

Republic of the Philippines

Department of Trade and Industry

Department of Budget and Management

Bangko Sentral ng Pilipinas

Republic Act No. 8792
IMPLEMENTING RULES AND REGULATIONS
OF THE
ELECTRONIC COMMERCE ACT

Pursuant to the provisions of Section 34 of Republic Act No. 8792, otherwise known as the Electronic Commerce Act (the "Act"), the following implementing rules and regulations (the "Rules") are hereby promulgated:

PART I

DECLARATION OF POLICY

AND

PRINCIPLES FOR ELECTRONIC COMMERCE PROMOTION

Chapter I

Declaration of Policy

Section 1. *Declaration of Policy.* - The State recognizes the vital role of information and communications technology (ICT) in nation-building; the need to create an information-friendly environment which supports and ensures the availability, diversity and affordability of ICT products and services; the primary responsibility of the private sector in contributing investments and services in ICT; the need to develop, with appropriate training programs and institutional policy changes, human resources for the information

age, a labor force skilled in the use of ICT and a population capable of operating and utilizing electronic appliances and computers; its obligation to facilitate the transfer and promotion of technology; to ensure network security, connectivity and neutrality of technology for the national benefit; and the need to marshal, organize and deploy national information infrastructures, comprising in both communications network and strategic information services, including their interconnection to the global information networks, with the necessary and appropriate legal, financial, diplomatic and technical framework, systems and facilities.

Section 2. Authority of the Department of Trade and Industry and Participating Entities. -The Department of Trade and Industry (DTI) shall direct and supervise the promotion and development of electronic commerce in the country with relevant government agencies, without prejudice to the provisions of Republic Act. 7653 (Charter of Bangko Sentral ng Pilipinas) and Republic Act No. 8791 (General Banking Act).

Chapter II

Declaration of Principles for Electronic Commerce Promotion

Section 3. Principles. -Pursuant to the mandate under Section 29 of the Act to direct and supervise the promotion and development of electronic commerce in the country, the following principles are hereby adopted as Government policy on electronic commerce:

(a) Role of the Government. -Government intervention, when required, shall promote a stable legal environment, allow a fair allocation of scarce resources and protect public interest. Such intervention shall be no more than is essential and should be clear, transparent, objective, non-discriminatory, proportional, flexible, and technologically neutral. Mechanisms for private sector input and involvement in policy making shall be promoted and widely used.

(b) Role of the Private Sector. - The development of electronic commerce shall be led primarily by the private sector in response to market forces. Participation in electronic commerce shall be pursued through an open and fair competitive market.

(c) International Coordination and Harmonization. - Electronic commerce is global by nature. Government policies that affect electronic commerce will be internationally coordinated and compatible and will facilitate interoperability within an international, voluntary and consensus-based environment for standards setting.

(d) *Neutral Tax Treatment.* - Transactions conducted using electronic commerce should receive neutral tax treatment in comparison to transactions using non-electronic means and taxation of electronic commerce shall be administered in the least burdensome manner.

(e) *Protection of Users.* - The protection of users, in particular with regard to privacy, confidentiality, anonymity and content control shall be pursued through policies driven by choice, individual empowerment, and industry-led solutions. It shall be in accordance with applicable laws. Subject to such laws, business should make available to consumers and, where appropriate, business users the means to exercise choice with respect to privacy, confidentiality, content control and, under appropriate circumstances, anonymity.

(f) *Electronic Commerce Awareness.* - Government and the private sector will inform society, both individual consumers and businesses, about the potentials of electronic commerce and its impact on social and economic structures.

(g) *Small and Medium-Sized Enterprises.* - Government will provide small and medium-sized enterprises (SMEs) with information and education relevant to opportunities provided by global electronic commerce. Government will create an environment that is conducive to private sector investment in information technologies and encourage capital access for SMEs.

(h) *Skills Development.* - Government shall enable workers to share in the new and different employment generated by electronic commerce. In this regard, the Government shall continue to promote both formal and non-formal skills-development programs.

(i) *Government as a Model User.* - Government shall utilize new electronic means to deliver core public services in order to demonstrate the benefits derived therefrom and to promote the use of such means. In this regard, the Government will be a pioneer in using new technologies. In particular, the Government Information System Plan (GISP), which is expected to include, but not be limited to, online public information and cultural resources, databases for health services, web sites at local, regional and national levels and public libraries and databases, where appropriate, will be implemented in accordance with the provisions of the Act and RPWEB.

(j) *Convergence.* - Convergence of technologies is crucial to electronic commerce and will be supported by appropriate government policies. Government will work closely with business in preparing for and reacting to changes caused by convergence.

(k) *Domain Name System.* - The Government supports initiatives to ensure that Internet users will have a sufficient voice in the governance of the domain name system.

(l) Access to Public Records. - Government shall provide equal and transparent access to public domain information.

m) Dispute Mechanisms. - Government encourages the use of self-regulatory extra-judicial dispute settlement mechanisms such as arbitration and mediation as an effective way of resolving electronic commerce disputes.

Chapter III

Objective and Sphere of Application

Section 4. Objective of the Act. - The Act aims to facilitate domestic and international dealings, transactions, arrangements, agreements, contracts and exchanges and storage of information through the utilization of electronic, optical and similar medium, mode, instrumentality and technology to recognize the authenticity and reliability of electronic documents related to such activities and to promote the universal use of electronic transactions in the government and by the general public.

Section 5. Sphere of Application. - The Act shall apply to any kind of electronic data message and electronic document used in the context of commercial and non-commercial activities to include domestic and international dealings, transactions, arrangements, agreements, contracts and exchanges and storage of information.

