

THE UNITED REPUBLIC OF TANZANIA

ACT SUPPLEMENT

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THE ELECTRONIC TRANSACTIONS ACT, 2015

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THE UNITED REPUBLIC OF TANZANIA



NO.13 OF 2015

I ASSENT,

JAKAYA MRISHO KIKWETE

*President*25th April, 2015

An Act to provide for the legal recognition of electronic transactions, e-Government services, 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.

[.....]

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and
commen-
cement

1. This Act may be cited as the Electronic Transactions Act, 2015 and shall come into operation on

such date as the Minister may, by notice published in the *Gazette*, appoint.

Application

2. Save for Part III, this Act shall apply to Tanzania Mainland 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;

"addressee" means a person or party who is intended by the originator to receive an electronic communication, but does not include a party 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 *Gazette*" means the *Gazette* referred to under section 16;
- "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 party, to indicate that party’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 party 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 party 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,
acknowledge
ment and
certification

10. Where the law requires-

- (a) a signature, statement or a document to be notarized, acknowledged, verified or made under oath, that requirement shall be deemed to be met if the electronic signature of the person authorized 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 electronic
signature

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

PART III
E-GOVERNMENT SERVICES

Recognition
of
e-Government
services

13.-(1) Without prejudice to any other law, where a public institution has power to deal with an information or a document or issue services, it may deal with that information or document or issue such services in electronic form in accordance with this Act.

(2) A requirement that information or document shall be made or given in writing or signed, does not in itself constitute an express prohibition of the use of electronic means.

(3) A public institution may take or receive payment in electronic form in a prescribed manner.

(4) For the purpose of subsection (1), the Minister may, in consultation with the Minister responsible for e-Government, by notice published in the *Gazette*, issue guidelines specifying-

- (a) the manner and format in which the electronic transaction shall be made;
- (b) the type of electronic signature required, in cases where an electronic transaction has to be signed;
- (c) the manner and format in which the electronic signature may be attached or associated with an electronic transaction;
- (d) control processes and procedures to ensure integrity, security and confidentiality of the information;
- (e) the identity of or criteria to be met by an authentication service provider for e-government services;

- (f) the appropriate control process and procedure to ensure adequate integrity, security and confidentiality of an electronic transaction or an electronic payments; and

- (g) any other requirements that relates to electronic transaction.

(5) Notwithstanding subsection (4), any authorized public institution may adopt such other authentication procedures.

(6) For the purpose of this Part, “e-Government Services” means any Government services provided through the use of Information and Communication Technologies.

Service by
electronic
means

14.-(1) Where the law requires a document to be served, that requirement is met if the document is served in an electronic form.

(2) Subsection (1) shall apply where there is an information processing system which can-

- (a) identify the origin, destination, time and date of service, sending or delivery; and
- (b) acknowledge receipt of the document.

Payment of
money and
issuance of
receipt in
electronic
form

15. Where the law requires –

- (a) payment to be made, that requirement shall be met if payment is made by an electronic means and complies with any conditions imposed by other relevant laws.
- (b) the issuance of any receipt of payment, that 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.

Publication of
document

16. Where a written law provides that a document be published in the *Gazette*, such requirement shall be deemed to have been met if such document is published in an electronic *Gazette*.

Document in
electronic
form not
mandatory

17. This Act shall not confer a right upon any person to insist that any public institution shall deal with any document in electronic form.

PART IV

ADMISSIBILITY OF 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 party to the proceedings who is adverse in interest to the party 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 party to the proceedings and who did not record or store it under the control of the party 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
communi-
cation

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

- (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) If 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) When 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.

Acknowled-
gement of

23.-(1) Acknowledgement of receipt of an electronic communication may, where the originator has not agreed

receipt

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
communi-
cation

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) If 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 party.

(3) Where a person makes an input error in an electronic communication exchanged with the interactive system of another party 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 party 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 party.

(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 places 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 service.

(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 an 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
communi-
cations

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) license 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
cryptogra-
phic 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.

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 (a) *Amendment of the Law of Contract Act, Cap. 345*

Construction
Cap.345

38. This Part shall be read as one with the Law of Contract Act, hereinafter referred to as the “principal Act”.

Amendment
of section 10

39. The principal Act is amended in section 10 by inserting the words “or in electronic form” immediately after the words “in writing” appearing in the proviso of that section.

Amendment
of section 25

40. The principal Act is amended in section 25, by –

the following:

“Agreement without consideration is void”

- (a) inserting the words “in electronic form” immediately after the word “writing” appearing in paragraph (a);
- (b) inserting the words “or electronic form” immediately after the word “writing” appearing in paragraph (c);

(b) Amendment of the Law of Evidence Act, Cap.6

Construction
Cap. 6

41. This Part shall be read as one with the Law of Evidence Act, hereinafter referred to as the “principal Act”.

Amendment
of section 3

42. The principal Act is amended in section 3 by deleting the definition of the term “document” and substituting for it with the following:
“document” means any writing, handwriting, typewriting, printing, Photostat, photography, computer data and every recording upon any tangible thing, any form of communication or representation including in electronic form, by letters, figures, marks or symbols or more than one of these means, which may be used for the purpose of recording any matter provided that recording is reasonably permanent and readable;.

Amendment
of section 19

43. Section 19 of the principal Act is amended by inserting the word “ electronic” immediately after the word “oral”;

Amendment
of section 34

44. Section 34 of the principal Act is amended by inserting the word “ electronic” immediately after the word “written”;

Amendment
of section
34B

45. Section 34B of the principal Act is amended by inserting the words “or electronic” between the words “written” and “statements” wherever they appear in that section.

Addition of
section 64A

46. The principal Act is amended by adding a new section 64A as follows:

“Admissibility
of electronic
evidence

64A.-(1) In any proceedings, electronic evidence shall be admissible.

(2) The admissibility and weight of electronic evidence shall be determined in the manner prescribed under section 18 of the Electronic Transaction Act, 2015.

(3) For the purpose of this section, “electronic evidence” means any data or information stored in electronic form or electronic media or retrieved from a computer system, which can be presented as evidence.”

(c) Amendment of the Records and Archives Management Act, Cap.309

Construction
Cap.309

47. This Part shall be read as one with the Records and Archives Management Act, hereinafter referred to as the “principal Act”.

Amendment
of section 2

48. The principal Act is amended in section 2 by inserting the words “or electronic” immediately after the word “recorded” appearing in the definition of the term “record”.

(d) Amendment of the Banking and Financial Institutions Act, Cap.342

Construction
Cap.342

49. This Part shall be read as one with the Banking and Financial Institutions Act, hereinafter referred to as the “principal Act”.

Amendment
of section 8

50. The principal Act is amended in section 8 by inserting the words “or in electronic form” between the words “writing” and “and”, appearing in subsection (1).

