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असाधारण

EXTRAORDINARY

भाग II— खण्ड 1

PART II— Section 1

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 5th February, 2009/Magha 16, 1930 (Saka)

The following Act of Parliament received the assent of the President on the 5th February, 2009, and is hereby published for general information:—

THE INFORMATION TECHNOLOGY (AMENDMENT) ACT, 2008

No. 10 OF 2009

[5th February, 2009.]

An Act further to amend the Information Technology Act, 2000.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. (1) This Act may be called the Information Technology (Amendment) Act, 2008.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

PART II

AMENDMENTS TO THE INFORMATION TECHNOLOGY ACT, 2000

Substitution of words "digital signature" by words "electronic signature".

2. In the Information Technology Act, 2000 (hereinafter in this Part referred to as the principal Act), for the words "digital signature" occurring in the Chapter, section, sub-section and clause referred to in the Table below, the words "electronic signature" shall be substituted.

TABLE

S.No.	Chapter/section/sub-section/clause
(1)	clauses (d), (g), (h) and (zg) of section 2;
(2)	section 5 and its marginal heading;
(3)	marginal heading of section 6;
(4)	clauses (a), (b), (c) and (e) of section 10 and its marginal heading;
(5)	heading of Chapter V;
(6)	clauses (f) and (g) of section 18;
(7)	sub-section (2) of section 19;
(8)	sub-sections (1) and (2) of section 21 and its marginal heading;
(9)	sub-section (3) of section 25;
(10)	clause (c) of section 30;
(11)	clauses (a) and (d) of sub-section (1) and sub-section (2) of section 34;
(12)	heading of Chapter VII;
(13)	section 35 and its marginal heading;
(14)	section 64;
(15)	section 71;
(16)	sub-section (1) of section 73 and its marginal heading;
(17)	section 74; and
(18)	clauses (d), (n) and (o) of sub-section (2) of section 87.

Amendment of section 1.

3. In section 1 of the principal Act, for sub-section (4), the following sub-sections shall be substituted, namely:—

"(4) Nothing in this Act shall apply to documents or transactions specified in the First Schedule:

Provided that the Central Government may, by notification in the Official Gazette, amend the First Schedule by way of addition or deletion of entries thereto.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament."

Amendment of section 2.

4. In section 2 of the principal Act,—

(A) after clause (h), the following clause shall be inserted, namely:—

'(ha) "communication device" means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image;';

(B) for clause (j), the following clause shall be substituted, namely:—

'(j) "computer network" means the inter-connection of one or more computers or computer systems or communication device through—

(i) the use of satellite, microwave, terrestrial line, wire, wireless or other communication media; and

(ii) terminals or a complex consisting of two or more inter-connected computers or communication device whether or not the inter-connection is continuously maintained;';

(C) in clause (n), the word "Regulations" shall be omitted;

(D) after clause (n), the following clauses shall be inserted, namely:—

'(na) "cyber cafe" means any facility from where access to the internet is offered by any person in the ordinary course of business to the members of the public;

(nb) "cyber security" means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosure, disruption, modification or destruction;'

(E) after clause (t), the following clauses shall be inserted, namely:—

'(ta) "electronic signature" means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature;

(tb) "Electronic Signature Certificate" means an Electronic Signature Certificate issued under section 35 and includes Digital Signature Certificate;'

(F) after clause (u), the following clause shall be inserted, namely:—

'(ua) "Indian Computer Emergency Response Team" means an agency established under sub-section (1) of section 70B;'

(G) in clause (v), for the words "data, text", the words "data, message, text" shall be substituted;

(H) for clause (w), the following clause shall be substituted, namely:—

'(w) "intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes;'

5. In Chapter II of the principal Act, for the heading, the heading "DIGITAL SIGNATURE AND ELECTRONIC SIGNATURE" shall be substituted.

Amendment of heading of Chapter II.

6. After section 3 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 3A.

"3A. (1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which—

Electronic signature.

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if—

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory or, as the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.”

Insertion of
new section
6A.

Delivery of
services by
service
provider.

7. After section 6 of the principal Act, the following section shall be inserted, namely:—

“6A. (1) The appropriate Government may, for the purposes of this Chapter and for efficient delivery of services to the public through electronic means authorise, by order, any service provider to set up, maintain and upgrade the computerised facilities and perform such other services as it may specify by notification in the Official Gazette.

Explanation.—For the purposes of this section, service provider so authorised includes any individual, private agency, private company, partnership firm, sole proprietor firm or any such other body or agency which has been granted permission by the appropriate Government to offer services through electronic means in accordance with the policy governing such service sector.

(2) The appropriate Government may also authorise any service provider authorised under sub-section (1) to collect, retain and appropriate such service charges, as may be prescribed by the appropriate Government for the purpose of providing such services, from the person availing such service.

(3) Subject to the provisions of sub-section (2), the appropriate Government may authorise the service providers to collect, retain and appropriate service 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.”

Insertion of
new section
7A.

Audit of
documents,
etc.,
maintained in
electronic
form.

Insertion of
new section
10A.

Validity of
contracts
formed
through
electronic
means.

8. After section 7 of the principal Act, the following section shall be inserted, namely:—

“7A. 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.”

9. After section 10 of the principal Act, the following section shall be inserted, namely:—

“10A. 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.”

