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Laws Act

2022-06-22

The Electronic Transactions Act, Cap 442 R.E. 2022

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THE UNITED REPUBLIC OF TANZANIA

CHAPTER 442

THE ELECTRONIC TRANSACTIONS ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION 2022

This Revised Edition of the Electronic Transactions Act, Chapter 442, has been revised up to and including 15th June, 2022 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
22nd June, 2022

ELIEZER MBUKI FELESHI,
Attorney General

PRINTED BY THE GOVERNMENT PRESS, DODOMA-TANZANIA

CHAPTER 442

THE ELECTRONIC TRANSACTIONS ACT

[PRINCIPAL LEGISLATION]

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JAMHURI YA MUUNGANO WA TANZANIA
UHURU NA UMOJA
IDARA YA KUPIGA CHAPA

CHAPTER 442

THE ELECTRONIC TRANSACTIONS ACT

[1]An Act to provide for the legal recognition of electronic transactions, the use of information and communication technologies in collection of evidence, admissibility of electronic evidence, to provide for the facilitation of use of secure electronic signatures; and to provide for other related matters.

[1st September, 2015]
[GN. No. 329 of 2015]

Acts Nos.
13 of 2015
10 of 2019

PART I
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Electronic Transactions Act.

Application

2. Save for Part III, this Act shall apply to Mainland Tanzania as well as Tanzania Zanzibar.

Interpretation

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

"access" in relation to any computer system, means to gain entry to, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any of the resources of the computer system or network or data storage medium;

[1] The long title is amended by Act No. 10 of 2019 under section 63

"addressee" means a person or part who is intended by the originator to receive an electronic communication, but does not include a part acting as an intermediary in respect of that electronic communication;

"computer system" means a device or combination of devices, including network, input and output devices capable of being used in conjunction with external files which contain computer programmes, electronic instructions, input data and output data that perform logic, arithmetic data storage and retrieval communication control and other functions;

"consumer" means any person who enters or intends to enter into an electronic transaction with a supplier as the end user of goods or services offered by the supplier;

"cryptography" means the art of protecting information by transforming it into an unreadable format;

"data" means any information presented in an electronic form;

"data message" means data generated, communicated, received or stored by electronic, magnetic optical or other means in a computer system or for transmission from one computer system to another;

"electronic communication" means any transfer of sign, signal, or computer data of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, photo-optical or in any other similar form;

"electronic record" means a record stored in an electronic form;

"electronic signature" means data, including an electronic sound, symbol or process, executed or adopted to identify a part, to indicate that part's approval or intention in respect of the information contained in the electronic communication and which is attached to or

logically associated with such electronic communication;

"electronic transaction" means a transaction, action or set of transactions of a commercial or non-commercial nature, that takes place electronically;

"interactive message system" means an automated system, or other pre-programmed system, used to, initiate an action, respond to electronic communications, or generate other performances in whole or in part without review or intervention by a part each time an action is initiated or a response is generated by the system;

"Minister" means the Minister responsible for information and communication technology;

"originator" means a person from whom the electronic communication purports to have been sent or generated;

"place of business" means any place where a part maintains a non-transitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location.

PART II
RECOGNITION AND EFFECTS OF ELECTRONIC TRANSACTIONS

Recognition of data message

4. A data message shall not be denied legal effect, validity or enforceability on the ground that it is in electronic format.

Validity of transaction in electronic form

5.-(1) Where a law requires information or transaction to be in a prescribed non-electronic form or in writing, such requirement shall be met by an information or a transaction entered in electronic form that is-

(a) organised in the same or substantially the same way as the prescribed non-electronic

form;

(b) accessible to the other person for subsequent reference; and

(c) capable to be retained by the other person.

(2) Subsection (1) shall apply whether the requirement is in a form of an obligation or where the law only provides consequences for the information which is not in writing.

Electronic signature

6.-(1) Where a law requires the signature of a person to be entered, that requirement shall be met by a secure electronic signature made under this Act.

