CHAPTER 308B

ELECTRONIC TRANSACTIONS

ARRANGEMENT OF SECTIONS

SECTION

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SECTION

CHAPTER 308B

ELECTRONIC TRANSACTIONS

An Act to make provision for electronic transactions and for related matters. 2001-2.

[8th March, 2001] Commencement.

PART I

Preliminary

1. This Act is cited as the *Electronic Transactions Act, 2001*. Short title.

2. In this Act, Interpretation.

"accredited certificate" means an electronic record that

(i) associates a signature verification device to a person,

(ii) confirms the identity of that person,

(iii) is issued by an authorized certification service provider, and

(iv) meets the relevant criteria;

"addressee", in relation to an electronic record, means a person who is intended by the originator to receive the electronic record, but does not include a person acting as an intermediary with respect to that electronic record;

"authorized certification service provider" means a certification service provider authorized under section 18(2) to provide accredited certificates;

"certification service provider" means a person who issues identity certificates for the purposes of electronic signatures or provides other services to the public related to electronic signatures;

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"data" means representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer;

"data controller" means a person who, either alone, jointly or in common with other persons, determines the purposes for which and the manner in which any personal electronic signature service is, or is to be, processed;

"electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

"electronic record" means a record created, stored, generated, received or communicated by electronic means but not limited to electronic data interchange, electronic mail, telegram, telex or telecopy;

"information" includes data, text, images, sounds, codes, computer programs, software and databases;

"information-processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or otherwise processing information;

"intermediary", with respect to an electronic record, means a person who, on behalf of another person, sends, receives or stores that electronic record or provides other services with respect to that electronic record;

"originator", in relation to an electronic record, means a person by whom, or on whose behalf, the electronic record purports to have been sent or generated prior to storage, if any, but does not include a person acting as an intermediary with respect to that electronic record;

"person" means an individual who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physiological, mental,

economic, cultural or social identity; and in relation to an artificial person or corporate entity, means the individual or individuals designated to act on behalf of that entity;

"personal data" means any information relating to an identified or identifiable natural person;

"record" means information that is inscribed on a tangible medium or that is stored in an electronic, paper-based or any other medium and is retrievable in perceivable form;

"security procedure" means a procedure established by law or agreement or knowingly adopted by each party that is employed for the purpose of verifying that an electronic signature, record or performance is that of a particular person or for detecting changes or errors in the content of an electronic record;

"signature" includes any symbol executed or adopted, or any methodology or procedure employed or adopted by a person with the intention of authenticating a record, including electronic or digital methods;

"signature creation device" means unique data, including codes or private cryptographic keys, or a uniquely configured physical device which is used by the signatory in creating an electronic signature;

"signature verification device" means unique data, including codes or public cryptographic keys, or a uniquely configured physical device which is used in verifying an electronic signature;

"transaction" includes a transaction of a non-commercial nature.

Non-application of Parts II and III.

3. (1) Parts II and III do not apply to any rule of law requiring writing or signatures for the following matters:

(a) the making, execution or revocation of a will or testamentary instrument;

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(b) the conveyance of real property or the transfer of any interest in real property; or

(c) the creation, performance or enforcement of an indenture, declaration of trust or power of attorney with the exception of constructive and resulting trusts.

(2) Nothing in this Act requires a person who uses, provides or accepts information or a document, to use, provide or accept it in an electronic form without the consent of that person.

(3) Consent for the purpose of subsection (2) may be inferred from a person's conduct if there exists a reasonable assurance that the consent is genuine and that it applies to the information or document.

(4) The Minister may make regulations to provide that this Act, or any provision of this Act as may be specified in the regulations, does not apply to any class of transactions, persons, matters or things specified in the regulations.

Variation by agreement.

4. As between parties involved in generating, sending, receiving, storing or otherwise processing records, any provision of Part II or Part III may be varied by agreement of the parties.

PART II

Legal Requirements Respecting Electronic Records

Legal recognition of electronic records.

5. Information shall not be denied legal effect, validity, admissibility or enforceability solely on the ground that

(a) it is in the form of an electronic record; or

(b) it is not contained in the electronic record purporting to give rise to legal effect, but is referred to in that electronic record.

Requirement for written information.

6. (1) Where the law requires information to be in writing or is described in any statutory provision as being written, that requirement or description is met by an electronic record if the information contained in the electronic record is accessible and is capable of retention for subsequent reference.

