

charges under this section notwithstanding the fact that there is no express provision under the Act, rule, regulation or notification under which the service is provided to collect, retain and appropriate e-service charges by the service providers.

(4) The appropriate Government shall, by notification in the Official Gazette, specify the scale of service charges which may be charged and collected by the service providers under this section:

Provided that the appropriate Government may specify different scale of service charges for different types of services.]

7. Retention of electronic records.—(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if—

- (a) the information contained therein remains accessible so as to be usable for a subsequent reference;
- (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;
- (c) the details which will facilitate the identification of the origin, destination, date and time of despatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be despatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

COMMENTS

If any law provides that documents, records or information are required to be retained for any specific period, then, that requirement shall be deemed to have been satisfied if the same is retained in electronic form.

[7A. Audit of documents, etc., maintained in electronic form.—Where in any law for the time being in force, there is a provision for audit of documents, records or information, that provision shall also be applicable for audit of documents, records or information processed and maintained in the electronic form.]

8. Publication of rule, regulation, etc., in Electronic Gazette.—Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette:

1. Ins. by Act 10 of 2009, sec. 8 (w.e.f. 27-10-2009).

Provided that where any rule, regulation, order, by-law, notification or any other matter is published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form.

9. Sections 6, 7 and 8 not to confer right to insist document should be accepted in electronic form.—Nothing contained in sections 6, 7 and 8 shall confer a right upon any person to insist that any Ministry or Department of the Central Government or the State Government or any authority or body established by or under any law or controlled or funded by the Central or State Government should accept, issue, create, retain and preserve any document in the form of electronic records or effect any monetary transaction in the electronic form.

10. Power to make rules by Central Government in respect of ¹[electronic signature].—The Central Government may, for the purposes of this Act, by rules, prescribe—

- (a) the type of ¹[electronic signature];
- (b) the manner and format in which the ¹[electronic signature] shall be affixed;
- (c) the manner or procedure which facilitates identification of the person affixing the ¹[electronic signature];
- (d) control processes and procedures to ensure adequate integrity, security and confidentiality of electronic records or payments; and
- (e) any other matter which is necessary to give legal effect to ²[electronic signatures].

³[10A. Validity of contracts formed through electronic means.—Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.]

CHAPTER IV

ATTRIBUTION, ACKNOWLEDGEMENT AND DESPATCH OF ELECTRONIC RECORDS

11. Attribution of electronic records.—An electronic record shall be attributed to the originator,—

- (a) if it was sent by the originator himself;
- (b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or
- (c) by an information system programmed by or on behalf of the originator to operate automatically.

1. Subs. by Act 10 of 2009, sec. 2, for "digital signature" (w.e.f. 27-10-2009).

2. Subs. by Act 10 of 2009, sec. 2, for "digital signatures" (w.e.f. 27-10-2009).

3. Ins. by Act 10 of 2009, sec. 9 (w.e.f. 27-10-2009).

COMMENTS

If any electronic record was sent by the originator himself or by a person who had the authority to act on behalf of the originator or by an information system programmed by or on behalf of the organiser to operate automatically, then the electronic record shall be attributed to the originator.

12. Acknowledgement of receipt.—(1) Where the originator has not [stipulated] that the acknowledgement of receipt of electronic record 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 record has been received.

(2) Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgement of such electronic record by him, then, unless acknowledgement has been so received, the electronic record shall be deemed to have been never sent by the originator.

(3) Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgement, and the acknowledgement has not been received by the originator 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 acknowledgement has been received by him and specifying a reasonable time by which the acknowledgement must be received by him and if no acknowledgement is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.

13. Time and place of despatch and receipt of electronic record.—(1) Save as otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:—

- (a) if the addressee has designated a computer resource for the purpose of receiving electronic records,—
 - (i) receipt occurs at the time when the electronic record enters the designated computer resource; or
 - (ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;
- (b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

1. Subs. by Act 10 of 2009, sec. 10, for "agreed with the addressee" (w.e.f. 27-10-2009).

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,—

- (a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;
- (b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;
- (c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

CHAPTER V

SECURE ELECTRONIC RECORDS AND SECURE ¹[ELECTRONIC SIGNATURES]

14. **Secure electronic record.**—Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

²15. **Secure electronic signature.**—An electronic signature shall be deemed to be a secure electronic signature if—

- (i) the signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and
- (ii) the signature creation data was stored and affixed in such exclusive manner as may be prescribed.

Explanation.—In case of digital signature, the "signature creation data" means the private key of the subscriber.]

