

ELECTRONIC TRANSACTIONS ACT 2008

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PART 1 - PRELIMINARY

Short title and commencement

- 1.(1)** This Act may be cited as the Electronic Transactions Act 2008.
- (2)** This Act comes into force on the date it is assented to by the Head of State.

Interpretation

2. In this Act, unless the context otherwise requires -

“addressee”, in relation to an electronic record, means the person who is intended by the originator to receive the electronic record, but does not include a person acting as an intermediary with respect to that electronic record;

“admissibility” means admissibility as evidence in any legal proceedings;

“electronic” includes electrical, digital, magnetic, optical, electromagnetic, biometric and photonic;

“electronic data interchange” means the electronic transfer from computer to computer of information using

an agreed standard to structure the information;

“electronic record” means information generated, sent, received or stored by electronic means including electronic data interchanged, electronic mail, telegram, telex or telecopy;

“information system” means a system for generating, sending, receiving, storing or otherwise processing electronic records;

“intermediary”, in relation to an electronic record, means a person who, on behalf of another person, sends, receives or stores the electronic record or provides other services with respect to the electronic record;

“originator”, in relation to an electronic record, means a person by whom, or on whose behalf, the electronic record purports to have been sent or generated prior to storage, if any, but does not include a person acting as an intermediary with respect to that electronic record;

“Minister” means the Minister of Finance.

Exclusions

3.(1) Parts II and III shall not apply to any rule of law requiring writing or signatures in any of the following matters:

- (a) the creation, execution or revocation of a will or testamentary instrument;
- (b) the conveyance of real property or the transfer of any interest in real property;
- (c) any other thing required to be done by deed; or
- (d) any other matter prescribed by the regulations.

Consent to use of electronic records

4.(1) Nothing in this Act requires a person to use, provide or accept an electronic record without that person’s consent.

(2) For the purposes of this Act -

- (a) a person may consent to use, provide or accept an electronic record subject to conditions regarding the form of the electronic record or the means by which the electronic record is generated, sent, received, stored or displayed; and
- (b) consent may be inferred from a person’s conduct.

Act to bind the Government

5.(1) This Act binds the Government.

(2) Notwithstanding subsection (1) and except for electronic transactions involving only the Samoa International Finance Authority, this Act shall not apply to any other electronic transactions unless authorized to

that effect by notice issued by the Minister.

PART 2 - APPLICATION OF LEGAL REQUIREMENTS TO ELECTRONIC RECORDS

Legal recognition of electronic records

- 6.** Information shall not be denied legal effect, validity or enforceability on the ground that -
- (a)* it is in the form of an electronic record; or
 - (b)* it is not contained in the electronic record purporting to give rise to such legal effect, but is merely referred to in that electronic record.

Requirement to be in writing

- 7.** A legal requirement for information to be in writing is satisfied by an electronic record if the information contained therein is accessible so as to be usable for subsequent reference.

Requirement for signature or seal

- 8.(1)** A legal requirement for a signature is satisfied by an electronic signature if -
- (a)* the electronic signature adequately identifies the signatory;
 - (b)* the electronic signature adequately indicates -
 - (i)** the signatory's approval of the information to which the signature relates; or
 - (ii)** in the case of the witnessing of a signature or a seal, that the signature or seal has been witnessed;
 - (c)* the electronic signature is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required; and
 - (d)* the recipient of the information to which the signature relates consents to receiving the electronic signature and the electronic signature of each witness, if any.
- (2)** For the purposes of this section, it is presumed that an electronic signature is as reliable as is appropriate if -
- (a)* the means of creating the electronic signature is linked to the signatory and to no other person;
 - (b)* the means of creating the electronic signature was under the control of the signatory and no other person;
 - (c)* no alteration to the electronic signature made after the time of signing is detectable; and

(d) where the purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, no alteration made to that information after the time of signing is detectable.

(3) Subsection (2) does not prevent any person from proving on other grounds or by other means that an electronic signature -

(a) is as reliable as is appropriate; or

(b) is not as reliable as is appropriate.

(4) A legal requirement for a seal is satisfied by an electronic seal.

Requirement to be in original form

9.(1) A legal requirement for information to be presented or retained in its original form is satisfied by an electronic record if-

(a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as an electronic record or otherwise; and

(b) where it is required that information be presented, that information is capable of being displayed to the person to whom it is to be presented.

(2) For the purposes of subsection (1)(a),

(a) the criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display; and

(b) the standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

Retention of information

10.(1) A legal requirement for information to be retained is satisfied by the retention of electronic records if:

(a) the information contained therein is accessible so as to be usable for subsequent reference;

(b) the electronic record is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and

(c) such information, if any, is retained as enables the identification of the origin and destination of an electronic record and the date and time when it was sent or received.

(2) An obligation to retain information in accordance with subsection (1) does not extend to any information the sole purpose of which is to enable the electronic record to be sent or received.

(3) A person may satisfy the legal requirement referred to in subsection (1) by using the services of any other person, provided that the conditions set forth in subsection (1)(a), (b) and (c) are met.

Admissibility and evidential weight of electronic records

- 11.(1)** An electronic record shall not be denied admissibility:
- (a)* on the sole ground that is an electronic record; or
 - (b)* if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that is not in its original form.
- (2)** Information in the form of an electronic record shall be given due evidential weight, and for this purpose, regard shall be had to;
- (a)* the reliability of the manner in which the electronic record was generated, stored or communicated;
 - (b)* the reliability of the manner in which the integrity of the information was maintained;
 - (c)* the manner in which its originator was identified; and
 - (d)* any other relevant factor.

