

**THE GAZETTE OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

Part II of May 26, 2017

SUPPLEMENT

(Issued on 29. 05. 2017)



**ELECTRONIC TRANSACTIONS
(AMENDMENT)**

A

BILL

to amend the Electronic Transactions Act, No. 19 of 2006

*Ordered to be published by the Minister of Telecommunication and
Digital Infrastructure*

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STATEMENT OF LEGAL EFFECT

Clause 2 : This clause amends the long title of the Electronic Transactions Act, No. 19 of 2006 (hereinafter referred to as the “principal enactment”) to include “licensing and authorising of certification service providers and giving effect to the provisions of the United Nations Convention on the use of Electronic Communications in International Contracts”.

Clause 3 : This clause amends section 2 of the principal enactment and the legal effect of this section as amended is to insert two new objectives to the Act.

Clause 4 : This clause amends section 5 of the principal enactment and the legal effect of this section as amended is to amend the provisions in relation to the application of the Act where law requires information to be presented or retained in its original form.

Clause 5 : This clause replaces section 7 of the principal enactment with a new section on “Legal recognition of electronic signatures”.

Clause 6 : This clause amends section 8 of the principal enactment and the legal effect of this section as amended is to amend the provisions in relation to the use of electronic records and electronic signatures in government institutions and statutory bodies.

Clause 7 : This clause replaces section 10 of the principal enactment with a new section on “Ministry, department, & etc, to accept or issue any document in electronic form”.

Clause 8 : This clause inserts a new section 11A to the principal enactment on “Invitation to make offers”.

Clause 9 : This clause amends section 14 of the principal enactment and the legal effect of this section as amended is to amend the provisions in relation to the time and place of dispatch and receipt of electronic records.

Clause 10 : This clause inserts a new section 14A to the principal enactment on “Error in electronic communications”.

Clause 11 : This clause amends section 18 of the principal enactment and the legal effect of this section as amended is to replace “accredited Certification Service Providers.”, with “licensed or authorized Certification Service Providers”.

Clause 12 : This clause inserts a new section 18A to the principal enactment on “Minister to appoint the task forces to manage and administer the Certification Authority”.

Clause 13 : This clause amends section 19 of the principal enactment and the legal effect of this section as amended is to amend the provisions in relation to the powers of the Certification Authority.

Clause 14 : This clause amends section 20 of the principal enactment and the legal effect of this section as amended is to amend the provisions in relation to the licensing or authorization of Certification Service Providers.

Clause 15 : This clause amends section 23 of the principal enactment and the legal effect of this section as amended is to amend the provisions in relation to the restriction on application of the principal enactment.

Clause 16 : This clause amends section 24 of the principal enactment and the legal effect of this section as amended is to amend the provisions in relation to making regulations under the principal enactment.

Clause 17 : This clause amends section 26 of the principal enactment and the legal effect of this section as amended is to insert new definitions for the terms “automated message system”, “Convention”, “electronic address”, “electronic communication”, “electronic signature”, “Minister”, “originator” and “prescribe”.

Electronic Transactions
(Amendment)

L.D.—O 22/2016.

AN ACT TO AMEND THE ELECTRONIC TRANSACTIONS
ACT, No. 19 OF 2006

BE it enacted by the Parliament of the Democratic Socialist
Republic of Sri Lanka as follows:-

1. This Act may be cited as the Electronic Transactions (Amendment) Act, No. of 2017. Short title.

5 **2.** The long title of the Electronic Transactions Act, No. 19 of 2006 (hereinafter referred to as the “principal enactment”) is hereby amended, by the substitution for the words “AND ACCREDITATION OF CERTIFICATION SERVICE PROVIDERS; AND”, of the words “AND
10 LICENSING AND AUTHORISING OF CERTIFICATION SERVICE PROVIDERS; TO GIVE EFFECT TO THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE USE OF ELECTRONIC COMMUNICATIONS IN INTERNATIONAL CONTRACTS AND”. Amendment
of the long
title of Act,
No. 19 of
2006.

15 **3.** Section 2 of the principal enactment is hereby amended as follows:- Amendment
of section 2
of the
principal
enactment.

(1) by the repeal of paragraph (c) thereof and the substitution therefor, of the following new paragraphs:-

20 “(c) to facilitate electronic filing of any application, petition, plaint, answer, written submission or any other document with any court;

25 (ca) to facilitate electronic filing of any form, application, or any other document with any

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(3)

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in such written law, that requirement shall be deemed to be met in relation to a data message, electronic document, electronic record or communication if-

- 5 (a) a method is used to identify that person and to indicate that person's intention in respect of the information contained in the electronic communication; and
- (b) the method used is,
- 10 (i) as reliable as appropriate for the purpose for which the electronic communication was generated, sent or communicated, in the light of all the circumstances, including any
- 15 relevant agreement; or
- (ii) proven to have fulfilled the functions described in paragraph (a) by itself or together with further evidence.”.

