

THE ELECTRONIC TRANSACTIONS ACT, 2006
(Act 15 of 2006)

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SCHEDULES

JAMAICA

No. 15 -2006

I assent,

[L.S.]

(Sgd.) Prof. H. O. Hall
Governor-General.

21st December, 2006

AN ACT to Facilitate electronic transactions and for connected matters.

The date notified by the Minister.
[*Bringing the Act into operation*]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Electronic Transactions Act, 2006, and shall come into operation on a day appointed by the Minister by notice published in the *Gazette*.

Short title
and
commence-
ment.

Part I. Preliminary

2. In this Act—

Inter-
pretation.

“addressee” means a person who the originator of an electronic document intends to receive the document, but does not include a person acting as an intermediary with respect to that document;

“automated communications device” means a computer program or an electronic or other automated device used to initiate or respond to electronic communications in whole or in part, without review or action by an individual;

“certificate” means any record that—

- (a) identifies the entity that issues it;
- (b) names or otherwise identifies the signatory or a device (including an automated communications device) under the control of the signatory;
- (c) specifies its operational period;
- (d) is digitally signed by the entity that issues it;
- (e) contains a public key that corresponds to a private key under the control of the originator of the electronic document to which the certificate relates; and
- (f) specifies any other matter required to be specified under regulations made pursuant to section 37;

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

“Certifying Authority” means the Certifying Authority established under section 33;

“data” includes—

- (a) material in whatever form stored in an electronic communications system;
- (b) the whole or part of a computer program; and
- (c) a representation suitable for processing in an electronic communications system;

“electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or

similar capabilities, and references to carrying out any act “electronically” shall be similarly construed;

“electronic communications system” means a system for creating, generating, sending, receiving, storing, displaying or otherwise processing electronic documents or data;

“electronic document” means information that is created, generated, communicated, stored, displayed or processed by electronic means;

“electronic signature” means information that—

- (a) is contained in, attached to or logically associated with, an electronic document; and
- (b) is used by a signatory to indicate his adoption of the content of that document,

but does not include any signature produced by a facsimile machine or by an electronic scanning device;

“encrypted signature” means an electronic signature that is encrypted by means of a private key or other encrypted signature creation device;

“encrypted signature creation device” means unique data, including codes or private cryptographic keys, or a uniquely configured physical device, used by a signatory in creating an encrypted signature;

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

“information technology requirements” includes software requirements;

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

“signatory” means a person who by means of an encrypted signature creation device has (whether acting himself or

through another person, or an automated communications device, acting on his behalf) affixed his encrypted signature to an electronic document;

“traffic data” means information about the communication of data using an electronic communications system, including the—

- (a) number and kind of communications;
- (b) origin of the communication;
- (c) destination of the communication;
- (d) time when the communication was sent; and
- (e) time when the communication was received.

Objects

3.—(1) The objects of this Act are to—

- (a) facilitate electronic transactions by means of reliable electronic documents;
- (b) promote the development of the legal and business infrastructure necessary to implement secure electronic commerce;
- (c) eliminate barriers to electronic commerce resulting from uncertainties over writing and signature requirements;
- (d) promote public confidence in the integrity and reliability of electronic documents and electronic transactions, in particular through the use of encrypted signatures to ensure the authenticity and integrity of electronic documents;
- (e) establish uniformity of legal rules and standards regarding the authentication and integrity of electronic documents;
- (f) facilitate electronic filing of information with Government agencies and statutory bodies and to promote efficient delivery of Government services by means of reliable electronic documents.

(2) This Act shall be construed in accordance with the objects set out in subsection (1), taking into account what is commercially reasonable in each case.

4. The provisions of this Act shall not apply to the transactions set out in the First Schedule, to the extent specified in the First Schedule.

Exclusions
First
Schedule

5.—(1) Except as provided in Part IV, nothing in this Act shall be construed as imposing an obligation on any person to create, give, store or receive any information electronically.

Agreement
required

(2) This Act applies to any transaction between parties each of whom has agreed to conduct the transaction electronically.

(3) The fact as to whether or not a party agrees to conduct a transaction electronically shall be determined—

- (a) where the party is the Government, by express stipulation of the Government;
- (b) in the case of any other party, by the context and surrounding circumstances including the party's conduct.

(4) A party that agrees to conduct a particular transaction electronically may refuse to conduct other transactions electronically.

