

THE UNITED REPUBLIC OF TANZANIA

BILL SUPPLEMENT

No. 6

20th February, 2015

to the Gazette of the United Republic of Tanzania No.8 Vol.96 dated 20th February, 2015

Printed by the Government Printer, Dar es Salaam by Order of Government

THE ELECTRONIC TRANSACTIONS ACT, 2015

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NOTICE

This Bill to be submitted to the National Assembly is published for general information to the public together with a statement of its objects and reasons.

Dar es Salaam,
3rd February, 2015

OMBENI Y. SEFUE
Secretary to the Cabinet

A BILL
for

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 of 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, 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 (2), 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 ELECTRONIC EVIDENCE

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.

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
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

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

consumers

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 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) 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 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 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 –

- (a) deleting the marginal note and substituting for it the following:
“Agreement without consideration is void”
- (b) inserting the words “in electronic form” immediately after the word “writing” appearing in paragraph (a);
- (c) 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).

OBJECTS AND REASONS

This Bill proposes the enactment of the Electronic Transactions Act, 2015 with a view to provide for the legal recognition of electronic transactions, to provide for recognition of 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.

The Bill is divided into Nine Parts.

Part I provides for preliminary matters such as the short title, application and commencement and interpretation of some of the terms used in the proposed legislation.

Part II deals with matters that relates to recognition and effects of Electronic Transactions, the use or application of secure electronic signature, electronic record keeping and matters relating to notarisation, acknowledgement and certification.

Part III provides for matters relating to e-Government services which include electronic services, the requirements for acceptance of electronic filing, acceptance of electronic documents, payment and issuance of receipts in electronic form and recognition of electronic *Gazette*.

Part IV provides for provisions which deal with the recognition and admissibility of electronic evidence, attribution of electronic communications and production of original documents in electronic form.

Part V provides for the provisions which recognise electronic contracts and matters relating to formation of such contracts which include time of dispatch, acknowledgement of receipt of electronic communication, time and places where the contract can be said to be entered and online auctions

Part VI provides for matters related to consumer protection which includes duties of suppliers to online consumers, time within which an order for online purchase must be executed, the right of cancellation and restriction of unsolicited commercial messages and advertisements.

Part VII provides for provisions relating to the use or application of cryptographic and certification services in order to ensure security and safety in electronic transactions.

Part VIII Provides for general provision which deals with the powers of the Minister in making regulation.

Part IX deals with the consequential amendments for the purposes of harmonizing the existing law with the proposed legislation.

Dar es Salaam,
12th March, 2015

MAKAME M. MBARAWA
*Minister of Communication
Science and Technology*

SHERIA YA MIAMALA YA KIELEKTRONIKI, 2015

MPANGILIO WA VIFUNGU

**SEHEMU YA KWANZA
MASHARTI YA AWALI**

Kifungu *Kichwa cha habari*

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

**SEHEMU YA PILI
KUTAMBULIKA NA MATOKEO
YA MIAMALA YA KIELEKTRONIKI**

4. Kutambulika kwa ujumbe wa data.
5. Uhalali wa muamala wa kielektroniki.
6. Saini ya kielektroniki.
7. Saini salama ya kielektroniki.
8. Matumizi ya saini salama ya kielektroniki.
9. Kutunza kumbukumbu kielektroniki.
10. Uthibitisho.
11. Masharti mengineyo.
12. Mwenendo wa mtu anayetegemea saini ya kielektroniki.

**SEHEMU YA TATU
HUDUMA ZA SERIKALI MTANDAO**

13. Kukubalika kwa uwasilishaji kielektroniki.
14. Uwasilishaji wa nyaraka kwa njia ya kielektroniki.
15. Malipo na utoaji wa stakabadhi kwa njia ya kielektroniki.
16. Uchapishaji nyaraka.
17. Ulazima wa nyaraka za kielektroniki.

**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. Kutolewa kwa nyaraka halisi kielektroniki.

**SEHEMU YA TANO
KUTAMBULIKA KWA MIKATABA YA KIELEKTRONIKI**

21. Kutambulika kwa mikataba ya kielektroniki.
22. Muda wa kutumwa na kupokelewa kwa mawasiliano ya kielektroniki.
23. Uthibitisho wa upokeaji taarifa.
24. Mahali pa kutuma na kupokea mawasiliano ya kielektroniki.
25. Muda na sehemu ya kuingiwa kwa mkataba.
26. Mikataba kupitia mifumo ya kompyuta.
27. Mnada kupitia mtandao.

