

THE ELECTRONIC COMMERCE SUPPORT ACT, 1998

An Act to amend various Central Acts to facilitate electronic commerce.

WHEREAS the rapid development of electronic commerce in India makes it expedient to amend existing legislation to facilitate the continued growth of electronic commerce and to resolve questions raised regarding the applicability of such legislation to the unique features of the electronic regime;

It is hereby enacted as follows:

1.Short title, Extent and Commencement.

This Act may be called the Electronic Commerce Support Act, 1998.

This Act extends to the whole of India, except the state of Jammu and Kashmir.

This Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2.Amendments to the Indian Penal Code.

(a). The Indian Penal Code is amended by adding to the end of section 29 the words ";or an electronic record as defined by the Electronic Commerce Act, 1998."

(b). A new Section 4A shall be added to the Indian Penal Code after section 4 of that Code, as under:

"4A. Electronic Records and Electronic Signatures. In the application of the provisions of this Code to offences relating to electronic records or electronic signatures, due regard shall be given to the provisions of the Electronic Commerce Act, 1998 and, in particular, words and expressions used but not defined in this Code shall, unless the context otherwise requires, be construed as having the same meaning as is assigned to them respectively by that Act."

(c). New sections 29A, 29B, 29C and 29D shall be added to the Indian Penal Code after section 29, as under:

"29A. Electronic Record. The term "electronic record," shall have the same meaning as assigned to it in the Electronic Commerce Act, 1998.

29B. Electronic Signature. The term "electronic signature" shall have the same meaning as assigned to it in the Electronic Commerce Act, 1998.

29C. Signature and Sign. The terms "signature" and "sign" shall have the same meanings as assigned to them in the Electronic Commerce Act, 1998.

29D. Writing. The term "writing" shall have the same meaning as assigned to it in the General Clauses Act, 1897, as amended by the Electronic Commerce Support Act, 1998."

3. Amendments to the Indian Evidence Act, 1872.

(a) Section 1 of the Indian Evidence Act, 1872 shall be amended by inserting at the end of the paragraph entitled "Extent" the following:

"In the application of this Act to electronic records or electronic signatures as defined in the Electronic Commerce Act, 1998, due regard shall be had to the provisions of the latter Act."

(b) The definition of "document" in Section 3 of the Indian Evidence Act, 1872 shall be replaced with the following definition:

"Document means (i) any matter expressed, inscribed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used or which may be used for the purpose of recording that matter; or (ii) any electronic record."

(c) Section 3 of the Indian Evidence Act, 1872 shall be amended by adding the following definitions at the end of that section:

"electronic signature" shall have the meaning assigned to it in the Electronic Commerce Act, 1998.

"electronic record" shall have the meaning assigned to it in the Electronic Commerce Act, 1998.

"writing" shall have the meaning assigned to it in the General Clauses Act, 1897 as amended by the Electronic Commerce Support Act, 1998.

"signature" or "signed" shall have the meaning assigned to it in the Electronic Commerce Act, 1998.

"books" shall include electronic records and shall be construed accordingly.

(d) The definition of "evidence" in Section 3 of the Indian Evidence Act, 1872 shall be amended by replacing the second clause with the following:

"(2) all documents produced for the inspection of the court, including matter in the form of electronic records."

(e) Section 35 of the Indian Evidence Act, 1872 shall be amended by adding the words "including an electronic record" after the word "record."

(f) Section 47 of the Indian Evidence Act, 1872 shall be amended by adding at the end of that section the following:

"In assessing the weight of electronic records or electronic signatures, due regard shall be had to the provisions of the Electronic Commerce Act, 1998."

(g) Section 58 of the Indian Evidence Act, 1872 shall be amended by inserting after the words "under their hands" the words "or under their electronic signature."

(h) Section 61 of the Indian Evidence Act, 1872 shall be amended by adding at the end of that section the following:

"Provided that nothing in this section shall affect the provisions of the Electronic Commerce Act, 1998."

(i) Section 62, Explanation 2 of the Indian Evidence Act, 1872 shall be amended by adding at the end of that Explanation the following:

"Nothing in this Section shall affect the provisions of Section 9 or 10 of the Electronic Commerce Act, 1998."

(j) Section 63 of the Indian Evidence Act, 1872 shall be amended by adding at its end the following:

"(6) electronic records that do not qualify as originals under Section 9 of the Electronic Commerce Act, 1998."

(k) Section 65 of the Indian Evidence Act, 1872 shall be amended by adding in clause (d) after the word "movable" the following: "or forms part of an electronic record."

(l) A new Section 67A shall be inserted into the Indian Evidence Act after Section 67 as under:

"67A. Proof of electronic signatures. Subject to the provisions of the Electronic Commerce Act, 1998, if an electronic record is alleged to bear the electronic signature of any person, such signature must be proved to be his.

Comments: This section is intended to amend the Indian Evidence Act to facilitate the use of electronic records and signatures as evidence and to harmonize this Act with the Electronic Commerce Act.

4. Amendments to the Indian Contract Act, 1872.

(a) Section 1 of the Indian Contract Act, 1872 is amended by adding at the end of the paragraph entitled "Extent, commencement" the following:

"In the application of this Act to contracts entered into through an electronic record or bearing an electronic signature, as those terms are defined by the Electronic Commerce Act, 1998, due regard shall be had to the provisions of the latter Act."

(b) New sections 2A, 2B, 2C and 2D shall be added to the Indian Contract Act, 1872, as under:

2A. Electronic Record. The term "electronic record," shall have the same meaning as assigned to it in the Electronic Commerce Act, 1998.