PART II

ELECTRONIC COMMERCE IN GENERAL

Chapter I

General Provisions

Section 6. Definition of Terms. - For the purposes of the Act and these Rules, the following terms are defined, as follows:

(a) "Addressee" refers to a person who is intended by the originator to receive the electronic data message or electronic document, but does not include a person acting as an intermediary with respect to that electronic data message or electronic document.

(b) “Commercial Activities” shall be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. The term shall likewise refer to acts, events, transactions, or dealings occurring between or among parties including, but not limited to, factoring, investments, leasing, consulting, insurance, and all other services, as well as the manufacture, processing, purchase, sale, supply, distribution or transacting in any manner, of tangible and intangible property of all kinds such as commodities, goods, merchandise, financial and banking products, patents, participations, shares of stock, software, books, works of art and other intellectual property.

(c) “Computer” refers to any device or apparatus singly or interconnected which, by electronic, electro-mechanical, optical and/or magnetic impulse, or other means with the same function, can receive, record, transmit, store, process, correlate, analyze, project, retrieve and/or produce information, data, text, graphics, figures, voice, video, symbols or other modes of expression or perform any one or more of these functions.

(d) “Convergence” refers to technologies moving together towards a common point and elimination of differences between the provisioning of video, voice and data, using digital and other emerging technologies; the coming together of two or more disparate disciplines or technologies; the ability of different network platforms to carry any kind of service; and the coming together of consumer devices such as, but not limited to, the telephone, television and personal computer.

(e) “Electronic data message” refers to information generated, sent, received or stored by electronic, optical or similar means, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy. Throughout these Rules, the term *“electronic data message”* shall be equivalent to and be used interchangeably with *“electronic document.”*

(f) “Information and Communications System” refers to a system for generating, sending, receiving, storing or otherwise processing electronic data messages or electronic documents and includes the computer system or other similar device by or in which data is recorded or stored and any procedures related to the recording or storage of electronic data message or electronic document.

(g) “Electronic signature” refers to any distinctive mark, characteristic and/or sound in electronic form, representing the identity of a person and attached to or logically associated with the electronic data message or electronic document or any methodology or procedures employed or adopted by a person and executed or adopted by such person with the intention of authenticating or approving an electronic data message or electronic document.

(h) “Electronic document” refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. Throughout these Rules, the term *“electronic document”* shall be equivalent to and be used interchangeably with *“electronic data message.”*

(i) “Electronic key” refers to a secret code, which secures and defends sensitive information that crosses over public channels into a form decipherable only by itself or with a matching electronic key. This term shall include, but not be limited to, keys produced by single key cryptosystems, public key cryptosystems or any other similar method or process, which may hereafter, be developed.

(j) **“Intermediary”** refers to a person who in behalf of another person and with respect to a particular electronic data message or electronic document sends, receives and/or stores or provides other services in respect of that electronic data message or electronic document.

(k) **“Non-Commercial Activities”** are those not falling under commercial activities.

(l) **“Originator”** refers to a person by whom, or on whose behalf, the electronic data message or electronic document purports to have been created, generated and/or sent. The term does not include a person acting as an intermediary with respect to that electronic data message or electronic document.

(m) **“Person”** means any natural or juridical person including, but not limited to, an individual, corporation, partnership, joint venture, unincorporated association, trust or other juridical entity, or any governmental authority.

(n) **“Service provider”** refers to a provider of –

i. Online services or network access, or the operator of facilities therefore, including entities offering the transmission, routing, or providing of connections for online communications, digital or otherwise, between or among points specified by a user, of electronic data message or electronic documents of the user’s choosing; or

ii. The necessary technical means by which electronic data message or electronic documents of an originator may be stored and made accessible to a designated or undesignated third party.

Such service providers shall have no authority to modify or alter the content of the electronic data message or electronic document received or to make any entry therein on behalf of the originator, addressee or any third party unless specifically authorized to do so, and shall retain the electronic data message or electronic document in accordance with the specific request or as necessary for the purpose of performing the services it was engaged to perform.

Chapter II

Legal Recognition of Electronic Data Messages And Electronic Documents

Section 7. Legal Recognition of Electronic Data Messages and Electronic Documents. - Information shall not be denied validity or enforceability solely on the ground that it is in the form of an electronic data message or electronic document, purporting to give rise to such legal effect. Electronic data messages or

electronic documents shall have the legal effect, validity or enforceability as any other document or legal writing. In particular, subject to the provisions of the Act and these Rules:

(a) A requirement under law that information is in writing is satisfied if the information is in the form of an electronic data message or electronic document.

(b) A requirement under law for a person to provide information in writing to another person is satisfied by the provision of the information in an electronic data message or electronic document.

(c) A requirement under law for a person to provide information to another person in a specified non-electronic form is satisfied by the provision of the information in an electronic data message or electronic document if the information is provided in the same or substantially the same form.

(d) Nothing limits the operation of any requirement under law for information to be posted or displayed in specified manner, time or location; or for any information or document to be communicated by a specified method unless and until a functional equivalent shall have been developed, installed, and implemented.

Section 8. *Incorporation by Reference.* - Information shall not be denied validity or enforceability solely on the ground that it is not contained in an electronic data message or electronic document but is merely incorporated by reference therein.

Section 9. *Use Not Mandatory.* - Without prejudice to the application of Section 27 of the Act and Section 37 of these Rules, nothing in the Act or these Rules requires a person to use or accept information contained in electronic data messages, electronic documents, or electronic signatures, but a person's consent to do so may be inferred from the person's conduct.