Passed in the National Assembly on the 1st day of April, 2015

THOMAS D. KASHILILAH
Clerk of the National Assembly

SHERIA YA MIAMALA YA KIELEKTRONIKI, 2015

MPANGILIO WA VIFUNGU

SEHEMU YA KWANZA
MASHARTI YA UTANGULIZI

Kifungu *Kichwa cha habari*

1. Jina na tarehe ya kuanza kutumika.
2. Matumizi.
3. Tafsiri.

SEHEMU YA PILI
UTAMBUZI NA MATOKEO
YA MIAMALA YA KIELEKTRONIKI

4. Utambuzi wa ujumbe wa data.
5. Uhalali wa muamala wa kielektroniki.
6. Saini ya kielektroniki.
7. Usalama wa saini ya kielektroniki.
8. Matumizi salama ya saini ya kielektroniki.
9. Utunzaji wa kumbukumbu kielektroniki.
10. Uthibitisho.
11. Mahitaji mengineyo.
12. Mwenendo wa mtu anayetumia saini ya kielektroniki.

SEHEMU YA TATU
HUDUMA ZA SERIKALI MTANDAO

13. Utambuzi wa huduma za Serikali Mtandao.
14. Uwasilishaji wa nyaraka kwa njia ya kielektroniki.
15. Malipo ya fedha na utoaji wa stakabadhi kwa njia ya kielektroniki.
16. Uchapishaji wa nyaraka.
17. Nyaraka katika mfumo wa kielektroniki haitakuwa shuruti.

SEHEMU YA NNE
KUKUBALIKA KWA USHAHIDI NA UZITO WA
USHAHIDI WA UJUMBE WA DATA

18. Kukubalika kwa ujumbe wa data.
19. Chanzo cha mawasiliano ya kielektroniki.
20. Kuwasilisha nyaraka halisi katika mfumo wa kielektroniki.

SEHEMU YA TANO
UTAMBUZI WA MIKATABA YA KIELEKTRONIKI

21. Utambuzi wa mikataba ya kielektroniki.
22. Muda wa kutuma na kupokea kwa mawasiliano ya kielektroniki.
23. Uthibitishaji wa kupokea mawasiliano.
24. Mahali pa kutuma na kupokea mawasiliano ya kielektroniki.
25. Muda na mahali ambapo mkataba umefungwa.
26. Mikataba kupitia mifumo inayojiendsha yenyewe.
27. Mnada kupitia Mtandao.

SEHEMU YA SITA
ULINZI KWA MTUMIAJI

28. Wajibu wa watoa huduma kwa watumiaji wa mtandaoni.
29. Muda kwa ajili ya utekelezaji wa agizo.
30. Haki ya usitishaji.
31. Taarifa zitakazotolewa katika mawasiliano ya kielektroniki.
32. Bidhaa, huduma au mawasiliano ambayo hayajaombwa.

SEHEMU YA SABA
WATOA HUDUMA ZA KRAIPTOGRAFIA NA WAIDHINISHAJI

33. Huduma za kriptografia na uidhinishaji.

- 34. Majukumu ya mdhibiti.
- 35. Maombi ya usajili.
- 36. Katazo la kutoa huduma za kriptografia au uidhinishaji.

SEHEMU YA NANE
MASHARTI YA JUMLA

- 37. Mamlaka ya kutunga kanuni.

SEHEMU YA TISA
MAREKEBISHO YATOKANAYO

(a) Marekebsiho ya Sheria ya Mikataba, Sura ya 345

- 38. Tafsiri.
- 39. Marekebisho ya kifungu cha 10.
- 40. Marekebisho ya kifungu cha 25.

(b) Marekebisho ya Sheria ya Ushahidi, Sura ya 6

- 41. Tafsiri.
- 42. Marekebisho ya kifungu cha 3.
- 43. Marekebisho ya kifungu cha 19.
- 44. Marekebisho ya kifungu cha 34.
- 45. Marekebisho ya kifungu cha 35B.
- 46. Marekebisho ya kifungu cha 64.

*(c) Marekebisho ya Sheria ya Usimamizi wa Kumbukumbu,
Sura ya 309*

- 47. Tafsiri.
- 48. Marekebisho ya kifungu cha 2.

*(d) Marekebisho ya Sheria ya Benki na Taasisi za Kifedha,
Usimamizi wa , Sura ya 342*

- 49. Tafsiri.
- 50. Marekebisho ya kifungu cha 8.

JAMHURI YA MUUNGANO WA TANZANIA



NA.13 YA 2015

NAKUBALI,
JAKAYA MRISHO KIKWETE
Rais

25 Aprili, 2015

Sheria kwa ajili ya kuweka utambuzi wa kisheria wa miamala ya kielektroniki, huduma za Serikali mtandao, matumizi ya Teknolojia ya Habari na Mawasiliano katika ukusanyaji wa ushahidi, kukubalika kwa ushahidi wa kielektroniki; urahisishaji wa matumizi ya saina salama za kielektroniki na mambo mengine yanayohusiana na hayo.

[.....]

IMETUNGWA na Bunge la Jamhuri ya Muungano wa Tanzania.

SEHEMU YA KWANZA
MASHARTI YA UTANGULIZI

Jina na tarehe
ya kuanza
kutumika

1. Sheria hii itaitwa Sheria ya Miamala ya Kielektroniki ya mwaka 2015 na itanza kutumika kwa tarehe ambayo Waziri, kwa Tangazo litakalo chapishwa kwenye *Gazeti la Serikali*, atateua.

3. Katika Sheria hii, isipokuwa kama muktadha utahitaji vinginevyo-

“kuingia” kuhusiana na mfumo wowote wa kompyuta maana yake ni kupata fursa ya kuingia, kutoa kuelekeza, kuwasiliana na, kuhifadhi data katika, kupokea data kutoka katika au vinginevyo kutumia rasilimali zozote za mfumo wa kompyuta au mtandao au mfumo wa kifaa cha kutunzia data ;

“mlengwa” maana yake ni mtu au mhusikaambaye amedhaminiwa na mtumaji taarifa kupokea mawasiliano ya kielektroniki, isipokuwa haitajumuisha mtu anayetenda kama mtu kati kuhusiana na mawasiliano ya kielektroniki;

“mfumo wa kompyuta” maana yake ni kifaa au mjumuiiko wa vifaa, ikijumuisha mtandao, vifaa vya kwingiza na kutoa vinavyoweza kutumika pamoja na majalada ya nje ambayo yana programu za kompyuta, maelezo yakielektroniki, data zinazolingia na zinazotoka ambazo zinaleta mantiki, uhifadhi wa data za namba na udhibiti wa mawasiliano yanayorejea;

“mtumiaji” maana yake ni mtu yeyote ambaye anayeingia au anayekusudia kuingia katika muamala wa kielektroniki na mtoa huduma akiwa kama mtumiaji wa mwisho wa bidhaa au huduma zinazotolewa na mtoa huduma;

“kraitografia” maana yake ni utaalum wa kulinda taarifa kwa kuzibadilisha kuwa kwenye mfumo usiosomeka;

“data” maana yake ni taarifa yoyote iliyowasilishwa kwa njia ya kielektroniki;

