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The State Peace and Development Council The Electronic Transactions Law

(The State Peace and Development Council Law No. 5/2004)
The 12th Waxing Day of Kason, 1366 M.E.
(30th April, 2004)

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The State Peace and Development Council hereby enacts the following
Law :-

Chapter I

Title and Definition

1. This Law shall be called the Electronic Transactions Law.
2. The following expressions contained in this Law shall have the meanings given hereunder :-
 - (a) **Information** includes data, texts, images, sounds, codes, computer programmes, software and databases;
 - (b) **Electronic record** means a record generated, sent, received or stored by means of electronic, magnetic, optical or any other similar technologies in an information system or for transmission from one information system to another;
 - (c) **Electronic data message** means an information generated, sent, received or stored by means of electronic, optical or any other similar

technologies, including electronic data interchange, fax, e-mail, telegraph, telex and telecopy.

- (d) **Computer** means a device capable of receiving, transmitting, storing, processing or retrieving information and records, using arithmetic and logical means by manipulation of electronic, magnetic, optical or any other similar technologies;
- (e) **Computer network** means the network system of the interconnection of computers through use of satellite or by any other technologies;
- (f) **Electronic signature** means any symbol or mark arranged personally or on his behalf by electronic technology or any other similar technologies to verify the authenticity of the source of the electronic record and the absence of amendment or substitution;
- (g) **Certification authority** means a person or an organization that has been granted a licence by the Control Board under this Law for services in respect of the electronic signature ;
- (h) **Certificate** means the certificate issued to a subscriber by the certification authority as an electronic data message or other record identifying the relation between the signer of an electronic signature and the electronic data message ;
- (i) **Originator** means a person by whom or on whose behalf the electronic record or electronic data message purports to have been created, generated or sent. This expression does not include a person acting as an intermediary with respect to electronic record or electronic data message ;
- (j) **Addressee** means a person who is intended by the originator to receive the electronic record or electronic data message. This expression does not include a person acting as an intermediary with respect to electronic record or electronic data message ;

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- (k) **Subscriber** means a person who is by any technologies identified as an authentic signer of an electronic signature in the certificate;
- (l) **Central Body** means the Central Body of Electronic Transactions formed under this Law;
- (m) **Ministry** means the Ministry of Communications, Posts and Telegraphs;
- (n) **Control Board** means the Electronic Transactions Control Board formed under this Law.

Chapter II

Aims

3. The aims of this Law are as follows :-
 - (a) to support with electronic transactions technology in building a modern, developed nation;
 - (b) to obtain more opportunities for all-round development of sectors including human resources, economic, social and educational sector by electronic transactions technologies;
 - (c) to recognize the authenticity and integrity of electronic record and electronic data message and give legal protection thereof in matters of internal and external transactions, making use of computer network;
 - (d) to enable transmitting, receiving and storing local and foreign information simultaneously, making use of electronic transactions technologies;
 - (e) to enable communicating and co-operating effectively and speedily with international organizations, regional organizations, foreign countries, local and foreign government departments and organizations, private organizations and persons, making use of computer network.

Chapter III Application

4. (a) The provisions contained in this Law shall apply to any kind of electronic record and electronic data message used in the context of commercial and non-commercial activities including domestic and international dealings, transactions, arrangements, agreements, contracts and exchanges and storage of information.
- (b) This Law shall apply to any person who commits any offence actionable under this Law within the country or from inside of the country to outside of the country, or from outside of the country to inside of the country by making use of the electronic transactions technology.
5. The provisions contained in this Law shall not apply to the following matters :
 - (a) "Will" defined in sub-section (h) of section 2 of the Succession Act;
 - (b) "Negotiable instrument" defined in section 13 of the Negotiable Instruments Act;
 - (c) "Trust" defined in section 3 of the Trusts Act;
 - (d) "Power of Attorney" granted under the Powers of Attorney Act;
 - (e) Documents relating to title;
 - (f) Instruments prescribed in any existing law to be registered;
 - (g) Matters exempted by the Ministry by issuing notification, with the approval of the Government.

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Chapter IV

Formation of the Central Body of Electronic Transactions and Functions and Duties thereof

6. The Government : -

- (a) shall form the Central Body of Electronic Transactions for enabling the implementation of the aims of this Law, comprising the Minister for the Ministry of Communications, Posts and Telegraphs as the Chairman and persons from the relevant ministries, government departments and organizations and technicians as members;
- (b) may, in forming the Central Body, determine the Vice - Chairman, Secretary and Joint Secretary and assign duties thereof;
- (c) may reorganize the Central Body as may be necessary.