(2) Subsection (1) applies whether the requirement for the information to be in writing is in the form of an obligation or the law provides consequences if it is not in writing.

Delivery etc. of information.

7. (1) Where the law requires information to be delivered, dispatched, given or sent to, or to be served on, a person, that requirement is met by doing so in the form of an electronic record if the originator of the electronic record states that the receipt of the electronic record is to be acknowledged and the addressee has acknowledged its receipt.

(2) Subsection (1) applies whether the requirement for delivery, dispatch, giving, sending or serving is in the form of an obligation or the law provides consequences for the information not being delivered, dispatched, given, sent or served.

Electronic signature.

8. (1) Where the law requires the signature of a person, that requirement is met in relation to an electronic record if

(a) a method is used to identify that person and to indicate that person's approval of the information in the electronic record; and

(b) that method is as reliable as is appropriate for the purpose for which the electronic record was generated or communicated, in the light of all the circumstances, including any relevant agreement.

(2) An electronic record that meets the requirements of paragraphs *(a)* and *(b)* of subsection (1) shall not be denied legal effect, validity and enforceability solely on the ground that it is an electronic signature.

(3) Subsection (1) applies whether the requirement for a signature is in the form of an obligation or the law provides consequences for the absence of a signature.

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Original form of information.

9. (1) Where the law requires information to be presented or retained in its original form, that requirement is met by an electronic record

(a) if there exists a reliable assurance as to the integrity of the information from the time it was first generated in its final form as an electronic record or otherwise; and

(b) where it is required that information be presented, if that information is capable of being accurately presented to the person to whom it is to be presented.

(2) Subsection (1) applies whether the requirement for the information to be presented or retained in its original form is in the form of an obligation or the law provides consequences if it is not presented or retained in its original form.

(3) For the purposes of paragraph *(a)* of subsection (1)

(a) the criterion for assessing integrity is whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display; and

(b) the standard of reliability required is to be assessed in the light of the purpose for which the information was generated and all the relevant circumstances.

Retention of electronic records.

10. (1) Where the law requires that certain documents, records or information are to be retained, that requirement is met by retaining electronic records if the following conditions are satisfied:

(a) the information contained in the electronic record is accessible and is capable of retention for subsequent reference;

(b) the electronic record is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and

(c) any information that enables the identification of the origin and destination of an electronic record and the date and time when it was sent or received is retained.

(2) An obligation to retain documents, records or information in accordance with subsection (1) does not extend to any information the sole purpose of which is to enable the electronic record to be sent or received.

(3) A person may satisfy the requirement referred to in subsection (1) by using the services of any other person, if the conditions set out in paragraphs *(a)*, *(b)* and *(c)* of subsection (1) are met.

Admissibility and evidential weight of electronic records.

11. (1) In any legal proceedings, nothing in the rules of evidence shall apply so as to deny the admissibility of an electronic record in evidence solely on the ground that it is an electronic record.

(2) Information in the form of an electronic record shall be given due evidential weight and in assessing the evidential weight of an electronic record, regard shall be had to

(a) the reliability of the manner in which the electronic record was generated, stored or communicated;

(b) the reliability of the manner in which the integrity of the information was maintained;

(c) the manner in which the originator was identified; and

(d) any other relevant factor.

PART III

Communication of Electronic Records

Formation and validity of contracts.

12. (1) Unless otherwise agreed by the parties, an offer, and the acceptance of an offer, in relation to the formation of a contract may be expressed by means of electronic records.

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(2) Where an electronic record is used in the formation of a contract, that contract shall not be denied legal effect, validity or enforceability solely on the ground that an electronic record was used for that purpose.

Recognition by parties of electronic records.

13. As between the originator and the addressee of an electronic record, a declaration of intention or other statement shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic record.

Attribution of electronic records.

14. (1) An electronic record is attributable to a person if the electronic record resulted from the action of the person, his agent, or his electronic device.

(2) As between the originator of the electronic record and the addressee of that record, an addressee is entitled to regard an electronic record as being that of the originator, and to act on that assumption where

(a) in order to ascertain whether the electronic record was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or

(b) the electronic record as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify the electronic record as his own.

(3) Subsection (2) does not apply

(a) as of the time when the addressee received notice from the originator that the electronic record is not that of the originator, and had reasonable time to act accordingly; or

(b) in the case of paragraph *(b)* of subsection (2), at any time when the addressee knew or should have known, had the addressee exercised reasonable care or used any agreed procedure, that the electronic record was not that of the originator.