(2) The requirement for an electronic signature made under subsection (1) shall be met if-

(a) the method is used to identify the person and to indicate the intention of that person in relation with information communicated; and

(b) at the time the method was used, that method was reliable and appropriate for the purposes for which the information was communicated.

(3) Parties to a contract may agree to use a particular method of electronic signature as they deem appropriate unless it is otherwise provided by law.

Secure electronic signature

7. An electronic signature shall be deemed to be secure if it-

(a) is unique for the purpose for which it is used;

(b) can be used to identify the person who signs the electronic communication;

(c) is created and affixed to the electronic communication by the signer;

(d) is under control of the person who signs; and

(e) is created and linked to the electronic communication to which it relates in a manner such that any changes in the electronic communication would be

revealed.

Application of secure electronic signature

8. A secure electronic signature shall be deemed to have been applied if it is-

(a) applied by the holder of the secure electronic signature; and

(b) affixed by the holder with the intention of signing or approving the electronic communication.

Electronic record keeping

9.-(1) Where a written law requires that certain information or document be retained or kept, that requirement is deemed to have been met by electronic record keeping provided that-

(a) the information contained in that record is in electronic form;

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

(c) such electronic record is retained or kept in a form that enables the identification of the origin and destination of an electronic record or electronic communication and the date and time when it was first generated, sent, received or retained.

(2) An obligation to retain or keep a document, record or information in accordance with subsection (1) shall not extend to any information of which the sole purpose is to enable the message to be sent or received.

Notarisation, acknowledgement and certification

10. Where the law requires-

(a) a signature, statement or a document to be notarised, acknowledged, verified or made under oath, that requirement shall be deemed to be met if the electronic signature of the person authorised to perform those acts is attached to,

incorporated in or logically associated with an electronic signature or a data message; or

(b) a person to provide a certified copy of a document and that document exists in an electronic form, the requirement shall be met if the person provides a certified print-out of the document.

Other requirements

11.-(1) Where the law requires-

(a) submission of multiple copies of a document to a single addressee at the same time, that requirement is met by submission of a single electronic communication that is capable of being reproduced by that addressee;

(b) a seal to be affixed and signature to a document and that law does not prescribe the method or form by which such a document may be sealed by electronic means, that requirement shall be met if the document is sealed and signed electronically by a person who was required to seal and sign that document; or

(c) a person to send an information or a document by post or a similar service, that requirement shall be met if that information or document is sent in an electronic form.

(2) An expression in a written law, including the terms "document", "record", "file", "submit", "lodge", "deliver", "issue", "publish", "write in", "print" or words or expressions of similar effect, shall be interpreted so as to include or permit such form, format or action in relation to an electronic communication unless it is otherwise provided for in this Act.

Conduct of person relying on

12. A person who relies on an electronic signature shall bear the legal consequence of failure to

electronic signature

take reasonable steps to verify the-

(a) authenticity of a electronic signature; or

(b) validity of a certificate or observe any limitation with respect to the certificate where an electronic signature is supported by a certificate.

Payment of money and issuance of receipt in electronic form Act No. 10 of 2019 s. 64

12A. Where the law requires-

(a) payment to be made, the requirement shall be met if payment is made by an electronic means and complies with any conditions imposed by other relevant laws; and

(b) the issuance of any receipt of payment, the requirement shall be met if the receipt is in the form of an electronic message and the electronic message is accessible and intelligible so as to be usable for subsequent reference.

PART III

Repealed

13.-17. [Repealed by Act No. 10 of 2019 s. 65.]

PART IV

ADMISSIBILITY AND EVIDENTIAL WEIGHT OF DATA MESSAGES

Admissibility of data message

18.-(1) In any legal proceedings, nothing in the rules of evidence shall apply so as to deny the admissibility of data message on ground that it is a data message.

(2) In determining admissibility and evidential weight of a data message, the following shall be considered-

(a) the reliability of the manner in which the data message was generated, stored or communicated;

(b) the reliability of the manner in which the integrity of the data message was

maintained;

(c) the manner in which its originator was identified; and

(d) any other factor that may be relevant in assessing the weight of evidence.