“ujumbe wa data” maana yake ni ujumbe uliyotengenezwa, uliyowasilishwa, uliyopokelewa au kutunzwa kwa njia ya kielektroniki, kwa simaku au njia nyingine

yoyote katika mfumo wa mawasiliano au kwa ajili
ya kusafirishwa kutoka katika mfumo mmoja wa
mawasiliano

kwenda kwenye mfumo mwingine;

“mawasiliano ya kielektroniki” manta yake ni uhamishaji wowote wa alama, mawimbi au data zozote za kompyuta za aina yoyote zilizosafirishwa kwa mkupuo au sehemu kwa njia ya waya, redio, sumaku, picha za kielektroniki, picha za kioo au kwa njia nyingine yoyote zinazofanana na hiyo;

“Gazeti la Serikali la kielektroniki” maana yake ni Gazeti la Serikali linalorejewa kwenye kifungu cha 16;

“kumbukumbu ya kielektroniki” maana yake ni kumbukumbu iliyotunzwa kwa njia ya kielektroniki;

“saini ya kielektroniki” maana yake ni data, ikijumuisha, sauti ya kielektroniki, alama au mchakato uliofanyika au kutumika katika kumtambua mhusika, ili kuashiria ridhaa au kusudio lake kuhusiana na taarifa iliyoko katika mawasiliano ya kielektroniki na ambayo imeambatanishwa kwenye au kimantiki inahusiana na mawasilano ya kielektroniki;

“muamala wa kielektroniki” maana yake ni muamala, kitendo au fungo la miamala ama ya kibiashara au yasiyo ya kibiashara ambayo inafanyika kwa njia ya kielektroniki;

“mfumo wa ujumbe unaojiendesha” maana yake ni mfumo unaojiendesha wenyewe au programu nyingine

iliyoandaliwa awali, inayotumika kuanzishia kitendo, kujibu mawasiliano ya kielektroniki au kuzalisha kazi nyingine kwa ukamilifu au kwa sehemu pasipo kurejea au kuingiliwa na mhusika kila wakati kitendo kinapofanywa au jibu linapotolewa na mfumo;

“Waziri” maana yake ni Waziri mwenye dhamana na masuala ya Teknolojia ya Habari na Mawasiliano;

“mtuma taarifa” maana yake ni mtu ambaye kutoka kwake mawasiliano ya kielektroniki yanadaiwa kuwa aliyatuma au kuyayazalisha;

“sehemu ya biashara” maana yake ni sehemu yoyote ambayo mhusika anatunza ana mahala pa kuendesha shughuli ya kiuchumi mbali ya shughuli ya muda ya uuazaji wa bidhaa au huduma katika eneo maalum.

SEHEMU YA PILI UTAMBUZI NA MATOKEO YA MIAMALA YA KIELEKTRONIKI

Kutambulika
kwa ujumbe
wa data

4. Ujumbe wa data hautakataliwa nguvu ya kisheria, uhalali au ktumuika kwake kwa sababu ya kuwa umetengenezwa katika mfumo wa kielektroniki.

Uhalali wa
muamala wa
kielektroniki

5.-(1) Endapo sheria inahitaji taarifa au muamala kuwa katika namna iliyoainishwa isiyo ya kielektroniki au kimaandishi, masharti hayo yatakuwa yametimizwa na taarifa au muamala wa kielektroniki ambayo-

- (a) imewekwa katika namna sawa au inayokaribiana na namna maalum isiyo ya kielektroniki;
- (b) inaweza kufikiwa na mtu mwingine kwa ajili ya rejea; na

(c) ina uwezo wa kuhifadhiwa na mtu huyo mwingine.

(2) Kifungu kidogo cha (2) kitatumika iwapo maelekezo ya kuwa katika maandishi ni ya lazima au iwapo sheria inaainisha madhara ya taarifa ambayo haiko kimaandishi.

Saini ya
kielektroniki

6.-(1) Endapo sheria inahitaji saini ya mtu, kuwekwa masharti hayo yatatimizwa kwa kuweka salama na saini ya kielektroniki iliyowekwa chini ya Sheria hii.

(2) Masharti yanayohitaji saini ya kielektroniki chini ya kifungu kidogo cha (1) yatakuwa yametimizwa iwapo:

(a) njia hiyo inatumika kumtambua huyo mtu na kuonesha nia ya mtu huyo kuhusu taarifa iliwasilishwa;

(b) wakati wa matumizi ya njia hiyo, njia hiyo ilikuwa inaaminika na sahihi kwa madhumuni ambayo taarifa ilimesilishwa.

(3) Wahusika katika mkataba wanaweza kukubaliana kutumia njia fulani ya kusiani ya kielektroniki kwa kadri watakavyoona inafaa, isipokuwa kama imeelezewa vinginevyo na sheria.

Saini salama
ya
kielektroniki

7. Saini ya kielektroniki itachukuliwa kuwa ni salama iwapo:

- (a) ni ya kipekee kwa madhumuni ambayo inatumika;
- (b) inaweza kutumika kumtambua mtu ambaye anasaini mawasiliano ya kielektroniki;
- (c) inatengenezwa na kuwekwa kwenye mfumo wa mawasiliano ya kielektroniki na mweka saini;
- (d) ipo chini ya udhibiti wa mweka saini; na
- (e) imetengenezwa na kuunganishwa kwenye mawasiliano ya kielektroniki ambayo inahusiana nayo kwa namna ambayo iwapo kuna mabadiliko yoyote yanafanyika kwenye mawasiliano ya kielektroniki, mabadiliko hayo yatafichuliwa.

Matumizi ya
saini salama
ya
kielektroniki

8. Saini salama ya kielektroniki itachukuliwa kuwa imetumika iwapo:

- (a) imetumwa na mmiliki wa saini salama ya kielektroniki;
- (b) inawekwa na mmiliki kwa lengo la kusaini au kuthibitisha mawasiliano hayo ya kielektroniki.

Kutunza
kumbuku-
mbu
kielektroniki

9.-(1) Endapo sheria inahitaji taarifa fulani au nyaraka kutunzwa, masharti hayo yatakuwa yametimizwa kwa kutumia taarifa ya kielektroniki, ilimradi masharti yafuatayo yatazingatiwa:

- (a) taarifa iliyomo kwenye kumbukumbu hiyo ipo katika njia ya kielektroniki,
- (b) kumbukumbu ya kielektroniki inashikiliwa au kuwekwa katika namna ambayo imezalishwa, imetumwa au imepokelewa au ipo katika mpangilio ambao umewekwa wazi ili kuonyesha taarifa hiyo ni saini; na
- (c) taarifa hiyo ya kielektroniki inashikiliwa au inatunzwa katika namna ambayo inawezesha utambuzi wa chanzo na sehemu ambayo taarifa hiyo ya kielektroniki au mawasiliano ya kielektroniki yanaelekea na tarehe na muda ambao ilitengenezwa au ilizalishwa, ilitumwa, ilipokelewa au kutunzwa.

(2) Wajibu wa kushikilia au kutunza nyaraka, kumbukumbu au taarifa kwa mujibu wa kifungu kidogo cha (1) hautahusu taarifa yoyote ambayo madhumuni yake pekee ni kuwezesha ujumbe kutumwa au kupokelewa.

