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".

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 Short title. (Amendment) Act, No. of 2017.
- 2. The long title of the Electronic Transactions Act, Amendment No. 19 of 2006 (hereinafter referred to as the "principal of the long enactment") is hereby amended, by the substitution for No. 19 of the words "AND ACCREDITATION OF CERTIFICATION 2006. 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".
- 15 3. Section 2 of the principal enactment is hereby Amendment amended as follows:-

of section 2 of the principal

- (1) by the repeal of paragraph (c) thereof and the enactment. 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;
- (ca) to facilitate electronic filing of any form, application, or any other document with any 25

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ministry, department, provincial council, provincial ministry and department or local authority or, office, body or agency owned or controlled by the Government or a statutory body in a particular manner and to promote efficient delivery of public service by means of reliable forms of electronic communications;";

- (2) in paragraph (*d*) thereof, by the substitution for the 10 words "other communications.", of the words "other communications; and";
 - (3) by the insertion of new paragraph immediately after paragraph (d) thereof, of the following new paragraph:-
- 15 "(e) to implement the provisions of the Convention subject to such restrictions specified in section 23 of this Act declared at the time of ratification of the Convention.".
- 4. Section 5 of the principal enactment is hereby Amendment 20 amended in subsection (1) thereof, by the substitution for of section 5 the words "the time when it was made available in electronic principal princ form", of the words "the time when it was first generated in enactment. its final form as a data message, electronic document, electronic record or communication or otherwise".

5. Section 7 of the principal enactment is hereby Replacement 25 repealed and the following section substituted therefor:-

of section 7 of the principal

"Legal recognition of electronic signatures.

7. Where any written law provides that a enactment. communication or any other document shall, be signed or bear the signature of any person, then notwithstanding anything to the contrary

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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-

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- (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,
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 (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 relevant agreement; or

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- (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 Amendment amended as follows:-

Amendment of section 8 of the principal

- (1) in subsection (1) thereof, by the substitution for the enactment. 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;
- (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

- (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 Amendment 15 repealed and the following section substituted therefor:-

of section 10 of the principal

"Ministry, department, & etc, to accept or issue any 20 document in electronic form.

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10. Every ministry, department, institution, enactment. 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 Insertion of immediately after section 11 of the principal enactment and 25 shall have effect as section 11A of that enactment:-

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.".

of section 14 of the principal

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

- (1) in subsection (1) thereof, by the substitution for the enactment. words "enters an information system outside the control of the originator,", of the words "leaves an information system under the control of the originator,";
- (2) by the repeal of subsection (2) thereof, and the substitution therefor, of the following new 10 subsection:-

"(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-

- (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
- (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

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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.

(b) For the purpose of this subsection, a data message, electronic document, electronic record or other communication is presumed to be capable of being retrieved by the addressee when the said data message, electronic document, electronic record or other communication reaches the addressee's electronic address.";

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

"(5) For the purposes of this section—

(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 contemplated by the originator or the addressee before or at the conclusion of the contract;

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Electronic Transactions 7 (Amendment) (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; (c) a location is not a place of business merely becausethe 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 (ii) the information system may be accessed by addressee in that location; (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; (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

where it is registered.".

(f) "usual place of residence" in relation

to a body corporate, means the place

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

14A in the principal enactment.

"Error in electronic communica-

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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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(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

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(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.

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(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).".

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11. Section 18 of the principal enactment is hereby Amendment amended in subsection (2) thereof, by the substitution for of section 18 the words "of this Chapter" and "accredited Certification of the Service Providers.", of the words "of this Act" and "licensed enactment. 35 or authorized Certification Service Providers." respectively.

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

18A in the principal enactment.

"Minister to appoint the 5 task forces.

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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.".

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

of section 19 of the principal enactment.

- (1) in paragraph (a) thereof, by the substitution for the 15 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:-
 - "(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
 - (3) by the insertion immediately after paragraph (d) thereof, of the following new paragraph:-
- "(da) authorize Certification Service Providers to 30 issue various types of electronic signatures

in accordance with such criteria and guidelines as may be prescribed, including operational framework and security procedure for the use of biometric data and other authentication technologies for verification purposes;".

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14. Section 20 of the principal enactment is hereby Amendment amended as follows:-

of section 20 of the principal enactment.

- (1) by the repeal of subsection (1) thereof and the 10 substitution therefor, of the following new subsection:-
 - "(1) A Certification Service Provider may be licensed or authorized by the Certification Authority in accordance with the criteria prescribed from time to time.";

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- (2) in subsection (2) thereof, by the substitution for the words "without being accredited", of the words "without being licensed or authorized";
- (3) by the repeal of subsection (3) thereof; and
- 20 (4) by the repeal of the marginal note thereof and the substitution therefor of the following:-

"Licensing or authorizing the Certification Service Providers.".

15. Section 23 of the principal enactment is hereby Amendment 25 amended as follows:-

of section 23 of the

- by the insertion immediately after paragraph (c) principal thereof, of the following new paragraph:-
- enactment.
 - "(ca) any financial matter in the nature of the following:-
- (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;";
- 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, 15 implied and resulting trust;".
 - 16. Section 24 of the principal enactment is hereby Amendment amended as follows:-

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:-
- 25 "(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;"; 30
 - (3) in paragraph (d) of subsection (2) thereof, by the substitution for the words "criteria for accreditation

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Electronic Transactions (Amendment)

of certification service providers under section 20", of the words "criteria for licensing or authorizing of certification service providers under section 20";

- (4) by the insertion immediately after paragraph (d) of 5 subsection (2) thereof, of the following new paragraph-
 - "(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
- (5) in paragraph (e) of subsection (2) thereof, by the 15 substitution for the word "an accreditation certificate", of the words "a license or an authorization".
 - 17. Section 26 of the principal enactment is hereby Amendment amended as follows:-

of section 26 of the

- (1) by the insertion of new definition immediately after principal enactment. the definition of term of expression "addressee", of the following new definition:-
 - ""automated message system" means 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;";
- 30 (2) by the insertion of new definition immediately after the definition of term of expression "computer", of the following new definition:-

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""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 5 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 devise 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;"; by the repeal of the definition of term of expression 20 "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 25 record or communication which may be used 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;"; 30 (5) by the insertion of new definition immediately after the definition of term of expression "intermediary",

of the following new definition:-

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""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;";

- (6) by the repeal of the definition of term of expression "originator" and the substitution therefor, of the following definitions:-
- ""originator" of an electronic communication means a person by whom, or on whose behalf, the electronic communication has been sent or generated prior to storage, if any, but it does not include a person acting as an intermediary with respect to that electronic communication;

"prescribe" means prescribe by regulations made under this Act;"; and

- 15 (7) by the substitution, in the definition of the term of expression "security procedure", for the words "a certificate issued" of the words "a license or an authorization issued".
- 18. In the event of any inconsistency between the Sinhala text 20 Sinhala and Tamil texts of this Act, the Sinhala text shall to prevail in case of inconsistency.

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