

The Information Technology ACT, 2008

Section 3 - Authentication of Electronic Records

2008.(2) It shall extend to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention hereunder committed outside India by any person.(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.[Act notified with effect from October 17, 2000. Amendments vide ITAA-2008 notified with effect from....](4) (Substituted Vide ITAA-2008) Nothing in this Act shall apply to documents or transactions specified in the First Schedule by way of addition or deletion of entries thereto. 1(5) (Inserted vide ITAA-2008) Every notification issued under subsection (4) shall be laid before each House of Parliament 2 Definitions (1) In this Act, unless the context otherwise requires, (a) "Access" with its grammatical variations and cognate expressions means gaining entry into, instructing or communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network; (b) "Addressee" means a person who is intended by the originator to receive the electronic record but does not include any intermediary; (c) "Adjudicating Officer" means adjudicating officer appointed under subsection (1) of section 46; (d) "Affixing Electronic Signature" with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for the purpose of authenticating an electronic record by means of Electronic Signature; (e) "Appropriate Government" means as respects any matter, (i) enumerated in List II of the Seventh Schedule to the Constitution; (ii) relating to any State law enacted under List III of the Seventh Schedule to the Constitution, the State Government and in any other case, the Central Government; (f) "Asymmetric Crypto System" means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature; (g) "Certifying Authority" means a person who has been granted a license to issue an Electronic Signature Certificate under section 24; (h) "Certification Practice Statement" means a statement issued by a Certifying Authority to specify the practices that the Certifying Authority employs in issuing Electronic Signature Certificates; (ha) "Communication Device" means Cell Phones, Personal Digital Assistance (Sic), or combination of both or any other device used to communicate, send or transmit any text, video, audio, or image. (Inserted Vide ITAA 2008) (i) "Computer" means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network; (j) (Substituted vide ITAA-2008) "Computer Network" means the interconnection of one or more Computers or Computer systems or Communication device through- (i) the use of satellite, microwave, terrestrial line, wire, wireless or other communication media; and (ii) terminals or a complex consisting of two or more interconnected computers or communication device whether or not the interconnection is continuously maintained; (k) "Computer Resource" means computer, communication device, computer system, computer network, data, computer database or software; 2 (l) "Computer System" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data, and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions; (m) "Controller" means the Controller of Certifying Authorities appointed under sub-section (7) of section 17; (n) "Cyber Appellate Tribunal" means the Cyber Appellate * Tribunal established under sub-section (1) of section 48 (* "Regulations" omitted) (na) (Inserted vide ITAA-2008) "Cyber cafe" means any facility from where access to the internet is offered by any person in the ordinary course of business to the members of the public. (nb) (Inserted Vide ITAA 2008) "Cyber Security" means protecting information, equipment, devices, computer, computer resource, communication device and information

stored therein from unauthorized access, use, disclosure, disruption, modification or destruction. (o) "Data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network. , and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer; (p) "Digital Signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3; (q) "Digital Signature Certificate" means a Digital Signature Certificate issued under sub-section (4) of section 35; (r) "Electronic Form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device; (s) "Electronic Gazette" means official Gazette published in the electronic form; (t) "Electronic Record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche; (ta) (Inserted vide ITAA-2006) "electronic signature" means authentication of any electronic record by a subscriber by means of the electronic technique specified in the second schedule and includes digital signature (tb) (Inserted vide ITAA-2006) "Electronic Signature Certificate" means an Electronic Signature Certificate issued under section 35 and includes Digital Signature Certificate" (u) "Function", in relation to a computer, includes logic, control, arithmetical process, deletion, storage and retrieval and communication or telecommunication from or within a computer; (ua) "Indian Computer Emergency Response Team" means an agency established under sub-section (1) of section 70 B (v) "Information" includes data, message, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche; (Amended vide ITAA-2008) (w) (Substituted vide ITAA-2008) "Intermediary" with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web hosting service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes. 3 (x) "Key Pair", in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key; (y) "Law" includes any Act of Parliament or of a State Legislature, Ordinances promulgated by the President or a Governor, as the case may be. Regulations made by the President under article 240, Bills enacted as President's Act under sub-clause (a) of clause (1) of article 357 of the Constitution and includes rules, regulations, bye-laws and orders issued or made there under (z) "License" means a license granted to a Certifying Authority under section 24; (za) "Originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary; (zb) "Prescribed" means prescribed by rules made under this Act; (zc) "Private Key" means the key of a key pair used to create a digital signature; (zd) "Public Key" means the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate; (ze) "Secure System" means computer hardware, software, and procedure that :- (a) are reasonably secure from unauthorized access and misuse; (b) provide a reasonable level of reliability and correct operation; (c) are reasonably suited to performing the intended functions; and (d) adhere to generally accepted security procedures; (zf) "Security Procedure" means the security procedure prescribed under section 16 by the Central Government; (zg) "Subscriber" means a person in whose name the Electronic Signature Certificate is issued; (zh) "Verify" in relation to a digital signature, electronic record or public key, with its grammatical variations and cognate expressions means to determine whether (a) the initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber; (b) the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature. (2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area. II. DIGITAL SIGNATURE AND ELECTRONIC SIGNATURE (amended vide ITAA 2008) 1) Subject to the provisions of this section any subscriber may authenticate an electronic record by affixing his Digital Signature (2) The authentication of the electronic record shall be effected by the use of asymmetric cryptosystem and hash function which envelop and transform the initial electronic record into another electronic record. Explanation - 4 For the purposes of this sub-section, "Hash function" means an

algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "Hash Result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible (a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm; (b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

3A Electronic Signature (Inserted vide ITAA 2006)

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which- (a) is considered reliable; and (b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if- (a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory or, as the case may be, the authenticator and of no other person; (b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person; (c) any alteration to the electronic signature made after affixing such signature is detectable; (d) any alteration to the information made after its authentication by electronic signature is detectable; and (e) it fulfills such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether an electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the second schedule; Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

III. ELECTRONIC GOVERNANCE

4 Legal Recognition of Electronic Records

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirements shall be deemed to have been satisfied if such information or matter is

5 (a) rendered or made available in an electronic form; and (b) accessible so as to be usable for a subsequent reference.

5 Legal recognition of Electronic Signature

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document should be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

Explanation - For the purposes of this section, "Signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "Signature" shall be construed accordingly.

6 Use of Electronic Records and Electronic Signature in Government and its agencies

(1) Where any law provides for (a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner; (b) the issue or grant of any license, permit, sanction or approval by whatever name called in a particular manner; (c) the receipt or payment of money in a particular manner, then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe - (a) the manner and format in which such electronic records shall be filed, created or issued; (b) the manner or method of payment of any fee or charges for filing, creation or issue of any electronic record under clause (a).

6A Delivery of Services by Service Provider (Inserted vide ITAA-2008)

(1) The appropriate Government may, for the purposes of this Chapter and for efficient delivery of services to the public through electronic means authorize, by order, any service provider to set up, maintain and upgrade the computerized facilities and perform such other services as it may specify, by notification in the Official Gazette.

Explanation: For the purposes of this section, service provider so authorized includes any individual, private agency, private company, partnership firm, sole proprietor form or any such other body or agency which has been granted permission by the appropriate Government to offer services through electronic means in accordance with the policy governing such service sector.

(2) The appropriate Government may also authorize any service provider authorized under sub-section

(1) to collect, retain and appropriate service charges, as may be prescribed by the appropriate Government for the purpose of providing such services, from the person availing such service. (3) Subject to the provisions of sub-section (2), the appropriate Government may authorize the service providers to collect, retain and appropriate service charges under this section notwithstanding the fact that there is no express provision under the Act, rule, regulation or notification under which the service is provided to collect, retain and appropriate e-service charges by the service providers. 6(4) The appropriate Government shall, by notification in the Official Gazette, specify the scale of service charges which may be charged and collected by the service providers under this section: Provided that the appropriate Government may specify different scale of service charges for different types of services. 7 Retention of Electronic Records (1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, - (a) the information contained therein remains accessible so as to be usable for a subsequent reference; (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; (c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record: Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received. (2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records. Publication of rules, regulation, etc.. in Electronic Gazette. 7A Audit of Documents etc in Electronic form Where in any law for the time being in force, there is a provision for audit of documents, records or information, that provision shall also be applicable for audit of documents, records or information processed and maintained in electronic form (ITAA 2008, Standing Committee Recommendation) 8 Publication of rules, regulation, etc, in Electronic Gazette Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette: Provided that where any rule, regulation, order, bye-law, notification or any other matters published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form 9 Sections 6, 7 and 8 Not to Confer Right to insist document should be accepted in electronic form Nothing contained in sections 6, 7 and 8 shall confer a right upon any person to insist that any Ministry or Department of the Central Government or the State Government or any authority or body established by or under any law or controlled or funded by the Central or State Government should accept, issue, create, retain and preserve any document in the form of electronic records or effect any Section 10 - monetary transaction in the electronic form