(3) The authenticity of an electronic records system in which an electronic record is recorded or stored shall, in the absence of evidence to the contrary, be presumed where-

(a) there is evidence that supports a finding that at all material times the computer system or other similar device was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of an electronic record and there are no other reasonable grounds on which to doubt the authenticity of the electronic records system;

(b) it is established that the electronic record was recorded or stored by a part to the proceedings who is adverse in interest to the part seeking to introduce it; or

(c) it is established that an electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a part to the proceedings and who did not record or store it under the control of the part seeking to introduce the record.

(4) For purposes of determining whether an electronic record is admissible under this section, an evidence may be presented in respect of any set standard, procedure, usage or practice on how electronic records are to be recorded or stored, with regard to the type of business or endeavours that used, recorded or stored the electronic record and the nature and purpose of the electronic record.

Attribution of electronic

19. An electronic communication shall be treated to be from originator if it is sent by-

communication

(a) the originator;
(b) a person who is duly authorised by the originator to communicate in electronic form in respect of that data message; or
(c) computer system programmed by or on behalf of the originator to operate automatically.

Production of original document in electronic form

20.-(1) Where a written law requires a person to produce a document or information, that requirement is met if-

(a) the person produces, by means of an electronic communication, an electronic form of that document or information;
(b) considering all the relevant circumstances, at the time that an electronic communication was sent, the method of generating the electronic form of the document provided a reliable means of assuring the maintenance of integrity of the information contained in the document; and
(c) at the time that an electronic communication is sent, it is reasonable to expect that an information contained in the document or information would be readily accessible so as to be usable for subsequent reference.

(2) For the purposes of subsection (1), the integrity of the information contained in a document is maintained if the information has remained complete and unaltered, except for-

(a) the addition of any endorsement; or
(b) any immaterial change, which arises in the normal course of communication, storage or display.

PART V
RECOGNITION OF ELECTRONIC CONTRACTS

Recognition of electronic contracts

21.-(1) For avoidance of doubt, a contract may be formed electronically unless otherwise agreed by the parties.

(2) Where an electronic record is used in the formation of a contract, that contract shall not be denied validity or enforceability on the ground that an electronic record was used for that purpose.

Time of dispatch and receipt of electronic communication

22.-(1) Information in electronic form is dispatched when it enters a computer system outside the control of the originator or of the person who sent the electronic communication on behalf of the originator.

(2) Where the originator and the addressee are in the same computer system, information in electronic form is communicated when it is capable of being retrieved by the addressee.

(3) Where the addressee has designated a computer system for the purpose of receiving electronic communication, that information is received at the time when the electronic communication enters the designated computer system.

(4) Where the electronic communication is sent to an information system of the addressee that is not the designated computer system, that information is communicated-

(a) at the time when the electronic communication is capable of being retrieved by the addressee at that address; and

(b) the addressee becomes aware that the electronic communication has been sent to that address.

(5) Where the addressee has not designated an information system, receipt occurs when the electronic communication is retrieved by the addressee, or

should reasonably have been retrieved by the addressee.

Acknowledgement of receipt

23.-(1) Acknowledgement of receipt of an electronic communication may, where the originator has not agreed with the addressee on the form or method, be given by-

(a) any electronic communication by the addressee, automated or otherwise; or

(b) any act of the addressee, sufficient to indicate to the originator that the electronic communication has been received.

(2) Where the originator has stipulated that an electronic communication shall be binding only on receipt of an acknowledgment, and the acknowledgment has not been received, the originator shall-

(a) 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 reasonable time by which the acknowledgment shall be received by him;

(b) within the aforesaid time limit, he may after giving notice to the addressee, treat the electronic communication as though it has never been sent.

Place of dispatch and receipt of electronic communication

24.-(1) Unless otherwise agreed between the originator and the addressee, an electronic communication is deemed to be dispatched at the place where the originator has its place of business and is deemed to be received at the place where the addressee has its place of business.