Section 10. *Writing.* - Where the law requires a document to be in writing, or obliges the parties to conform to a writing, or provides consequences in the event information is not presented or retained in its original form, an electronic document or electronic data message will be sufficient if the latter:

(a) maintains its integrity and reliability; and

(b) can be authenticated so as to be usable for subsequent reference, in that:

(i) It has remained complete and unaltered, apart from the addition of any endorsement and any authorized change, or any change which arises in the normal course of communication, storage and display; and

- (ii) It is reliable in the light of the purpose for which it was generated and in the light of all relevant circumstances.

Section 11. *Original.* - Where the law requires that a document be presented or retained in its original form, that requirement is met by an electronic document or electronic data message if:

(a) There exists a reliable assurance as to the integrity of the electronic document or electronic data message from the time when it was first generated in its final form and such integrity is shown by evidence aliunde (that is, evidence other than the electronic data message itself) or otherwise; and

(b) The electronic document or electronic data message is capable of being displayed to the person to whom it is to be presented.

(c) For the purposes of paragraph (a) above:

(i) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display; and

(ii) The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all relevant circumstances.

An electronic data message or electronic document meeting and complying with the requirements of Sections 6 or 7 of the Act shall be the best evidence of the agreement and transaction contained therein.

Section 12. *Solemn Contracts.* - No provision of the Act shall apply to vary any and all requirements of existing laws and relevant judicial pronouncements respecting formalities required in the execution of documents for their validity. Hence, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract is proved in a certain way, that requirement is absolute and indispensable.

Legal Recognition of Electronic Signatures

Section 13. *Legal Recognition of Electronic Signatures.* An electronic signature relating to an electronic document or electronic data message shall be equivalent to the signature of a person on a written document if the signature:

(a) is an electronic signature as defined in Section 6(g) of these Rules; and

(b) is proved by showing that a prescribed procedure, not alterable by the parties interested in the electronic document or electronic data message, existed under which:

(i) A method is used to identify the party sought to be bound and to indicate said party's access to the electronic document or electronic data message necessary for his consent or approval through the electronic signature;

(ii) Said method is reliable and appropriate for the purpose for which the electronic document or electronic data message was generated or communicated, in the light of all circumstances, including any relevant agreement;

(iii) It is necessary for the party sought to be bound, in order to proceed further with the transaction, to have executed or provided the electronic signature; and,

(iv) The other party is authorized and enabled to verify the electronic signature and to make the decision to proceed with the transaction authenticated by the same.

The parties may agree to adopt supplementary or alternative procedures provided that the requirements of paragraph (b) are complied with.

For purposes of subparagraphs (i) and (ii) of paragraph (b), the factors referred to in *Annex "2"* may be taken into account.

Section 14. *Presumption Relating to Electronic Signatures.* - In any proceeding involving an electronic signature, the proof of the electronic signature shall give rise to the rebuttable presumption that:

(a) The electronic signature is the signature of the person to whom it correlates; and

(b) The electronic signature was affixed by that person with the intention of signing or approving the electronic data message or electronic document unless the person relying on the electronically signed electronic data message or electronic document knows or has notice of defects in or unreliability of the signature or reliance on the electronic signature is not reasonable under the circumstances.

Modes of Authentication

Section 15. Method of Authenticating Electronic Documents, Electronic Data Messages, and Electronic Signatures. - Electronic documents, electronic data messages and electronic signatures, shall be authenticated by demonstrating, substantiating and validating a claimed identity of a user, device, or another entity in an information or communication system.

Until the Supreme Court, by appropriate rules, shall have so provided, electronic documents, electronic data messages and electronic signatures, shall be authenticated, among other ways, in the following manner:

(a) The electronic signature shall be authenticated by proof that a letter, character, number or other symbol in electronic form representing the persons named in and attached to or logically associated with an electronic data message, electronic document, or that the appropriate methodology or security procedures, when applicable, were employed or adopted by a person and executed or adopted by such person, with the intention of authenticating or approving an electronic data message or electronic document;

(b) The electronic data message or electronic document shall be authenticated by proof that an appropriate security procedure, when applicable was adopted and employed for the purpose of verifying the originator of an electronic data message or electronic document, or detecting error or alteration in the communication, content or storage of an electronic document or electronic data message from a specific point, which, using algorithm or codes, identifying words or numbers, encryptions, answers back or acknowledgement procedures, or similar security devices.

Section 16. Burden of Authenticating Electronic Documents or Electronic Data Messages. - The person seeking to introduce an electronic document or electronic data message in any legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic data message or electronic document is what the person claims it to be.

Modes for Establishing Integrity

Section 17. Method of Establishing the Integrity of an Electronic Document or Electronic Data Message. - In the absence of evidence to the contrary, the integrity of the information and communication system in which an electronic data message or electronic document is recorded or stored may be established in any legal proceeding, among other methods:

(a) By evidence that at all material times the information and communication system or other similar device was operating in a manner that did not affect the integrity of the electronic document or electronic data message, and there are no other reasonable grounds to doubt the integrity of the information and communication system;

(b) By showing that the electronic document or electronic data message was recorded or stored by a party to the proceedings who is adverse in interest to the party using it; or

(c) By showing that the electronic document or electronic data message was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not act under the control of the party using the record.

Admissibility and Evidential Weight

Section 18. *Admissibility and Evidential Weight of Electronic Data Messages and Electronic Documents.* - For evidentiary purposes, an electronic document or electronic data message shall be the functional equivalent of a written document under existing laws. In any legal proceeding, nothing in the application of the rules on evidence shall deny the admissibility of an electronic data message or electronic document in evidence:

(a) On the sole ground that it is in electronic form; or

(b) On the ground that it is not in the standard written form.

