Authority) Regulations, 2013**

UNION OF INDIA

India

## **The Information Technology (Recognition of Foreign Certifying Authorities not Operating under any Regulatory Authority) Regulations, 2013**

### **Rule**

### **THE-INFORMATION-TECHNOLOGY-RECOGNITION-OF-FOREIGN-CER of 2013**

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The Information Technology (Recognition of Foreign Certifying Authorities not Operating under any Regulatory Authority) Regulations, 2013 Published vide Notification New Delhi, the 6th April, 2013 G.S.R. 205 (E). - In exercise of the powers conferred by clause (b) of sub-section (2) of section 89 of the Information Technology Act, 2000 (21 of 2000), the Controller hereby, after consultation with the Cyber Regulations Advisory Committee and with the previous approval of the Central Government, makes the following Regulations, namely :-

### **1. Short title and Commencement.**

(1) These Regulations may be called the Information Technology (Recognition of Foreign Certifying Authorities not operating under any Regulatory Authority) Regulations, 2013. (2) They shall come into force on the date of their publication in the Official Gazette.

### **2. Definitions.**

- In these Regulations, unless the context otherwise requires, -(a) "Act" means the Information Technology Act, 2000 (21 of 2000); (b) "Certifying Authority" means a person who has been granted a licence to issue a Digital Signature Certificate under section 24; (c) "Controller" means the Controller of Certifying Authorities appointed under sub-section (1) of section 17 of the

Act;(d)"Foreign Certifying Authority" means a certifying authority other than one licensed to issue a digital signature certificate under section 24 of the Act and whose installed facilities and infrastructure associated with all functions of generation, issue and management of digital signature certificates are located outside India ;(e)"Recognized Foreign Certifying Authority" means a Foreign Certifying Authority who has been granted recognition under these regulations pursuant to sub-section (1) of section 19 of the Act;(f)Words and expressions used herein and not defined, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

### **3. Criteria for recognition of foreign certifying authorities which does not operates under any regulatory authority.**

- (A) Recognition of Foreign Certifying Authorities. - The procedure relating to recognition of Foreign Certifying Authorities which does not operate under any Regulatory Authority is as under :  
(1)Application for grant of recognition. - Notwithstanding anything contained in regulation 3(A), any foreign certifying authority may apply to the Controller for recognition.  
(2)Particulars of application. - Every application for recognition of a Foreign Certifying Authority under this regulation shall be made to the Controller, in such manner as the Controller may, from time to time, determine, supported by such documents and information as the Controller may require and it shall inter alia, include the following, namely :-(a)a Certification Practice Statement (CPS);(b)a statement including the procedures with respect to identification of the applicant;(c)a statement for the purpose and scope of anticipated Digital Signature Certificate technology, management, or operations to be outsourced;(d)certified copies of the business registration documents and licences of the Foreign Certifying Authority that intends to be recognized;(e)a description of any event, particularly current or past insolvency, that could materially affect the applicant's ability to act as a recognized Foreign Certifying Authority;(f)an undertaking by the applicant that to its best knowledge and belief it can and will comply with the requirements of its Certification Practice Statement;(g)the required fee; and(h)any other information required by the Controller.  
(3)Performance Bond and in the form of Banker's guarantee - Every applicant under this regulation shall submit a performance bond and furnish a banker's guarantee from a scheduled bank in India in favour of the Controller in such form and in such manner as may be approved by the Controller for an amount of not less than one crore of US dollars and the performance bond and banker's guarantee shall remain valid for a period of six years from the date of its submission.  
(4)Invocation of Performance Bond and Banker's Guarantee - Without prejudice to any penalty which may be imposed or prosecution which may be initiated for any offence under the Act or any other law for the time being in force, the performance bond and banker's guarantee submitted under sub-regulation (3) may be invoked in the following circumstances, namely :-(a)when the Controller has suspended the recognition of the foreign certifying authority under these regulations; or(b)for payment of an offer of compensation made by the Controller; or(c)for payment of liabilities and rectification costs attributed to the negligence of the foreign Certifying Authority, its officers or employees; or(d)for payment of the costs incurred in the discontinuation or transfer of operations of the foreign Certifying Authority, if the foreign Certifying Authority's authorization in the country of its origin or operations is discontinued; or(e)for payment of the costs incurred in the inspection of the infrastructure utilized by the foreign certifying authority for generation, issue and management of Digital Signature Certificates if such costs are not defrayed by