**SEHEMU YA SITA
USALAMA KWA WALAJI**

28. Wajibu wa watoa huduma kwa walaji.
29. Muda wa kutekeleza agizo.
30. Haki ya kusitisha.
31. Maelezo yatakatolewa katika biashara ya mtandao.
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.

TAARIFA

Muswada huu utakaowasilishwa Bungeni umechapishwa pamoja na madhumuni na sababu zake kwa ajili ya kutoa taarifa ya jumla kwa umma.

Dar es Salaam,
3 Februari, 2015

OMBENI Y. SEFUE
Katibu wa Baraza la Mawaziri

MUSWADA
wa

Sheria inayoweka masharti kuhusiana na utambuzi wa miamala ya kielektroniki, huduma za Serikali mtandao, matumizi ya Teknolojia Habari na Mawasiliano katika ukusanyaji wa ushahidi, kukubalika kwa ushahidi wa kielektroniki, matumizi salama ya saini za kielektroniki na mambo mengine yanayohusiana nayo.

IMETUNGWA na Bunge la Jamhuri ya Muungano wa Tanzania.

SEHEMU YA KWANZA
MASHARTI YA AWALI

Jina na tarehe
ya kuanza
kutumika

1.-(1) Sheria hii itaitwa Sheria ya Miamala ya Kielektroniki ya mwaka 2015.

(2) Sheria hii itanza kutumika kwa tarehe ambayo Waziri, kwa Tangazo litakalo chapishwa kwenye *Gazeti la Serikali*, atateua.

Matumizi

2. Isipokuwa kwa Sehemu ya Tatu, Sheria hii itatumika Tanzania Bara na Tanzania Zanzibar.

Tafsiri

3. Katika sheria hii, isipokuwa kama muktadha utahitaji vinginevyo-
“kuingia” kuhusiana na mfumo wa kompyuta maana yake ni kupata fursa ya kuingia, kutoa maelekezo, kuwasiliana na, kuhifadhi data katika, kupokea data kutoka katika au vinginevyo kutumia rasilimali zozote za mfumo wa kompyuta au mtandao au mfumo wa chamboo cha kutunzia data ;

- “mlengwa” maana yake ni mtu au mhusika anayelengwa na mtoa taarifa kupokea mawasiliano ya kielektroniki, isipokuwa hamjumuishi mtu anayetenda kama mtu kati kuhusiana na mawasiliano ya kielektroniki;
- “mlaji” 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;
- “kraiptografia” maana yake ni utaalumu wa kulinda taarifa kwa kuzibadilisha kuwa kwenye mfumo usiosomeka;
- “data” maana yake ni taarifa iliyowasilishwa kwa njia ya kielektroniki;
- “ujumbe wa data” maana yake ni ujumbe uliotolewa, kuwasilishwa, kupokelewa au kutunzwa kwa njia ya kielektroniki, kwa njia nyingine yoyote katika mfumo wa mawasiliano au kwa ajili ya kusafirishwa kutoka katika mfumo mmoja wa mawasiliano kwenda kwenye mfumo mwingine;
- “Serikali Mtandao” maana yake ni huduma yoyote ya Kiserikali inayotolewa kwa njia ya mawasiliano yakielektroniki;
- “mawasiliano ya kielektroniki” maana yake ni mawasiliano yaliyofanywa na au kwa kutumia njia ya kielektroniki;
- “Gazeti la kielektroniki” maana yake ni *Gazeti* lililotajwa kwenye kifungu cha 16;
- “kumbukumbu ya kielektroniki” maana yake ni kumbukumbu iliyo katika namna inayo tunzwa kwa njia ya kielektroniki;
- “saini ya kielektroniki” maana yake ni data, yaweza kuwa aidha, sauti ya kielektroniki, alama au mchakato unaofanyika au kutumika katika kumtambua mhusika ili kuashiria ridhaa au kusudio lake kuhusiana na taarifa iliyoko katika mawasiliano ya kielektroniki na ambayo imeambatanishwa kwenye au kikawaida inahusishwa na hayo mawasiliano ya kielektroniki;
- “muamala wa kielektroniki” maana yake ni muamala, kitendo au fungo la muamala ama ya kibiashara au yasiyo yakibiashara ambayo yanafanyika kwa njia ya kielektroniki;
- “mfumo wa habari” maana yake ni chombo au kundi la vifaa vilivyounganishwa na vinayoshabihiana au vihusikanavyo na hayo, ikijumuisha intaneti ambavyo kwa namna moja au nyingine, kwa mujibu wa programu moja, vinashughulikia data kwa kujiendesha zenyewe au kufanya kazi nyingine;