The Act does not modify any statutory rule relating to the admissibility of electronic data messages or electronic documents, except the rules relating to authentication and best evidence.

In assessing the evidential weight of an electronic data message or electronic document, the reliability of the manner in which it was generated, stored or communicated, the reliability of the manner in which its originator was identified, and other relevant factors shall be given due regard.

Section 19. *Proof by Affidavit and Cross-Examination.* - The matters referred to in Section 12 of the Act on admissibility and evidentiary weight, and Section 9 of the Act on the presumption of integrity of electronic signatures, may be presumed to have been established by an affidavit given to the best of the deponent's or affiant's personal knowledge subject to the rights of parties in interest to cross-examine such deponent or affiant as a matter of right. Such right of cross-examination may likewise be enjoyed by a party to the proceedings who is adverse in interest to the party who has introduced the affidavit or has caused the affidavit to be introduced.

Any party to the proceedings has the right to cross-examine a person referred to in Section 11, paragraph 4, and sub-paragraph (c) of the Act.

Retention of Electronic Data Message and Electronic Document

Section 20. *Retention of Electronic Data Message and Electronic Document.* - Notwithstanding any provision of law, rule or regulation to the contrary:

(a) The requirement in any provision of law that certain documents be retained in their original form is satisfied by retaining them in the form of an electronic data message or electronic document which:

(i) Remains accessible so as to be usable for subsequent reference;

(ii) Is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to accurately represent the electronic data message or electronic document generated, sent or received; and,

(iii) Where applicable, enables the identification of its originator and addressee, as well as the determination of the date and the time it was sent or received.

(b) The requirement referred to in paragraph (a) is satisfied by using the services of a third party, provided that the conditions set forth in subparagraphs (i), (ii) and (iii) of paragraph (a) are met.

(c) Relevant government agencies tasked with enforcing or implementing applicable laws relating to the retention of certain documents may, by appropriate issuances, impose regulations to ensure the integrity, reliability of such documents and the proper implementation of Section 13 of the Act.

Chapter III

Communication of Electronic Data Messages And Electronic Documents

Section 21. *Formation and Validity of Electronic Contracts.* Except as otherwise agreed by the parties, an offer, the acceptance of an offer and such other elements required under existing laws for the formation and perfection of contracts may be expressed in, demonstrated and proved by means of electronic data message or electronic documents and no contract shall be denied validity or enforceability on the sole ground that it is in the form of an electronic data message or electronic document, or that any or all of the elements required under existing laws for the formation of the contracts is expressed, demonstrated and proved by means of electronic documents.

Section 22. Consummation of Electronic Transactions with Banks. - Electronic transactions made through networking among banks, or linkages thereof with other entities or networks, and vice versa, shall be deemed consummated under rules and regulations issued by the Bangko Sentral under the succeeding paragraph hereunder, upon the actual dispensing of cash or the debit of one account and the corresponding credit to another, whether such transaction is initiated by the depositor or by an authorized collecting party; Provided, that the obligation of one bank, entity, or person similarly situated to another arising therefrom shall be considered absolute and shall not be subjected to the process of preference of credits; Provided, however, that the foregoing shall apply only to transactions utilizing the Automated Teller Machine switching network.

Without prejudice to the foregoing, all electronic transactions involving banks, quasi-banks, trust entities, and other institutions which under special laws are subject to the supervision of the Bangko Sentral ng Pilipinas shall be covered by the rules and regulations issued by the same pursuant to its authority under Section 59 of Republic Act No. 8791 (The General Banking Act), Republic Act No. 7653 (the Charter of the Bangko Sentral ng Pilipinas) and Section 20, Article XII of the Constitution.

Section 23. Recognition by Parties of Electronic Data Message. - As between the originator and the addressee of an electronic data message or electronic document, a declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic data message or electronic document.

Attribution of Electronic Data Message and Electronic Document

Section 24. Origin of Electronic Data Message. - An electronic data message or electronic document is that of the originator if it was sent by the originator himself.

Section 25. Origin of Electronic Data Message Not Personally Sent by an Originator. - As between the originator and the addressee, an electronic data message or electronic document is deemed to be that of the originator if it was sent:

(a) by a person who had the authority to act on behalf of the originator with respect to that electronic data message or electronic document; or

(b) by an information and communications system programmed by, or on behalf of the originator to operate automatically.

Section 26. When an Originator May Be Bound By an Electronic Data Message. - As between the originator and the addressee, an addressee is entitled to regard an electronic data message or electronic document as being that of the originator, and to act on that assumption, if:

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

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

The provisions of this Section do not exclude other instances or circumstances when an originator may be bound by the reliance and consequent action of an addressee respecting an electronic data message, which purports to have been that of the originator.

Section 27. When an Originator May Not Be Bound By an Electronic Data Message. - As between the originator and the addressee, an addressee is not entitled to regard an electronic data message as being that of the originator, and to act on that assumption:

(a) as of the time when the addressee has both received notice from the originator that the electronic data message or electronic document is not that of the originator, and has reasonable time to act accordingly; or

(b) in a case within paragraph (b) Section 26 of these Rules, at any time when the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the electronic data message or electronic document was not that of the originator.

The provisions of this Section do not exclude other instances or circumstances when an originator may not be liable for the reliance and consequent action of an addressee respecting an electronic data message, which purports to have been that of the originator.