(5) Except as otherwise provided hereunder, as between the parties to a transaction conducted electronically, any provision of Part II or Part III may be varied by agreement.

Part II. *Application of legal requirements to electronic transactions*

6. For the purposes of any law, information shall not be invalid or inadmissible solely on the ground that the information—

Validity of
electronic
transactions

- (a) is created, stored or communicated electronically; or
- (b) is referred to but is not contained in an electronic document, if the information being referred to is known to and accepted by the party against whom it is relied upon.

7.—(1) Where any law requires, or refers to, the giving of information in writing, information that is given electronically shall be taken to be given in writing if—

Requirements
to give
information
in writing

- (a) when the information was given, it was reasonable to expect that the information would be readily accessible to, and capable of retention for subsequent reference by, the addressee;

- (b) where the information is to be given to the Government and the Government requires—
 - (i) that the information be given in a particular way in accordance with particular technology requirements; or
 - (ii) that particular action be taken to verify the receipt of the information,

the Government's requirement has been met; and

- (c) where the information is to be given to a person other than the Government, that person consents to the information being given electronically.

(2) This section applies to a requirement or permission to give information, whether or not any of the words “give”, “send”, “serve”, or any other word, is used to designate the requirement or permission.

(3) For the purposes of this section, “the giving of information” includes—

- (a) making an application;
- (b) making or lodging a claim;
- (c) serving a notice;
- (d) lodging a return;
- (e) making a request;
- (f) making a declaration;
- (g) lodging or issuing a certificate;
- (h) lodging an objection;
- (i) giving a statement of reasons.

(4) Where a law referred to in subsection (1) requires more than one copy of the information to be submitted to a person, that requirement shall be taken to have been satisfied by giving the information to the person electronically in accordance with the provisions of this section.

8.—(1) A law requiring a person's signature in relation to any information shall be taken to have been met where the information is given electronically and—

Requirements
for signature

- (a) a method is used to identify the person and to show the person's approval of the information given;
- (b) having regard to all the relevant circumstances when that method was used, including any relevant agreement, the method was as reliable as was appropriate for the purposes for which the information was communicated;
- (c) if the signature is required to be given to the Government and the Government requires that the method used be in accordance with particular information technology requirements, the Government's requirement has been met; and
- (d) if the signature is required to be given to a person other than the Government, that person consents to that requirement being met by using the method mentioned in paragraph (a).

(2) Subject to subsection (3), an encrypted signature shall be presumed to have satisfied the requirements of subsection (1) (a) and (b) if that signature is—

- (a) uniquely linked to the person whose signature is required;
- (b) capable of identifying that person;
- (c) created by using means that such person can maintain under his sole control; and
- (d) linked to the information to which it relates in such a manner that any subsequent alteration of the information is revealed.

(3) Subsection (2) shall not be construed as limiting in any way the ability of any person to—

- (a) establish in any other manner, for the purpose of satisfying the requirement referred to in subsection (1), the

reliability of an encrypted signature or other method of indicating identity and approval;

- (b) adduce evidence of the unreliability of an encrypted signature.

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

(5) In determining whether, or to what extent, a certificate or an encrypted signature is legally effective, no regard shall be had to the geographic location—

- (a) where the certificate is issued or the encrypted signature is created or used; or
- (b) of the place of business of the certification service provider or signatory.

(6) This section shall not affect the operation of any other law that requires—

- (a) information that is given electronically to contain an encrypted signature (however described);
- (b) information that is given electronically to contain a unique identification in an electronic form; or
- (c) a particular method to be used for information that is given electronically to identify the originator and to show that the originator approved the information given.

Requirements
for
attestation,
etc. of
documents.

9. Where any law requires a document or signature to be made, attested, acknowledged, authenticated, notarized or verified, or to be made under oath, by any person, that requirement is met if the following are attached to or logically associated with the document—

- (a) the encrypted signature of that person;
- (b) in the case of a signature or a document requiring a signature, a statement by that person, attesting to his identity;

- (c) a statement by that person certifying the performance of all obligations imposed by any other law governing the legal validity of the document; and
- (d) all other information required to be included under any other law.

10.—(1) Where any law requires or permits information to be presented in its original form, or to be made available for inspection, that requirement is met where the information is produced electronically if—

Requirements to produce a document for inspection or in original form.