the foreign certifying authority.(f)any other default made by the Certifying Authority in complying with the provisions of the Act or rules made thereunder or under these regulations.Explanation. - For the purpose of this sub-regulation, the expression "transfer of operation" shall have the meaning assigned to it in clause (47) of section 2 of the Income-tax Act, 1961 (43 of 1961).(5)Local office - Every applicant shall establish a local office in India.(6)Audit Report of infrastructure - (a) Every applicant shall furnish an audit report of its installed facilities and infrastructure associated with all functions of generation, issue and management of digital signature certificate audited according to standards at least equivalent to those specified under the Act.(b)The audit report mentioned in clause (a) shall contain a statement to the effect that the audit has been performed according to standards at least equivalent to those specified in the Act.(7)Fee - (a) Every application for the grant of recognition shall be accompanied by a non-refundable fee of twenty five thousand of US dollars payable by a bank draft or by a pay order drawn in the name of the Controller.(b)The application submitted to the Controller for renewal of recognition shall be accompanied by a nonrefundable fee of five thousand of US dollars payable by a bank draft or by a pay order drawn in the name of the Controller.(c)The Fee or any part thereof shall not be refunded if the recognition is suspended or revoked during its validity period.(8)Issuance of recognition - (a) The Controller may, within a period of four weeks from the date of receipt of the application under this regulation, after considering the documents accompanying the application and such other factors, as he may deem fit, grant or renew the recognition or reject the application:Provided that in exceptional circumstances and for reasons to be recorded in writing, the period of four weeks may be extended to such period, not exceeding eight weeks in all as the Controller may deem fit:Provided further while rejecting the application, reasons for rejection of the same may be specified.(b)If the application for recognition of the Foreign Certifying Authority under this regulation is approved, the applicant shall:(i)submit a performance bond and furnish a banker's guarantee within one month from the date of such approval to the Controller in accordance with the provisions of sub-regulation (3) of regulation 3(A);(ii)execute an agreement with the Controller binding himself to comply with the terms and conditions of the recognition.(9)Security Guidelines - (a) Any Foreign Certifying Authority recognized under this regulation shall have the sole responsibility of integrity, confidentiality and protection of information and information assets employed in its operation, considering classification, declassification, labeling, storage, access and destruction of information assets according to their value, sensitivity and importance of operation.(b)Information Technology Security Guidelines and Security Guidelines for a Foreign Certifying Authority recognized under this regulation aimed at protecting its integrity, confidentiality and availability of service shall be of a level equivalent to that of a Certifying Authority licensed under the Act as specified under Schedule-II and Schedule-III of the Information Technology (Certifying Authority) Rules 2000 respectively.(c)A Foreign Certifying Authority recognized under this regulation shall formulate its Information Technology and Security Policy for operation complying with these guidelines and submit it to the Controller:Provided that any change made by any Foreign Certifying Authority recognized under this regulation in the Information Technology and Security Policy shall be submitted by it within a period of two weeks to the Controller.(10)Audit of operations - (a) A foreign certifying authority recognized under this regulation shall get its operations audited annually by an auditor approved under sub-regulation (6) and such audit shall include inter alia,-(i)security policy and planning;(ii)physical security;(iii)technology evaluation;(iv)services administration;(v)relevant Certification Practice Statement;(vi)compliance to relevant Certification Practice

