



ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT 2023

Summary of Main Requirements
Assented to on 16 August 2023

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- Purpose**
- » To provide for facilitation and regulation of secure electronic communications, transactions and receipt, payment and transfer of money and for their legal recognition.
 - » To promote the development of the legal and business infrastructure necessary to implement secure electronic commerce.
 - » To enhance efficient delivery of governance by public authorities by means of reliable electronic records and electronic filing of documents.

- Exempted Documents and Transactions not covered by the Act**
- » Creation or transfer of interest in movable or immovable property.
 - » Negotiable instruments.
 - » Documents of title.
 - » Wills and other testamentary instruments.
 - » Trusts.
 - » Powers of attorney.

Communications, Transactions and Records

Communication means any statement, declaration, demand, notice, request, offer or the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract.

Electronic Transaction includes the single communication or outcome of multiple communications involved in the conduct of business, consumer or commercial affairs, including the sale of goods, services or anything else of value conducted over computer-mediated networks or information systems, where the payment or ultimate delivery may occur without the use of such networks or systems.

Record means the information that is inscribed, stored or otherwise fixed on a tangible medium or that is stored in an electronic, paper-based or other medium and is retrievable in visible form.

Legal Recognition of Electronic Records

Any information or other matter to be given or rendered in written or printed form, shall be deemed given or rendered if the information or matter is:

- a. rendered or recorded or made available in electronic form; and
- b. accessible to, and is capable of retention by, the intended recipient to be usable or retrievable for subsequent use.

For information retained in electronic form which is retrievable at any point in a specified period of retention, the paper form is not required to be retained.

Information that can be recognised as “given” in this context, includes the following:

- a. making an application;
- b. filing, making or lodging a claim;

- c. giving, sending or serving a notice;
- d. filing or lodging a return;
- e. making a request or requisition;
- f. making a declaration;
- g. filing, lodging or issuing a certificate;
- h. making, varying or cancelling an option;
- i. filing or lodging an objection or reply; or
- j. giving a statement of reasons.

Should there be a legal requirement to provide access to information that is in paper form, the requirement is satisfied by providing access to the information in electronic form where:

- a. the form and means of access to the information reliably assures, by the electronic security measures or procedures employed, the maintenance of the integrity of the information; and
- b. the person to who access is required to be provided consents to accessing the information in that electronic form.

Where information is required to be delivered to a person, that requirement is met by doing so in the electronic form provided the originator of the electronic record states that in the record that the receipt of the electronic record must be acknowledged, and addressee has acknowledged its receipt by so stating.

Where information is required by law to be presented or retained in original form, the requirement is met if:

- a. there exists, by electronic security measures or procedures, a reliable assurance as to the integrity of the information from the time it was first generated in its final form as an electronic communication or electronic record; and
- b. where it is required that the information be presented, that information, by electronic security measures or procedures, is capable of being accurately represented to the person to whom it is to be presented.

Where any document, record or information is required by law to be retained in paper form, that requirement is met by retaining it in electronic form if the following conditions are satisfied:

- a. the document, record or information contained in the electronic form is accessible to be usable for subsequent reference;
- b. the electronic communication is retained in the format in which it was generated, sent or received; and
- c. any information that enables the identification of the origin and destination of an electronic communication and the date and time when it was sent or received, is received.

Sealed as Notarised Documents

Where a seal is required by law, the requirement is met if the document indicates that it is required to be under seal and it includes the secure electronic signature of the person by whom it is required to be sealed.

Where information or a signature, document or record is required by any law, or by contract or deed to be notarised, acknowledged, verified or made under oath, the requirement is satisfied if, the electronic signature of the person authorised to perform those acts, together with all other information required is attached.