“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 ya masuala ya Teknolojia Habari na Mawasiliano;

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

“mahali pasipo pa muda mfupi” maana yake ni sehemu ambayo mhusika ana mahala pa kuendesha shughuli kwa madhumuni ya ya kiuchumi mbali ya shughuli ya muda ya uuazaji wa bidhaa na utoaji wa huduma katika eneo maalum;

SEHEMU YA PILI KUTAMBULIWA NA MATOKEO YA MIAMALA YA KIELEKTRONIKI

Kutambulika
kwa ujumbe
wa data

4. Ujumbe wa data hautakosa nguvu ya kisheria, uhalali au nguvu ya utekelezaji kutokana na sababu ya kuwa umetengenezwa katika mfumo wa kielektroniki.

Uhalali wa
muamala wa
kielektroniki

5.-(1) Pale ambapo sheria inahitaji taarifa au muamala kuwa katika namna maalumu isiyo ya kielektroniki au kimaandishi, masharti hayo yatakuwa yametimizwa na taarifa au muamala wa kielektroniki iwapo taarifa hiyo-

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

(2) Kifungu kidogo cha (2) kitatumika iwapo matakwa ya kuwa taarifa iwe kwa maandishi ni ya lazima au iwapo sheria inaainisha madhara ya taarifa ambayo haiko kwa maandishi.

Saini ya
kielektroniki

6.-(1) Pale ambapo sheria inahitaji saini ya mtu, masharti hayo yatatumizwa na saini ya kielektroniki iliyotolewa chini ya Sheria hii.

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

- (a) njia hiyo inatumika kumtambua mtu na kuonesha nia ya mtu huyo kuhusiana na taarifa inayowasilishwa;

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

(3) Wahusika wanaweza kukubaliana kutumia njia maalum ya kusiani kwa njia ya kielektroniki kwa kadri watakavyoona inafaa, isipokuwa kama imeelezwa vinginevyo na sheria.

Saini salama
ya
kielektroniki

7. Saini ya kielektroniki itachukuliwa kuwa ni salama iwapo:

- (a) imetengenezwa katika namna ya kipekee ili kuendana na madhumuni ambayo inatumika;
- (b) inaweza kutumika kumtambua mweka saini ya mawasiliano hayo ya kielektroniki;
- (c) imetengenezwa na kuwekwa kwenye mfumo wa habari uliowekwa programu na au kwa niaba ya mwanzilishi kwa lengo la kujiendesha wenyewe;
- (d) ipo chini ya udhibiti wa mweka saini; na
- (e) imetengenezwa na kuunganishwa kwenye mawasiliano ya kielektroniki ambayo yanahusiana na nayo kwa namna ambayo iwapo kuna mabadiliko yoyote yanafanyika kwenye mawasiliano ya kielektroniki, mabadiliko hayo yataonekana.

Matumizi ya
saini salama
ya
kielektroniki

8. Saini ya kielektroniki iliyosalama itachukuliwa kuwa imetumika iwapo:

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

Kutunza
kumbuku-
mbu
kielektroniki

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

- (a) taarifa iliyomo kwenye kumbukumbu ipo katika mfumo wa kielektroniki,
- (b) taarifa ya kumbukumbu inatunzwa katika namna ambayo imetengenezwa au kuzalishwa, kutumwa au kupokelewa au katika mfumo ambao umewekwa wazi ili kuashiria uhalisia wa taarifa hiyo; na
- (c) taarifa hiyo ya kielektroniki 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 kuzalishwa, kutumwa, kupokelewa au kutunzwa.

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

Uthibitisho

10. Pale ambapo sheria inahitaji-

- (a) saina, maelezo au nyaraka kuthibitishwa, kuidhinishwa au kutolewa chini ya kiapo, masharti hayo yatachukuliwa kuwa yametimizwa iwapo saina ya kielektroniki ya mtu aliyeidhinishwa kutekeleza wajibu huo imeambatanishwa, imejumuishwa au kwa hali ya kawaida inahusishwaq na saina ya kielektroniki au ujumbe wa data;
- (b) mtu kutoa nakala ya nyaraka iliyo idhinishwa na nyaraka hiyo ipo katika mfumo wa kielektroniki, masharti hayo yatakuwa yametimizwa iwapo mtu huyo anatoa hati iliyo chapishwa na kuidhinishwa.