Uthibitisho

10. Endapo sheria inahitaji-

- (a) saini, maelezo au nyaraka kuthibitishwa, rasmi, kukubaliwa, kuidhinishwa au kutolewa chini ya kiapo, masharti hayo yatachukuliwa kuwa yametimizwa iwapo saini ya kielektroniki ya mtu aliyeidhinishwa kutekeleza wajibu huo imeambatanishwa, imejumuishwa au katika hali ya kawaida inahusishwa na saini ya kielektroniki au ujumbe wa data;
- (b) mtu kutoa nakala ya nyaraka iliyoidhinishwa rasmi na nyaraka hiyo ipo katika mfumo wa kielektroniki, masharti hayo yatakuwa yametimizwa iwapo mtu huyo atatoa nakala ya nyaraka iliyochapishwa na kuthibitishwa.

Masharti
mengineyo**11.-(1) Endapo Sheria inahitaji-**

- (a) kuwasilishwa kwa nakala zaidi ya moja ya nyaraka kwenda kwa mlengwa mmoja kwa wakati mmoja, masharti hayo yatakuwa yametimizwa kwa uwasilishaji wa wasiliano moja la kielektroniki ambalo lina uweza wa kutolewa nakala na mlengwa huyo;
- (b) lakiri na saini kuwekwa kwenye nyaraka na sheria hiyo haiweki utaratibu au namna ambavyo nyaraka hiyo inaweza kufungwa au kuwekewa lakiri kwa njia ya kielektroniki, masharti hayo yatakuwa yametimizwa iwapo nyaraka hiyo itafungwa na kuwekewa lakiri na kusainiwa kwa njia ya kielektroniki na mtu ambaye alitakiwa kusaini na kuweka lakiri nyaraka hiyo;
- (c) mtu kutuma taarifa au nyaraka kwa njia ya posta au huduma sawa na hiyo, masharti hayo yatakuwa

yametimizwa iwapo taarifa au nyaraka **hiyo** imetumwa kwa njia ya kielektroniki.

(2) Maneno yaliyomo kwenye sheria, ikijumuisha maneno “nyaraka”, “kumbukumbu”, “jalada”, “wasilisha”, “peleka”, “fikisha”, “chapisha”, “andika kwenye” au maneno au matamshi yenye maana kama hayo, yatatafsiriwa kwa namna ambayo itaruhusu aina, mfumo au tendo hilo kuwiana na mawasiliano ya kielektroniki isipokuwa kama imeelezwa vinginevyo chini ya Sheria hii.

Mwenendo
wa mtu
anayetumia
saini ya
kielektroniki

12. Mtu anayetumia saini ya kielektroniki atawajibika kisheria kwa kushindwa kuchukua hatua stahiki kuthibitisha-
(a) kuhakikisha uhalali wa saini inayotumika; na
(b) uhalali wa cheti au kuzingatia masharti yanayo husiana na cheti iwapo saini ya kielektroniki inawiana na cheti.

SEHEMU YA TATU HUDUMA ZA SERIKALI MTANDAO

Utambuzi wa
huduma za
Serikali
mitandao

13.-(1) Bila ya kuathiri sheria nyingine yoyote, ambapo taasisi ya umma ina mamlaka ya kushughulikia taarifa au nyaraka au kutoa huduma, inaweza kushughulikia taarifa au nyaraka hiyo au kutoa huduma hizo kwa njia ya kielektroniki kwa mujibu wa Sheria hii.

(2) Masharti kuwa taarifa au nyaraka itatolewa kimaandishi au kusainiwa haitatafsiriwa kuzuia matumizi ya njia ya kielektroniki.

(3) Taasisi ya umma inaweza kuchukua au kupokea malipo kwa njia ya kielektroniki kwa namna itakavyoainishwa.

(4) Kwa madhumuni ya kifungu kidogo cha (1), Waziri anaweza kwa kushauriana na Waziri mwenye dhamana na masuala ya Serikali Mtandao na kwa Tangazo litakalo chapishwa kwenye *Gazeti la Serikali*, kutoa miongozo itakayo ainisha-

- (a) namna na mfumo ambao muamala wa kielektroniki unaweza kufanyika;
 - (b) aina ya saini ya kielektroniki inayohitajika, pale ambapo muamala wa kielektroniki unatakiwa kusainiwa;
 - (c) namna na mfumo ambao saini ya kielektroniki inaweza kuambatanishwa au kuhusishwa na muamala wa kielektroniki;
 - (d) mchakato wa udhibiti na taratibu za kuhakikisha uadilifu usalama na usiri wa taarifa;
 - (e) utambulisho au utaratibu utakaozingatiwa na mtoa huduma aliyeidhinishwa kwa ajili ya kuwasilisha muamala wa kielektroniki;
 - (f) mchakato wa udhibiti na utaratibu utakao hakikisha uadilifu wa kutosha, usalama na usiri wa muamala wa kielektroniki au malipo yakielektroniki; na
 - (g) masharti mengine kwa yoyote ambayo yanahusiana na miamala ya kielektroniki.
- (5) Bila kujali kifungu kidogo cha (4), taasisi yoyote iliyoidhinishwa, inaweza kutumia taratibu nyingine za uthibitishaji.

Uwasilishaji
wa nyaraka
kwa njia ya
kielektroniki

14.-(1) Endapo sheria inahitaji nyaraka kuwasilishwa, masharti hayo yatakuwa yametimizwa iwapo nyaraka hiyo imewasilishwa kwa njia ya kielektroniki.

(2) Kifungu kidogo cha (1) kitatumika pale ambapo kuna mfumo wa kuandaa taarifa ambao unaweza-

- (a) kutambua chanzo, mwelekeo, muda na tarehe ya kutowasilishwa, kutuma na kupokea kwa taarifa;
- (b) kuthibitisha kupokewa kwa nyaraka.

Malipo ya
fedha na utoaji
wa stakabadhi
kwa njia ya
kielektroniki

15. Endapo sheria inahitaji-

- (a) malipo kufanyika, masharti hayo yatakuwa yametekelezwa iwapo malipo yatakuwa yamefanyika kwa njia ya kielektroniki na kukidhi masharti yoyote yaliyotolewa na sheria nyingine husika; na
- (b) utoaji wa stakabadhi yoyote ya malipo, masharti hayo yatakuwa yametekelezwa iwapo stakabadhi hiyo itakuwa katika mfumo wa ujumbe wa kielektroniki na ujumbe kusomeka na unaeleweka kiasi kwamba unaweza kutumika katika rejea.

Uchapishaji wa
nyaraka

16. Endapo sheria inahitaji nyaraka kuchapishwa kwenye *Gazeti la Serikali*, masharti hayo yatakuwa yametimizwa iwapo nyaraka hiyo itachapishwa kwenye *Gazeti la Serikali* la kielektroniki.

Nyaraka katika
mfumo wa
kielektroniki
haitakuwa
lazima

17. Sheria hii haitatoa haki kwa mtu yeyote kushinikiza taasisi ya yoyote ya umma kushughulikia nyaraka yoyote kielektroniki.

