

The Information Technology ACT, 2008

Section 10 - Power to Make Rules by Central Government in respect of

Electronic Signature (Modified Vide ITAA 2008) The Central Government may, for the purposes of this Act, by rules, prescribe 7 (a) the type of Electronic Signature; (b) the manner and format in which the Electronic Signature shall be affixed; (c) the manner or procedure which facilitates identification of the person affixing the Electronic Signature; (d) control processes and procedures to ensure adequate integrity, security and confidentiality of electronic records or payments; and (e) any other matter which is necessary to give legal effect to Electronic Signature. 10A Validity of contracts formed through electronic means (Inserted by ITAA 2008) Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose. IV. ATTRIBUTION, ACKNOWLEDGMENT AND DISPATCH OF ELECTRONIC RECORDS 11 Attribution of Electronic Records An electronic record shall be attributed to the originator (a) if it was sent by the originator himself; (b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or (c) by an information system programmed by or on behalf of the originator to operate automatically. 12 Acknowledgement of Receipt (Modified by ITAA 2008) (1) Where the originator has not agreed with stipulated that the acknowledgment of receipt of electronic record be given in a particular form or by a particular method, an acknowledgment may be given by - (a) any communication by the addressee, automated or otherwise; or (b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received. (2) Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then unless acknowledgment has been so received, the electronic record shall be deemed to have been never sent by the originator. (3) Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgment must be received by him and if no acknowledgment is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent. 13 Time and place of despatch and receipt of electronic record (1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator. (2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely (a) if the addressee has designated a computer resource for the purpose of receiving electronic records 8 (i) receipt occurs at the time when the electronic record enters the designated computer resource; or (ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee; (b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee. (3) Save as otherwise agreed between the originator and the addressee, an electronic record is deemed to "be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business. (4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3). (5) For the purposes of this section (a) if the originator or the addressee has more than one place of business, the principal place of business shall be the place of business; (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) "Usual Place of Residence", in relation to a body corporate, means the place where it is registered. V. SECURE

ELECTRONIC RECORDS AND SECURE ELECTRONIC SIGNATURES¹⁴ Secure Electronic Record

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.¹⁵

Secure Electronic Signature (Substituted vide ITAA 2008) An electronic signature shall be deemed to be a secure electronic signature if- (i) the signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and (ii) the signature creation data was stored and affixed in such exclusive manner as may be prescribed. **Explanation-** In case of digital signature, the "signature creation data" means the private key of the subscriber¹⁶

Security procedures and Practices (Amended vide ITAA 2008) The Central Government may for the purposes of sections 14 and 15 prescribe the

security procedures and practices. Provided that in prescribing such security procedures and practices, the Central Government shall have regard to the commercial circumstances, nature of transactions and such other related factors as it may consider appropriate.

VI REGULATION OF CERTIFYING AUTHORITIES¹⁷

Appointment of Controller and other officers (Amended Vide ITAA 2008) 9(1) The Central Government

may, by notification in the Official Gazette, appoint a Controller of Certifying Authorities for the purposes of this Act and may also by the same or subsequent notification appoint such number of Deputy Controllers and Assistant Controllers, other officers and employees (Inserted vide ITAA 2008) as it deems fit. (2) The

Controller shall discharge his functions under this Act subject to the general control and directions of the Central Government. (3) The Deputy Controllers and Assistant Controllers shall perform the functions

assigned to them by the Controller under the general superintendence and control of the Controller. (4) The qualifications, experience and terms and conditions of service of Controller, Deputy Controllers and Assistant Controllers other officers and employees (Inserted vide ITAA 2008) shall be such as may be prescribed by the Central Government. (5) The Head Office and Branch Office of the Office of the Controller shall be at such

places as the Central Government may specify, and these may be established at such places as the Central Government may think fit. (6) There shall be a seal of the Office of the Controller.¹⁸

The Controller may perform all or any of the following functions, namely: (a) exercising supervision over the activities of the Certifying Authorities; (b) certifying public keys of the Certifying Authorities; (c) laying down the standards to be maintained by the Certifying Authorities; (d) specifying the qualifications and experience which employees of the Certifying Authorities should possess; (e) specifying the conditions subject to which the Certifying Authorities shall conduct their business; (f) specifying the content of written, printed or visual material and advertisements that may be distributed or used in respect of a Electronic Signature Certificate and the Public Key; (g) specifying the form and content of a Electronic Signature Certificate and the key; (h) specifying the form and manner in which accounts shall be maintained by the Certifying Authorities; (i) specifying the terms and conditions subject to which auditors may be appointed and their remuneration to be paid to them; (j) facilitating the establishment of any electronic system by a Certifying Authority either solely or jointly with other Certifying Authorities and regulation of such systems; (k) specifying the manner in which the Certifying Authorities shall conduct their dealings with the subscribers; (l) resolving any conflict of interests between the Certifying Authorities and the subscribers; (m) laying down the duties of the Certifying Authorities; (n) maintaining a data-base containing the disclosure record of every Certifying

Authority containing such particulars as may be specified by regulations, which shall be accessible to public.¹⁹

Recognition of foreign Certifying Authorities (1) Subject to such conditions and restrictions as may be specified by regulations, the Controller may with the previous approval of the Central Government, and by notification in the Official Gazette, recognize any foreign Certifying Authority as a Certifying Authority for the purposes of this Act. (2) Where any Certifying Authority is recognized under sub-section (1), the