- (a) having regard to all the relevant circumstances at the time, the method of producing the information electronically provided a reliable means of assuring the maintenance of the integrity of the information;
- (b) when the information was sent, it was reasonable to expect that it would be readily accessible so as to be useable for subsequent reference;
- (c) where the information is to be produced to the Government and the Government requires that—
 - (i) an electronic form of the document be produced in a particular way, in accordance with particular information technology requirements; or
 - (ii) particular action be taken to verify receipt of the document,

the Government's requirement has been met; and

- (d) where the document is to be produced to a person other than the Government, that person consents to the document being produced electronically.

(2) For the purposes of subsection (1)(a), the criteria for assessing integrity are—

- (a) that 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;

- (b) the purpose for which the information is produced; and
- (c) any other relevant factor.

Requirements
for keeping
information

11.—(1) Where any law requires a person to keep information (whether or not in its original form, in writing or in electronic form) for a specified period, that requirement is met by keeping the information electronically if the following conditions are satisfied—

- (a) when the information was first generated in electronic form, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference;
- (b) having regard to all the relevant circumstances when the information was first generated in electronic form, the method of retaining the information in electronic form provided a reliable means of assuring the maintenance of the integrity of the information that was so generated;
- (c) the traffic data relating to the information is also kept in electronic form during the specified period;
- (d) when the traffic data was first generated in electronic form, it was reasonable to expect that it would be readily accessible so as to be useable for subsequent reference; and
- (e) if the law requires the information to be kept in electronic form on a particular kind of data storage medium, that requirement is met throughout the specified period.

(2) 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 subsection (1)(a) to (e) are met.

Admissibility
and
evidential
weight of
information
in electronic
form

12.—(1) In any legal proceedings, nothing in the rules of evidence shall apply so as to deny the admissibility in evidence of any information given electronically—

- (a) solely on the ground that the information is given electronically; or

- (b) if the information is the best evidence that the person adducing it could reasonably be expected to obtain, on the ground that the information is not in its original form.

(2) In assessing the evidential weight of information given electronically, regard shall be had to—

- (a) the reliability of the manner in which the information 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.

(3) This section shall not affect the application of section 31G or 31H of the Evidence Act (which relate to the admissibility of computer generated evidence).

13.—(1) Where any law requires or refers to serving or delivering information, that information shall be taken to have been served or delivered, as the case may be, if—

Information required to be served or delivered.

- (a) the information is contained in an electronic document sent to the person upon whom such service or delivery is required to be effected; and
- (b) that person acknowledges the receipt of the information.

(2) Nothing in this section affects any rule relating to the time for service or delivery of any information.

14. Where any law prescribes a form, the Minister responsible may make regulations providing for an electronic form that is substantially the same as the prescribed form, and the electronic form may be used for the same purposes as the prescribed form.

Electronic alternative to prescribed forms.

15. Where any law requires that a payment be made to the Government, the Minister responsible may make regulations—

Electronic payment.

- (a) for the purpose of authorizing or facilitating the making of such payment by electronic means;

- (b) specifying the manner in which such payment may be made by electronic means;
- (c) for the purpose of securing the integrity, security and confidentiality of such payment by electronic means.

Formation
and validity
of contracts.

16.—(1) In the context of the formation of contracts, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed electronically.

(2) As between the originator and the addressee of an electronic document, a declaration of intention or other statement or delivery of a deed shall not be denied legal validity or enforceability solely on the ground that it is in an electronic document.

(3) A contract may be formed by the interaction of the automated communications device of each party, even if no individual was aware of or reviewed the actions of the device or the resulting terms and agreements.

(4) Subject to subsection (5), a contract may be formed by the interaction of an automated communications device and an individual, acting on the individual's own behalf or for another person, including an interaction in which the individual performs actions that the individual—

- (a) is free to refuse to perform; and
- (b) knows or has reason to know will cause the device to complete the transaction.

(5) In the circumstances referred to in subsection (4), the individual or the person on whose behalf the individual is acting, as the case may be, shall not be bound by the terms of the contract unless, prior to the formation of the contract, those terms were capable of being reviewed by the individual.

General provisions relating to electronic transactions

Attribution
of electronic
documents.

17.— (1) An electronic document is sent by a person (A) if—

- (a) as between A and any other person, the document was sent by A himself; or

- (b) as between A and the addressee, the document was sent by—
 - (i) another person who has the authority to act on behalf of A; or
 - (ii) an automated communications device programmed, by or on behalf of A, to operate automatically.

