

ELECTRONIC COMMERCE BILL 2006

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A BILL

i n t i t u l e d

An Act to provide for legal recognition of electronic messages in commercial transactions, the use of the electronic messages to fulfill legal requirements and to enable and facilitate commercial transactions through the use of electronic means and other matters connected therewith.

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ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Electronic Commerce Act 2006.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Application

2. (1) Subject to section 3, this Act shall apply to any commercial transaction conducted through electronic means including commercial transactions by the Federal and State Governments.

(2) This Act shall not apply to the transactions or documents specified in the Schedule.

(3) The Minister may by order amend, vary, delete from or add to the Schedule.

Use not mandatory

3. (1) Nothing in this Act shall make it mandatory for a person to use, provide or accept any electronic message in any commercial transaction unless the person consents to the using, providing or accepting of the electronic message.

(2) A person's consent to use, provide or accept any electronic message in any commercial transaction may be inferred from the person's conduct.

Reference to other written laws

4. The application of this Act shall be supplemental and without prejudice to any other laws regulating commercial transactions.

Interpretation

5. In this Act, unless the context otherwise requires—

“electronic” means the technology of utilizing electrical, optical, magnetic, electromagnetic, biometric, photonic or other similar technology;

“Minister” means the Minister charged with the responsibility for domestic trade and consumer affairs;

“electronic message” means an information generated, sent, received or stored by electronic means;

“originator” means a person by whom or on whose behalf, the electronic message is generated or sent;

“addressee” means a person who is intended by the originator to receive the electronic message;

“information processing system” means an electronic system for generating, sending, receiving, storing or processing the electronic message;

“electronic signature” means any letter, character, number, sound or any other symbol or any combination thereof created in an electronic form adopted by a person as a signature;

“commercial transactions” means a single communication or multiple communications of a commercial nature, whether contractual or not, which includes any matters relating to the supply or exchange of goods or services, agency, investments, financing, banking and insurance.

PART II

LEGAL RECOGNITION OF ELECTRONIC MESSAGE

Legal recognition of electronic message

6. (1) Any information shall not be denied legal effect, validity or enforceability on the ground that it is wholly or partly in an electronic form.

(2) Any information shall not be denied legal effect, validity or enforceability on the ground that the information is not contained in the electronic message that gives rise to such legal effect, but is merely referred to in that electronic message, provided that the information being referred to is accessible to the person against whom the referred information might be used.

Formation and validity of contract

7. (1) In the formation of a contract, the communication of proposals, acceptance of proposals, and revocation of proposals and acceptances or any related communication may be expressed by an electronic message.

(2) A contract shall not be denied legal effect, validity or enforceability on the ground that an electronic message is used in its formation.

PART III

FULFILMENT OF LEGAL REQUIREMENTS
BY ELECTRONIC MEANS**Writing**

8. Where any law requires information to be in writing, the requirement of the law is fulfilled if the information is contained in an electronic message that is accessible and intelligible so as to be usable for subsequent reference.

Signature

9. (1) Where any law requires a signature of a person on a document, the requirement of the law is fulfilled, if the document is in the form of an electronic message, by an electronic signature which—

- (a) is attached to or is logically associated with the electronic message;
- (b) adequately identifies the person and adequately indicates the person's approval of the information to which the signature relates; and
- (c) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required.

(2) For the purposes of paragraph (1)(c), an electronic signature is as reliable as is appropriate if—

- (a) the means of creating the electronic signature is linked to and under the control of that person only;
- (b) any alteration made to the electronic signature after the time of signing is detectable; and
- (c) any alteration made to that document after the time of signing is detectable.

(3) The Digital Signature Act 1997 [Act 562] shall continue to apply to any digital signature used as an electronic signature in any commercial transaction.

Seal

10. (1) Where any law requires a seal to be affixed to a document, the requirement of the law is fulfilled, if the document is in the form of an electronic message, by a digital signature as provided under the Digital Signature Act 1997.

(2) Notwithstanding subsection (1), the Minister may, by order in the *Gazette*, prescribe any other electronic signature that fulfills the requirement of affixing a seal in an electronic message.

Witness

11. Where any law requires the signature of a witness on a document, the requirement of the law is fulfilled, if the document is in the form of an electronic message, by an electronic signature of the witness that complies with the requirements of section 9.

Original

12. (1) Where any law requires any document to be in its original form, the requirement of the law is fulfilled by a document in the form of an electronic message if—

- (a) there exists a reliable assurance as to the integrity of the information contained in the electronic message from the time it is first generated in its final form; and
- (b) the electronic message is accessible and intelligible so as to be usable for subsequent reference.

(2) For the purposes of paragraph (1)(a)—

- (a) the criteria for assessing the integrity of the information shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement or any change which arises in the normal course of communication, storage and display; and
- (b) the standard of reliability required shall be assessed in the light of the purpose for which the document was generated and in the light of all other relevant circumstances.