1. Subs. by Act 10 of 2009, sec. 2, for "DIGITAL SIGNATURES" (w.e.f. 27-10-2009).

2. Subs. by Act 10 of 2009, sec. 11, for section 15 (w.e.f. 27-10-2009). Section 15, before substitution, stood as under:

"15. **Secure digital signature.**—If, by application of a security procedure agreed to by the parties concerned, it can be verified that a digital signature, at the time it was affixed, was—

- (a) unique to the subscriber affixing it;
- (b) capable of identifying such subscriber;
- (c) created in a manner or using a means under the exclusive control of the subscriber and is linked to the electronic record to which it relates in such a manner that if the electronic record was altered the digital signature would be invalidated,

then such digital signature shall be deemed to be a secure digital signature."

¹[16. Security procedures and practices.—The Central Government may, for the purposes of sections 14 and 15, prescribe the security procedures and practices:

Provided that in prescribing such security procedures and practices, the Central Government shall have regard to the commercial circumstances, nature of transactions and such other related factors as it may consider appropriate.]

CHAPTER VI

REGULATION OF CERTIFYING AUTHORITIES

17. **Appointment of Controller and other officers.**—(1) The Central Government may, by notification in the Official Gazette, appoint a Controller of Certifying Authorities for the purposes of this Act and may also by the same or subsequent notification, appoint such number of Deputy Controllers ²[Assistant Controllers, other officers and employees] as it deems fit.

(2) The Controller shall discharge his functions under this Act subject to the general control and directions of the Central Government.

(3) The Deputy Controllers and Assistant Controllers shall perform the functions assigned to them by the Controller under the general superintendence and control of the Controller.

(4) The qualifications, experience and terms and conditions of service of Controller, Deputy Controllers ³[Assistant Controllers, other officers and employees] shall be such as may be prescribed by the Central Government.

(5) The Head Office and Branch Office of the office of the Controller shall be at such places as the Central Government may specify, and these may be established at such places as the Central Government may think fit.

(6) There shall be a seal of the Office of the Controller.

18. **Functions of Controller.**—The Controller may perform all or any of the following functions, namely:—

- (a) exercising supervision over the activities of the Certifying Authorities;
- (b) certifying public keys of the Certifying Authorities;

1. Subs. by Act 10 of 2009, sec. 11, for section 16 (w.e.f. 27-10-2009). Section 16, before substitution, stood as under:

“16. Security procedure.—The Central Government shall, for the purposes of this Act, prescribe the security procedure having regard to commercial circumstances prevailing at the time when the procedure was used, including—

- (a) the nature of the transaction;
- (b) the level of sophistication of the parties with reference to their technological capacity;
- (c) the volume of similar transactions engaged in by other parties;
- (d) the availability of alternatives offered to but rejected by any party;
- (e) the cost of alternative procedures; and
- (f) the procedures in general use for similar types of transactions or communications.”

2. Subs. by Act 10 of 2009, sec. 12(a), for “and Assistant Controllers” (w.e.f. 27-10-2009).

3. Subs. by Act 10 of 2009, sec. 12(b), for “and Assistant Controllers” (w.e.f. 27-10-2009).

- (c) laying down the standards to be maintained by the Certifying Authorities;
- (d) specifying the qualifications and experience which employees of the Certifying Authority should possess;
- (e) specifying the conditions subject to which the Certifying Authorities shall conduct their business;
- (f) specifying the contents of written, printed or visual materials and advertisements that may be distributed or used in respect of a ¹[Electronic Signature] Certificate and the public key;
- (g) specifying the form and content of a ¹[Electronic Signature] Certificate and the key;
- (h) specifying the form and manner in which accounts shall be maintained by the Certifying Authorities;
- (i) specifying the terms and conditions subject to which auditors may be appointed and the remuneration to be paid to them;
- (j) facilitating the establishment of any electronic system by a Certifying Authority either solely or jointly with other Certifying Authorities and regulation of such systems;
- (k) specifying the manner in which the Certifying Authorities shall conduct their dealings with the subscribers;
- (l) resolving any conflict of interests between the Certifying Authorities and the subscribers;
- (m) laying down the duties of the Certifying Authorities;
- (n) maintaining a database containing the disclosure record of every Certifying Authority containing such particulars as may be specified by regulations, which shall be accessible to public.

19. Recognition of foreign Certifying Authorities.—(1) Subject to such conditions and restrictions as may be specified, by regulations, the Controller may, with the previous approval of the Central Government, and by notification in the Official Gazette, recognise any foreign Certifying Authority as a Certifying Authority for the purposes of this Act.

(2) Where any Certifying Authority is recognised under sub-section (1), the ¹[Electronic Signature] Certificate issued by such Certifying Authority shall be valid for the purposes of this Act.

(3) The Controller may, if he is satisfied that any Certifying Authority has contravened any of the conditions and restrictions subject to which it was granted recognition under sub-section (1) he may, for reasons to be recorded in writing, by notification in the Official Gazette, revoke such recognition.

²**20. Controller to act as repository.**—[Rep. by the Information and Technology (Amendment) Act, 2008, sec. 13.]