(2) As between the originator and the addressee, the addressee is entitled to assume that an electronic document is being sent by the originator and to act on that assumption if—

- (a) in order to ascertain whether the document is that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or
- (b) the document as received by the addressee resulted from the actions of a person whose relationship with the originator enabled that person to gain access to a method used by the originator to identify electronic documents as his own.

(3) Subsection (2) does not apply—

- (a) as of the time when the addressee has—
 - (i) received notice from the originator that the electronic document was not sent by the originator; and
 - (ii) had reasonable time to act accordingly; or
- (b) in any case falling within subsection (2)(b), at any time when the addressee knew, or ought to have known had he exercised reasonable care or used any agreed procedure, that the electronic document was not sent by the originator.

(4) An addressee is not entitled to regard an electronic document as being what the originator intended to send if the addressee knew, or ought reasonably to have known had he exercised reasonable care or used an agreed procedure, that—

- (a) the document was sent in error; or

- (b) the transmission of the document resulted in an error in the document as received by the addressee.

Effect of
change or
error.

18.—(1) This section applies where a change or error occurs in the transmission of an electronic document between parties.

(2) Where there is an agreement between the parties to use a security procedure to detect changes or errors in the electronic document and—

- (a) only one of the parties has conformed to the procedure; and
- (b) the non-conforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic document.

(3) A party may avoid the effect of an electronic document that results from an error made by the party in dealing with the automated communications device of another person, if the device did not provide an opportunity for the prevention or correction of the error and, at the time the party learns of the error, that party—

- (a) promptly notifies the person of the error and that the party did not intend to be bound by the erroneous document;
- (b) takes steps that conform to the person's reasonable instructions for the return or disposal of the consideration (if any) received by the party as a result of the erroneous document;
- (c) if no reasonable instructions are given under paragraph (b), takes reasonable steps for the return or disposal of such consideration; and
- (d) has not received any benefit or value from such consideration.

(4) Where neither subsection (2) nor (3) applies, the change or error shall have the effect provided for by—

- (a) any contract between the parties; or
- (b) law, if there is no such contractual provision.

(5) The provisions of subsections (2) and (3) may not be varied by agreement.

19.—(1) The provisions of this section apply where, on or before sending an electronic document, the originator indicates to the addressee that receipt of the document must be acknowledged.

Acknowledgement of receipt of electronic document.

(2) Where, on or before sending the electronic document, the originator indicates to the addressee that the communication of the document is conditional on the receipt of the acknowledgement, the document shall be treated, as between the originator and the addressee, as if the document had never been sent, until the originator receives the acknowledgement.

(3) Where there is no agreement between the originator and the addressee as to the form or method of acknowledgement, the addressee may give the acknowledgement by any means of communication, electronic, automated or otherwise, or by any conduct that is reasonably sufficient to indicate to the originator that the electronic document has been received by the addressee.

(4) Subsection (5) applies where the originator has not indicated, in accordance with subsection (2), that the communication of the electronic document is conditional upon the receipt of the 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, within a reasonable time.

(5) The originator—

- (a) may 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), may, upon notice to the addressee, treat the document as though it had never been sent, or exercise any other rights the originator may have.

(6) An acknowledgement of receipt given to the originator by the addressee shall be taken as *prima facie* proof that an electronic document was received by the addressee, but nothing in this subsection shall be construed as implying that the electronic document sent corresponds to the electronic document received.

(7) A statement in an acknowledgement of receipt given by the addressee that the related electronic document meets technical requirements, either agreed upon between originator and addressee or set forth in applicable standards, shall be taken as *prima facie* proof that those requirements have been met.

(8) Except in so far as it relates to the sending or receipt of the electronic document, this section shall not affect the legal consequences that may flow either from that electronic document or from the acknowledgement of its receipt.

Time and
place of
dispatch and
receipt of
electronic
documents.

20.—(1) Unless otherwise agreed between the originator and the addressee, the dispatch of an electronic document occurs when it enters an electronic communications system outside the control of the originator.

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

- (a) where the addressee has designated an electronic communications system for the purpose of receiving electronic documents, receipt occurs—
 - (i) at the time when the document enters the designated electronic communications system;
 - (ii) if the document is sent on an electronic communications system of the addressee that is not the designated electronic communication system, at the time when the document comes to the attention of the addressee;
- (b) where the addressee has not designated an electronic communications system, receipt occurs when the

document enters an electronic communications system of the addressee or otherwise comes to the attention of the addressee.