Retention of document

13. Where any law requires any document to be retained, the requirement of the law is fulfilled by retaining the document in the form of an electronic message if the electronic message—

- (a)* is retained in the format in which it is generated, sent or received, or in a format that does not materially change the information contained in the electronic message that was originally generated, sent or received;
- (b)* is accessible and intelligible so as to be usable for subsequent reference; and
- (c)* identifies the origin and destination of the electronic message and the date and time it is sent or received.

Copy

14. Where any law requires any document to be retained, served, sent or delivered in more than one copy, the requirement of the law is fulfilled, if the document is in the form of an electronic message, by retention, service, sending or delivery of the document in one copy.

Prescribed form

15. Where any law requires any document to be in a prescribed form, the requirement of the law is fulfilled by a document in the form of an electronic message if the electronic message is—

- (a)* formatted in the same or substantially the same way as the prescribed form;
- (b)* accessible and intelligible so as to be usable for subsequent reference; and
- (c)* capable of being retained by the other person.

Service and delivery

16. (1) Where any law requires any document to be served, sent or delivered, the requirement of the law is fulfilled by the

service, sending or delivery of the document by an electronic means if an information processing system is in place—

- (a) to identify the origin, destination, time and date of service, sending or delivery; and
- (b) for the acknowledgement of receipt,

of the document.

(2) This section does not apply to—

- (a) any notice of default, notice of demand, notice to show cause, notice of repossession or any similar notices which are required to be served prior to commencing a legal proceeding; and
- (b) any originating process, pleading, affidavit or other documents which are required to be served pursuant to a legal proceeding.

PART IV

COMMUNICATION OF ELECTRONIC MESSAGE

Attribution of electronic message

17. (1) An electronic message is that of the originator if it is sent by the originator himself.

(2) As between the originator and the addressee, an electronic message is deemed to be that of the originator if it is sent by—

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

(3) As between the originator and the addressee, the addressee is entitled to regard an electronic message as being that of the originator, and to act on that presumption, if—

- (a) the addressee properly applies an authentication method agreed between the originator and the addressee for ascertaining whether the electronic message was that of the originator; or

- (b) the electronic message as received by the addressee resulted from the actions of a person whose relationship with the originator or any agent of the originator enabled that person to gain access to an authentication method used by the originator to identify electronic message as its own.
- (4) Subsection (3) does not apply if—
 - (a) the addressee has received a notice from the originator that the electronic message is not that of the originator and has reasonable time to act accordingly; or
 - (b) the addressee knew or should have known that the electronic message was not that of the originator had he exercised reasonable care or used any authentication method agreed between the originator and the addressee.

Contents of electronic message

18. Where an addressee receives an electronic message, the addressee is entitled to regard the electronic message as being what the originator intended to send, and to act on that presumption, unless the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the electronic message as received.

Each electronic message to be regarded separately

19. Where an addressee receives an electronic message, the addressee is entitled to regard each electronic message received as a separate electronic message and to act on that presumption, unless the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the electronic message was a duplicate.

Time of dispatch

20. Unless otherwise agreed between the originator and the addressee, an electronic message is deemed sent when it enters an information processing system outside the control of the originator.

Time of receipt

21. Unless otherwise agreed between the originator and the addressee, an electronic message is deemed received—

- (a) where the addressee has designated an information processing system for the purpose of receiving electronic messages, when the electronic message enters the designated information processing system; or
- (b) where the addressee has not designated an information processing system for the purpose of receiving electronic messages, when the electronic message comes to the knowledge of the addressee.

Place of dispatch

22. Unless otherwise agreed between the originator and the addressee, an electronic message is deemed sent from the originator's place of business, and—

- (a) where the originator has more than one place of business, from the place of business that has the closest relationship with the transaction or where there is no place of business that has the closest relationship with the transaction, from the originator's principal place of business; or
- (b) where the originator does not have a place of business, from the originator's ordinary place of residence.

Place of receipt

23. Unless otherwise agreed between the originator and the addressee, an electronic message is deemed received at the addressee's place of business, and—

- (a) where the addressee has more than one place of business, at the place of business that has the closest relationship with the transaction or where there is no place of business that has the closest relationship with the underlying transaction, at the addressee's principal place of business; or
- (b) where the addressee does not have a place of business, at the addressee's ordinary place of residence.

Acknowledgement of receipt

24. (1) This section applies where, on or before sending an electronic message, or in the electronic message, the originator has requested or agreed with the addressee that receipt of the electronic message is to be acknowledged.

(2) Where the originator has requested or agreed with the addressee that receipt of the electronic message is to be acknowledged, the electronic message is treated as though it has never been sent until the acknowledgement is received.

(3) Where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by—

- (a) any communication by the addressee, automated or otherwise; or
- (b) any conduct of the addressee sufficient to indicate to the originator that the electronic message has been received.