SEHEMU YA NNE

KUKUBALIKA NA UZITO WA USHAHIDI WA UJUMBE WA DATA

Kukubalika
kwa ujumbe wa
data

18.-(1) Katika mwenendo wa shauri lolote la kisheria, kanuni za ushahidi kitakacho tumika ili kukataa kukubalika kwa ushahidi wa ujumbe data kwa kigezo kwamba ni ujumbe data.

(2) Katika kuamua kukubalika na uzito wa ushahidi wa ujumbe data, yafuatayo yatazingatiwa-

- (a) kuaminika kwa namna ambayo ujumbe data umetengenezwa, umehifadhiwa au umewasilishwa;
- (b) kuaminika kwa namna ambayo uadilifu wa ujumbe data ulivyohifadhiwa;

- (c) namna ambayo chanzo cha ujumbe data kimetambuliwa;
 - (d) vigezo vingine vyovyote vinavyofaa katika kutathmini uzito wa ushahidi huo.
- (3) Uhalali wa kumbukumbu za mfumo wa kielektroniki ambamo kumbukumbu ya kielektroniki inanukuliwa au kutunzwa, iwapo hakuna ushahidi kinyume na, utachukuliwa kuwa-
- (a) iwapo kuna ushahidi unaothibitisha ukweli kuwa katika muda wote, mfumo wa kompyuta au kifaa kama hicho kilikuwa kinafanya kazi vizuri au iwapo hakikuwa kinafanya kazi vizuri, kitendo cha kutokufanya kazi kwake vizuri hakukuathiri uadilifu wa kumbukumbu ya kielektroniki na hakuna sababu nyingine za msingi kushuku uhalali wa kumbukumbu za mfumo wa kielektroniki;
 - (b) iwapo inabainika kwamba kumbukumbu ya kielektroniki ilirekodiwa au kuhifadhiwa na mhusika katika shauri ambaye ana maslahi tofauti na mhusika wa upande unaotaka kuutumia ushahidi huo; au
 - (c) imebainika kuwa kumbukumbu ya kielektroniki ilirekodiwa au kuhifadhiwa katika utendaji kazi wa kawaida na mtu ambaye si mhusika katika shauri na ambaye hakurekodi au kuhifadhi kumbukumbu chini ya uangalizi wa mhusika wa upande unaotaka kuutumia ushahidi huo.
- (4) Kwa madhumuni ya kuamua iwapo kumbukumbu ya kielektroniki inakubalika chini ya kifungu hiki, ushahidi unaweza kutolewa kuhusiana na kiwango chochote kilichowekwa, taratibu, mila au uzoefu kuhusiana na namna ambavyo

kumbukumbu za kielektroniki zinatakiwa kuchukuliwa au kunakiliwa au kutunzwa kwa kuzingatia aina ya biashara au mfumo unaotumika, au kutunza kumbukumbu ya kielektroniki na chanzo na madhumuni ya kumbukumbu ya kielektroniki.

Chanzo cha
mawasiliano
ya
kielektroniki

19. Mawasiliano ya kielektroniki yatachukuliwa kuwa yametoka kwenye chanzo iwapo yametumwa na-

- (a) chanzo chenyewe;
- (b) mtu ambaye ameidhinishwa kwa namna hiyo na chanzo ili kufanya mawasiliano kwa njia ya kielektroniki kuhusiana na ujumbe data; au
- (c) mfumo wa kompyuta katika programu unaojiendesha yenyewe uliyowekwa na au kwa niaba ya chanzo.

Kuwasilisha
nyaraka
halisi katika
mfumo wa
kielektroniki

20.-(1) Endapo sheria inamtaka mtu kwasilisha nyaraka au taarifa, matakwa hayo yatakuwa yametimizwa iwapo-

- (a) mtu huyo anawasilisha, kwa njia ya mawasiliano ya kielektroniki katika mfumo wa kielektroniki, fomu au nyaraka hiyo;
- (b) kwa kuzingatia mazingira yote husika, wakati mawasilano hayo ya kielektroniki yanatumwa, mfumo wa kutoa taarifa ya kielektroniki ya nyaraka hiyo ulitoa njia ya uhakika ya kuhakikisha utunzaji wa uadilifu wa taarifa iliyoko kwenye nyaraka;
- (c) wakati mawasiliano ya kielektroniki yanatumwa, ilikuwa ni sahihi kutarajia kuwa taarifa iliyoko ndani ya nyaraka hiyo au taarifa ingeweza kupatika na kwa urahisi ili kuiwezesha kutumika katika rejea ya taarifa hiyo.

(2) Kwa madhumuni ya kifungu kidogo cha (1), uadilifu wa taarifa iliyoko kwenye nyaraka utakuwa umezingatiwa iwapo taarifa itabaki kuwa kamili na haijabadilishwa, isipokuwa kwa:

- (a) kuweka nyongeza ya uthibitisho **wowote**; au
- (b) mabadiliko yoyote ya msingi, ambayo yanatokea wakati wa kufanya mawasiliano ya kawaida, utunzaji au uwekaji wazi.

SEHEMU YA TANO UTAMBUZI WA MIKATABA YA KIELEKTRONIKI

Utambuzi wa
mikataba ya
kielektroniki

21.-(1) Kwa madhumuni ya kuondoa shaka, mkataba unaweza kuandaliwa kwa njia ya kielektroniki isipokuwa kama imekubaliwa vinginevyo na wahusika.

(2) Endapo kumbukumbu za kielektroniki zinatumiwa katika kuandaa mkataba, mkataba huo hautapoteza nguvu ya kisheria au uwezo wa kutekelezwa kutokana na sababu kuwa kumbukumbu za kielektroniki zilitumiwa kwa madhumuni hayo.

Muda wa
kutuma na
kupokea
mawasiliano
ya
kielektroniki

22.-(1) Taarifa iliyoko kwenye mfumo wa kielektroniki itachukuliwa kuwa imetumwa pale inapoingia kwenye mfumo wa mawasiliano ulio nje ya uwezo wa chanzo cha taarifa au mtu ambaye aliituma taarifa hiyo ya kielektroniki kwa niaba ya chanzo.

(2) Endapo au mlengwa wa taarifa wapo kwenye mfumo mmoja wa mawasiliano ya kielektroniki, taarifa ya kielektroniki itachukuliwa kuwaimewasilishwa pale ambapo mlengwa anaweza kupata taarifa hiyo.

(3) Endapo mlengwa ametenga mfumo wa kompyuta kwa madhumuni ya kupokea mawasiliano ya kielektroniki, taarifa hiyo itachukuliwa kuwa imepokelewa wakati mawasiliano ya kielektroniki yanaingia kwenye mfumo wa mawasiliano uliotengwa.

(4) Endapo mawasiliano ya kielektroniki yanatumwa kwenye mfumo wa mawasiliano wa mlengwa ambao ni tofauti na mfumo wa kompyutauliotengwa, taarifa hiyo itachukuliwa kuwa imewasilishwa-

(a) wakati ambapo mawasiliano ya kielektroniki yanaweza kupokelewa na mlengwa katika anwani hiyo; na

(b) mlengwa anajua kuwa mawasiliano ya kielektroniki yametumwa kwenye anwani hiyo.