20 **6.** Section 8 of the principal enactment is hereby further amended as follows:-

Amendment
of section 8
of the
principal
enactment.

- (1) in subsection (1) thereof, by the substitution for the words “contained in any other law” and “electronic records as”, of the words “contained in any other written law” and “electronic records, electronic document, data message or any electronic communication as” respectively;
- 25 (2) in paragraph (b) of subsection (1) thereof, by the substitution for the words “any license, permit or approval;”, of the words “any license, certificate, permit or any other form of approval;”; and
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- (3) in subsection (2) thereof, by the substitution for the words “requiring the use of electronic records specified in subsection (1), may recommend the making of regulations for the purpose of authorizing or facilitating the use of electronic communications or electronic records,” of the words “requiring the use of data message, electronic record, electronic document or electronic communication specified in subsection (1), may recommend the making of regulations for the purpose of authorizing or facilitating the use of such data message, electronic record, electronic document or electronic communication,”.

7. Section 10 of the principal enactment is hereby repealed and the following section substituted therefor:-

Amendment
of section 10
of the
principal
enactment.

- “Ministry, department, & etc, to accept or issue any document in electronic form. 10. Every ministry, department, institution, public corporation or other similar body may, subject to the provisions of this Act, accept or issue, any document in the form of data message, electronic record, electronic document or other communication in electronic form.”.

8. The following new section is hereby inserted immediately after section 11 of the principal enactment and shall have effect as section 11A of that enactment :-

Insertion of
new section
11A in the
principal
enactment.

- “Invitation to make offers. 11A. A proposal to conclude a contract made through one or more electronic communications which is not addressed to one or more specific parties, but is generally accessible to parties making use of any information systems, shall be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.”.

9. Section 14 of the principal enactment is hereby amended:-

Amendment
of section 14
of the
principal
enactment.

5 (1) in subsection (1) thereof, by the substitution for the words “enters an information system outside the control of the originator,” of the words “leaves an information system under the control of the originator,”;

10 (2) by the repeal of subsection (2) thereof, and the substitution therefor, of the following new subsection:-

15 “(2) (a) Unless otherwise agreed between the originator and the addressee, the time of receipt of a data message, electronic document, electronic record or other communication shall be determined as follows, namely-

20 (i) if the addressee has designated an electronic address for the purpose of receiving data message, electronic document, electronic record or other communication, receipt occurs at the time when the said data message, electronic document, electronic record or other communication becomes capable of being retrieved by the addressee; or

30 (ii) if the addressee has not designated an electronic address or has indicated another electronic address for the purpose of receiving data message, electronic document, electronic record or other communication, receipt

occurs at the time when the said data message, electronic document, electronic record or other communication becomes capable of being retrieved by the addressee at that electronic address and the addressee becomes aware that the said data message, electronic document, electronic record or other communication has been sent to that electronic address.

20 (3) by the repeal of subsection (5) thereof, and the substitution therefor, of the following new subsection-

25 (a) if the originator or the addressee has
not indicated a place of business or has
more than one place of business, the
place of business is that which has the
closest relationship to the relevant
contract, having regard to the
circumstances known to or
30 contemplated by the originator or the
addressee before or at the conclusion
of the contract;

- (b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;
- 5 (c) a location is not a place of business merely because-
 - 10 (i) the equipment and technology supporting an information system used by a particular originator or the addressee in connection with the formation of a contract, are in that particular location; or
 - 15 (ii) the information system may be accessed by addressee in that location;
- 20 (d) the fact that the originator or the addressee makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that the said originator or the addressee's place of business is located in that country;
- 25 (e) a party's place of business is presumed to be the location indicated by that party, unless another party demonstrates that the party making the indication does not have a place of business at that location; and
- 30 (f) "usual place of residence" in relation to a body corporate, means the place where it is registered."

10. The following new section is hereby inserted immediately after section 14 of the principal enactment and shall have effect as section 14A of that enactment :-

Insertion of new section 14A in the principal enactment.

- 5 “Error in electronic communications.
- 10 14A. (1) Where a natural person in relation to the formation or performance of an electronic contract, makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made, if-
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- 20 (a) the person, or the party on whose behalf that person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he made an error in the electronic communication; and
- 25 (b) the person, or the party on whose behalf that person was acting, has not used or received any material benefit or value from the goods and services, if any, received from the other party.
- 30 (2) Nothing in this section affects the application of any rule of law that may govern the consequences of any error other than as provided for in subsection (1).”.

