

STATE OF SABAH

ELECTRONIC GOVERNMENT ACTIVITIES ENACTMENT 2014 (Sabah No. 7 of 2014)

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An Enactment to provide for legal recognition of electronic messages in dealings between the Government and the public, the use of electronic messages to fulfil legal requirements and to enable and facilitate the dealings through the use of electronic means and other matters connected therewith.

ENACTED by the Legislature of the State of Sabah as follows:

PART I
PRELIMINARY

Short title and commencement

1. (1) This Enactment may be cited as the Electronic Government Activities Enactment 2014.
- (2) This Enactment comes into operation on 1 January 2015.

Application

2. Subject to section 3, this Enactment shall apply to State laws which are designated in accordance with section 6.

Use not mandatory

3. (1) Nothing in this Enactment shall make it mandatory for a person to use, provide or accept any electronic message in dealings with the Government unless the person consents to the using, providing or accepting of the electronic message.
- (2) A person's consent to use, provide or accept any electronic message in dealings with the Government may be inferred from the person's conduct.

Reference to other written laws

4. The application of this Enactment shall be supplemental and without prejudice to any other written laws regulating the dealings between the Government and the public.

Interpretation

5. In this Enactment, unless the context otherwise requires -

"designated Enactment" means a written law or part of it which is designated by the relevant Minister under section 6;

"Information Technology Instructions" means the instructions issued under section 9;

"electronic" means the technology of utilizing electrical, optical, magnetic, electromagnetic, biometric, photonic or other similar technology;

"Minister" means the Minister charged with the responsibility for information technology and electronic government system;

"relevant Minister" means the Minister charged with the responsibility for the administration of the designated Enactment;

"electronic message" means an information generated, sent, received or stored by an electronic means;

"originator" means a person by whom or on whose behalf, the electronic message is generated or sent;

"addressee" means a person who is intended by the originator to receive the electronic message;

"information processing system" means an electronic system for generating, sending, receiving, storing or processing the electronic message;

"electronic signature" means any letter, character, number, sound or any other symbol or any combination thereof created in an electronic form adopted by a person as a signature;

"Government" means the State Government of Sabah.

PART II
ADMINISTRATION AND APPLICATION OF THE ENACTMENT
TO WRITTEN LAW

Designation by relevant Minister

6. (1) The relevant Minister may, after consultation with the Minister, designate in Form 1 of the Schedule, any written law or part of it for the purpose of the application of this Enactment.

(2) The relevant Minister, in designating any written law or part of it under subsection (1), may impose any conditions as he deems fit.

Subsidiary legislation

7. (1) This Enactment shall be deemed to apply to any subsidiary legislation of a designated Enactment unless excluded in accordance with subsection (2).

(2) The relevant Minister may, by notification in Form 2 of the Schedule, after consultation with the Minister, exclude any subsidiary legislation of a designated Enactment from the application of this Enactment.

(3) The relevant Minister may, by notification in Form 3 of the Schedule, after consultation with the Minister, include any subsidiary legislation which has been excluded under subsection (2), for the purpose of the application of this Enactment.

Repeal or amendment

8. (1) Where a designated Enactment is repealed, such repealed Enactment shall no longer be the designated Enactment from the effective date of its repeal save for the subsidiary legislation unaffected by the repeal of the designated Enactment.

(2) Where a designated Enactment is amended and the relevant Minister is satisfied that the amended Enactment is inconsistent with the policy or objectives of this Enactment, the relevant Minister may, in Form 4 of the Schedule, exclude the amended Enactment or part thereof from the application of this Enactment.

Information Technology Instructions

9. (1) The Minister may issue Information Technology Instructions which may include -

- (a) information technology standards;
- (b) the criteria for the electronic signature and appropriate seal for the purpose for which they are used;
- (c) the process of recording the time and acknowledgement of receipt of the electronic message;
- (d) security measures against any unauthorized access;
- (e) disaster recovery procedures;
- (f) accessibility rules for electronic government services and forms;
- (g) management and maintenance of the electronic message;
- (h) methods relating to data entry and verification of the electronic message;
- (i) guidelines for the payment and receipt of money; and
- (j) any other matters as may be required from time to time.

(2) Non-compliance with any of the Information Technology Instructions shall not affect the validity or enforceability of the activities, which are undertaken electronically pursuant to this Enactment.

PART III
LEGAL RECOGNITION OF ELECTRONIC MESSAGE

Legal recognition of electronic message

10. (1) Any information shall not be denied legal effect, validity or enforceability on the ground that it is wholly or partly in an electronic form.