(5) Endapo mlengwa hajatenga mfumo wa mawasiliano, upokeaji wa taarifa unatimia pale ambapo mawasiliano ya kielektroniki yanapokelewa na mlengwa, au yalitakiwa katika kikawaida yakupokelewa na mlengwa.

Uthibitishaji
wa upokeaji
mawasiliano

23.-(1) Uthibitisho wa kupokea mawasiliano ya kielektroniki, iwapo chanzo na mlengwa hawajakubaliana kuhusu namna au njia ya mawasiliano, unaweza kutolewa kwa-

(a) njia ya kielektroniki na mlengwa, ama kwa njia ya ujumbe kujiendesha wenyewe au vinginevyo; au

(b) kwa kupitia kitendo chochote kilichofanywa na mlengwa, ambacho kinatosha kuashiria kwa chanzo cha mawasiliano kuwa mawasiliano ya kielektroniki yamepokelewa.

(2) Endapo chanzo cha mawasiliano amesainishakuwa mawasiliano ya kielektroniki yatawabana wahusika pale tu anapopokea uthibitisho wa kupokea au unapokelewa, na uthibitisho haujapokelewa, mwanzilishi atatakiwa-

(a) ndani ya muda uliotajwa au kukubalika au, iwapo muda haujatajwa au kukubalika, ndani ya muda wa

kawaida, basi chanzo cha mawasiliano kinaweza kutoa taarifa kwenda kwa mlengwa ikielezea kuwa hakuna uthibitisho aliyopokea na ikiainisha muda wa kawaida ambao kwayo uthibitisho wa taarifa unatakiwa kuwa umepokelewa naye; au

- (b) ndani ya ukomo wa muda uliotajwa, anaweza, baada ya kutoa taarifa kwa mlengwa, kuyachukulia mawasiliano hayo ya kielektroniki kama vile hayakuwahi kutumwa kabisa.

Mahali pa
kutuma na
kupokea
mawasiliano
ya
kielektroniki

24.-(1) Isipokuwa kama imekubalika vinginevyo kati ya chanzo cha mawasiliano na mlengwa, mawasiliano ya kielektroniki yatachukuliwa kuwa yametumwa kwenye sehemu ambapo chanzo cha mawasiliano kinaendesha biashara yake na yatachukuliwa yamepokelewa katika sehemu ambayo mlengwa anaendesha biashara yake.

(2) Kifungu kidogo cha (1) kitatumika-

(a) hata kama chanzo cha taarifa au mlengwa hakuwepo katika sehemu yake ya kawaida ya biashara; na

(b) kuamua sehemu ambapo mkataba uliingiwa kwa madhumuni ya kulipa kodi.

(3) Kwa madhumuni ya kifungu kidogo cha (1), iwapo chanzo cha mawasiliano au mlengwa -

(a) ana sehemu ya biashara zaidi ya moja, sehemu ya biashara itakuwa ni:

- (i) ile ambayo inahusiana kwa karibu zaidi na muamala husika kwa kuzingatia mazingira yanayojulikana au ya kufikiriwa na wahusika katika muda wowote kabla au wakati wa kufikia makubaliano ya mkataba; au

(ii) pale ambapo hakuna muamala, sehemu yake aliyoizoea kwa ajili ya biashara.

(4) Iwapo kampuni hodhi haina sehemu ya biashara, sehemu ya biashara itakuwa ni anwani ya kibiashara ya kampuni hiyo au sehemu ilisajiliwa au kuanzishwa kisheria.

(5) Kifungu hiki kitatumika bila kujali kwamba sehemu ambapo mfumo wa kompyuta unaowiana na unawezesha kupatikana kwa anwani ya kielektroniki upo katika sehemu iliyotofauti na sehemu ambapo mawasiliano yakielektroniki yatachukuliwa kuwa yamepelekwa au kupokelewa.

Muda na mahali ambapo mkataba umefungwa

25.-(1) Endapo wahusika wanaingia kwenye mkataba kwa njia ya kielektroniki, mkataba huo utakuwa umefungwa kwa muda huo na sehemu ambayo mawasiliano ya makubaliano yalipokelewa.

(2) Mapendekezo ya mkataba yaliyo katika mfumo wa kielektroniki yatakuwa na nguvu katika muda ambao yatapokelewa na mpokea mapendekezo.

Mikataba kupitia mifumo inayojiendesha

26.-(1) Mkataba ulioingiwa kwa njia ya mwingiliano kati ya mfumo unayojiendesha wenyewe na mtu binafsi au mifumo yenyewe, haitapoteza nguvu ya kisheria kutokana na sababu kuwa hakuna mtu aliyefanya mapitio ya matendo ya kila mmoja wao yaliyotendwa kwa mifumo kuingiliana.

(2) Mfumo unaojiendesha wenyewe utatoa nafasi kwa mtu kurekebisha kosa lolote la kiuvingizaji wa taarifa lililofanywa katika mawasiliano ya kielektroniki baina ya mifumo inayoiingiliana na mhusika wa upande wa pili.

(3) Endapo mtu anafanya kosa la kiuvingizaji kwenye mawasiliano ya kielektroniki baina ya mifumo unaojiendesha wenyewe na mhusika wa upande wa pili na mfumo huo

unaoingiliana hautoi nafasi kwa mtu kurekebisha kosa **hilo** , mtu huyo atakuwa na haki ya kuondoa mawasiliano hayo ya kielektroniki ambamo ndani yake amefanya kosa la kiuingizaji, wapo-

- (a) anamtaarifu mhusika wa upande wa pili kuhusiana na kosa hilo haraka iwezekanavyo baada ya kugundua kosa hilo na anakusudia kusitisha mkataba au kurekebisha kosa la kiuingizaji ;
- (b) anachukua hatua madhubuti kutekeleza maelekezo yaliyotolewa na upande wa pili kurudisha bidhaa au huduma alizopokea kutokana na kutendeka kwa kosa hilo au kuharibu bidhaa au huduma au kurekebisha kosa hilo; na
- (c) hajatumia au kupokea faida yoyote au thamani ya bidhaa au huduma hiyo au kosa la kiuingizaji kutoka kwa mhusika wa upande wa pili.
- (4) Mtu ambaye ameshalipia bidhaa au huduma kabla ya kutekeleza haki iliyotolewa chini ya kifungu kidogo cha (1), atastahili kurudishiwa malipo yake yote ndani ya siku thelathini baada ya kufutwa kwa muamala.
- (5) Hakuna kitu chochote katika kifungu hiki kitakachoathiri matumizi ya sheria yoyote inayosimamia masuala yatokanayo na makosa yaliyofanywa wakati wa ufugwaji au utekelezaji wa aina ya mkataba huo mbali na kosa linalo husiana na uingizaji linatokea katika mazingira ya kifungu kidogo cha (3).