11. Section 18 of the principal enactment is hereby amended in subsection (2) thereof, by the substitution for the words “of this Chapter” and “accredited Certification Service Providers.”, of the words “of this Act” and “licensed or authorized Certification Service Providers.” respectively.

Amendment of section 18 of the principal enactment.

12. The following new section is hereby inserted immediately after section 18 of the principal enactment and shall have effect as section 18A of that enactment:-

Insertion of new section 18A in the principal enactment.

5 “Minister to appoint the task forces. 18A. The Minister shall, on the recommendation of the Secretary to the Ministry of the Minister, appoint a task force or a body of persons to manage and administer the Certification Authority, having regard to the qualifications and experience as well as the need to represent relevant stakeholders, with the objective of ensuring its proper administration.”.

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13. Section 19 of the principal enactment is hereby amended as follows:-

Amendment of section 19 of the principal enactment.

15 (1) in paragraph (a) thereof, by the substitution for the words “accreditation”, of the words “licensing or authorization”;

(2) by the repeal of paragraphs (b) and (c) thereof and the substitution therefor of the following new paragraphs:-

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“(b) hear appeals and specify the procedure to be followed in the granting of a license or an authorization for the purposes of this Act;

(c) specify the procedure for the hearing of appeals in the event of a refusal to grant or renew a license or an authorization under section 20, as the case may be;”; and

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(3) by the insertion immediately after paragraph (d) thereof, of the following new paragraph:-

30 “(da) authorize Certification Service Providers to issue various types of electronic signatures

10 *Electronic Transactions*
 (Amendment)

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Amendment
of section 20
of the
principal
enactment.

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“Licensing or authorizing the Certification Service Providers.”.

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Amendment
of section 23
of the
principal
enactment.

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(i) transactions on a regulated exchange;

- (ii) foreign exchange transactions;
- (iii) inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments; and
- (iv) the transfer of security rights in sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary;”;

(2) by the repeal of paragraph (e) thereof and the substitution therefor, of the following:-

“(e) a trust as defined in the Trusts Ordinance (Chapter 87) excluding a constructive, implied and resulting trust;”.

16. Section 24 of the principal enactment is hereby amended as follows:-

Amendment
of section 24
of the
principal
enactment.

(1) in subsection (1) thereof, by the substitution for the words and figures “subsection (2)”, of the words and figures “section 2.”;

(2) by the repeal of paragraph (c) of subsection (2) thereof and the substitution therefor, of the following new paragraph:-

“(c) the powers, duties and functions of the Task Force or body of persons being appointed to manage and administer the Certification Authority in terms of section 18A and the other terms and conditions applicable to them;”;

(3) in paragraph (d) of subsection (2) thereof, by the substitution for the words “criteria for accreditation

“(da) prescribe criteria and guidelines for Certification Service Providers to issue various types of electronic signatures, including the operational framework and security procedures for the use of biometric data and other authentication technologies for verification purposes ;”; and

17. Section 26 of the principal enactment is hereby amended as follows:-

Amendment
of section 26
of the
principal
enactment.

30 (2) by the insertion of new definition immediately after
the definition of term of expression “computer”, of
the following new definition:-

5 ““Convention” means the United Nations Convention on the Use of Electronic Communications in International Contracts ratified by Sri Lanka on July 7, 2015 subject to the declaration made at the time of ratification;”;

- (3) by the insertion of new definition immediately after the definition of term of expression “electronic”, of the following new definitions:-

10 ““electronic address” means a communication network or an electronic mailbox, telecopy device or a designated portion or location in an information system that a person uses to receive a data message, electronic document,
15 electronic record or any communication;

 “electronic communication” means any communication made by means of data message;”;

- 20 (4) by the repeal of the definition of term of expression “electronic signature” and the substitution therefor, of the following definition:-

 ““electronic signature” means data in electronic form, affixed to logically associated with a data message, electronic document, electronic record or communication which may be used
25 to identify the signatory in relation to the data message, electronic document, electronic record or communication and to indicate the signatory’s intention in respect of the information contained therein;”;

- (5) by the insertion of new definition immediately after the definition of term of expression “intermediary”, of the following new definition:-

35 ““Minister” means the Minister to whom the implementation of the provisions of

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Electronic Transactions Act, No. 19 of 2006

is assigned;”;

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“prescribe” means prescribe by regulations made

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Sinhala text
to prevail in
case of
inconsistency.

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