Masharti
mengineyo

11.-(1) Pale ambapo Sheria inahitaji-

- (a) kuwasilishwa kwa nakala zaidi ya moja ya nyaraka kwenda kwa mlengwa mmoja kwa wakati mmoja, masharti hayo yatakuwa yametimizwa kwa kuwasilishwa kwa wasiliano moja la kielektroniki ambalo linaweza kutolewa nakala na mlengwa;
- (b) lakiri na saina kuwekwa kwenye nyaraka na sheria hiyo haiweki utaratibu au namna ambavyo nyaraka hiyo inaweza kufungwa au kuwekwa lakiri kwa njia ya kielektroniki, masharti hayo yatakuwa yametimizwa iwapo nyarakahiyo itafungwa na kuwekwa lakiri na kusainiwa kwa njia ya kielektroniki na mtu ambaye alitakiwa kusaini ka kuweka lakiri/ kuifunga nyaraka hiyo;
- (c) mtu kutuma taarifa au nyaraka kwa njia ya posta au huduma kama hiyo, masharti hayo yatakuwa yametimizwa iwapo taarifa hiyo au nyaraka imetumwa kwa njia ya kielektroniki.

(2) Maneno yoyote yaliyomo kwenye sheria, ikijumuisha maneno “nyaraka”, “kumbu kumbu”, “jalada/faili”, “wasilisha”, “peleka”, “toa”, “chapisha”, “andika kwenye au maneno au matamshi yaliyo na maana kama hayo, yatatafsiriwa kujumuisha au kuruhusu mfumo, aina au kitendo kuhusiana na mawasiliano ya kielektroniki isipokuwa kama imeelezwa vinginevyo chini ya Sheria hii.

Mwenendo
wa mtu

12. Mtu anayetumia saina ya kielektroniki atawajibika kisheria kwa kushindwa kuchukua hatua stahiki -

anayetumia
saini ya
kielektroniki

- (a) kuhakikisha uhalali wa saini inayotumika;
- (b) uhalisia wa uthibitisho au kufuata masharti yoyote ya uthibitisho iwapo saini hiyo inatakiwa iwe na uthibitisho.

**SEHEMU YA TATU
HUDUMA ZA SERIKALI MTANDAO**

Kukubalika
kwa
uwasilishaji
kielektroniki

13.-(1) Bila kuathiri sheria nyingine yoyote, iwapo taasisi ya umma inayo mamlaka yakushughulikia taarifa au nyaraka, inaweza kushughulikia taarifa au nyaraka hiyo kwa njia ya kielektroniki kwa mujibu wa Sheria hii.

(2) Masharti kuwa taarifa au nyaraka iwe kwa maandishi au saini haitatafsiriwa kuzuia matumizi ya njia ya kielektroniki.

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

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

- (a) namna na mfumo ambao muamala wa kielektroniki unaweza kufanyika;
- (b) aina ya saini ya kielektroniki inayohitajika, katika hali ambapo muamala wakielektroniki unatakiwa kusainiwa;
- (c) namna na mfumo ambao saini ya kielektroniki inaweza kuambatanishwa au kuhusishwa na muamala wakielektroniki;
- (d) mchakato wa udibiti na taratibu za kuhakikisha uaminifu usalama na usiri wa taarifa;
- (e) utambulisho au utaratibu utakaozingatiwa na watoa huduma walioidhinishwa wakati wa kuwasiliha/andaa muamala wa kielektroniki;
- (f) mchakato unaofaa na utaratibu utakao hakikisha uadilifu unaofaa, usalama na usiri wa muamala wakielektroniki na malipo yakielektroniki; na
- (g) masharti mengine kwa ajili ya miamala yakielektroniki.

(5) Bila kujali kifungu kidogo cha (2), taasisi yoyote iliyoidhinishwa, inaweza kutumia taratibu nyingine ya uthibitisho.

Uwasilishaji
wa nyaraka
kwa njia ya
kielektroniki

14.-(1) Pale ambapo sheria inahitaji nyaraka kuwasilishwa, masharti hayo yatakuwa yametekelezwa iwapo nyaraka imewasilishwa kwa njia ya kielektroniki.