(2) Any information shall not be denied legal effect, validity or enforceability on the ground that the information is not contained in the electronic message that gives rise to such legal effect, but is merely referred to in that electronic message, provided that the information being referred to is accessible to the person against whom the referred information might be used.

Formation and validity of contract

11. (1) In the formation of a contract, the communication of proposals, acceptance of proposals, and revocations of proposals and acceptances or any related communication may be expressed by an electronic message.

(2) A contract shall not be denied legal effect, validity or enforceability on the ground that an electronic message is used in its formation.

PART IV
FULFILMENT OF LEGAL REQUIREMENTS BY ELECTRONIC
MEANS

Writing

12. Where any law requires information to be in writing, the requirement of the law is fulfilled if the information is contained in an electronic message that is accessible and intelligible so as to be usable for subsequent reference.

Signature

13. (1) Where any law requires a signature of a person on a document, the requirement of the law is fulfilled if the document is in the form of an electronic message, by an electronic signature which -

- (a) is attached to or is logically associated with the electronic message;
- (b) adequately identifies the person and adequately indicates the person's approval of the information to which the signature relates; and
- (c) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required.

(2) For the purposes of paragraph (1) (c), an electronic signature is as reliable as is appropriate if -

- (a) the means of creating the electronic signature is linked to and under the control of that person only;
- (b) any alteration made to the electronic signature after the time of signing is detectable; and
- (c) any alteration made to that document after the time of signing is detectable.

(3) The Digital Signature Act 1997 [Act 562] shall continue to apply to any digital signature used as an electronic signature in any Government activities.

Seal

14. (1) Where any law requires a seal to be affixed to a document, the requirement of the law is fulfilled if the document is in the form of an electronic message, by a digital signature as provided under the Digital Signature Act 1997.

(2) Notwithstanding subsection (1), the Minister may, by order in the *Gazette*, prescribe any other electronic signature that fulfils the requirement of affixing a seal in an electronic message.

Witness

15. Where any law requires the signature of a witness on a document, the requirement of the law is fulfilled if the document is in the form of an electronic message, by an electronic signature of the witness which complies with the requirement of section 13.

Original form

16. (1) Where any law requires any document to be in its original form, the requirement of the law is fulfilled by a document in the form of an electronic message if -

- (a) there exists a reliable assurance as to the integrity of the information contained in the electronic message from the time it is first generated in its final form; and
- (b) the electronic message is accessible and intelligible so as to be usable for subsequent reference.

(2) For the purposes of subparagraph (1) (a) -

- (a) the criteria for assessing the integrity of the information shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement or any change which arises in the normal course of communication, storage and display; and
- (b) the standard of reliability required shall be assessed in the light of the purpose for which the document was generated and in the light of all other relevant circumstances.

Certified true copy

17. Where any law requires submission of a certified true copy of a document, the requirement of the law is fulfilled if the document is submitted in the form of an electronic message and fulfils the requirement under section 16.

Copy

18. Where any law requires any document to be retained, served, sent or delivered in more than one copy, the requirement of the law is fulfilled if the document is in the form of an electronic message, by retention, service, sending or delivery of the document in one copy.

Submission of a document

19. (1) Where any law requires the filing or submission of any document, the requirement of the law is fulfilled if the document is filed or submitted in the form of an electronic message, if the electronic message is accessible and intelligible so as to be usable for subsequent reference.

(2) For the purposes of subsection (1), where any prescribed form is specified by an electronic means, the filing or submission of such document shall be in accordance with such specified form.

Prescribed form

20. Where any law requires any document to be in a prescribed form, the requirement of the law is fulfilled by a document in the form of an electronic message if the electronic message is –

- (a) formatted in the same or substantially the same way as the prescribed form;
- (b) accessible and intelligible so as to be usable for subsequent reference; and
- (c) capable of being retained by the other person.

Requirement to issue licence, permit, approval, authorization, etc.

21. Where any law requires the issuance of any licence, permit, approval, authorization or similar document, the requirement of the law is fulfilled if the licence, permit, approval, authorization or similar document is issued in the form of an electronic message provided that the electronic message is accessible and intelligible so as to be usable for subsequent reference.