7. The functions and duties of the Central Body are as follows : -

- (a) laying down plans for application step by step of electronic transactions technologies extensively in building the modern, developed nation ;
- (b) laying down and implementing programmes for enriching experience and knowledge on electronic transactions technologies and readiness in globalization process ;
- (c) carrying out activities to be in conformity with the policies relating to electronic transactions technologies, legal affairs and specifications to enable communicating, co-operating and dealing effectively and speedily, with international organizations, regional organizations, foreign countries and local and foreign organizations ;
- (d) communicating and co-operating with international organizations, regional organizations, foreign countries, local and foreign organizations on matters relating to electronic transactions technologies ;

- (e) forming the Control Board and supervising and guiding thereof ;
 - (f) forming the necessary working committees and stipulating functions and duties thereof for enabling the implementation of their functions and duties successfully.
8. The Central Body may, if necessary, assign any of its functions and duties to an appropriate government department and organization or person.

Chapter V

Formation of the Electronic Transactions Control Board and Functions and Powers thereof

9. The Central Body :
- (a) shall, for the purposes of this Law, form the Electronic Transactions Control Board comprising suitable persons and experts for enabling the supervision of the activities of the electronic transactions.
 - (b) may reorganize the Control Board as may be necessary.
10. The Control Board shall exercise and carry out the following functions and powers under the guidance of the Central Body :
- (a) issuing licence to enable performing as a certification authority and refusing to issue the same ;
 - (b) specifying the manner in which dealings shall be conducted between the certification authority and the subscribers ;
 - (c) specifying the terms and conditions and standards subject to which the certification authority shall conduct its business and the detailed data to be recorded in the accounts to be maintained by it ;
 - (d) specifying the qualifications and experience that employees of the certification authority should possess ;

- (e) settling disputes relating to interests which arise between the certification authority and the subscriber ;
- (f) facilitating the establishment of any electronic system by a certification authority either solely or jointly with other certification authority and regulation of such system ;
- (g) maintaining a database containing the disclosure record by certification authority of particulars that shall be accessible to the public ;
- (h) reproducing, copying or extracting, if necessary, of records, accounts, data and documents stored by a certification authority and examining thereof ;
- (i) having access to and inspecting and checking the operation of any computer system and any associated apparatus or material which it has reasonable cause to suspect is or has been in use in connection with any offence under this Law ;
- (j) exposing and acquiring any necessary identification document from any person with respect to any offence contained in this Law ;
- (k) examining and supervising the activities of the certification authority ;
- (l) investigating as may be necessary to scrutinize whether this Law and rules, procedures, notifications, orders and directives issued under this Law are abided by or not ;
- (m) recognizing any foreign certification authority in accordance with the stipulations ;
- (n) submitting its activities to the Central Body in accordance with the stipulations ;
- (o) performing other functions and duties as are assigned by the Central Body and the Ministry from time to time.

11. The Control Board may, if necessary, assign any of its functions and duties to a body after forming it or to an expert, with the approval of the Central Body.

Chapter VI

Certification Authority

12. Any person or organization from inside or outside of the country desirous of performing service as a certification authority shall apply to the Control Board to obtain the licence in accordance with the stipulations.

13. The Control Board may, after scrutinizing the licence application under section 12, issue the licence to the person or organization by prescribing the terms and conditions or refuse to issue the same.

14. The certification authority shall :

- (a) utilize the trustworthy system so as not to cause intrusion and misuse of computer hardware, software and procedures of computer ;
- (b) prescribe a reasonable level of reliability in its services which are reasonably suited to the performance of intended functions ;
- (c) carry out the secrecy and privacy of the electronic signatures in accordance with the security procedures ;
- (d) observe the specified standards ;
- (e) mention the detailed facts of electronic transactions certificate;
- (f) disclose its service that can be provided with respect to issuance of certificate ;
- (g) disclose facts that may materially and adversely affect reliability, or responsibility or guaranty of a certificate that is issued or its ability to perform its services ;

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(h) in the event of occurrences that may materially and adversely affect due to conditions permitted in the certificate or failure in the computer system:

(i) notify the person who may foreseeably be affected, by any possible means;

(ii) act in accordance with procedures governing such an occurrence specified in its certification practice statement;

(i) comply with the regulations and duties prescribed by the Control Board from time to time.

15. (a) The certification authority who obtains a licence issued under section 13 shall, on submitting a proposal to obtain a permit under the Myanmar Citizens Investment Law or Union of Myanmar Foreign Investment Law, apply to the Myanmar Investment Commission together with the licence issued by the Control Board.

(b) The Myanmar Investment Commission may, with respect to application under sub-section (a), seek the remark of the Control Board, if necessary.

Chapter VII Subscriber

16. (a) Any person, desirous of performing as a subscriber, shall apply to the certification authority to obtain the certificate in accordance with the stipulations.

(b) The certification authority may, after scrutinizing the application under sub-section (a), issue the certificate by prescribing conditions or refuse to issue the same.

