

The Information Technology ACT, 2008

Section 39 - Notice of suspension or revocation

(1) Where a Digital Signature Certificate is suspended or revoked under section 37 or section 38, the Certifying Authority shall publish a notice of such suspension or revocation, as the case may be, in the repository specified in the Digital Signature Certificate for publication of such notice. (2) Where one or more repositories are specified, the Certifying Authority shall publish notices of such suspension or revocation, as the case may be, in all such repositories.

VIII 40 Generating Key Pair Where any Digital Signature Certificate, the public key of which corresponds to the private key of that subscriber which is to be listed in the Digital Signature Certificate has been accepted by a subscriber, (*) the subscriber shall generate that [substituted for "the" vide amendment dated 19/09/2002] key pair by applying the security procedure. [* word "then"-deleted vide amendment dated 19/9/2002], 40A Duties of subscriber of Electronic Signature Certificate In respect of Electronic Signature Certificate the subscriber shall perform such duties as may be prescribed. (Inserted Vide ITAA 2008) 41 Acceptance of Digital Signature Certificate. (1) A subscriber shall be deemed to have accepted a Digital Signature Certificate if he publishes or authorizes the publication of a Digital Signature Certificate - (a) to one or more persons; (b) in a repository, or otherwise demonstrates his approval of the Digital Signature Certificate in any manner. (2) By accepting a Digital Signature Certificate the subscriber certifies to all who reasonably rely on the information contained in the Digital Signature Certificate that - 15 (a) the subscriber holds the private key corresponding to the public key listed in the Digital Signature Certificate and is entitled to hold the same; (b) all representations made by the subscriber to the Certifying Authority and all material relevant to the information contained in the Digital Signature Certificate are true; (c) all information in the Digital Signature Certificate that is within the knowledge of the subscriber is true. 42 Control of Private key (1) Every subscriber shall exercise reasonable care to retain control of the private key corresponding to the r public key listed in his Digital Signature Certificate and take all steps to prevent its disclosure. ["to a person not authorized to affix the digital signature of the subscriber". - Omitted vide amendment dated 19/09/2002] (2) If the private key corresponding to the public key listed in the Digital Signature Certificate has been compromised, then, the subscriber shall communicate the same without any delay to the Certifying Authority in such manner as may be specified by the regulations. Explanation - For the removal of doubts, it is hereby declared that the subscriber shall be liable till he has informed the Certifying Authority that the private key has been compromised.

IX. PENALTIES , COMPENSATION AND ADJUDICATION (Amended vide ITAA-2006/8) 43 Penalty and Compensation for damage to computer, computer system, etc (Amended vide ITAA-2008) If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network - (a) accesses or secures access to such computer, computer system or computer network or computer resource (ITAA 2008) (b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium; (c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network; (d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network; (e) disrupts or causes disruption of any computer, computer system or computer network; (f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means; (g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder, (h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network, (i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means (Inserted vide ITAA-2008) (i) Steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an

intention to cause damage, (Inserted vide ITAA 2008) 16 he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected. (change vide ITAA 2008)

Explanation - for the purposes of this section - (i) "Computer Contaminant" means any set of computer instructions that are designed - (a) to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or (b) by any means to usurp the normal operation of the computer, computer system, or computer network; (ii) "Computer Database" means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network; (iii) "Computer Virus" means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource; (iv) "Damage" means to destroy, alter, delete, add, modify or re-arrange any computer resource by any means. (v) "Computer Source code" means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form (Inserted vide ITAA 2008) 43 A Compensation for failure to protect data (Inserted vide ITAA 2006) Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation, not exceeding five crore rupees, to the person so affected. (Change vide ITAA 2008) Explanation: For the purposes of this section (i) "body corporate" means any company and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities (ii) "reasonable security practices and procedures" means security practices and procedures designed to protect such information from unauthorised access, damage, use, modification, disclosure or impairment, as may be specified in an agreement between the parties or as may be specified in any law for the time being in force and in the absence of such agreement or any law, such reasonable security practices and procedures, as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit. (iii) "sensitive personal data or information" means such personal information as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit. 44 Penalty for failure to furnish information, return, etc If any person who is required under this Act or any rules or regulations made thereunder to - 17 (a) furnish any document, return or report to the Controller or the Certifying Authority, fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure; (b) file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues: (c) maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues. 45 Residuary Penalty Whoever contravenes any rules or regulations made under this Act, for the contravention of which no penalty has been separately provided, shall be liable to pay a compensation not exceeding twenty-five thousand rupees to the person affected by such contravention or a penalty not exceeding twenty-five thousand rupees. 46 Power to Adjudicate (1) For the purpose of adjudging under this Chapter whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, direction or order made thereunder which renders him liable to pay penalty or compensation, the Central Government shall, subject to the provisions of sub-section (3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an inquiry in the manner prescribed by the Central Government. (amended vide ITAA 2008) (1A) The adjudicating officer appointed under sub-section (1) shall exercise jurisdiction to adjudicate matters in which the claim for injury or damage does not exceed rupees five crore Provided that the jurisdiction in respect of claim for injury or damage exceeding rupees five crore shall vest with the competent court. (Inserted Vide ITAA 2008) (2) The adjudicating officer shall, after giving the person referred to in sub-section (1) a reasonable opportunity for making representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit

in accordance with the provisions of that section. (3) No person shall be appointed as an adjudicating officer unless he possesses such experience in the field of Information Technology and Legal or Judicial experience as may be prescribed by the Central Government. (4) Where more than one adjudicating officers are appointed, the Central Government shall specify by order the matters and places with respect to which such officers shall exercise their jurisdiction. (5) Every adjudicating officer shall have the powers of a civil court which are conferred on the Cyber Appellate Tribunal under sub-section (2) of section 58, and (a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code; (b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure,

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