Retention of document

22. Where any law requires any document to be retained, the requirement of the law is fulfilled by retaining the document in the form of an electronic message if the electronic message –

- (a) is retained in the format in which it was generated, sent or received, or in a format that does not materially change the information contained in the electronic message that was originally generated, sent or received;
- (b) is accessible and intelligible so as to be usable for subsequent reference; and
- (c) identifies the origin and destination of the electronic message and the date and time it was sent or received.

Electronic register

23. (1) Where any law requires a register to be established, operated and maintained, the requirement of the law is fulfilled if the register is in the form of an electronic message and its contents cannot be altered by any means by any person administering the register who has the power by law to alter the register.

(2) Any search made on a register established, operated and maintained by electronic message shall have the same legal validity as the register referred to in a designated Enactment.

Service and delivery

24. (1) Where any law requires any document to be served, sent or delivered, the requirement of the law is fulfilled by the service, sending or delivery of the document by an electronic means if an information processing system is in place –

- (a) to identify the origin, destination, time and date of service, sending or delivery; and
- (b) for the acknowledgement of receipt,

of the document.

(2) This section does not apply to –

- (a) any notice of default, notice of demand, notice to show cause, notice of repossession or any similar notices which is required to be served prior to commencing a legal proceeding; and
- (b) any originating process, pleading, affidavit or other documents which is required to be served pursuant to a legal proceeding.

Personal service

25. Where any law requires a document to be submitted or delivered personally, the requirement of the law is fulfilled if the document is submitted in accordance with section 19 accompanied with an electronic signature.

Payment

26. Where any law requires any payment to be made, the requirement of the law is fulfilled if the payment is made by an electronic means and complies with any conditions imposed by the Government.

Receipt

27. Where any law requires the issuance of any receipt of payment, the requirement of the law is fulfilled if the receipt is in the form of an electronic message and the electronic message is accessible and intelligible so as to be usable for subsequent reference.

PART V COMMUNICATION OF ELECTRONIC MESSAGE

Attribution of electronic message

28. (1) An electronic message is that of the originator if it is sent by the originator himself.

(2) As between the originator and the addressee, an electronic message is deemed to be that of the originator if it is sent by -

- (a) a person who has the authority to act on behalf of the originator in respect of that electronic message; or
- (b) an information processing system programmed by, or on behalf of, the originator to operate automatically;

(3) As between the originator and the addressee, an addressee is entitled to regard an electronic message as being that of the originator, and to act on that presumption, if -

- (a) the addressee properly applies an authentication method agreed between the originator and the addressee for ascertaining whether the electronic message was that of the originator; or
- (b) the electronic message as received by the addressee resulted from the actions of a person whose relationship with the originator or any agent of the originator enabled that person to gain access to an authentication method used by the originator to identify electronic message as its own.

- (4) Subsection (3) does not apply if -
- (a) the addressee has received a notice from the originator that the electronic message is not that of the originator and has reasonable time to act accordingly; or
 - (b) the addressee knew or should have known that the electronic message was not that of the originator had he exercised reasonable care or used any authentication method agreed between the originator and the addressee.

Contents of electronic message

29. Where an addressee receives an electronic message, the addressee is entitled to regard the electronic message as being what the originator intended to send, and to act on that presumption, unless the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the electronic message as received.

Each electronic message to be regarded separately

30. Where an addressee receives an electronic message, the addressee is entitled to regard each electronic message received as a separate electronic message and to act on that presumption, unless the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the electronic message was a duplicate.

Time of dispatch

31. Unless otherwise agreed between the originator and the addressee, an electronic message is deemed sent when it enters an information processing system outside the control of the originator.

Time of receipt

32. Unless otherwise agreed between the originator and the addressee, an electronic message is deemed received -

- (a) where the addressee has designated an information processing system for the purpose of receiving electronic messages, when the electronic message enters the designated information processing system; or
- (b) where the addressee has not designated an information processing system for the purpose of receiving electronic messages, when electronic message comes to the knowledge of the addressee.

Place of dispatch

33. Unless otherwise agreed between the originator and the addressee, an electronic message is deemed sent from the originator's place of dealing, and -

- (a) where the originator has more than one place of dealings, from the place of dealing that has the closest relationship with the dealing or where there is no place of dealing that has the closest relationship with the dealing, from the originator's principal place of dealing; or
- (b) where the originator does not have a place of dealing, from the originator's ordinary place of residence.