Electronic Signature Certificate issued by such Certifying Authority shall be valid for the purposes of this Act. (3) The Controller may if he is satisfied that any Certifying Authority has contravened any of the

conditions and restrictions subject to which it was granted recognition under sub-section (1) he may, for reasons to be recorded in writing, by notification in the Official Gazette, revoke such recognition.²⁰ (Omitted vide ITA 2008)²¹

License to issue electronic signature certificates (1) Subject to the provisions of sub-section (2), any person may make an application, to the Controller, for a license to issue Electronic Signature

Certificates. (2) No license shall be issued under sub-section (1), unless the applicant fulfills such requirements with respect to qualification, expertise, manpower, financial resources and other

infrastructure facilities, which are necessary to issue Electronic Signature Certificates as may be prescribed by the Central Government. (3) A license granted under this section shall (a) be valid for such period as may be

prescribed by the Central Government; (b) not be transferable or heritable; (c) be subject to such terms and conditions as may be specified by the regulations.

22 Application for license(1) Every application for issue of a license shall be in such form as may be prescribed by the Central Government .(2) Every application for issue of a license shall be accompanied by- (a) a certification practice statement; (b) a statement including the procedures with respect to identification of the applicant; (c) payment of such fees, not exceeding twenty-five thousand rupees as may be prescribed by the Central Government; (d) such other documents, as may be prescribed by the Central Government.

23 Renewal of license An application for renewal of a license shall be (a) in such form; (b) accompanied by such fees, not exceeding five thousand rupees, as may be prescribed by the Central Government and shall be made not less than forty-five days before the date of expiry of the period of validity of the license:

24 Procedure for grant or rejection of license The Controller may, on receipt of an application under sub-section (1) of section 21, after considering the documents accompanying the application and such other factors, as he deems fit, grant the license or reject the application: Provided that no application shall be rejected under this section unless the applicant has been given a reasonable opportunity of presenting his case.

25 Suspension of License(1) The Controller may, if he is satisfied after making such inquiry, as he may think fit, that a Certifying Authority has (a) made a statement in, or in relation to, the application for the issue or renewal of the license, which is incorrect or false in material particulars; 11 (b) failed to comply with the terms and conditions subject to which the license was granted; (c) failed to maintain the standards specified in Section 30 [Substituted for the words "under clause (b) of sub-section (2) of section 20;" vide amendment dated September 19, 2002] (d) contravened any provisions of this Act, rule, regulation or order made there under, revoke the license: Provided that no license shall be revoked unless the Certifying Authority has been given a reasonable opportunity of showing cause against the proposed revocation.(2) The Controller may, if he has reasonable cause to believe that there is any ground for revoking a license under sub-section (1), by order suspend such license pending the completion of any inquiry ordered by him: Provided that no license shall be suspended for a period exceeding ten days unless the Certifying Authority has been given a reasonable opportunity of showing cause against the proposed suspension.(3) No Certifying Authority whose license has been suspended shall issue any Electronic Signature Certificate during such suspension.

26 Notice of suspension or revocation of license.(1) Where the license of the Certifying Authority is suspended or revoked, the Controller shall publish notice of such suspension or revocation, as the case may be, in the data-base maintained by him.(2) Where one or more repositories are specified, the Controller shall publish notices of such suspension or revocation, as the case may be, in all such repositories. Provided that the data-base containing the notice of such suspension or revocation, as the case may be, shall be made available through a web site which shall be accessible round the clock Provided further that the Controller may, if he considers necessary, publicize the contents of the data-base in such electronic or other media, as he may consider appropriate.

27 Power to delegate. The Controller may, in writing, authorize the Deputy Controller, Assistant Controller or any officer to exercise any of the powers of the Controller under this Chapter.

28 Power to investigate contraventions.(1) The Controller or any officer authorized by him in this behalf shall take up for investigation any contravention of the provisions of this Act, rules or regulations made there under.(2) The Controller or any officer authorized by him in this behalf shall exercise the like powers which are conferred on Income-tax authorities under Chapter XIII of the Income-tax Act, 1961 and shall exercise such powers, subject to such limitations laid down under that Act.

29 Access to computers and data.(1) Without prejudice to the provisions of sub-section (1) of section 69, the Controller or any person authorized by him shall, if he has reasonable cause to suspect that any contravention of the provisions of this chapter made there under has been committed, have access to any computer system, any apparatus, data or any other material connected with such system, for the purpose of searching or causing a search to be made for obtaining any information or data contained in or available to such computer system. (Amended vide ITAA 2008)(2) For the purposes of sub-section (1), the Controller or any person authorized by him may, by order, direct any person in charge of, or otherwise concerned with the operation of the computer system, data apparatus or material, to provide him with such reasonable technical and other assistance as he may consider necessary.

1230 Certifying Authority to follow certain procedures. Every Certifying Authority shall- (a) make use of hardware, software, and procedures that are secure from intrusion and misuse; (b) provide a reasonable level of reliability in its services which are reasonably suited to the performance of intended functions; (c) adhere to security procedures to ensure that the secrecy and privacy of the Electronic Signature are assured (Amended vide ITAA 2008) (ca) be the repository of all Electronic Signature Certificates issued

under this Act (Inserted vide ITAA 2008) (cb) publish information regarding its practices, Electronic Signature Certificates and current status of such certificates; and (Inserted vide ITAA 2008) (d) observe such other standards as may be specified by regulations.³¹ Certifying Authority to ensure compliance of the Act, etc. Every Certifying Authority shall ensure that every person employed or otherwise engaged by it complies, in the course of his employment or engagement, with the provisions of this Act, rules, Section 32 - regulations and orders made there under

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