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

(4) Unless otherwise agreed between the originator and the addressee, an electronic document is deemed to be dispatched at the originator's place of business, and is deemed to be received at the addressee's place of business.

(5) For the purposes of subsection (4)—

- (a) if the originator or the addressee, as the case may be, has more than one place of business, the place of business is that which has the closest relationship to the matter to which the electronic document relates;
- (b) if the originator does not have a place of business, the electronic document is deemed to be dispatched at the place where the originator ordinarily resides;
- (c) if the addressee does not have a place of business, the electronic document is deemed to be received at the place where the addressee ordinarily resides.

Part III. *Conduct of parties in relation to electronic communications and signatures*

21.—(1) In this Part, “relying party” means a person who may act on the basis of a certificate or encrypted signature. Conduct of relying party.

(2) A relying party shall bear the legal consequences of that party's failure—

- (a) to take reasonable steps to verify the reliability of an encrypted signature;
- (b) where an encrypted signature is supported by a certificate, to take reasonable steps to verify the validity and currency of the certificate and to observe any limitation with respect to the certificate.

Conduct of
signatory.

22. A signatory who has an encrypted signature creation device shall—

- (a) exercise reasonable care to avoid unauthorized use of that device;
- (b) forthwith notify any person that may reasonably be expected by the signatory to rely on or to provide services in support of, the signature, if the signatory knows—
 - (i) that the device has been compromised; or
 - (ii) of circumstances which give rise to a substantial risk that the device may have been compromised;
- (c) where a certificate is used to support an encrypted signature, exercise reasonable care to ensure, throughout the life cycle of the certificate, the accuracy and completeness of all material representations made by the signatory in or in relation to the certificate;
- (d) indicate, in any document to which he affixes his encrypted signature, whether he does so in a personal capacity or in an official capacity.

Conduct of
certification
service
provider.

23.—(1) A certification service provider who issues a certificate shall—

- (a) act in accordance with representations made by it with respect to its policies and practices;
- (b) exercise reasonable care to ensure, throughout the life cycle of the certificate, the accuracy and completeness of all material representations made by it in or in relation to the certificate;
- (c) provide reasonably accessible means for enabling a relying party to ascertain from the certificate—
 - (i) the identity of the certification service provider;
 - (ii) that the signatory identified in the certificate had control of the encrypted signature creation

- device at the time when the certificate was issued; and
 - (iii) that the encrypted signature creation device was valid at the time when the certificate was issued;
- (d) provide reasonably accessible means for enabling a relying party to ascertain from the certificate or otherwise—
- (i) the method used to identify the signatory;
 - (ii) every limitation on the purpose or value for which the encrypted signature creation device or the certificate may be used;
 - (iii) whether the encrypted signature creation device is valid and has not been compromised;
 - (iv) every limitation on the scope or extent of liability stipulated by the certification service provider;
 - (v) the facilities provided for the signatory to give notice pursuant to section 22 (b) ;
 - (vi) the procedures in place to effect revocation;
- (e) provide a means for a signatory to give notice pursuant to section 22(b) ;
- (f) ensure the availability of a timely revocation service;
- (g) utilize trustworthy systems, procedures and human resources in performing its services.

(2) For the purposes of this section, in determining whether any systems, procedures or human resources utilized by a certification service provider are trustworthy, regard may be had to—

- (a) the financial and human resources, including the existence of assets and the quality of hardware and software systems of the provider;
- (b) the provider's procedures for processing certificates and applications for certificates;

- (c) the provider's retention of records and the availability of information to relying parties and to signatories identified in certificates;
- (d) the regularity and extent of audits of the provider's operations by an independent body;
- (e) any other relevant factor.

Use and disclosure of pseudonyms.

24.—(1) A certification service provider may, at the request of a signatory, indicate, in the relevant certificate, a pseudonym instead of the signatory's name.

(2) Where a pseudonym is indicated pursuant to subsection (1), the certification service provider shall disclose the name of the signatory if—

- (a) requested to do so by a Constable pursuant to a warrant issued by a Justice of the Peace or a court; or
- (b) otherwise required to do so by law.

Liability of intermediaries.

25.—(1) In this section, "intermediary" means a person who sends, receives or stores an electronic document, or provides other services in relation to that document, on behalf of another person.