(4) Where an electronic record is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee, the addressee is entitled to regard the electronic record as received as being what the originator intended to send, and to act on that assumption; but the addressee is not so entitled when the addressee knew or should have known, had the addressee exercised reasonable care or used any agreed procedure, that the transmission resulted in an error in the electronic record as received.

(5) The addressee is entitled to regard each electronic record received as a separate electronic record and to act on that assumption, except to the extent that it duplicates another electronic record and the addressee knew or should have known, had the addressee exercised reasonable care or used any agreed procedure, that the electronic record was a duplicate.

Acknowledgment of receipt of electronic records.

15. (1) Subsections (2), (3) and (4) apply where, on or before sending an electronic record, or by means of that electronic record, the originator has requested or has agreed with the addressee that receipt of the electronic record is to be acknowledged.

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

(a) any communication by the addressee, automated or otherwise; or

(b) any conduct of the addressee that is reasonably sufficient to indicate to the originator that the electronic record has been received.

(3) Where the originator has stated that the electronic record is conditional on receipt of the acknowledgment, the electronic record is to be treated as though it had never been sent until the acknowledgment is received.

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(4) Where the originator has not stated that the electronic record is conditional on receipt of the acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, where no time has been specified or agreed, within a reasonable time, the originator

(a) may give notice to the addressee stating that no acknowledgment has been received and specifying a reasonable time by which the acknowledgment must be received; and

(b) if the acknowledgment is not received within the time specified in paragraph *(a)*, may, upon notice to the addressee, treat the electronic record as though it had never been sent or exercise any other rights the originator may have.

(5) Where the originator receives the addressee's acknowledgment of receipt, it is presumed that the related electronic record was received by the addressee, but that presumption does not imply that the electronic record corresponds to the record received.

(6) Where the acknowledgment of receipt of the addressee states that the related electronic record met technical requirements, either agreed upon or set forth in applicable standards, it is presumed that those requirements have been met.

(7) Except in so far as it relates to the sending or receipt of the electronic record, this section is not intended to deal with the legal consequences that may flow either from that electronic record or from the acknowledgment of its receipt.

Time and place of dispatch and receipt of electronic records.

16. (1) Unless otherwise agreed between the originator and the addressee, the dispatch of an electronic record occurs when it enters an information-processing system outside the control of the originator, or his agent.

(2) Unless otherwise agreed between the originator and the addressee, the time of receipt of an electronic record is determined as follows:

(a) where the addressee has designated an information-processing system for the purpose of receiving electronic records, receipt occurs

(i) at the time when the electronic record enters the designated information-processing system, or

(ii) if the electronic record is sent to an information-processing system of the addressee that is not the designated information-processing system, at the time when the electronic record is retrieved by or comes to the attention of the addressee;

(b) where the addressee has not designated an information-processing system, receipt occurs when the electronic record enters an information-processing system of the addressee or otherwise is retrieved by or comes to the attention of the addressee.

(3) Subsection (2) applies notwithstanding that the place where the information-processing system is located may be different from the place where the electronic record is deemed to be received under subsection (4).

(4) Unless otherwise agreed between the originator and the addressee, an electronic record is deemed to be dispatched 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.

(5) For the purposes of subsection (4)

(a) if the originator or the addressee has more than one place of business, the place of business is that which has the closest relationship to the transaction to which the electronic record relates or, where there is no transaction, the place of business is presumed to be the principal place of business; or

(b) if the originator or the addressee does not have a place of business, it is presumed to be where the originator or the addressee ordinarily resides.

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PART IV

Certification and Accreditation

Electronic signature associated with an accredited certificate.

17. An electronic signature that is associated with an accredited certificate issued by an authorized certification service provider under section 18 is deemed to satisfy the requirements of paragraphs *(a)* and *(b)* of section 8(1).

Certification and revocation of certification.

18. (1) The provision of certification services for electronic signatures is not subject to prior authorization by the Minister; but authorization is required for the purposes of section 8.

(2) The Minister, on

(a) the receipt of an application by a certification service provider for the approval of the provision of accredited certificates; and

(b) the payment of such fee as may be prescribed,

may, if satisfied that the applicant meets the relevant criteria, by notice published in the *Official Gazette*, authorize the applicant to provide accredited certificates.

(3) Subject to subsection (4), the Minister, if satisfied that an authorized certification service provider no longer meets the relevant criteria, may by notice published in the *Official Gazette* revoke an authorization given under subsection (2).