(2) Kifungu kidogo kitatumika iwapo kuna mfumo wa kuandaa taarifa ambao unaweza-

- (a) kutambua chanzo, ukomo, muda, tarehe ya kutolewa, kutumwa na kupokelewa kwa taarifa;
- (b) kutoa stakabadhi ya nyaraka hiyo.

Malipo na utoaji wa stakabadhi kwa njia ya kielektroniki

15. Pale ambapo sheria inahitaji-

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

Uchapishaji nyaraka

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

Ulazima wa nyaraka za kielektroniki

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

SEHEMU YA NNE

KUKUBALILIKA NA UZITO WA USHAHIDI WA UJUMBE WA DATA

Kukubalika kwa ujumbe wa data

18.-(1) Katika mwenendo wa shauri lolote la kisheria, matumizi ya kanuni za ushahidi hayataondoa uhalali wa kukubalika kwa ushahidi wa ujumbe data kwa kigezo kwamba ni ujumbe data.

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

- (a) kuaminika kwa namna ambayo ujumbe data ulitengenezwa, kuhifadhiwa au kuwasilishwa;
- (b) kukubalika na kuaminika kwa jinsi ujumbe data ulivyohifadhiwa;
- (c) namna ambayo chanzo cha ujumbe data kimetambuliwa;
- (d) vigezo vingine vyovyote vinavyoweza kufaa 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 hapo, utachukuliwa kuwa-

- (a) iwapo kuna ushahidi unaounga mkono uamuzi kuwa katika muda wote wa msingi, 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 kielelektroniki na kwamba hakuna sababu nyingine za msingi kushuku uhalali wa kumbukumbu za mfumo wa kielelektroniki;

(b) iwapo inabainika kwamba kumbukumbu ya kielelektroniki ilirekodiwa au kuhifadhiwa na mhusika katika shauri ambaye ana maslahi tofauti na mhusika wa upande unaotaka kuutumia ushahidi huo; au

(c) inathibitika kuwa kumbukumbu ya kielelektroniki 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 kielelektroniki inakubalika chini ya kifungu hiki, ushahidi unaweza kutolewa kuhusiana na utaratibu wowote uliowekwa, matumizi au mwenendo kuhusiana na namna ambavyo kumbukumbu zinatakiwa kuchukuliwa au kunakiliwa au kutunzwa, kwa kuzingatia aina ya biashara au mfumo unaotumika, kunakili au kuchukua au kutunza kumbukumbu ya namna hiyo madhumuni ya kumbukumbu ya kielelektroniki.

Chanzo cha mawasiliano ya kielelektroniki

19. Mawasiliano ya kielelektroniki 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 kielelektroniki kuhusiana na ujumbe ya data; au

(c) mfumo wa taarifa umewekwa katika programu inayojiendesha yenyewe ili inaashiria kuwa yametoka kwenye chanzo na au kwa niaba ya chanzo.

Kutolewa kwa nyaraka halisi kielelektroniki

20.-(1) Pale ambapo sheria inamtaka mtu kutoa nyaraka au taarifa, masharti hayo yatakuwa yametimizwa iwapo-

(a) mtu anatoa, kwa njia ya mawasiliano ya kielelektroniki, fomu au nyaraka yakielelektroniki au taarifa;

(b) kwa kuzingatia masuala yote ya msingi, wakati mawasilano yakielelektroniki yanatumwa, mfumo wa kutoa taarifa ya kielelektroniki ya nyaraka hiyo ulitoa namna ya uhakika ya kuhakikisha utunzaji wa uadilifu wa taarifa iliyoko kwenye nyaraka;

(c) wakati mawasiliano yakielektroniki yanatumwa, ilikuwa ni kwa hali ya kawaida kutarajia kuwa taarifa iliyoko ndani yake ingeweza kupatika 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 inabaki kuwa kamili na haijabadilishwa, isipokuwa kwa:

(a) kuweka nyongeza ya uthibitisho; au

(b) mabadiliko yoyote ya msingi, ambayo yanatokea wakati wa kufanya mawasiliano ya kawaida, utunzaji au uwekaji wazi.

SEHEMU YA TANO
KUTAMBULIKA KWA MIKATABA YA KIELEKTRONIKI

Kutambulika
kwa
mikataba ya
kielektroniki

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

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

Muda wa
kutumwa na
kupokelewa
kwa
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 alituma taarifa hiyo ya kielektroniki kwa niaba ya chanzo.