(2) An intermediary shall not be held liable in any civil or criminal proceedings for any information contained in an electronic document in respect of which the intermediary provides services, if the intermediary—

- (a) is not the originator of the document;
- (b) has no actual knowledge of the act or omission that gives rise to the civil or criminal liability, as the case may be, in respect of the document; and
- (c) has no knowledge of any facts or circumstances from which the likelihood of such civil or criminal liability ought reasonably to have been known.

(3) Nothing in this section shall be construed as—

- (a) requiring an intermediary to monitor any information contained in an electronic document in order to establish knowledge of any act, omissions, facts or circumstances giving rise to civil or criminal liability or imputing knowledge of such liability; or

- (b) relieving an intermediary from complying with any law, court order, ministerial direction or contractual obligation in respect of an electronic document.

(4) In relation to information contained in an electronic document in respect of which the intermediary provides services, if the intermediary has—

- (a) actual knowledge of the act or omission that gives rise to the civil or criminal liability, as the case may be, in respect of the document; or
- (b) knowledge of any facts or circumstances from which the likelihood of such civil or criminal liability ought reasonably to have been known,

the intermediary shall forthwith remove the document from any electronic communications system within the intermediary's control and shall cease to provide services in relation to that document.

(5) An intermediary shall not be liable for any act done in good faith pursuant to the provisions of this section.

Part IV. Obligations in relation to electronic transactions for the supply of goods, services or facilities

26.—(1) This Part applies only to the formation, by means of electronic transactions, of agreements for the supply of goods, services or facilities, for sale, hire or exchange, and to the performance of such agreements.

Interpretation and application of Part IV.

(2) This Part applies to any supplier who—

- (a) in Jamaica, offers goods, services or facilities, for sale, hire or exchange, to any person in or outside of Jamaica; or
- (b) whether in or outside of Jamaica, offers goods, services or facilities, for sale, hire or exchange, to any person in Jamaica.

(3) In this Part—

“commercial communication” means any electronic communication which constitutes an offer, for sale, hire or exchange, of goods, services or facilities;

“consumer” in relation to—

- (a) any goods, means—
 - (i) any person who acquires or wishes to acquire goods for his own private use or consumption; and
 - (ii) a commercial undertaking that purchases consumer goods;
- (b) any services or facilities, means any person who employs or wishes to be provided with the services or facilities; and
- (c) any accommodation, means any person who wishes to occupy the accommodation;

“goods” includes all kinds of property other than real property, securities, money or choses in action;

“personal information” means information about an identifiable individual, including—

- (a) information relating to the race, gender, marital status, nationality or ethnicity, colour, sexual orientation, age, physical or mental health, disability, religion, social or political views, language or birth of the individual;
- (b) information relating to the education or the medical, criminal, credit or employment history of the individual;
- (c) information about financial transactions in which the individual is or has been involved;
- (d) the address, fingerprints or blood type of the individual;
- (e) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal personal information about the individual;

- (f) correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature, or further correspondence that would reveal the contents of the original correspondence;
- (g) the views or opinions of any person about the individual;

“supplier” means a person who offers by means of electronic transactions any goods, services or facilities for sale, hire or exchange.

27.—(1) A supplier shall, on the website where goods, services or facilities are offered for sale, hire or exchange by the supplier, make available to the consumer the information set out in the Second Schedule.

Obligations of supplier in the conduct of electronic transactions.

(2) The supplier shall provide the consumer with an opportunity to do the following, in the order of their occurrence herein—

Second Schedule.

- (a) review the entire electronic transaction;
- (b) correct any errors;
- (c) withdraw from the transaction before finally placing an order; and
- (d) access electronically and reproduce an accurate summary of the order and the terms, including the total cost, relating thereto.

(3) Where a supplier fails to comply with subsection (1) or (2), the consumer is entitled to cancel the transaction within fourteen days after receiving the goods, services or facilities to which the transaction applies.

(4) Where a transaction is cancelled under subsection (3)—

- (a) the consumer shall return the goods and cease using the services or facilities supplied pursuant to the transaction, as the case may require;

- (b) the supplier shall refund all payments made by the consumer in respect of the transaction.

(5) The supplier shall utilize a payment system that is sufficiently secure having regard to—

- (a) accepted technological standards at the time of the transaction; and
- (b) the type of transaction concerned.