Mnada
kupitia
mtandao

27. Endapo sheria inahitaji mkataba wa mauzo, utekelezwe kwa njia ya mnada, masharti ya “nyundo kugongwa” yatakuwa yamezingatiwa katika mnada utakaofanyika kupitia mtandao kwa kutumia muda ambao mawasiliano ya kielektroniki yalipokelewa kama kigezo cha ukomo wa muda kama njia ya kumchagua mzabuni wa mwisho.

SEHEMU YA SITA
ULINZI KWA MTUMIAJI

Wajibu wa
watoa
huduma kwa
watumiaji
wa mtandao

28-(1) Mtoa huduma anayeuzia bidhaa au huduma kwa ajili ya mauzo, kukodisha au kwa ajili ya kubadilishana kwa njia ya kielektroniki, atatoa taarifa zifuatazo kwa watumiaji-

- (a) jina kamili, hadi ya kisheria na eneo la biashara;
- (b) maelezo yanayohusu anuwani yake kupatikana kwake zikijumuisha anuani ya makazi, nambari za simu na anuani ya barua pepe;
- (c) maelezo kamili ya bidhaa au huduma zinazotolewa;
- (d) bei ya bidhaa au huduma hiyo;
- (e) taarifa inayohusu malipo yatakayofanywa kwa mujibu wa sheria nyingine; na
- (f) taarifa nyingine yoyote muhimu.

(2) Kabla ya mtumiaji hajatoa maombi yake ya bidhaa au huduma, mtoa huduma atatoa nafasi kwa mtumiaji ya -

- (a) kufanya mapitio ya muamala mzima wa kielektroniki;
- (b) kurekebisha makosa yoyote; na
- (c) kujitoa kwenye muamala huo.

(3) Endapo mtoa huduma anakiuka masharti ya kifungu hiki, mtumiaji anaweza, ndani ya siku kumi na nne baada ya kupokea bidhaa au huduma, kufuta muamala.

Muda kwa
ajili ya
kutekeleza
agizo

29.-(1) Isipokuwa kama wahusika wamekubaliana vinginevyo, mtoa huduma atatekeleza agizo ndani ya siku thelathini kutokea siku ambayo mtoa huduma amepokea maombi ya bidhaa au huduma.

(2) Endapo mtoa huduma anashindwa kutekeleza agizo ndani ya muda uliotajwa chini ya kifungu kidogo cha (1), mtumiaji anaweza kufuta makubaliano kwa kutoa taarifa ya siku saba.

(3) Endapo mtoa huduma anashindwa kutekeleza mkataba kutokana na sababu kuwa bidhaa au huduma zilizoagizwa hazipatikani, mtoa huduma, ndani ya siku thelathini, atamtaarifu mtumiaji na mtoa huduma atarudisha malipo yoyote ambayo yatakuwa yamefanyika.

Haki ya
usitishaji

30.-(1) Bila ya kuathiri sheria nyingine yoyote, mtumiaji, anaweza ndani ya siku saba au muda mwingine zaidi uliokubalika ndani ya mkataba, baada ya kupokea bidhaa au kukamilika kwa makubaliano na mtumiaji hajapokea faida yoyote kutokana na miamala, huo kufuta makubaliano hayo kwa ajili ya usambazaji wa bidhaa au utolewaji wa huduma.

(2) Endapo mtumiaji anafuta mkataba chini ya kifungu kidogo cha (1), atalipa gharama zote za moja kwa moja za kurudisha bidhaa.

(3) Endapo mtumiaji amelipia bidhaa au huduma kabla ya kutekeleza haki iliyotolewa chini ya kifungu kidogo cha (1), atastahili kurudishiwa fedha.

(4) Fedha itakayotolewa chini ya kifungu kidogo cha (3) italipwa ndani ya siku thelathini baada ya tarehe ya kufutwa kwa muamala.

(5) Kifungu hiki hakitatumika kwa miamala ya kielektroniki-

- (a) kwa ajili ya huduma za kifedha;
- (b) kwa njia ya mnada;
- (c) kwa usambazaji wa vyakula, vinywaji au bidhaa nyingine zilizokusudiwea kwa ajili ya matumizi ya kila siku;

- (d) kwa huduma zilizotokana na idhini ya mtumiaji kabla ya kupita kwa muda wa siku saba;
 - (e) iwapo bei ya kusambaza bidhaa au huduma inategemea mfumuko wa bei katika masoko ya fedha na ambayo hayawezi kudhibitiwa na mtumiaji;
 - (f) iwapo bidhaa:
 - (i) zimetengenezwa ili kukidhi matakwa ya mtumiaji;
 - (ii) zimetengenezwa maalum kwa ajili maalum;
 - (iii) kutokana na hali yake, haziwezi kurudishwa; au
 - (iv) zina uwezekano wa kuharibika au kupitwa na muda wa matumizi haraka;
 - (g) iwapo rekodi za kusikiliza au za video au programu za kompyuta zilipakuliwa au kuondolewa lakiri na mtumiaji;
 - (h) kwa ajili ya uuzaji wa magazeti, makala, majarida na vitabu;
 - (i) kwa ajili ya kutolewa kwa huduma za michezo ya kubahatisha au bahati nasibu;
 - (j) kwa ajili ya michezo ya kubahatisha inayofanyika kwa kupitia mtandao;
 - (k) kwa ajili ya kutolea huduma za malazi, usafiri na chakula; na
 - (l) kwa kadri ambavyo Waziri anaweza kwa tangazo litakalochapishwa kwenye *Gazeti* la Serikali, kuanzisha miamala mingine yoyote.
- (6) Kwa madhumuni ya kifungu hiki, “gharama za moja kwa moja” maana yake ni gharama zilizoingiwa na zinajumuisha gharama za usafiri au kutumia wakati wa kurudisha bidhaa au huduma, isipokuwa haitajumuisha gharama zozote za upakiaji au usambazaji.

Taarifa zitakazo
tolewa katika
mawasiliano ya
kielektroniki

31.-(1) Mtu anayeuzua bidhaa au huduma za mawasiliano ya kielektroniki atampatia mlengwa –

- (a) utambulisho wa chanzo cha mawasiliano na maelezo kuhusiana na anuwani yake;
- (b) chombo halali cha utekelezaji ambacho kitatoa nafasi ya mtu kuamua kutokuendelea kupokea mawasiliano katika siku za mbele; na
- (c) maelezo kuhusiana na chanzo ambacho kutoka kweke chanzo cha mawasiliano kilipata taarifa binafsi za mlengwa.