17. The subscriber shall : -

- (a) when using valid signature by decryption of the electronic signature, take care so that such decryption may not be used by others unlawfully;
- (b) in using the certificate issued for electronic signature during the period granted, take care to be completely accurate and correct with respect to facts relevant to him or facts that are to be inserted;
- (c) if the secrecy of decryption of the electronic signature has been compromised or is in a situation where compromise may possibly occur, inform the persons who are related to his electronic signature as arranged by the certification authority or by any suitable arrangement without delay.

18. The subscriber shall be responsible for the consequences of the loss and damage to be caused by his failure to comply with the provisions of section 17.

Chapter VIII

Electronic Record, Electronic Data Message and Electronic Signature

19. (a) Matters prescribed to be reduced to writing or to be signed under any existing law may be made by electronic record, electronic data message or electronic signature.
- (b) The electronic record, electronic data message or electronic signature made under sub-section (a) shall be lawful as if they were made under the relevant law.
20. The originator and the addressee shall, in accordance with the stipulated means, perform the sending, receiving or storing of electronic record,

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electronic data message or electronic signature. However, if there is a specific agreement between them, it may be performed in accordance with the means of such agreement.

Chapter IX

Contracts made by Electronic Technology

21. In making contracts unless otherwise agreed by the parties, offer acceptance of offer and other requirements may be made by electronic technology.
22. The electronic record and electronic data message shall be deemed to be that of the originator if it was sent by the originator himself or by a person who had the authority to act on behalf of the originator or by an information system programmed by or on behalf of the originator to operate automatically.
23. An addressee is entitled to regard an information electronic record or electronic data message as being that of the originator if it conforms to any of the following points and to act on that assumption :
 - (a) sending in accordance with the procedure previously agreed between the originator and the addressee ;
 - (b) receiving by the addressee data message which resulted from the action of a person who has relationship with the originator or who has the authority to act on behalf of the originator and sending by a procedure used by the originator.
24. On or before sending of the electronic record or electronic data message, the originator and the addressee :
 - (a) may acknowledge the receipt by any of the following procedures :
 - (i) communicating by the addressee himself or automated or by any other means ;

- (ii) any conduct sufficient to indicate to the originator that addressee has received it;
 - (b) may enter into specific agreement in respect of the acknowledgment of receipt.
25. Where:
- (a) the originator has stated that electronic record or the electronic data message is conditional on receipt of the acknowledgment of the electronic data message or electronic record, it shall be treated as though it had never been sent until the acknowledgment is received;
 - (b) the originator has not stated that electronic record or the electronic data message is conditional on receipt of acknowledgment and the acknowledgment 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, the originator may give notice to the addressee stating that no acknowledgment has been received.
26. Unless otherwise agreed between the originator and the addressee in respect of dispatch and receipt of an electronic record or electronic data message:
- (a) dispatch of it occurs when it enters information system outside the control of the originator or his agent;
 - (b) the time of receipt of it is as follows:
 - (i) the time when it enters the designated information system;
 - (ii) if an information system which is not designated is used, the time when it is retrieved by the addressee;
 - (iii) if no information system has been designated, the time when it enters an information system of the addressee.

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27. (a) Unless otherwise agreed between the originator and the addressee the place of business of the originator shall be deemed to be the dispatching place and the place of business of the addressee shall be deemed to be the receiving place.
- (b) If the originator and the addressee conduct business in more than one place, the principal place of business shall be deemed to be the permanent address. If there is no place of business, their place of permanent residence shall be deemed to be the permanent address, and if it is a corporate body, the place where it has been incorporated and established legally shall be deemed to be the permanent address.

Chapter X Taking Administrative Action

28. The Control Board may, if the certification authority violates any condition of the licence or is convicted for the commission of any offence under this Law, pass any of the following administrative orders :
- (a) imposing a penalty as stipulated;
 - (b) suspending the licence subject to a time limit;
 - (c) cancelling the licence.
29. The certification authority may, if the subscriber violates any condition contained in the certificate or is convicted for the commission of any offence under this Law, pass any of the administrative orders :
- (a) suspending the certificate subject to a time limit;
 - (b) cancelling the certificate.

Chapter XI

Application for Revision and Appeal

30. (a) A person dissatisfied with any order or decision made by the certification authority in respect of the refusal of issuing certificate, suspension of the certificate subject to a time limit or cancellation of the certificate may apply for revision to the Control Board within 30 days from the date of passing such order or decision;
- (b) The Control Board may confirm, revise or set aside the order or decision made by the certification authority.
31. (a) A person dissatisfied with any order or decision made by the Control Board in respect of the refusal of issuing certificate, imposing a penalty as stipulated, suspension of licence subject to a time limit or cancellation of the licence or with any other order or decision made under sub-section (b) of section 30 may file an appeal to the Central Body within 60 days from the date of passing such order or decision;
- (b) The Central Body may confirm, revise or set aside the order or decision made by the Control Board.
32. The decision made by the Central Body under sub-section (b) of section 31 shall be the final and conclusive.