Separate Receipt of and Error on Electronic Data Message and Electronic Document

Section 28. Assumption Regarding Receipt of Separate Electronic Data Messages. - The addressee is entitled to regard each electronic data message or electronic document received as a separate electronic data message or electronic document and to act on that assumption, except to the extent that it duplicates another electronic data message or electronic document and the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the electronic data message or electronic document was a duplicate.

Section 29. Error on Electronic Data Message or Electronic Document. - The addressee is entitled to regard the electronic data message or electronic document received as that which the originator intended to send, and to act on that assumption, unless the addressee knew or should have known, had the addressee exercised reasonable care, used the appropriate procedure or applied an agreed procedure:

- (a) That the transmission resulted in any error therein or in the electronic data message or electronic document when the latter enters the designated information and communications system; or
- (b) That electronic data message or electronic document is sent to an information and communications system which is not so designated by the addressee for the purpose.

Dispatch and Receipt of Electronic Data Message and Electronic Document

Section 30. Agreement on Acknowledgment of Receipt of Electronic Data Messages or Electronic Documents. - The following rules shall apply where, on or before sending an electronic data message or electronic document, the originator and the addressee have agreed, or in that electronic document or electronic data message, the originator has requested, that receipt of the electronic document or electronic data message be acknowledged:

- (a) Where the originator has not agreed with the addressee that the acknowledgment be given in a particular form or by a particular method, an acknowledgment may be given by or through any communication by the addressee, automated or otherwise, or any conduct of the addressee, sufficient to indicate to the originator that the electronic data message or electronic document has been received.
- (b) Where the originator has stated that the effect or significance of the electronic data message or electronic document is conditional on receipt of the acknowledgment thereof, the electronic data message or electronic document is treated as though it has never been sent, until the acknowledgment is received.
- (c) Where the originator has not stated that the effect or significance of the electronic data message or electronic document is conditional on receipt of the 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 and specifying a reasonable time by which the acknowledgment must be received; and if the acknowledgment is not received within the time specified, the originator may, upon notice to the addressee, treat the electronic document or electronic data message as though it had never been sent, or exercise any other rights it may have.

Section 31. Time of Dispatch of Electronic Data Message or Electronic Document. - Unless otherwise agreed between the originator and the addressee, the dispatch of an electronic data message or electronic document occurs when it enters an information and communications system outside the control of the originator or of the person who sent the electronic data message or electronic document on behalf of the originator.

Section 32. Time of Receipt of Electronic Data Message or Electronic Document. - Unless otherwise agreed between the originator and the addressee, the time of receipt of an electronic data message or electronic document is as follows:

(a) If the addressee has designated an information and communications system for the purpose of receiving electronic data message or electronic document, receipt occurs at the time when the electronic data message or electronic document enters the designated information and communications system; Provided, however, that if the originator and the addressee are both participants in the designated information and communications system, receipt occurs at the time when the electronic data message or electronic document is retrieved by the addressee.

(b) If the electronic data message or electronic document is sent to an information and communications system of the addressee that is not the designated information and communications system, receipt occurs at the time when the electronic data message or electronic document is retrieved by the addressee.

(c) If the addressee has not designated an information and communications system, receipt occurs when the electronic data message or electronic document enters an information and communications system of the addressee.

These rules apply notwithstanding that the place where the information and communications system is located may be different from the place where the electronic data message or electronic document is deemed to be received.

Section 33. Place of Dispatch and Receipt of Electronic Data Message or Electronic Document. - Unless otherwise agreed between the originator and the addressee, an electronic data message or electronic document is deemed to be dispatched at the place where the originator has its place of business and received at the place where the addressee has its place of business. This rule shall apply even if the originator or addressee had used a laptop or other portable device to transmit or receive his electronic data message or electronic document. This rule shall also apply to determine the tax situs of such transaction to the extent not inconsistent with Philippine situs rules and the regulations which may be promulgated by the Bureau of Internal Revenue (BIR) relating to the tax treatment of electronic commerce transactions.

For the purpose hereof:

(a) If the originator or the addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the principal place of business.

(b) If the originator or the addressee does not have a place of business, reference is to be made to its habitual residence; or

(c) The “usual place of residence” in relation to a body corporate, which does not have a place of business, means the place where it is incorporated or otherwise legally constituted.

Nothing in this Section shall be deemed to amend the rules of private international law.

Security Methods

Section 34. Choice of Security Methods. - Subject to applicable laws and/or rules and guidelines promulgated by the Department of Trade and Industry and other appropriate government agencies, parties to any electronic transaction shall be free to determine the type and level of electronic data message or electronic document security needed, and to select and use or implement appropriate technological methods that suit their needs.

PART III

ELECTRONIC COMMERCE IN CARRIAGE OF GOODS

Section 35. Actions Related to Contracts of Carriage of Goods. - Without derogating from the provisions of Part Two of the Act, this Part of the Rules applies to any action in connection with, or in pursuance of, a contract of carriage of goods, including but not limited to:

(a)

(i) furnishing the marks, number, quantity or weight of goods;

(ii) stating or declaring the nature or value of goods;

(iii) issuing a receipt for goods;

(iv) confirming that goods have been loaded;

(b)

(i) notifying a person of terms and conditions of the contract;

- (ii) giving instructions to a carrier;
- (c)
 - (i) claiming delivery of goods;
 - (ii) authorizing release of goods;
 - (iii) giving notices of loss of, or damage to goods;
- (d) giving any other notice or statement in connection with the performance of the contract;
- (e) undertaking to deliver goods to a named person or a person authorized to claim delivery;
- (f) granting, acquiring, renouncing, surrendering, transferring or negotiating rights in goods;
- (g) acquiring or transferring rights and obligations under the contract.