Place of receipt

34. Unless otherwise agreed between the originator and the addressee, an electronic message is deemed received at the addressee's place of dealing, and -

- (a) where the addressee has more than one place of dealings, at the place of dealing that has the closest relationship with the dealing or where there is no place of dealing that has the closest relationship with the dealing, at the addressee's principal place or dealing; or
- (b) where the addressee does not have a place of dealing, at the addressee's ordinary place of residence.

Acknowledgement of receipt

35. (1) This section applies where, on or before sending an electronic message, or in the electronic message, the originator has requested or agreed with the addressee that receipt of the electronic message is to be acknowledged.

(2) Where the originator has requested or agreed with the addressee that receipt of the electronic message is to be acknowledged, the electronic message is treated as though it has never been sent until the acknowledgement is received.

(3) Where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by any particular method, an acknowledgement may be given by -

- (a) any communication by the addressee, automated or otherwise; or
- (b) any conduct of the addressee sufficient to indicate to the originator that the electronic message has been received.

(4) Where 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, the originator may -

- (a) 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), give notice to the addressee to treat the electronic message as though it had never been sent and exercise any other rights he may have.

(5) Where the originator receives the addressee's acknowledgement of receipt, it is presumed that the addressee received the related electronic message.

(6) Where the received acknowledgement states that the related electronic message fulfils technical requirements, either agreed upon or set forth applicable standards, it is presumed that those requirements have been fulfilled.

PART VI
MISCELLANEOUS

Regulations

- 36.** The Minister may make such regulations as may be necessary or expedient for giving effect to the provisions of this Enactment.

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SCHEDULE

FORM 1

ELECTRONIC GOVERNMENT ACTIVITIES ENACTMENT 2014

NOTIFICATION OF DESIGNATED ENACTMENT

[Section 6]

IN exercise of the powers conferred by section 6 of the Electronic Government Activities Enactment 2014, I

[name of the relevant Minister]

Minister of, after consultation with the Minister, designate -

[name of the Enactment or part of it]

as a designated Enactment under the Electronic Government Activities Enactment 2014.

2. The Electronic Government Activities Enactment 2014 shall apply to the provisions of the Enactment and the subsidiary legislation made under the Enactment subject to the following :

.....
.....
.....

3. This Notification comes into operation on

[specify the date]

Dated

[Name of the relevant Minister]

Minister of [specify the Ministry]

FORM 2

ELECTRONIC GOVERNMENT ACTIVITIES ENACTMENT 2014

NOTIFICATION OF EXCLUSION OF SUBSIDIARY LEGISLATION FROM THE ENACTMENT

[Subsection 7 (2)]

IN exercise of the powers conferred by subsection 7 (2) of the Electronic Government Activities Enactment 2014, I

[name of the Minister]

Minister of....., after consultation with the Minister exclude -

.....
[name of the subsidiary legislation]

made under

.....
[name of the designated Enactment]

from the application of the Electronic Government Activities Enactment 2014.

2. This Notification comes into operation on

[specify the date]

Dated

[Name of the relevant Minister]

Minister of [specify the Ministry]

FORM 3

ELECTRONIC GOVERNMENT ACTIVITIES ENACTMENT 2014
NOTIFICATION OF INCLUSION OF SUBSIDIARY LEGISLATION
FOR THE APPLICATION OF THE ENACTMENT

[Subsection 7 (3)]

IN exercise of the powers conferred by subsection 7 (3) of the Electronic Government
Activities Enactment 2014, I

[*name of the Minister*]

Minister of, after consultation with the Minister, include -

.....
[*name of the subsidiary legislation*]

made under

.....
[*name of the designated Enactment*]

for the purpose of the application of the Electronic Government Activities Enactment 2014.

2. This Notification comes into operation on

[*specify the date*]

Dated

[*Name of the relevant Minister*]

Minister of [*specify the Ministry*]

FORM 4

ELECTRONIC GOVERNMENT ACTIVITIES ENACTMENT 2014

NOTIFICATION OF EXCLUSION OF AMENDED ENACTMENT FROM THE ENACTMENT

[Subsection 8 (2)]

IN exercise of the powers conferred by subsection 8 (2) of the Electronic Government Activities Enactment 2014, I.....

[name of the Minister]

Minister of....., after consultation with the Minister, exclude -

- (a) the whole of(name of the amended Enactment); or
- (b) part of(name of the amended Enactment), as follows:
 - (i)
 - (ii); and
 - (iii), (please specify)

from the application of the Electronic Government Activities Enactment 2014.

2. This Notification comes into operation on

[specify the date]

Dated

[Name of the relevant Minister]

Minister of [specify the Minister]