PART 3 - COMMUNICATION OF ELECTRONIC RECORDS

Formation and validity of contracts

- 12.(1)** Unless otherwise agreed by the parties, an offer or the acceptance of an offer may, in relation to the formation of a contract, be expressed by means of an electronic record.
- (2)** Where an electronic record is used in the formation of a contract, the contract shall not be denied legal effect, validity or enforceability on the sole ground that an electronic record was used for that purpose.
- (3)** Where an electronic record is used in the formation of a contract, the law that governs the contract shall, unless otherwise agreed by the parties, be the law of Samoa.

Recognition by parties of electronic records

- 13.** As between the originator and the addressee of an electronic record, a declaration of intention or other statement shall not be denied legal effect, validity or enforceability on the sole ground that it is in the form of an electronic record.

Attribution of electronic records

- 14.(1)** An electronic record is that of the originator's if it was sent by the originator himself.
- (2)** As between the originator and the addressee, an electronic record is deemed to be that of the originator's if

it was sent:

- (a) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or
- (b) by an information system programmed by, or on behalf of, the originator to operate automatically.

(3) As between the originator and the addressee, an addressee is entitled to regard an electronic record as being that of the originator's, and to act on that assumption, if:

- (a) in order to ascertain whether the electronic record was that of the originator's, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or
- (b) the electronic record as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain authorised access to a method used by the originator to identify electronic records as that person's own.

(4) Subsection (3) does not apply;

- (a) at the time when the addressee has received notice from the originator that the electronic record is not that of the originator's, and had reasonable time to act accordingly; or
- (b) in a case within subsection (3)(b), at any time when the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the electronic record was not that of the originator's.

(5) Where an electronic record is that of the originator's or is deemed to be that of the originator's, or the addressee is entitled to act on that assumption then, as between the originator and the addressee, the addressee is entitled to regard the electronic record as received as being what the originator intended to send, and to act on that assumption, unless the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the electronic record as received.

(6) The addressee is entitled to regard each electronic record received as a separate electronic record and to act on that assumption, except to the extent that the electronic record is a duplicate of another electronic record and the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the electronic record was a duplicate.

Acknowledgement of receipt

15.(1) Subsections (2) to (4) apply where, on or before sending an electronic record, or by means of that electronic record, the originator has requested or has agreed with the addressee that receipt of the electronic record be acknowledged.

(2) Where the originator has not agreed with the addressee that the acknowledgement 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.

(3) Where the originator has stated that the electronic record is conditional on receipt of the acknowledgment, the electronic record shall be treated as though it has never been sent, until the acknowledgment is received.

(4) Where the originator has not stated that the electronic record is conditional on receipt of the 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, within a reasonable time, the originator:

- (a) may give notice to the addressee stating that no acknowledgment has been received and specifying a reasonable time by which the acknowledgment must be received; and
- (b) if the acknowledgment is not received within the time specified in paragraph (a), may, upon notice to the addressee, treat the electronic record as though it had never been sent, or exercise any other rights he may have.

(5) Where the originator receives the addressee's acknowledgment of receipt it may be presumed that the related electronic record had been received by the addressee but that presumption shall not imply that the electronic record received corresponds to the electronic record as sent.

(6) Where the addressee's received acknowledgment states that the related electronic record met technical requirements that the originator and the addressee have agreed should be met, it shall be presumed that the requirements have been met.

(7) Except in so far as it relates to the sending or receipt of an electronic record, this section shall not affect the legal consequences that may flow from the electronic record or from the acknowledgment of its receipt.

Time and place of receipt and dispatch of electronic records

16.(1) Unless otherwise agreed between the originator and the addressee, the dispatch of an electronic record occurs when it enters an information system outside the control of the originator or of the person who sent the electronic record on behalf of the originator.

(2) Unless otherwise agreed between the originator and the addressee, the time of receipt of an electronic record is determined as follows:

- (a) if the addressee has designated an information system for the purpose of receiving electronic records, receipt occurs;
 - (i) at the time when the electronic record enters the designated information system; or
 - (ii) if the electronic record is sent to an information system of the addressee that is not the designated information system, at the time when the electronic record is retrieved by the addressee;
- (b) if the addressee has not designated an information system, receipt occurs when the electronic record enters an information system of the addressee.

(3) Subsection (2) applies notwithstanding that the place where the information system is located may be different from the place where the electronic record is deemed to be received under subsection (4).

(4) Unless 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, and for the purpose of this subsection:

- (a) if the originator or the addressee has more than one place of business, the 'place of

business' is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the principal place of business; or

- (b) if the originator or the addressee does not have a place of business, the electronic record is deemed to be dispatched or received, as the case may be, at the originator or addressee's habitual residence.

PART 4 - MISCELLANEOUS

Regulations

17.(1) The Head of State may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), regulations may be made for the following purposes:

- (a) governing the operation of this Act in relation to any class of transactions, persons, matters or things, or with reference to any particular purpose or provision;
- (b) prescribing conditions, in addition to or to substitute the requirements, that must be complied with in order for an electronic record to satisfy a legal requirement in Part II; and
- (c) providing that this Act, or any provision thereof, shall not apply to any class of transactions, persons, matters or things.