Section 36. Transport Documents. - (1) Subject to paragraph (3), where the law requires that any action referred to in the immediately preceding Section be carried out in writing or by using a paper document, that requirement is met if the action is carried out by using one or more electronic data messages or electronic documents. The transport documents referred to herein shall include, but not be limited to, those enumerated in *Annex "1"* hereof. Concerned agencies such as, but not limited to, the DTI, Department of Finance, DOTC, Philippine Ports Authority and other port authorities, shall, within their respective mandates, issue appropriate rules and guidelines with respect to transport documents as provided herein.

(2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for failing either to carry out the action in writing or to use a paper document.

(3) If a right is to be granted to, or an obligation is to be acquired by, one person and no other person, and if the law requires that, in order to effect this, the right or obligation must be conveyed to that person by the transfer, or use of, a paper document, that requirement is met if the right or obligation is conveyed by using one or more electronic data messages or electronic documents: Provided, That a reliable method is used to render such electronic data messages or electronic documents unique.

(4) For the purposes of paragraph (3), the standard of reliability required shall be assessed in the light of the purpose for which the right or obligation was conveyed and in the light of all the circumstances, including any relevant agreement.

(5) Where one or more electronic data messages or electronic documents are used to effect any action in subparagraphs (f) and (g) of Section 25 of the Act, no paper document used to effect any such action is valid unless the use of electronic data message or electronic document has been terminated and replaced by the use of paper documents. A paper document issued in these circumstances shall contain a statement of such termination. The replacement of electronic data messages or electronic documents by paper documents shall not affect the rights or obligations of the parties involved.

(6) If a rule of law is compulsorily applicable to a contract of carriage of goods which is in, or is evidenced by, a paper document, that rule shall not be inapplicable to such a contract of carriage of goods which is evidenced by one or more electronic data messages or electronic documents by reason of the fact that the contract is evidenced by such electronic data message or electronic document instead of a paper document.

PART IV

ELECTRONIC TRANSACTIONS IN GOVERNMENT

Chapter I

Government Use of Data Messages, Electronic Documents and Electronic Signatures

Section 37. Government Use of Electronic Data Messages, Electronic Documents and Electronic Signatures. - Notwithstanding any law to the contrary, within two (2) years from the date of the effectivity of the Act, all departments, bureaus, offices and agencies of the government, as well as all government-owned and-controlled corporations, that pursuant to law require or accept the filing of documents, require that documents be created, or retained and/or submitted, issue permits, licenses or certificates of registration or approval, or provide for the method and manner of payment or settlement of fees and other obligations to the government, shall:

(a) accept the creation, filing or retention of such documents in the form of electronic data messages or electronic documents;

(b) issue permits, licenses, or approval in the form of electronic data messages or electronic documents;

(c) require and/or accept payments, and issue receipts acknowledging such payments, through systems using electronic data messages or electronic documents; or

(d) transact the government business and/or perform governmental functions using electronic data messages or electronic documents, and for the purpose, are authorized to adopt and promulgate, after appropriate public hearing and with due publication in newspapers of general circulation, the appropriate rules, regulations, or guidelines, to, among others, specify:

(1) the manner and format in which such electronic data messages or electronic documents shall be filed, created, retained or issued;

(2) where and when such electronic data messages or electronic documents have to be signed, the use of a electronic signature, the type of electronic signature required;

(3) the format of an electronic data message or electronic document and the manner the electronic signature shall be affixed to the electronic data message or electronic document;

(4) the control processes and procedures as appropriate to ensure adequate integrity, security and confidentiality of electronic data messages or electronic documents or records or payments;

(5) other attributes required of electronic data messages or electronic documents or payments; and

(6) the full or limited use of the documents and papers for compliance with the government requirements;

Provided, That the Act shall by itself mandate any department of the government, organ of state or statutory corporation to accept or issue any document in the form of electronic data messages or electronic documents upon the adoption, promulgation and publication of the appropriate rules, regulations, or guidelines. Nothing in the Act or the Rules authorizes any person to require any branch, department, agency, bureau, or instrumentality of government to accept or process electronic data messages; conduct its business; or perform its functions by electronic means, until the adoption, promulgation and publication of the afore-mentioned appropriate rules, regulations or guidelines. Such rules, regulations or guidelines

as well as the underlying technologies utilized in the implementation of the Act and these Rules shall conform the principles set forth in the immediately succeeding section.

Section 38. Principles Governing Government Use of Electronic Data Messages, Electronic Documents and Electronic Signatures. - The following principles shall govern the implementation of Section 27 of the Act and shall be mandatory upon all departments, bureaus, offices and agencies of the government, as well as all government-owned and-controlled corporations:

(a) *Technology Neutrality.* - All solutions implemented shall neither favor a particular technology over another nor discriminate against or in favor of particular vendors of technology.

(b) *Interoperability.* - All implementation of technological solutions shall ensure the interoperability of systems forming part of the government network.

(c) *Elimination of Red Tape.* - Government processes shall be re-examined and if appropriate, simplified or re-engineered to maximize the functionality of technology and to eliminate unnecessary delays in the delivery of governmental services.

(d) *Security Measures.* - Government shall implement appropriate security measures to guard against unauthorized access, unlawful disclosure of information, and to ensure the integrity of stored information.

(e) *Auditability.* - All systems installed shall provide for an audit trail.