(4) Where the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed, within a reasonable time, the originator may—

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

(5) Where the originator receives the addressee's acknowledgement of receipt, it is presumed that the addressee received the related electronic message.

(6) Where the received acknowledgement states that the related electronic message fulfills technical requirements, either agreed upon or set forth in applicable standards, it is presumed that those requirements have been fulfilled.

PART V

MISCELLANEOUS

Regulations

25. The Minister may make such regulations as are necessary or expedient for giving full effect to the provisions of this Act.

SCHEDULE

(Section 2)

This Act shall not apply to the following transactions or documents:

1. Power of attorney
2. The creation of wills and codicils
3. The creation of trusts
4. Negotiable instruments

EXPLANATORY STATEMENT

This Bill seeks to provide for legal recognition of electronic messages used in commercial transactions, the use of the electronic messages to fulfill legal requirements and to enable as well as to facilitate commercial transactions through the use of electronic means.

PART I

2. Part I contains preliminary provisions.
3. *Clause 1* contains the short title and seeks to empower the Minister to appoint a date of coming into operation of the proposed Act.
4. *Clause 2* seeks to define the scope of application of the proposed Act.
5. *Clause 3* seeks to provide that commercial transactions by electronic means may be conducted if a person consents to it and such consent may be given expressly or impliedly.
6. *Clause 4* seeks to clarify the relationship between the proposed Act and other written laws regulating commercial transactions.

7. *Clause 5* seeks to define certain words and expressions used in the proposed Act.

PART II

8. Part II contains provisions relating to legal recognition of electronic messages.

9. *Clause 6* deals with the affirmation of the legal effect, validity or enforceability of an electronic message.

10. *Clause 7* provides that proposals, acceptance of proposals, and revocation of proposals and acceptances or any related communication may be expressed by electronic messages. *Clause 7* also provides for the affirmation of the legal effect, validity or enforceability of contracts formed by the use of an electronic message.

PART III

11. Part III contains provisions relating to the removal of legal obstacles of electronic commerce.

12. *Clause 8* provides that if the legal requirement for information is to be in writing such requirement may be fulfilled by an electronic message that is accessible and intelligible for subsequent reference.

13. *Clause 9* provides that electronic signature that meets the criteria in *clause 9(1)* fulfills any legal requirement for signature. *Clause 9* also states the criteria to be considered in assessing the reliability of an electronic signature.

14. *Clause 10* provides that a digital signature fulfills the legal requirement for a seal to be affixed to a document. *Clause 10* also empowers the Minister to prescribe any other types of electronic signature which may be available in the future that can fulfill any legal requirement for a seal to be affixed to a document.

15. *Clause 11* provides that a witness may use an electronic signature to fulfill any legal requirement for the signature of a witness to a signing of a document or to a transaction.

16. *Clause 12* deals with the situations where there is a legal requirement for any document to be in its original form. An electronic message is regarded as an original document if it fulfills the criteria listed in *clause 12(1)*. *Clause 12* also provides the criteria for assessing the integrity of information and the standard of reliability of information required for the electronic message to be regarded as an original.

17. *Clause 13* seeks to provide that the retention of a document in the form of an electronic message fulfills any legal requirement to retain the document. The requirement is fulfilled by an electronic message if the electronic message fulfills the criteria set out in *clause 13*.

18. *Clause 14* seeks to provide that the retention, service, sending or delivery of a document in the form of an electronic message in one copy fulfills any legal requirement for the retention, service, sending or delivery of the document in more than one copy.

19. *Clause 15* deals with the situations where a law requires a document to be in a prescribed form. The requirement is fulfilled by a document in an electronic message if the electronic message fulfills the criteria set out in *clause 15*.

20. *Clause 16* provides that the service or delivery of any document by an electronic means fulfills any legal requirement to serve or deliver any document.

PART IV

21. Part IV contains provisions relating to the communication of electronic messages.

22. *Clause 17* deals with the situations where there is a question as to whether a data message was really sent by the person who is indicated as being the originator.

23. *Clause 18* deals with the problem of errors in the content of an electronic message that resulted from an error during the course of transmission of the electronic message.

24. *Clause 19* deals with the problem of receipt of a duplicate electronic message, which has to be regarded separately from the original electronic message unless the addressee has knowledge that such electronic message is a duplicate.

25. *Clause 20* seeks to provide for the time an electronic message is deemed sent.

26. *Clause 21* seeks to provide for the time an electronic message is deemed received.

27. *Clause 22* seeks to provide for the place an electronic message is deemed sent.

28. *Clause 23* seeks to provide for the place an electronic message is deemed received.

29. *Clause 24* provides for the manner and effect of acknowledging the receipt of an electronic message.

30. *Clause 25* seeks to empower the Minister to make regulations under the proposed Act.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

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