Chapter XII

Offences and Penalties

33. Whoever commits any of the following acts by using electronic transactions technology shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine :

- (a) doing any act detrimental to the security of the State or prevalence of law and order or community peace and tranquillity or national solidarity or national economy or national culture.
- (b) receiving or sending and distributing any information relating to secrets of the security of the State or prevalence of law and order or community peace and tranquillity or national solidarity or national economy or national culture.

34. Whoever commits any of the following acts shall, on conviction be punished with imprisonment for a term which may extend to 5 years or with fine or with both:

- (a) sending, hacking, modifying, altering, destroying, stealing, or causing loss and damage to the electronic record, electronic data message, or the whole or part of the computer programme dishonestly;
- (b) intercepting of any communication within the computer network, using or giving access to any person of any fact in any communication without permission of the originator and the addressee;
- (c) communicating to any other person directly or indirectly with a security number, password or electronic signature of any person without permission or consent of such person;
- (d) creating, modifying or altering of information or distributing of information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organization or any person.

35. Any certification authority or any of his officer or employee who violates any of the prohibitions contained in the order issued by the Control Board shall, on conviction be punished with imprisonment for a term which may extend to 3 years or with fine or with both.

36. Whoever violates any of the prohibitions contained in the rules, notifications and orders issued under this Law shall, on conviction be punished with imprisonment for a term which may extend to 1 year or with fine or with both.

37. Whoever commits any of the following acts shall, on conviction be punished with imprisonment for a term which may extend to 1 year or with fine or with both : -

(a) knowingly misrepresents to the certification authority his identity or authorisation in applying for a certificate or in submitting for suspension or cancellation of a certificate;

(b) obstructing or impeding or assaulting the Central Body and body or person assigned duty by it or the Control Board and body or person assigned duty by it which performs the functions and duties in accordance with this Law or failing to comply with the demand to perform in accordance with this Law.

38. Whoever attempts to commit any offence of this Law or conspires amounting to an offence or abets the commission of an offence shall be punished with the punishment provided for such offence in this Law.

Chapter XIII Miscellaneous

39. The government departments and organizations shall recognize the transaction of electronic record or electronic data message as lawful for the following matters :

- (a) submitting, accepting or retention of documents ;
- (b) issuing permit, licence or approval ;
- (c) claiming the required payment, paying, receiving and issuing a receipt therefor.

40. The persons making use of electronic transactions may determine the required type and level of security of electronic record and electronic data message and may select, use and implement the methods which accord with their requirement.

41. The Ministry shall determine the tenure of licence, licence fees and renewal fees of tenure of licence in respect of business licence to enable performance as the certification authority.

42. The Control Board has the right to recover the fees and fines to be received under this Law from the defaulter as if they were arrears of land revenue.

43. The Ministry : -

- (a) may prescribe and allow remuneration to the members of the Central Body, who are not government servants.
- (b) shall arrange to carry out the functions of the office of Central Body and shall also bear the expenses.

44. In prosecuting under this Law, prior sanction of the Central Body shall be obtained.

45. Any offence contained in this Law is cognizable by the Myanmar Police Force.

46. If an exhibit involved in any offence prosecuted under this Law is not easily producible before the Court, such exhibit needs not be produced before the Court. However, a report with other relevant documentary evidence as to the manner of custody of the same may be submitted. Such submission shall be deemed as if it were a submission of the exhibit before the Court and the relevant Court may dispose of the same in accordance with Law.

47. The expression "experts" referred to in section 45 of the Evidence Act shall be deemed to include the Control Board, the body or person assigned duty by it or the certification authority.
48. Information, electronic record, electronic data message, electronic signature or other documents communicated between the originator and the addressee shall not be denied legal effect, validity or enforceability solely on the ground of being made through electronic technology.
49. No suit or prosecution shall lie against the Central Body and body or person assigned duty by it or the Control Board and body or person assigned duty by it or the certification authority for duties and functions done in good faith in pursuance of this Law.
50. The Ministry may, with the approval of the Government, issue a notification if necessary, to clarify the definition of any technical terms of this Law.
51. Notwithstanding anything contained in any existing law, the provisions contained in this Law shall prevail over the provisions not in conformity with or contradicting any provisions contained in this Law.
52. In implementing the provisions of this Law : -
- (a) the Ministry may, with the approval of the Government, issue necessary rules and procedures;
 - (b) the Central Body and the Ministry may issue necessary notifications, orders and directives and the Control Board may issue necessary directives.

(Sd.) Than Shwe
 Senior General
 Chairman
 The State Peace and Development Council

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