(4) Before revoking an authorization under subsection (3), the Minister shall

(a) give notice in writing to the authorized certification service provider of his intention to do so, indicating his reasons for the proposed revocation; and

(b) invite the authorized certification service provider, within 14 days of the notice, to submit representations in writing as to why the authorization shall not be revoked, and shall consider those representations.

(5) In this section the "relevant criteria" means such policy criteria in respect of electronic signatures or signature products as the Minister may specify by notice published in the *Official Gazette*.

Recognition of external certification service providers.

19. (1) The Minister may, by notice published in the *Official Gazette*, recognise certificates or classes of certificates issued in, or certification service providers or classes of certification service providers established in, any other jurisdiction and, upon such recognition and on payment of such fee as may be prescribed

(a) those certificates or classes of certificates shall be deemed to be accredited certificates; and

(b) those certification service providers or classes of certification service providers shall be deemed to be authorized under section 18(2).

(2) In the determination to accord recognition under subsection (1) the Minister shall have regard to whether

(a) the certificates or classes of certificates are required to, and do in fact, meet obligations equivalent to those required for an accredited certificate; and

(b) the certification service providers or classes of certification service providers are required to, and do in fact, meet criteria equivalent to those required for an authorized certification service provider.

(3) The Minister may, by notice published in the *Official Gazette*, revoke any recognition accorded under subsection (1), but, before doing so, the Minister shall

(a) advise the person affected of his intention to do so;

(b) indicate his reasons for the proposed revocation; and

(c) invite that person, within 14 days of the notice, to submit representations in writing as to why the recognition should not be revoked, and shall consider those representations.

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Liability of authorized certification service provider.

20. (1) By issuing an accredited certificate, an authorized certification service provider is liable to any person who reasonably relied on the certificate for

(a) the accuracy of all information in the accredited certificate as from the date on which it was issued, unless the authorized certification service provider has stated otherwise in the accredited certificate;

(b) assurance that the person identified in the accredited certificate held, at the time the accredited certificate was issued, the signature creation device corresponding to the signature verification device given or identified in the accredited certificate;

(c) assurance that the signature creation device and the signature verification device functioned together in a complementary manner, where the service provider generates both devices,

unless the person who relied on the accredited certificate knows or ought reasonably to have known that the authorization of the certification service provider has been revoked.

(2) An authorized certification service provider is not liable for errors in the information in an accredited certificate where

(a) the information was provided by or on behalf of the person identified in the accredited certificate; and

(b) the certification service provider can demonstrate that he has taken all reasonably practical measures to verify that information.

(3) An authorized certification service provider that

(a) indicates in the accredited certificate limits on the uses of that certificate; and

(b) makes those limits known to third parties,

is not liable for damages arising from the use of the accredited certificate contrary to those limits.

(4) The limits in subsection (3) may include a limit on the value of transactions for which the accredited certificate is valid.

PART V

Encryption

Regulations for encryption.

21. (1) The Minister may make regulations

(a) respecting the use, import and export of encryption programmes or other encryption products;

(b) prohibiting the export of encryption programmes or other encryption products from Barbados generally or subject to such restrictions as may be prescribed.

(2) Subject to any regulations made under subsection (1), a person may use any encryption programmes or other encryption product of any bit size or other measure of the strength of the encryption that has lawfully come into the possession of that person.

PART VI

Protection of Data and Privacy

Restrictions on disclosure of information.

22. (1) Subject to this Part, no information that

(a) has been obtained under or by virtue of the provisions of this Act, and

(b) relates to the private affairs of a natural person or to any particular business,

shall, during the lifetime of that person or as long as that business continues to be carried on, be disclosed without the consent of that natural person or the person for the time being carrying on that business.

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(2) Subsection (1) does not apply to any disclosure of information which is made

(a) for the purpose of facilitating the carrying out of any functions under Part IV;

(b) for the purpose of facilitating the carrying out of prescribed public functions of any persons;

(c) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;

(d) for the purposes of any civil proceedings that

(i) relate to the provision of certification or accreditation services, and

(ii) are proceedings to which a person authorized in accordance with the provisions of Part IV is a party.

(3) In subsection (2)(*b)* "public functions" includes any function conferred by or in accordance with any provision contained in or made under any enactment.

(4) If information is disclosed to the public in circumstances in which the disclosure does not contravene this section, this section shall not prevent its further disclosure by any person.