(2) Subsection (1) shall apply-

(a) even if the originator or addressee was not at his usual place of business; and

(b) to determine the place where a contract

was concluded for the purposes of taxation.

(3) For the purpose of subsection (1), if the originator or the addressee-

(a) has more than one place of business, the place of business is-

(i) that which has the closest relationship to the underlying transaction having regard to the circumstances known or contemplated by the parties at any time before or at the conclusion of the contract; or

(ii) where there is no underlying transaction, the principal place of business;

(b) does not have a place of business, the place of business shall be his habitual residence.

(4) Where a body corporate does not have a place of business, the place of business shall be the business address of the body corporate or the place where it is incorporated or otherwise legally constituted.

(5) This section shall apply notwithstanding that a place where a computer system supporting an electronic address is located is different from the place where the electronic communication is deemed to be dispatched or received.

Time and place of contract formation

25.-(1) Where parties conclude a contract electronically, that contract shall be formed at the time and place where acceptance of the offer becomes effective.

(2) An offer in the form of an electronic communication becomes effective at the time it is received by the offeree.

Contracts with interactive systems

26.-(1) A contract formed by the interaction of an interactive system and a person, or by interaction of interactive systems, shall not be denied legal effect, on the ground that no person reviewed each of the

individual actions carried out by the interactive systems.

(2) An interactive system shall provide an opportunity for a person to correct an input error made in an electronic communication exchanged with the interactive system of another part.

(3) Where a person makes an input error in an electronic communication exchanged with the interactive system of another part and an interactive system does not provide the person with an opportunity to correct the error, that person has the right to withdraw the electronic communication in which the input error was made if the person-

(a) notifies the other part of the error as soon as practicable after having learned of the error and intends to cancel the contract or cancel the input error;

(b) takes reasonable steps, to comply with instruction by the other part to return the goods or services received as a result of the error, or to destroy the goods or services, or to cancel the input error; and

(c) has not used or received any material benefit or value from the goods or services, or the input error, from the other part.

(4) A person who has paid for goods or services prior to exercising a right under subsection (1), is entitled to a full refund of such payment within thirty days upon cancellation of the transaction.

(5) Nothing in this section shall affect the application of any law that may govern the consequences of any errors made during formation or performance of the type of contract in question other than an input error that occurs in the circumstances under subsection (3).

Online auction

27. Where a written law requires a contract of sale by auction, the requirement of the fall of hammer is met in an online auction using the time at which an electronic communication was received as the time

limit as the means of selecting the last bidder.

PART VI
CONSUMER PROTECTION

Duties of suppliers to online consumers

28.-(1) A supplier offering goods or services for sale, hire or for exchange electronically, shall provide the following information to consumers-

(a) full name, legal status and place of business;
(b) contact details including physical address, telephone and e-mail addresses;
(c) a full description of the goods or services offered;
(d) the price of the goods or services;
(e) information on the payment mechanism that complies with other written laws; and
(f) any other relevant information.

(2) Before a consumer place an order, the supplier shall provide the consumer with an opportunity to-

(a) review the entire electronic transaction;
(b) correct any mistake; and
(c) withdraw from the transaction.

(3) Where a supplier contravenes this section, the consumer may, within fourteen days of receiving the goods or services, cancel the transaction.

Time for execution of order

29.-(1) Unless the parties have agreed otherwise, the supplier shall execute the order within thirty days from the day on which the supplier received the order.

(2) Where a supplier fails to execute the order within time specified under subsection (1), the consumer may cancel the agreement by giving a seven days notice.

(3) Where a supplier is unable to perform the contract on the grounds that goods or services ordered are unavailable, the supplier shall, within thirty days, notify the consumer and the supplier shall refund any

payment that has been made.

Cancellation right

30.-(1) Without prejudice to any other law, a consumer may, within seven days or longer period specified in the agreement, after receiving the goods or conclusion of the agreement and the consumer has not received any material benefit from the transaction, cancel the agreement for supply of goods or provision of services.

(2) Where a consumer has cancelled the agreement under subsection (1), he shall pay direct cost of returning the goods.