Bidhaa, huduma
au mawasiliano
ambayo
hayajaombwa

32.-(1) Mtu hatatuma mawasiliano ya kibiashara yanayphusu bidhaa au huduma ambazo hazijaombwa na mlengwa, isipokuwa kama-

- (a) mtumiaji anaridhia mawasiliano hayo;
 - (b) mwanzoni mwa mawasiliano, mawasiliano hayo yanaweka wazi utambulisho wa mtumaji na madhumuni ya mawasiliano; au
 - (c) mawasiliano hayo yanaweka utaratibu wa kukataa mawasiliano hayo siku zijazo.
- (2) Masharti ya mtu kuridhia ama kutokuridhia yatachukuliwa kuwa yametimizwa iwapo-
- (a) anuwani ya mlengwa wa mawasiliano na taarifa nyingine binafsi ambayo ilikusanywa na mtuma taarifa wakati wa mauzo au majadiliano kwa ajili ya mauzo;
 - (b) mtuma taarifa anatuma matangazo ya biashara yanayohusiana bidhaa au huduma zinazofanana kwa mlengwa;
 - (c) mtoa taarifa ametoa nafasi kwa mlengwa fursa ya kujitoa na kufanya hivyo; na

(d) fursa ya kujitoa imetolewa na mtoa taarifa kwenda kwa mlengwa kwa kila ujumbe utakaotumwa.

(3) Mtuma taarifa atayayekiuka masharti ya kifungu hiki atakuwa ametenda kosa na atawajibika, pale atakapotiwa hatiani, kulipa faini isiyopungua shilingi milioni kumi au kutumikia kifungo kwa kipindi kisichopungua mwaka mmoja au vyote kwa pamoja.

SEHEMU YA SABA

WATOA HUDUMA ZA KRAIPTOGRAFIA NA UIDHINISHAJI

Huduma za
kriptografia
na
uidhinishaji

33. Waziri anaweza, kwa taarifa itakayochapishwa kwenye *Gazeti la Serikali*, kuteua taasisi ya kiserikali chini ya Wizara yenye dhamana na Teknolojia ya Habari na Mawasiliano kuwa mdhibiti wa Huduma za Kriptografia na Uidhinishaji.

Majukumu
ya mdhibiti

34. Majukumu ya mdhibiti huyo yatakuwa ni-

- (a) kutoa leseni na kusimamia huduma za kriptografia na uidhinishaji;
- (b) kuainisha viwango vya kiusalama vya kriptografia na saini za kielektroniki;
- (c) kuamua viwango vitakavyozingatiwa na mamlaka za uidhinishaji;
- (d) kuweka na kutunza rejesta ya watoa huduma wa huduma za kriptografia na uidhinishaji; na
- (e) kufanya vitu vingine vyovyote ambavyo ni muhimu kwa utekelezaji wa masharti ya Sehemu hii.

Maombi ya
usajili

35. (1) Mtu anayekusudia kutoa huduma za kriptografia au uidhinishaji atawasilisha maombi yake kwa mdhibiti .

(2) Maombi yaliyofanywa chini ya kifungu kidogo cha (1) yatakuwa na maelezo yafuatayo:

- (a) jina na mawasiliano yake, ikijumuisha **anuwani** ya makazi, simu na barua pepe;
- (b) maelezo yanayohusu aina ya huduma itakayotolewa;
- (c) maelezo ya madhumuni ya huduma itakayotolewa;
- (d) maelezo yanayohusu teknolojia itakayotumika katika utowaji wa huduma hiyo; na
- (e) maelezo mengine yoyote kwa kadri itakavyoelekezwa na msimamizi.

Katazo la kutoa
huduma za
kraiptografia au
uidhinishaji

36.-(1) Mtu hatatoa huduma za kraiptografia au uidhinishaji bila ya kuwa na leseni.

(2) Mtu atakayekiuka masharti ya kifungu kidogo cha (1) atakuwa ametenda kosa na iwapo atatiwa hatiani, atawajibika kulipa faini isiyopungua shilingi milioni kumi au kutumikia kifungo kwa kipindi kisichopungua miaka mitano au vyote kwa pamoja.

SEHEMU YA NANE MASHARTI YA JUMLA

Mamlaka ya
kutunga kanuni

37. Waziri anaweza kutunga kanuni kwa jumla zinazohusu jambo lolote ambalo linatakiwa kuainishwa na Sheria hii au ambalo ni la umuhimu kwa ajili ya utekelezaji **bora** wa masharti ya Sheria hii.

SEHEMU YA TISA MASHARTI YATONANAYO PART IX

CONSEQUENTIAL AMENDMENTS

(a) *Amendment of the Law of Contract Act, Cap. 345*

Construction
Cap.345

38. This Part shall be read as one with the Law of Contract Act, hereinafter referred to as the “principal Act”.

Amendment of
section 10

39. The principal Act is amended in section 10 by inserting the words “or in electronic form” immediately after the words “in writing” appearing in the proviso of that section.

Amendment of
section 25

40. The principal Act is amended in section 25, by –
the following:

“Agreement without consideration is void”

(c) inserting the words “in electronic form”
immediately after the word “writing” appearing
in paragraph (a);

(d) inserting the words “or electronic form”
immediately after the word “writing” appearing
in paragraph (c);

Construction
Cap. 6

(b) Amendment of the Law of Evidence Act, Cap.6

41. This Part shall be read as one with the Law of
Evidence Act, hereinafter referred to as the “principal Act”.

Amendment of
section 3

42. The principal Act is amended in section 3 by
deleting the definition of the term “document” and
substituting for it with the following:

“document” means any writing, handwriting, typewriting,
printing, Photostat, photography, computer data and every
recording upon any tangible thing, any form of
communication or representation including in electronic
form, by letters, figures, marks or symbols or more than one
of these means, which may be used for the purpose of
recording any matter provided that recording is reasonably
permanent and readable;.

Amendment of
section 19

43. Section 19 of the principal Act is amended by
inserting the word “ electronic” immediately after the word
“oral”;

Amendment of
section 34

44. Section 34 of the principal Act is amended by
inserting the word “ electronic” immediately after the word
“written”;

Amendment of
section 34B

45. Section 34B of the principal Act is amended by
inserting the words “or electronic” between the words
“written” and “statements” wherever” they appear in that
section.

Addition of
section 64A

46. The principal Act is amended by adding a new section 64A as follows:

“Admissibility of
electronic
evidence

64A.-(1) In any proceedings, electronic evidence shall be admissible.

(2) The admissibility and weight of electronic evidence shall be determined in the manner prescribed under section 18 of the Electronic Transaction Act, 2015.

(3) For the purpose of this section, “electronic evidence” means any data or information stored in electronic form or electronic media or retrieved from a computer system, which can be presented as evidence.”

(c) Amendment of the Records and Archives Management Act, Cap.309

Construction
Cap.309

47. This Part shall be read as one with the Records and Archives Management Act, hereinafter referred to as the “principal Act”.

Amendment of
section 2

48. The principal Act is amended in section 2 by inserting the words “or electronic” immediately after the word “recorded” appearing in the definition of the term “record”.

(d) Amendment of the Banking and Financial Institutions Act, Cap.342

Construction
Cap.342

49. This Part shall be read as one with the Banking and Financial Institutions Act, hereinafter referred to as the “principal Act”.

Amendment of
section 8

50. The principal Act is amended in section 8 by inserting the words “or in electronic form” between the words “writing” and “and”, appearing in subsection (1).

Imepitishwa na Bunge tarehe 1 Aprili, 2015

Thomas Kasilillah
Katibu wa Bunge