Section 39. Government Information System Plan (GISP). - It is hereby mandated that the GISP shall be adjusted, modified and amended to conform to the provisions and requirements of the Act, RPWEB and these Rules.

Chapter II

RPWEB

Section 40. *RPWEB To Promote the Use Of Electronic Documents and Electronic Data Messages In Government and to the General Public.* - Within two (2) years from the effectivity of the Act, there shall be installed an electronic online network in accordance with Administrative Order 332 and House of Representatives Resolution 890, otherwise known as RPWEB, to implement Part IV of the Act to facilitate the open, speedy and efficient electronic online transmission, conveyance and use of electronic data messages or electronic documents amongst all government departments, agencies, bureaus, offices down to the division level and to the regional and provincial offices as practicable as possible, government-owned and -controlled corporations, local government units, other public instrumentalities, universities, colleges and other schools, and universal access to the general public.

The RPWEB network shall serve as initial platform of the government information infrastructure to facilitate the electronic online transmission and conveyance of government services to evolve and improve by better technologies or kinds of electronic online wide area networks utilizing, but not limited to, fiber optic, satellite, wireless and other broadband telecommunication mediums or modes.

Section 41. *Implementing Agencies.* - To facilitate the rapid development of the government information infrastructure, the Department of Transportation and Communications, National Telecommunications Commission and the National Computer Center shall in coordination with each other, promulgate the appropriate issuances in accordance with their respective mandate to aggressively formulate, promote and implement a policy environment and regulatory or non-regulatory framework that shall lead to the substantial reduction of costs of including, but not limited to, leased lines, land, satellite and dial-up telephone access, cheap broadband and wireless accessibility by government departments, agencies, bureaus, offices, government-owned and -controlled corporations, local government units, other public instrumentalities and the general public, to include the establishment of a government website portal and a domestic internet exchange system to facilitate strategic access to government and amongst agencies thereof and the general public and for the speedier flow of locally generated internet traffic within the Philippines.

Section 42. *Cable Television and Broadcast as Telecommunications.* - The physical infrastructure of cable and wireless systems for cable TV and broadcast excluding programming and content and the management thereof shall be considered as within the activity of telecommunications for the purpose of electronic commerce and to maximize the convergence of ICT in the installation of the government information infrastructure.

Chapter III

Delineation of Functions

Section 43. *Delineation of Functions and Coordination by the DTI.* - In the implementation of the Act, the following government agencies shall have the functions stated hereunder:

(a) The Department of Trade and Industry shall:

(i) Supervise and coordinate the full implementation of Section 27 of the Act. For this purpose, all government agencies intending to comply with the said provision of law shall coordinate with the DTI in order to ensure adherence with the principles provided for in Section 38 of these Rules. Observance of all laws and regulations on public bidding, disbursements and other restrictions, including COA policies, shall be mandatory.

(ii) Install an online public information and quality and price monitoring system for goods and services aimed in protecting the interests of the consuming public availing of the advantages of the Act.

(iii) Establish a voluntary listing system for all businesses or entities involved in electronic commerce including, but not limited to, value-added service (VAS) providers as this term is understood in Republic Act No. 7925, banks, financial institutions, manufacturing companies, retailers, wholesalers, and on-line exchanges. The list of electronic commerce entities shall be maintained by the DTI and made available electronically to all interested parties.

(iv) Review, study and assess all legal, technical and commercial issues arising in the field of electronic commerce which may be directed to the DTI and if necessary, convene the appropriate government agencies in order to discuss, deliberate on and resolve the same and in the proper cases, promulgate additional rules and regulations to implement the Act.

(b) The Bangko Sentral ng Pilipinas shall exercise and perform such functions as mandated under the Act including the promulgation of the rules and regulations to implement the provisions of the Act with respect to banks, quasi-banks, trust entities, and other institutions which under special laws are subject to the Bangko Sentral ng Pilipinas supervision.

(c) The Department of Budget and Management shall identify the fund source for the implementation of Sections 37, 39 and 40 of the Rules, consistent with the provisions of the annual General Appropriations Act, and in its capacity in managing the budget execution and accountability processes of government, shall be responsible for putting such core processes on-line.

PART V

FINAL PROVISIONS

Section 44. *Extent of Liability of a Service Provider.* - Except as otherwise provided in this Section, no person or party shall be subject to any civil or criminal liability in respect of the electronic data message or electronic document for which the person or party acting as a service provider as defined in Section 6(n) of these Rules merely provides access if such liability is founded on:

(a) The obligations and liabilities of the parties under the electronic data message or electronic document;

(b) The making, publication, dissemination or distribution of such material or any statement made in such material, including possible infringement of any right subsisting in or in relation to such material: *Provided, That -*

(i) The service provider: (1) does not have actual knowledge, or (2) is not aware of the facts or circumstances from which it is apparent, that the making, publication, dissemination or distribution of such material is unlawful or infringes any rights subsisting in or in relation to such material, or (3) having become aware, advises the affected parties within a reasonable time, to refer the matter to the appropriate authority or, at the option of the parties, to avail of alternative modes of dispute resolution;

(ii) The service provider does not knowingly receive a financial benefit directly attributable to the unlawful or infringing activity; and

(iii) The service provider does not directly commit any infringement or other unlawful act and does not induce or cause another person or party to commit any infringement or other unlawful act and/or does not benefit financially from the infringing activity or unlawful act of another person or party;

Provided, further, That nothing in this Section shall affect:

(a) Any obligation founded on contract;

(b) The obligation of a service provider as such under a licensing or other regulatory regime established under written law;

(c) Any obligation imposed under any written law; or

(d) The civil liability of any party to the extent that such liability forms the basis for injunctive relief issued by a court under any law requiring that the service provider take or refrain from actions necessary to remove, block or deny access to any material, or to preserve evidence of a violation of law.