(2) Iwapo chanzo au mlengwa wa taarifa wapo kwenye mfumo mmoja wa mawasiliano ya kielektroniki, taarifa itachukuliwa kuwa imepokelewa pale ambapo mlengwa anaweza kupata taarifa hiyo.

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

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

(a) wakati ambapo mawasiliano yanaweza kupokelewa na mlengwa katika anuani hiyo; na

(b) mlengwa anapata taarifa kuhusiana na mawasiliano ya kielektroniki yaliyotumwa kwenye anuani hiyo.

(5) Iwapo mlengwa hajatenga mfumo wa mawasiliano, upokeaji wa taarifa unatimia pale ambapo mawasiliano ya kielektroniki yanapokelewa na mlengwa, au yalitakiwa kuwa kikawaida yamepokelewa na mlengwa.

Uthibitisho
wa upokeaji
taarifa

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

- (a) njia ya kielektroniki na mlengwa, ama kwa njia ya ujumbe kujiendesha wenyewe au vinginevyo; au
- (b) kwa kupitia kitendo kilichofanywa na mlengwa, kwa kiasi ambacho kinatosha kuashiria kuwa chanzo cha mawasiliano kuwa mawasiliano ya kielektroniki yamepokelewa.

(2) Iwapo mwanzilishi wa mawasiliano amesainishakuwa mawasiliano ya kielektroniki yatawabana wahusika pale tu anapokea uthibitisho wa kupokea au unapokelewa, na uthibitisho haujapokelewa, mwanzilishiatakiwa-

- (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 idhinisho lililopokelewa naye na ikiainisha muda wa kawaida ambao ndani yake idhinisho ya kupokea taarifa linatakiwa kuwa limepokelewa naye; au
- (b) ndani ya ukomo wa muda uliotajwa anaweza baada ya kutoa taarifa kwa mlengwa, kuyachukulia mawasiliano hayo ya kielektroniki kana kwamba haikuwahi 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 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) anayo sehemu ya biashara zaidi ya moja, sehemu ya biashara itakuwa ni:

- (i) ile ambayo anahusiana nayo wa karibu zaidi kuhusiana na muamala husika kwa kuzingatia mazingira yanayojulikana ya kufikiriwa na wahusika katika muda wowote kabla au wakati wa kufikia makubaliano ya mkataba; au
- (ii) pale ambapo hakuna muamala sehemu yake ya biashara itakuwa ni sehemu aliyozoea kwa ajili ya makazi.

(4) Iwapo kampuni haina sehemu ya biashara, sehemu ya biashara itakuwa ni anuani ya kibiashara ya kampuni hiyo au sehemu ilipoundwa au kuanzishwa.

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

Muda na sehemu ya kuingiwa kwa mkataba

25.-(1) Pale ambapo wahusika wanaingia kwenye mkataba kwa njia ya kielektroniki, mkataba utakuwa umeingiwa 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 na mifumo ya kompyuta

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 kiuizingaji wa taarifa lililofanywa katika mawasiliano ya kielektroniki baina ya mifumo inayoingiliana na mhusika wa upande wa pili.

(3) Iwapo mtu anafanya kosa la kiuizingaji 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, mtu huyo atakuwa na haki ya kuondoa mawasiliano hayo ya kielektroniki ambamo ndani yake amefanya kosa la kiuizingaji wapo-

(a) anamtaarifu mhusika wa upande wa pili kuhusiana na kosa hilo haraka iwezekanavyo baada ya kugundua kosa hilo na kuwa anakusudia kusitisha au kurekebisha kosa la kiuizingaji ;

(b) anachukua hatua za msingi kutekeleza maelekezo yaliyotolewa na

mhusika wa upande wa pili kuhusu kurudisha bidhaa au huduma alizopokea kutokana na kutendeka kwa kosa hilo au kuharibu bidhaa au huduma au kurekebisha kosa; na

(c) hajatumia au kupokea faida yoyote au thamani ya bidhaa au huduma 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 kitakachoadhiri matumizi ya sheria yoyote inayosimamia masuala yatokanayo na makosa yaliyofanywa wakati wa uundwaji/uingiwaji au utekelezaji wa aina yoyote ya mkataba wowote mbali na kosa kuhusiana na uingizaji kwa mujibu wa masharti yaliyotolewa chini ya kifungu kidogo cha (3).