(6) The supplier is liable for any damage suffered by a consumer due to a failure by the supplier to comply with subsection (5).

Cooling-off
period.

28.—(1) Subject to subsections (2) and (4), a consumer is entitled to cancel, without giving any reason and without incurring any charge or penalty, any transaction or credit agreement for the supply of—

- (a) goods, within seven days after the receipt of the goods; or
- (b) services or facilities, within seven days after the date on which the agreement is made.

(2) This section does not apply to any transaction—

- (a) for financial services, including investment services, insurance and reinsurance operations, and banking services;
- (b) conducted as an auction;
- (c) for services which began, with the consumer's consent, before the applicable cooling-off period specified in subsection (1);
- (d) where the price for the supply of the goods, services or facilities in question is dependent on fluctuations in the financial markets and cannot be controlled by the supplier;
- (e) where the goods in question—
 - (i) are made to the consumer's specifications;
 - (ii) are clearly personalized;

- (iii) by reason of their nature cannot be returned;
or
- (iv) are likely to deteriorate or expire rapidly;
- (f) where audio or video recordings or consumer software are unsealed by the consumer;
- (g) for the sale of newspapers, periodicals, magazines or books;
- (h) for the provision of gaming or lottery services; or
- (i) for the provision of accommodation, transport, catering or leisure services or facilities, which the supplier undertakes to provide (when the transaction is concluded) on a specific date or within a specific period.

(3) Subject to subsection (4), if payment for the goods, services or facilities, as the case may be, has been made prior to a cancellation under subsection (1), the consumer is entitled to a full refund of the payment, and the supplier shall make the refund within thirty days after the date of the cancellation.

(4) The only charge that may be levied on a consumer who acts under subsection (1) is the direct cost to the supplier of returning the goods.

(5) Nothing in this section shall be construed to prejudice any other rights that the consumer may have under any other law.

29.—(1) A person who sends unsolicited commercial communications to consumers shall give to a consumer to whom any such communication is sent—

Unsolicited
commercial
communi-
cations.

- (a) the opportunity to decline to receive any further such communications from that person; and
- (b) upon request by the consumer, the identifying particulars of the source from which that person obtained the consumer's contact information or other personal information.

(2) A person who fails to comply with subsection (1) commits an offence.

(3) No agreement is concluded where a consumer fails to respond to an unsolicited commercial communication.

(4) A person who sends an unsolicited commercial communication to a consumer who has communicated to that person that the consumer does not wish to receive any such communication, commits an offence.

Supply of goods, services or facilities pursuant to transactions conducted electronically.

30.—(1) Where an agreement is made for the supply of goods, services or facilities, the supplier shall supply the goods, services or facilities (as the case may require) within the time specified in the agreement or, if no time is so specified, within thirty days after the date on which the agreement is made.

(2) Where the supplier fails to supply the goods, services or facilities (as the case may require) within the time required under subsection (1), the consumer may cancel the agreement seven days after giving the supplier notice of that intention.

(3) Where the supplier is unable to carry out the agreement because the goods, services or facilities in question are unavailable, the supplier shall—

- (a) forthwith notify the consumer of the inability; and
- (b) within thirty days after becoming aware of the inability, refund any payment made by, or on behalf of, the consumer in respect of the goods, services or facilities.

Provisions of this Part not excluded by agreement.

31. No provision in any agreement shall be construed as excluding any rights or obligations provided for in this Part.

Complaints to consumer Affairs Commission.

32. A consumer who alleges that a supplier has failed to comply with any of the provisions of this Part, may make a complaint to the Consumer Affairs Commission in accordance with section 7 of the Consumer Protection Act.

Part V. The Certifying Authority

Certifying Authority.

33.—(1) For the purposes of this Act there shall be a Certifying Authority, which shall have the functions set out in subsection (3).

(2) The Certifying Authority shall be—

- (a) the Trade Board; or

(b) such other person as the Minister may designate by notice published in the *Gazette*.

(3) The functions of the Certifying Authority shall be to—

- (a) issue certificates;
- (b) issue and regulate the use of private and public key pairs;
- (c) authorize and regulate the issue of certificates by certification service providers;
- (d) authenticate certificates issued by any local or overseas certification service provider;
- (e) provide time stamping services in relation to electronic documents;
- (f) provide application programming interface, including data encryption, encrypted signatures and digital envelopes;
- (g) carry out any other duties assigned to it under this or any other enactment.