1. Subs. by Act 10 of 2009, sec. 2, for "Digital Signature" (w.e.f. 27-10-2009).

2. Section 20, before omission, stood as under:

"20. Controller to act as repository.—(1) The Controller shall be the repository of all Digital Signature Certificates issued under this Act.

21. Licence to issue ¹[Electronic Signature] Certificates.—(1) Subject to the provisions of sub-section (2), any person may make an application to the Controller for a licence to issue ¹[Electronic Signature] Certificates.

(2) No licence shall be issued under sub-section (1), unless the applicant fulfills such requirements with respect to qualification, expertise, manpower, financial resources and other infrastructure facilities, which are necessary to issue ¹[Electronic Signature] Certificates as may be prescribed by the Central Government.

(3) A licence granted under this section shall—

- (a) be valid for such period as may be prescribed by the Central Government;
- (b) not be transferable or heritable;
- (c) be subject to such terms and conditions as may be specified by the regulations.

22. Application for licence.—(1) Every application for issue of a licence shall be in such form as may be prescribed by the Central Government.

(2) Every application for issue of a licence shall be accompanied by—

- (a) a certification practice statement;
- (b) a statement including the procedures with respect to identification of the applicant;
- (c) payment of such fees, not exceeding twenty-five thousand rupees as may be prescribed by the Central Government;
- (d) such other documents, as may be prescribed by the Central Government.

23. Renewal of licence.—An application for renewal of a licence shall be—

- (a) in such form;
- (b) accompanied by such fees, not exceeding five thousand rupees, as may be prescribed by the Central Government and shall be made not less than forty-five days before the date of expiry of the period of validity of the licence.

24. Procedure for grant or rejection of licence.—The Controller may, on receipt of an application under sub-section (1) of section 21, after considering the documents accompanying the application and such other factors, as he deems fit, grant the licence or reject the application:

Contd. from previous page

(2) The Controller shall—

- (a) make use of hardware, software and procedures that are secure from intrusion and misuse;
- (b) observe such other standards as may be prescribed by the Central Government, to ensure that the secrecy and security of the digital signatures are assured.

(3) The Controller shall maintain a computerised data base of all public keys in such a manner that such data base and the public keys are available to any member of the public.

1. Subs. by Act 10 of 2009, sec. 2, for "Digital Signature" (w.e.f. 27-10-2009).

Provided that no application shall be rejected under this section unless the applicant has been given a reasonable opportunity of presenting his case.

25. Suspension of licence.—(1) The Controller may, if he is satisfied after making such inquiry, as he may think fit, that a Certifying Authority has—

- (a) made a statement in, or in relation to, the application for the issue or renewal of the licence, which is incorrect or false in material particulars;
- (b) failed to comply with the terms and conditions subject to which the licence was granted;
- ¹[(c) failed to maintain the procedures and standards specified in section 30;]
- (d) contravened any provisions of this Act, rule, regulation or order made thereunder;

revoke the licence:

Provided that no licence shall be revoked unless the Certifying Authority has been given a reasonable opportunity of showing cause against the proposed revocation.

(2) The Controller may, if he has reasonable cause to believe that there is any ground for revoking a licence under sub-section (1), by order, suspend such licence pending the completion of any enquiry ordered by him:

Provided that no licence shall be suspended for a period exceeding ten days unless the Certifying Authority has been given a reasonable opportunity of showing cause against the proposed suspension.

(3) No Certifying Authority whose licence has been suspended shall issue any ²[Electronic Signature] Certificate during such suspension.

26. Notice of suspension or revocation of licence.—(1) Where the licence of the Certifying Authority is suspended or revoked, the Controller shall publish notice of such suspension or revocation, as the case may be, in the data base maintained by him.

(2) Where one or more repositories are specified, the Controller shall publish notices of such suspension or revocation, as the case may be, in all such repositories:

Provided that the data base containing the notice of such suspension or revocation, as the case may be, shall be made available through a web site which shall be accessible round the clock:

Provided further that the Controller may, if he considers necessary, publicise the contents of data base in such electronic or other media, as he may consider appropriate.

1. Subs. by S.O. 1015(E), dated 19th September, 2002, for clause (c) (w.e.f. 19-9-2002). Clause (c), before substitution, stood as under:

"(c) failed to maintain the standards specified under clause (b) of sub-section (2) of section 20;" (w.e.f. 19-9-2002)."

2. Subs. by Act 10 of 2009, sec. 2, for "Digital Signature" (w.e.f. 27-10-2009).

27. Power to delegate.—The Controller may, in writing, authorise the Deputy Controller, Assistant Controller or any officer to exercise any of the powers of the Controller under this Chapter.