Mnada
kupitia
mtandao

27. Pale ambapo 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 yalipokelewa kama kigezo cha ukomo wa muda kwa ajili ya kumchagua mzabuni wa mwisho.

SEHEMU YA SITA USALAMA WA MLAJI

Wajibu wa
watoa
huduma kwa
walaji

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

(a) jina kamili, hadi ya kisheria na eneo la kibiashara;

(b) maelezo kuhusiana na anuani yake ikijumuisha anuani ya makazi, nambari za simu na anuani ya barua pepe

(c) maelezo kamili ya bidhaa na huduma zinazotolewa;

(d) bei ya bidhaa au huduma;

(e) taarifa kuhusu malipo yatakayofanywa kwa mujibu wa sheria nyingine; na

(f) taarifa nyingine inayohusika.

(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) kujiondoa katika kuendelea na muamala huo.

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

Muda wa
kutekeleza
agizo

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

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

(3) Iwapo 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
kusitisha

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

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

(3) Iwapo mtumiaji amelipia bidhaa au huduma kabla ya kutekeleza haki iliyotolewa chini ya kifungu kidogo cha (1), atastahili kulipwa fidia.

(4) Fidia 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) kuhusiana na namna ya kuendesha mnada;

(c) usambazaji wa vyakula, vinywaji au bidhaa nyingine zilizokusudiwea kwa ajili ya matumizi ya kila siku;

(d) kuhusiana na 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 kusimamiwa na mtumiaji;

(f) iwapo bidhaa:

(i) zimetengenezwa ili kukidhi matakwa ya mtumiaji;

(ii) vimetengwa kwa uwazi kwa ajili maalum;

(iii) kutokana na hali yake, haziwezi kurudishwa; au

- (iv) zina uwezekano wa kuharibika au kupitwa na muda haraka/mapema;
 - (g) iwapo kumbukumbu za kusikiliza au za video au programu za kompyuta zilizopakuliwa au kunaondolewa lakirina na mtoa huduma;
 - (h) kwa ajili ya uuzaji wa magazeti, makala, majarida na vitabu;
 - (i) kwa ajili ya kutolewa kwa huduma za michezo ya bahati nasibu;
 - (j) kwa ajili ya michezo ya bahati nasibu inayofanyika kwa kupitia mtandao;
 - (k) kwa ajili ya kutolea huduma za malazi, usafiri na chakula; na
 - (l) kwa kadri ambavyo Waziri kwa tangazo litakalochapishwa kwenye *Gazeti* la Serikali.
- (6) Kwa madhumuni ya kifungu hiki, “gharama za moja kwa moja” maana yake ni gharama zilizoiingiwa kama gharama za usafiri au kutumia wakati wa kurudisha bidhaa au huduma, isipokuwa haijumuishi gharama zozote za upakiaji au usambazaji.

Maelezo yatakayotolewa katika biashara mtandao

- 31.**-(1) Mtu anayeuzua bidhaa au huduma za mawasiliano ya kielektroniki atampatia mlengwa –
- (a) utambulisho wa chanzo cha mawasiliano na maelezo kuhusiana na anuani yake;
 - (b) chombo halali na kinachofanya kazi ambacho kitatoa nafasi ya mtu kuamua kutokuendelea kupokea mawasiliano kwa mbeleni; 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 au taarifa za kibiashara kuhusiana na bidhaa au huduma ambazo hazijaombwa na mlengwa, isipokuwa kama-
- (a) mtumiaji anaridhia mawasiliano hayo;
 - (b) mwanzoni mwa mawasiliano yanaweka wazi utambulisho wa mtumaji na madhumuni ya mawasiliano; au
 - (c) kunatolewa nafasi ya kukataa mawasiliano ya ziada.
- (2) Masharti kuhusiana na mtu kuridhia ama kutokuridhia yatachukuliwa kuwa yametimizwa iwapo-
- (a) anuani 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 atatuma matangazo yanayohusiana na ukuzaji au

- uendelezaji wa bidhaa au huduma za mlaji wa huduma hiyo;
- (c) mtoa taarifa ametoa nafasi kwa mlengwa wa mawasiliano kujitoa au kukubali; na
- (d) nafasi ya kujitoa inatolewa 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 kifungu kwa kipindi kisichopungua mwaka mmoja au vyote.

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 yake kuwa mdhibiti wa huduma za kriptografia na uidhinishaji.