Consent to Electronic Record

Where a statutory or legal requirement exists for a record to be provided in paper form to a person, the requirement shall be satisfied by electronic provision of the record, if:

- a. the person has expressly consented to the use and has not withdrawn consent;
- b. prior to consenting, the person is provided with a clear and conspicuous statement informing of:
 - i. right to have record in paper form;
 - ii. right to withdraw consent to electronic form and any conditions, consequences or fees in event of withdrawal;
 - iii. whether the consent applies to a single transaction or to identified categories of records over the course of the parties' relationship;
 - iv. hardware and software requirements for access to, and retention of, the electronic record;
 - v. procedures for withdrawal of consent and contact information for electronic communication;
 - vi. procedures to obtain paper copy of electronic record and any associated fee, after consent has been given;
- c. the record is accessible in a manner usable for reference.

Electronic Contracts

Formation of contracts, including an offer and the acceptance of an offer or any other matter that is material, may be expressed in electronic communications.

An electronic communication is that of the originator if it is sent by the originator personally. Between the originator and the addressee, the electronic communication is deemed to be that of the originator if:

- a. it was sent by a person who had the authority to act on behalf of the originator; or
- b. it was sent by a system programmed by or on behalf of the originator to operate automatically.

An addressee is entitled to regard an electronic communication as that of the originator and to act on that assumption if:

- a. the addressee properly applied an electronic security procedure previously agreed to by the originator for that purpose; or
- b. the electronic communication resulted from the actions of a person whose relationship with the originator or an agent of the originator enabled that person to gain access to a method or an electronic supply procedure used by the originator to identify electronic communications as being those of the originator.

If an acknowledgement is required on an electronic communication, it is treated as never sent until receipt is acknowledged. If the form of acknowledgement is not agreed, it can be given through the conduct of the addressee.

Electronic Signatures

Where a rule of law requires a signature, that requirement is satisfied in relation to an electronic document or record, if:

- a. an electronic signature is used to identify the person and to indicate that person's intention in respect of the information contained in the electronic document or record; and
- b. the electronic signature used is either –
 - i. as reliable as appropriate for the purpose for which the electronic document or record was generated or communicated, in the light of all the circumstances, including any relevant agreement;
 - ii. proven in fact to have fulfilled the functions described, by itself or together with further evidence.

Secure Electronic Signatures, Communications and Records

A signature is treated as a secure electronic signature if, through the application of an electronic security procedure, or a commercially reasonable electronic security procedure agreed to by the parties involved, it is shown that the electronic signature satisfies the following for reliability and integrity:

- a. it is unique to the person using it;
- b. it can identify the person using it;
- c. it is created in a manner or using a means under the sole control of the person using it;
- d. it is linked to the electronic communication or record to which it relates in such a manner that if the communication or record was changed the electronic signature would be invalidated; and
- e. any other prescribed by the Minister by regulations.

Whether an electronic security procedure is commercially reasonable is determined by having regard to the purposes of the procedure and the commercial circumstances at the time the procedure was used, including:

- a. nature of the transaction;
- b. experience and knowledge of the parties;
- c. volume or similar transactions engaged in by either or all parties;
- d. availability of alternatives offered to but rejected by any party;
- e. cost of alternative procedures; and
- f. procedures in general use for similar types of transactions.

Electronic security procedures associated with Electronic Security Procedure Providers accredited under the Act are considered to satisfy the requirements of reliability and integrity of a secure

electronic signature. Electronic security procedures include electronic certificates and any other security procedure as may be prescribed by the Minister by Order. No person is permitted to issue an electronic security procedure unless registered by the Certifying Authority (established under the Act) as an accredited Electronic Security Procedure Provider. The Minister may by Order recognise a qualified electronic security procedure issued by Electronic Security Procedures Providers established in any other jurisdiction.

**Public Authorities
use of Electronic
Records, Information,
Signatures and
Systems**

A public authority may discharge its functions in electronic form, when required by law to:

- a. accept filing, application, other information;
- b. issues or grants licenses, permits, sanction or approval.

A public authority is also permitted to pay or transfer money by electronic form, including electronic money or card. Applicable procedures may be issued by Order by the Minister responsible for the public authority.



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Author's Note

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