2B. Electronic Signature. The term "electronic signature" shall have the same meaning as assigned to it in the Electronic Commerce Act, 1998.

2C. Signature and Sign. The terms "signature" and "sign" shall have the same meanings as assigned to them in the Electronic Commerce Act, 1998.

2D. Writing. The term "writing" shall have the same meaning as assigned to it in the General Clauses Act, 1897, as amended by the Electronic Commerce Support Act, 1998."

5. Amendment to the Indian Telegraph Act, 1885. The Indian Telegraph Act, 1885 is amended by adding a new section 34A as under:

"Nothing in this Act shall affect the provisions of the Electronic Commerce Act, 1998 and, in particular, nothing in this Act shall be construed to prohibit the transmission or receipt of encrypted data in the form of electronic records, as that term is defined in the Electronic Commerce Act, 1998."

6. Amendments to the Banker's Books Evidence Act of 1891.

(a) In Section 2 of the Banker's Books Evidence Act, 1891, sub-section (3) is replaced with the following:

"(3) "banker's books" include ledgers, day-books, cash books, account-books and other records used in the ordinary business of the bank, whether those records are in written form or are electronic records, as defined in the Electronic Commerce Act, 1998."

(b) New sections 2A, 2B, 2C and 2D shall be added to the Indian Penal Code, as under:

2A. Electronic Record. The term "electronic record," shall have the same meaning as assigned to it in the Electronic Commerce Act, 1998.

2B. Electronic Signature. The term "electronic signature" shall have the same meaning as assigned to it in the Electronic Commerce Act, 1998.

2C. Signature and Sign. The terms "signature" and "sign" shall have the same meanings as assigned to them in the Electronic Commerce Act, 1998.

2D. Writing. The term "writing" shall have the same meaning as assigned to it in the General Clauses Act, 1897, as amended by the Electronic Commerce Support Act, 1998."

7. Amendments to the General Clauses Act, 1897.

(a) The General Clauses Act, 1897 is amended by inserting immediately after section 3(18) the following:

"and includes an electronic record, as defined by the Electronic Commerce Act, 1998."

(b) The General Clauses Act, 1897 is amended by inserting at the end of section 3(65) the following:

"and includes electronic records, as defined by the Electronic Commerce Act, 1998."

Comments: This section expands the definitions of "document" and "writing" under the General Clauses Act to incorporate electronic records.

8. Amendments to the Reserve Bank of India Act, 1934,

(a) The Reserve Bank of India Act, 1934 is amended by inserting after Chapter IIIC, the following Chapter III D:

"Chapter III D

(1) If the Bank is satisfied that in the interest of development of efficient payment systems it is necessary to promote and establish multiple electronic funds transfer (EFT) systems, it may by order, allow banking companies, financial or other institutions, or any other person desirous of setting up an EFT System to apply for authorisation from the Bank to commence and operate an EFT System.

(2) An application for approval under sub-section (1) shall be submitted in the form specified by the Bank from time to time, along with a scheme of operations of the proposed system and the documents relating to rights, duties and liabilities of the person participating in such system.

(3) The Bank may, before granting approval for any such proposed system, require the applicant or the proposed participants in the system to submit such further information and

particulars as considered necessary and the Bank may also cause such reasonable inspection of the premises, equipments, machineries, books or other documents, or accounts and transactions, relating to the proposed system as considered essential by the Bank, with permission of the applicant.

(4) The Bank may, subject to such modifications and alterations to the scheme and any contract and documents submitted therewith as are considered desirable, approve or reject any application submitted for approval under sub-section (2). Provided that while approving the scheme, the Bank may impose such terms, restrictions, limitations and conditions as it may deem fit, on the applicant or the proposed participant or any other person likely to be affected or benefited thereby. Provided further, that before rejecting any such application the Bank may serve notice on the applicant requiring it to show cause as to why the application should not be rejected and if so requested by the applicant, an opportunity for hearing should also be given.

(5) Any Regulation framed by the Bank for regulation of multiple payment systems shall be binding on the applicant, the proposed participants and any other person likely to be affected or benefited thereby.

(6) No person, other than a person whose application is approved by the Bank under sub-section (4) shall commence or operate any EFT System.

Explanation: For the purpose of this Section:

"EFT System" means the Electronic Fund Transfer System established by these Regulations for carrying out interbank and intrabank funds transfers within India, through EFT centres connected by a network, and providing for settlement of payment obligations arising out of such funds transfers, between participating banks or institutions.

"banking company" means a company as defined in Section 5 of the Banking Regulation Act, 1949, and includes the State Bank of India, constituted by the State Bank of India Act, 1955, a Subsidiary Bank constituted under the State Bank of India (Subsidiary Banks) Act, 1959, a Corresponding New Bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, a cooperative bank, as defined in Section 56 of Part V of the Banking Regulation Act, 1949 and such other banks as may be specified from time to time.

"Financial Institutions" shall bear the meaning assigned to it in Section 4A(1) of the Companies Act, 1956 and includes an institution notified under Sub-section (2) of that Section.

"Institution" means a public financial institution and includes a department or agency of the Central or State Government or any other organisation approved by the Reserve Bank as eligible to open a settlement account with it."

(b) Section 58(2) of the Reserve Bank of India Act, 1934, is amended by inserting after existing clause (P), the following new clause (PP):

"(PP) The regulation of multiple payment systems"

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