Majukumu
ya mdhibiti

- 34.** Majukumu ya mdhibiti yatakuwa ni-
- (a) kutoa leseni na kusimamia huduma za kriptografia na uidhinishaji;
- (b) kuainisha viwango vya kiusalama vya kriptografia na saina 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 kitu kingine chochote ambacho ni muhimu kwa utekelezaji wa masharti ya sehemu hii.

Maombi ya
usajili

35. Mtu anayekusudia kutoa huduma za kriptografia au uidhinishaji atawasilisha maombi kwa mdhibiti na atatoa taarifa zifuatazo:

(a) jina na mawasiliano yake, ikijumuisha anuani ya makazi, simu na barua pepe;

(b) maelezo kuhusiana na aina ya huduma itakayotolewa;

(c) maelezo ya madhumuni ya huduma itakayotolewa;

(d) maelezo kuhusiana na teknolojia itakayotumika katika utolewaji wa huduma; na

(e) maelezo mengine yoyote kwa kadri itakavyoelekezwa na msimamizi.

Katazo la

36.-(1) Mtu hatatoa huduma za kriptografia au uidhinishaji bila ya

kutoa
huduma za
kraiptografia
au
uidhinishaji

kuwa na leseni.

(2) Mtu anayekiuka 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.

**SEHEMU YA NANE
MASHARTI YA JUMLA**

Mamlaka ya
kutunga
kanuni

37. Waziri anaweza kutunga Kanuni kuhusiana na jambo lolote ambalo linatakiwa kuainishwa na Sheria hii au ambalo ni la umuhimu au uharaka kwa ajili ya utekelezaji wa masharti ya Sheria hii.

MADHUMUNI NA SABABU

Muswada huu unapendekeza kutungwa kwa Sheria ya Miamala ya Kielektroniki, 2015 inayoweka masharti kuhusiana na utambuzi wa miamala ya kielektroniki, huduma za Serikali mtandao, matumizi ya Teknolojia Habari na Mawasiliano katika ukusanyaji wa ushahidi, kukubalika kwa ushahidi wa kielektroniki, matumizi salama ya saini za kielektroniki na mambo mengine yanayohusiana nayo.

Muswada huu umegawanyika katika Sehemu Kuu Nane.

Sehemu ya kwanza inatoa masharti ya utangulizi ikiwa ni pamoja na jina la Muswada na tarehe ya kuanza kutumika, matumizi ya sheria na tafsiri ya maneno yaliyotumika katika Muswada unaopendekezwa.

Sehemu ya Pili inapendekeza vifungu vitakavyoweka utaratibu wa kutambulika kisheria na matokeo yatokanayo na miamala ya kielektroniki ikiwa ni pamoja na utambuzi na matumizi ya saini za kielektroniki.

Sehemu ya Tatu inapendekeza utambuzi wa utoaji huduma za Serikali kwa njia ya TEHAMA.

Sehemu ya Nne inapendekeza kuweka vifungu vinavyoainisha utaratibu wa kukubalika kwa ushahidi na uzito wa ushahidi wa kielektroniki.

Sehemu ya Tano inapendekeza vifungu vinavyotambua mikataba ya kielektroniki. Sehemu hii pia inapendekeza vifungu vitakavyoainisha muda wa kuthibitisha kuwa taarifa ya kielektroniki imepokelewa. Aidha, utaratibu wa kutambua muda na mahali ambapo mkataba wa kielektroniki umeingiwa pamoja na mambo mengine, umeainishwa katika sehemu hii.

Sehemu ya Sita inapendekeza kuweka vifungu vinavyosimamia usalama wa mlaji ikiwa ni pamoja na masharti ya mtoa huduma kwa njia ya mtandao dhidi ya mlaji, haki ya mlaji kusitisha huduma au kurudisha bidhaa zilizounuliwa kwa njia ya mtandao. Pia sehemu hii inaainisha adhabu kwa watoa huduma watakaokiuka masharti yaliyowekwa katika sehemu hii.

Sehemu ya Saba inaweka utaratibu wa kusimamia na kudhibiti utoaji wa huduma za uthibitishaji wa sainsi za kielektroniki pamoja na watoa huduma za kriptografia.

Sehemu ya Nane inaweka masharti ya ujumla ikiwa ni pamoja na mamlaka ya Waziri kutengeneza Kanuni.

Dar es Salaam
2 Februari, 2015

MAKAME M. MBARAWA
*Waziri wa Mawasiliano Sayansi
na Teknolojia*