(4) For the purpose of exercising its functions under this section, the Certifying Authority may—

- (a) carry out such investigations as may be necessary;
- (b) co-operate with any overseas certifying authority in establishing a system of mutual certification;
- (c) issue, from time to time, certification practice statements;
- (d) with the approval of the Minister, make regulations prescribing—
 - (i) the fees to be imposed for the issue of certificates, authorizations to certification service providers and private and public key pairs;
 - (ii) the manner of application, and the requirements, for authorization of certification service providers;
 - (iii) standards and codes of conduct for intermediaries and certification service providers.

Part VI. General

Penalties.

34.—(1) A person who contravenes any provision of this Act or any regulations made hereunder commits an offence.

(2) A person who commits an offence under this Act or any regulations made hereunder, shall be liable upon—

- (a) conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment; or
- (b) conviction before a Circuit Court to a fine or to imprisonment for a term of not exceeding five years, or to both such fine and imprisonment.

Offences by
bodies
corporate.

35. Where a body corporate commits an offence under this Act and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, company secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, that officer or person (as the case may be) as well as the body corporate shall be liable for the offence.

Act binds
Crown.

36. This Act binds the Crown.

Regulations.

37. The Minister may make regulations generally for giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, may make regulations prescribing—

- (a) methods which satisfy the requirements for an encrypted signature under this Act;
- (b) requirements for certification;
- (c) the matters to be specified in a certificate;
- (d) procedures for the use, importation or exportation of encryption programs or other encryption devices.

Amendment
of Consumer
Protection
Act.

38. The Consumer Protection Act is amended in section 6(1)(a) by inserting next after the words “this Act” the words “or Part IV of the Electronic Transactions Act”.

39. The Minister may by order, subject to affirmative resolution of the House of Representatives—

Minister may
by order
amend
penalty or
Schedules.

- (a) increase any monetary penalty of this Act; or
- (b) amend any of the Schedules.

FIRST SCHEDULE

(Section 4)

<i>Transaction</i>	<i>Extent of exclusion from the provisions of this Act</i>
1. The making, execution, alteration or revocation of a Will or other testamentary instrument.	Whole Act.
2. The conveyance or transfer of real property or any interest in real property.	Whole Act.
3. The creation, variation, performance or enforcement of any— (a) trust; or (b) power of attorney.	Whole Act.
4. Any procedure governed by the Civil Procedures Rules, 2002, or by rules of court made pursuant to any law.	Whole Act.

SECOND SCHEDULE

(Section 27)

Information to be made available by supplier to consumers

1. The full name of the supplier.
2. The supplier's geographical address, website address, e-mail address and telephone number.
3. The geographical address where the supplier will receive service of legal documents.
4. A disclosure as to whether the entity is incorporated or registered under any law and, where applicable, the supplier's registration number and place of registration.
5. Details as to membership in any self-regulatory or accreditation bodies to which the supplier belongs or subscribes, and the contact information of such bodies.
6. A description of any code of conduct to which the supplier subscribes and how that code may be accessed electronically by the consumer.
7. A description of the main characteristics of each type of goods, service or facility (as the case may be) offered on the website by the supplier, which is reasonably sufficient to enable the consumer to make an informed decision as to the proposed electronic transaction.
8. The full price of the goods, services or facilities, as the case may be, including transportation costs, taxes and any other fees or costs.
9. The method of payment required by the supplier.
10. The terms of agreement, including any guarantees, that will apply to the transaction, and how those terms may be accessed, stored and reproduced by the consumer electronically.
11. The time within which the goods will be dispatched or delivered, the services rendered or the facilities made available, as the case may be.
12. The manner and period within which consumers can access and maintain a full record of the transaction.
13. The return, exchange and refund policy of the supplier.
14. Any dispute resolution code to which the supplier subscribes, and how the text of that code may be accessed electronically by the consumer.
15. The security procedures and privacy policy of the supplier in respect of payment, payment information and personal information.

16. Where appropriate, the minimum duration of the agreement in the case of agreements for goods, services or facilities to be supplied on an ongoing basis or recurrently.
17. Where applicable, the consumer's rights under section 28.

Passed in the House of Representatives this 14th day of November, 2006.

MICHAEL PEART
Speaker.

Passed in the Honourable Senate this 8th day of December, 2006.

SYRINGA MARSHALL-BURNETT, C.D. J.P.
President.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.