28. Power to investigate contraventions.—(1) The Controller or any officer authorised by him in this behalf shall take up for investigation any contravention of the provisions of this Act, rules or regulations made thereunder.

(2) The Controller or any officer authorised by him in this behalf shall exercise the like powers which are conferred on Income-tax authorities under Chapter XIII of the Income-tax Act, 1961 (43 of 1961), and shall exercise such powers, subject to such limitations laid down under that Act.

29. Access to computers and data.—(1) Without prejudice to the provisions of sub-section (1) of section 69, the Controller or any person authorised by him shall, if he has reasonable cause to suspect that ¹[any contravention of the provisions of this Chapter] has been committed, have access to any computer system, any apparatus, data or any other material connected with such system, for the purpose of searching or causing a search to be made for obtaining any information or data contained in or available to such computer system.

(2) For the purposes of sub-section (1), the Controller or any person authorised by him may, by order, direct any person incharge of, or otherwise concerned with the operation of, the computer system, data apparatus or material, to provide him with such reasonable technical and other assistance as he may consider necessary.

30. Certifying Authority to follow certain procedures.—Every Certifying Authority shall,—

- (a) make use of hardware, software, and procedures that are secure from intrusion and misuse;
- (b) provide a reasonable level of reliability in its services which are reasonably suited to the performance of intended functions;
- (c) adhere to security procedures to ensure that the secrecy and privacy of the ²[electronic signatures] are assured; ³[***]
- ⁴[(ca) be the repository of all Electronic Signature Certificates issues under this Act;]
- ⁴[(cb) publish information regarding its practices, Electronic Signature Certificates and current status of such certificate; and]
- (d) observe such other standards as may be specified by regulations.

31. Certifying Authority to ensure compliance of the Act, etc.—Every Certifying Authority shall ensure that every person employed or otherwise engaged by it complies, in the course of his employment or engagement, with the provisions of this Act, rules, regulations or orders made thereunder.

32. Display of licence.—Every Certifying Authority shall display its licence at a conspicuous place of the premises in which it carries on its business.

1. Subs. by Act 10 of 2009, sec. 14, for "any contravention of the provisions of this Act, rules or regulations made thereunder" (w.e.f. 27-10-2009).

2. Subs. by Act 10 of 2009, sec. 2, for "digital signatures" (w.e.f. 27-10-2009).

3. The word "and" omitted by Act 10 of 2009, sec. 15(i) (w.e.f. 27-10-2009).

4. Ins. by Act 10 of 2009, sec. 15(ii) (w.e.f. 27-10-2009).

33. Surrender of licence.—(1) Every Certifying Authority whose licence is suspended or revoked shall immediately after such suspension or revocation, surrender the licence to the Controller.

(2) Where any Certifying Authority fails to surrender a licence under sub-section (1), the person in whose favour a licence is issued, shall be guilty of an offence and shall be punished with imprisonment which may extend up to six months or a fine which may extend up to ten thousand rupees or with both.

34. Disclosure.—(1) Every Certifying Authority shall disclose in the manner specified by regulations—

- (a) its ¹[Electronic Signature] Certificate ²[***]
- (b) any certification practice statement relevant thereto;
- (c) notice of the revocation or suspension of its Certifying Authority certificate, if any; and
- (d) any other fact that materially and adversely affects either the reliability of a ¹[Electronic Signature] Certificate, which that Authority has issued, or the Authority's ability to perform its services.

(2) Where in the opinion of the Certifying Authority any event has occurred or any situation has arisen which may materially and adversely affect the integrity of its computer system or the conditions subject to which an ¹[Electronic Signature] Certificate was granted, then, the Certifying Authority shall—

- (a) use reasonable efforts to notify any person who is likely to be affected by that occurrence; or
- (b) act in accordance with the procedure specified in its certification practice statement to deal with such event or situation.

CHAPTER VII

³[ELECTRONIC SIGNATURE] CERTIFICATES

35. Certifying authority to issue ¹[Electronic Signature] Certificate.—(1) Any person may make an application to the Certifying Authority for the issue of an ¹[Electronic Signature] Certificate in such form as may be prescribed by the Central Government.

(2) Every such application shall be accompanied by such fee not exceeding twenty-five thousand rupees as may be prescribed by the Central Government, to be paid to the Certifying Authority:

Provided that while prescribing fees under sub-section (2) different fees may be prescribed for different classes of applicants.

(3) Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.

1. Subs. by Act 10 of 2009, sec. 2, for "Digital Signature" (w.e.f. 27-10-2009).

2. The words "which contains the public key corresponding to the private key used by that Certifying Authority to digitally sign another Digital Signature Certificate;" omitted by Act 10 of 2009, sec. 16 (w.e.f. 27-10-2009).

3. Subs. by Act 10 of 2009, sec. 2, for "DIGITAL SIGNATURE" (w.e.f. 27-10-2009).