(5) Any person who discloses any information in contravention of this section is guilty of an offence and is liable

(a) on summary conviction, to a fine of $10 000;

(b) on conviction on indictment, to imprisonment for a term of 2 years or to a fine of $10 000 or to both.

(6) The Minister may make regulations prescribing standards for the processing of personal data whether that data originates within or outside of Barbados.

(7) The regulations may provide for

(a) the registration of the standards by data controllers and data processors;

(b) the establishment of a register that is available for public inspection, showing particulars of data controllers and data processors who have registered the standards and the dates thereof and the countries in respect of which the registration applies;

(c) the application of the standards to those countries specified in the regulations; and

(d) different standards to be applied in respect of personal data originating from different countries.

(8) A data controller or data processor who registers a standard referred to in subsection (6) must comply with the standard and any amendments made to that standard in respect of any personal data that

(a) originates from a country to which the standard applies; and

(b) is collected by the data controller during the period of registration.

(9) A data controller or data processor who contravenes subsection (8) is guilty of an offence and is liable on summary conviction to imprisonment for a term of 6 months or to a fine of $5 000 or to both.

PART VII

Intermediaries

Liability of intermediaries.

23. (1) An intermediary is not subject to any civil or criminal liability in respect of any information contained in an electronic record in respect of which the intermediary provides services where the intermediary

(a) was not the originator of that electronic record;

(b) has no actual knowledge that the information gives rise to civil or criminal liability;

(c) is not aware of any facts or circumstances from which the likelihood of civil or criminal liability in respect of the information ought reasonably to have been known; or

(d) follows the procedure set out in section 24, if the intermediary

(i) acquires knowledge that the information gives rise to civil or criminal liability, or

(ii) becomes aware of facts or circumstances from which the likelihood of civil or criminal liability in respect of the information ought reasonably to have been known.

(2) An intermediary is not required to monitor any information contained in an electronic record in respect of which the intermediary provides services in order to establish knowledge of, or to become aware of, facts or circumstances to determine whether or not the information gives rise to civil or criminal liability.

(3) Nothing in this section relieves an intermediary from complying with any court order, injunction, writ, ministerial direction, regulatory requirement, or contractual obligation in respect of an electronic record.

Procedure for dealing with unlawful, defamatory information etc.

24. (1) Where an intermediary has actual knowledge that the information in an electronic record gives rise to civil or criminal liability, or is aware of facts or circumstances from which the likelihood of civil or criminal liability in respect of the information in an electronic record ought reasonably to have been known, as soon as practicable the intermediary shall

(a) remove the information from any information-processing system within the intermediary's control and cease to provide or offer to provide services in respect of that information; and

(b) notify the Minister or appropriate law enforcement agency of the relevant facts and of the identity of the person for whom

the intermediary was supplying services in respect of the in formation, where the identity of that person is known to the intermediary.

(2) Where the Minister is notified in respect of any information under subsection (1), the Minister may direct the intermediary to

(a) remove the electronic record from any information-processing system within the control of the intermediary;

(b) cease to provide services to the person to whom the intermediary was supplying services in respect of that electronic record; and

(c) cease to provide services in respect of that electronic record.

(3) An intermediary is not liable, whether in contract, tort, under statute or pursuant to any other right, to any person, including any person on whose behalf the intermediary provides services in respect of information in an electronic record, for any action the intermediary takes in good faith in exercise of the powers conferred by, or as directed by the Minister under, this section.

PART VIII

General

Liability of corporate officers.

25. Where a corporation is guilty of an offence under this Act or regulations made under this Act, every person who at the time of the commission of the offence was a director or officer of the corporation is guilty of the like offence unless he proves that the contravention took place without his consent or that he exercised all due diligence to prevent the commission of the offence.

General penalties.

26. Any person who is guilty of an offence under this Act or any regulations made under the Act for which no penalty is expressly provided is liable on summary conviction to a fine of $10 000 or to imprisonment for a term of 6 months or to both.

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Regulations.

27. The Minister may make regulations generally for the purpose of giving effect to this Act.

Crown to be bound.

28. (1) This Act binds the Crown.

(2) Notwithstanding subsection (1), nothing in this Act requires any Government Department or Government Agency to generate, send, receive, store or otherwise process any record by electronic means; but the Minister may, by notice published in the *Official Gazette*, indicate that a Government Department will receive and process electronic records relating to such matters as may be specified in that notice.