(3) Where a consumer has paid for the goods or services prior to exercising a right under subsection (1), the consumer is entitled to a refund.

(4) The refund under subsection (3) shall be made within thirty days after the date of cancellation of transaction.

(5) This section shall not apply to electronic transactions-

(a) for financial services;

(b) by way of an auction;

(c) for the supply of foodstuffs, beverages or other goods intended for daily consumption;

(d) for services which began with the consent by the consumer before expiration of the seven-day period;

(e) where the price for the supply of goods or services is dependent on fluctuations in the financial markets and which cannot be controlled by the supplier;

(f) where the goods-

(i) are made to the consumer's specifications;

(ii) are clearly personalised;

(iii) by their nature, cannot be returned; or

(iv) are likely to deteriorate or expire rapidly;

(g) where audio or video recordings or computer software were downloaded or unsealed by the consumer;
(h) for the sale of newspapers, periodicals, magazines and books;
(i) for the provision of gaming and lottery services;
(j) for online gambling;
(k) for the provision of accommodation, transport, catering; and
(l) any other transactions as the Minister may, by notice published in the *Gazette*, prescribe.

(6) For the purpose of this section "direct costs" means, costs incurred and include transport costs or postage when returning goods or services but exclude any handling fees.

Particulars to be provided in electronic communication

31. A person who offers goods or services electronically shall provide the addressee with-

(a) an identity of the originator and contact details;
(b) a valid and operational opt-out facility from receiving similar communications in future; and
(c) the particulars of the source from which the originator obtained the personal information of the addressee.

Unsolicited goods, services or communications

32.-(1) A person shall not send unsolicited commercial communication on goods or service unless-

(a) the consumer consents to the communication;
(b) at the beginning of the communication, the communication discloses the identity of sender and its purpose; and
(c) that communication gives an opt-out option to reject further communication.

(2) The consent requirement is deemed to

have been met where-

(a) the contact of the addressee and other personal information were collected by the originator of the message in the course of a sale or negotiations for a sale;

(b) the originator only sends promotional messages relating to its similar products and services to the addressee;

(c) the originator offered the addressee the opportunity to opt-out and the addressee declined to opt-out; and

(d) an opportunity to opt-out is provided by the originator to the addressee with every subsequent message.

(3) An originator who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of not less than ten million shillings or to imprisonment for a term not less than one year or to both.

PART VII
CRYPTOGRAPHIC AND CERTIFICATION SERVICE PROVIDERS

Cryptographic and certification services

33. The Minister may, by notice published in the *Gazette*, designate a government institution under the Ministry responsible for Information and Communication Technology to be a regulator of Cryptographic and Certification Services.

Functions of regulator

34. The functions of the regulator shall be to-

(a) licence and regulate cryptographic and certification services;

(b) prescribe security standards for cryptography and electronic signatures;

(c) determine standards to be maintained by certification authorities;

(d) keep and maintain a register of cryptographic and certification service providers; and

(e) do such other things necessary for the implementation of this Part.

Application for registration

35.-(1) A person who intends to offer cryptographic or certification services shall apply to the regulator.

(2) The application made under subsection (1) shall consist of the following information-

(a) name and contact, including the physical address, telephone and e-mail;

(b) a description of the type of service to be provided;

(c) a description of the purpose to which the service will be applied;

(d) a description of the technology to be applied in the services; and

(e) any other relevant particulars as may be prescribed by the regulator.

Prohibition to provide cryptographic or certification services

36.-(1) A person shall not provide cryptographic or certification services without a licence.

(2) A person who contravenes subsection (1) commits an offence and shall, upon conviction be liable to a fine of not not less than ten million shillings or to imprisonment for a term not less than five years or to both.

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PART VIII
GENERAL PROVISIONS

Powers to make regulations

37. The Minister may make regulations generally for or with respect to any matter which by this Act is required to be prescribed or which is necessary for giving effect to this Act.

PART IX
CONSEQUENTIAL AMENDMENTS

Omitted

[Section 38 to 50 Omitted.]