Lawful Access

Section 45. *Lawful Access to Electronic Documents, Electronic Data Messages, and Electronic Signatures.* - Access to an electronic file, or an electronic signature of an electronic data message or electronic document shall only be authorized and enforced in favor of the individual or entity having a legal right to the possession or the use of the plaintext, electronic signature or file and solely for the authorized purposes.

Section 46. *Lawful Access to Electronic Keys.* - The electronic key for identity or integrity shall not be made available to any person or party without the consent of the individual or entity in lawful possession of that electronic key. The testimonial disclosure of an electronic key in any proceeding shall be limited by the Constitutional right against self-incrimination.

Section 47. *Obligation of Confidentiality.* - Except for the purposes authorized under the Act, any person who obtained access to any electronic key, electronic data message, or electronic document, book, register, correspondence, information, or other material pursuant to any powers conferred under the Act, shall not convey to or share the same with any other person.

Penal Provisions

Section 48. *Hacking.* - Hacking or cracking which refers to unauthorized access into or interference in a computer system/server or information and communication system; or any access in order to corrupt, alter, steal, or destroy using a computer or other similar information and communication devices, without the knowledge and consent of the owner of the computer or information and communications system, including the introduction of computer viruses and the like, resulting in the corruption, destruction, alteration, theft or loss of electronic data messages or electronic document shall be punished by a minimum fine of one hundred thousand pesos (P100,000.00) and a maximum commensurate to the damage incurred and a mandatory imprisonment of six (6) months to three (3) years.

Section 49. *Piracy.* - Piracy or the unauthorized copying, reproduction, dissemination, distribution, importation, use, removal, alteration, substitution, modification, storage, uploading, downloading, communication, making available to the public, or broadcasting of protected material, electronic signature or copyrighted works including legally protected sound recordings or phonograms or information material on protected works, through the use of telecommunication networks, such as, but not limited to, the internet, in a manner that infringes intellectual property rights shall be punished by a minimum fine of one hundred thousand pesos (P100,000.00) and a maximum commensurate to the damage incurred and a mandatory imprisonment of six (6) months to three (3) years. The foregoing shall be without prejudice to the rights, liabilities and remedies under Republic Act No. 8293 or Intellectual Property Code of the Philippines and other applicable laws.

Section 50. Other Penal Offenses. - Violations of the Consumer Act or Republic Act No. 7394 and other relevant or pertinent laws through transactions covered by or using electronic data messages or electronic documents, shall be penalized with the same penalties as provided in those laws.

Section 51. Other Violations of the Act. - Other violations of the provisions of the Act, shall be penalized with a maximum penalty of one million pesos (P1,000,000.00) or six-(6) years imprisonment.

Miscellaneous Provisions

Section 52. Statutory Interpretation. - Unless otherwise expressly provided for, the interpretation of these Rules and the Act shall give due regard to the Act's international origin - the UNCITRAL Model Law on Electronic Commerce - and the need to promote uniformity in its application and the observance of good faith in international trade relations. The generally accepted principles of international law and convention on electronic commerce shall likewise be considered.

Section 53. Variation by Agreement. - Any provision of the Act may be varied by agreement between and among parties; Provided that such agreement involves only the generation, sending, receiving, storing or otherwise processing of an electronic data message or electronic document. Nothing shall authorize contracting parties to agree upon stipulations or covenants, which defeat the legal recognition, validity and admissibility of electronic data messages, electronic documents, or electronic signatures.

Section 54. Reciprocity. - All benefits, privileges, advantages or statutory rules established under this Act, including those involving practice of profession, shall be enjoyed only by parties whose country of origin grants the same benefits and privileges or advantages to Filipino citizens. Inasmuch as the Act merely contemplates the legal recognition of electronic forms of documents and signatures and does not amend any law governing the underlying substantive validity of acts or transactions, this provision shall be subject to existing Constitutional and statutory restrictions relative to activities which are reserved to Philippine citizens or juridical entities partially or wholly-owned by Philippine citizens.

Section 55. Oversight Committee. - There shall be a Congressional Oversight Committee composed of the Committees on Trade and Industry/Commerce, Science and Technology, Finance and Appropriations of both the Senate and House of Representatives, which shall meet at least every quarter of the first two years and every semester for the third year after the approval of this Act to oversee its implementation. The DTI, DBM, Bangko Sentral ng Pilipinas, and other government agencies as may be determined by the Congressional Committee shall provide a quarterly performance report of their actions taken in the implementation of this Act for the first three (3) years.

Section 56. DTI's Continuing Authority to Implement the Act and Issue Implementing Rules. - Among others, the DTI is empowered to promulgate rules and regulations, as well as provide quality standards or issue certifications, as the case may be, and perform such other functions as may be necessary for the implementation of this Act in the area of electronic commerce.

Section 57. Separability. - If any provision in these Rules or application of such provision to any circumstance is held invalid, the remainder of these Rules shall not be affected thereby.

Section 58. *Effectivity.* - These Rules shall take effect fifteen (15) days from the complete publication thereof in a newspaper of general circulation.

Done this ____ day of July, 2000.

MANUEL A. ROXAS II

Secretary

Department of Trade and Industry

BENJAMIN E. DIOKNO

Secretary

Department Of Budget and Management

RAFAEL B. BUENAVENTURA

Governor

Bangko Sentral ng Pilipinas