Statement;(vii)contracts or agreements;(viii)regulations prescribed by the Controller;(ix)policy requirements of Certifying Authorities Rules, 2000.(b)The Recognized Foreign Certifying Authority shall conduct internal half yearly audit of the Security Policy, physical security and planning of its operation.(c)The Recognized Foreign Certifying Authority shall submit copy of each audit report to the Controller within a period of four weeks of the completion of such audit and where irregularities are found, the Certifying Authority shall take immediate appropriate action to remove such irregularities.(11)Inspection - (a) The Controller may, when he deems fit, call for physical inspection of the facilities and infrastructure associated with all functions of generation, issue and management of digital signature certificate belonging to a Foreign Certifying Authority recognized under this regulation.(b)The Recognized Foreign Certifying Authority shall bear all costs and expenses with regards to the inspection mentioned in clause (a) of this regulation.(B)Recognized Foreign Certifying Authority not to issue certificates in India. - Notwithstanding anything contained in these regulations, a Recognized Foreign Certifying Authority shall not issue digital signature certificates to Indian nationals residing in India.Explanation: For the purposes of these regulations, the term Indian national shall include a company, a firm, an association of persons, a body of individuals or a local authority whose registered office or principal place of business is located in India.(C)Validity of recognition. - (1) A recognition granted under sub-regulation (8) of regulation 3(A) shall be valid for a period of five years from the date of its issue.(2)The recognition granted under these regulations shall not be transferable.(D)Digital Signature Certificates issued prior to recognition to be invalid. - Where any Foreign Certifying Authority is recognized under these regulations, all digital signature certificates issued by such Certifying Authority prior to such recognition shall be invalid for the purposes of this Act.(E)Suspension or revocation of recognition. - (1) A recognition granted to a Foreign Certifying Authority under sub-regulation (8) of regulation 3(A) shall stand suspended when the performance bond submitted or the banker's guarantee furnished by such Certifying Authority is invoked under sub-regulation (4) of regulation 3(A).(2)The Controller may, if he is satisfied after making such inquiry, as he may think fit, that a Foreign Certifying Authority recognized under sub-regulation (8) of regulation 3(A) has,-(a)made a statement in, or in relation to, the application for the issue or renewal of the recognition, which is incorrect or false in material particulars;(b)failed to comply with the terms and conditions subject to which the recognition was granted;(c)failed to maintain the procedures and standards, if any, specified by the Controller,(d)contravened any provisions of this Act, rule, regulation or order made thereunder, shall suspend or revoke the recognition:Provided that no recognition shall be suspended or revoked unless the recognized Foreign Certifying Authority has been given a reasonable opportunity of showing cause against the proposed revocation.(F)Renewal of recognition. - (1) The provisions of these regulations shall apply in the case of an application for renewal of recognition as it applies to a fresh application for recognition.(2)A Recognized Foreign Certifying Authority shall submit an application for the renewal of its recognition not less than forty-five days before the date of expiry of the period of validity of recognition.(3)The application for renewal of recognition may be submitted in the form of electronic record subject to such requirements as the Controller may deem fit.(4)If the application for renewal of recognition of a Foreign Certifying Authority recognized under sub-regulation (8) of regulation 3(A) is approved, such Certifying Authority shall -(a)submit a performance bond and furnish a banker's guarantee within a period one month from the date of such approval to the Controller in accordance with sub-regulation (3) of regulation 3(A); and(b)execute an agreement with the Controller binding himself to comply with the terms and

conditions of the recognition and the provisions of the Act and the rules and regulations made thereunder. (G) Refusal of recognition. - The Controller may refuse to grant or renew a recognition if- (i) the applicant has not provided the Controller with such information relating to its business, and to any circumstances likely to affect its method of conducting business, as the Controller may require; or (ii) the applicant is in the course of being wound up or liquidated; or (iii) a receiver has, or a receiver and manager have, been appointed by the court in respect of the applicant; or (iv) the applicant or any trusted person has been convicted, whether in India or out of India, of an offence the conviction for which involved a finding that it or such trusted person acted fraudulently or dishonestly, or has been convicted of an offence under the Act or these rules; or (v) an applicant commits breach of, or fails to observe and comply with, the procedures and practices as per the Certification Practice Statement; or (vi) an applicant fails to comply with the directions of the Controller; or (vii) the authorization granted to the applicant, to issue a Digital Signature Certificate under laws of a recognized country has been suspended or revoked: Provided that the reasons for refusal of recognition may be mentioned. (H) Requirements Prior to Cessation as recognized Foreign Certifying Authority. - Before ceasing to act as a recognized Foreign Certifying Authority, the recognized Foreign Certifying Authority shall, - (a) give notice to the Controller of its intention to cease acting as a recognized Foreign Certifying Authority: Provided that the notice shall be made ninety days before ceasing to act as a recognized Foreign Certifying Authority or ninety days before the date of expiry of recognition; (b) advertise sixty days before the expiry of recognized or ceasing to act as recognized Foreign Certifying Authority, as the case may be, the intention in such daily newspaper or newspapers and in such manner as the Controller may determine; (c) notify its intention to cease acting as a recognized Foreign Certifying Authority to the subscriber of each unrevoked or unexpired Digital Signature Certificate issued by it: Provided that the notice shall be given sixty days before ceasing to act as a recognized Foreign Certifying Authority or sixty days before the date of expiry of unrevoked or unexpired Digital Signature Certificate, as the case may be; (d) the notice shall be sent to the Controller, affected subscribers and Cross Certifying Authorities by digitally signed e-mail and registered post; (e) revoke all Digital Signature Certificates that remain unrevoked or unexpired at the end of the ninety days notice period, if the subscribers have requested for revocation; (f) make a reasonable effort to ensure that discontinuing its recognition causes minimal disruption to its subscribers and to persons duly needing to verify digital signatures by reference to the public keys contained in outstanding Digital Signature Certificates; (g) make reasonable arrangements for preserving the records for a period of seven years; (h) pay reasonable restitution (not exceeding the cost involved in obtaining the new Digital Signature Certificate) to subscribers for revoking the Digital Signature Certificates before the date of expiry.