

Electronic Transactions (Certification Authorities) Regulations 2010

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THE ELECTRONIC TRANSACTIONS ACT

Regulations made by the Minister under section 50 of the Electronic Transactions Act

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1. **Short title**

These Regulations may be cited as the **Electronic Transactions (Certification Authorities) Regulations 2010**.

2. **Interpretation**

In these Regulations -

"Act" means the Electronic Transactions Act;

"annual fee" means the annual fee specified in the Second Schedule and payable in respect of a licence or recognition at the beginning of each year in respect of that year;

"application fee" means the application fee specified in the Second Schedule;

"approval" means an approval issued by the Controller, at the Minister's request, to a public sector agency under regulation 15 or renewed under regulation 16, as the case may be;

"effective date", in relation to an application means the date by which all information, particulars and documents required by the Controller or Minister, as the case may be,

are submitted;

"foreign certification authority" means a certification authority outside Mauritius;

"initial fee" means the one-off fee specified in the Second Schedule and payable before a licence or recognition is issued;

"licence" means a licence issued under regulation 5 or renewed under regulation 6, as the case may be;

"recognition" means a recognition issued to a foreign certification authority under regulation 11 or renewed under regulation 12, as the case may be;

"subscriber identity verification method" means a method used to verify and authenticate the identity of a subscriber;

"trusted person" means any person who has –

- (a) direct responsibilities for the day-to-day operations, security and performance of a certification authority's transactions or business activities;
- (b) duties directly involving the issue, renewal, suspension, revocation of certificates (including the identification of any person requesting a certificate from a certification authority), creation of private keys or administration of a certification authority's computing facilities.

3. Functions of Controller

(1) The Controller shall, in relation to certification authorities -

- (a) exercise supervision over their activities;
- (b) certify their public keys;
- (c) lay down the standards to be maintained by them;
- (d) specify the qualifications and experience of persons employed by them or

acting on their behalf;

- (e) specify the terms and conditions subject to which they shall operate;
 - (f) lay down their duties;
 - (g) specify the contents of written, printed or visual materials and advertisements that may be distributed or used in respect of a certificate and the public key;
 - (h) specify the form and content of a certificate and the key pair;
 - (i) specify the form and manner in which accounts shall be maintained by them;
 - (j) facilitate the establishment of any electronic system by a certification authority, either solely or jointly with other certification authorities, and regulation of such systems;
 - (k) specify the manner in which they shall deal with subscribers;
 - (l) Maintain a publicly accessible database containing the disclosure record of every certification authority which shall contain the particulars set out in the First Schedule.
- (2) The Controller shall, in fulfilling its functions under paragraph (1), have regard to public interest and any element of national security.
- (3) For purposes of these regulations, the Controller may issue directives and guidelines to certification authorities.

4. Authorised certification authorities

No person or body shall act as certification authority in Mauritius unless –

- (a) he or it holds a valid licence issued by the Controller under regulation 5 or 6;

- (b) in the case of a foreign certification authority, it is issued with a recognition by the Controller under regulation 11 or 12; or
- (c) in the case of a public sector agency, it is issued with an approval under regulation 15 or 16.

5. Application for licence to act as certification authority

(1) Where -

- (a) any person who is a citizen of Mauritius or is duly authorised to carry out business in Mauritius;
- (b) any body which is a company or body corporate, incorporated in Mauritius or registered with the Registrar of Companies under the Companies Act,

wishes to act as a licensed certification authority for the purposes of the Act, he or it, as the case may be, shall make an application to the Controller in such form and manner as the Controller may determine for a licence.

(2) Every application made under paragraph (1) shall be accompanied by the appropriate application fee and such documents as the Controller may require.

(3) Where the Controller receives an application made under paragraph (1), it –

- (a) shall give public notice of the application in 2 daily newspapers having wide coverage in the country and invite any interested person wishing to object to the application to do so in writing within 14 days of the publication;
- (b) may direct the applicant to furnish such additional information as it may reasonably require.

(4) In considering an application made under paragraph (1), the Controller shall have regard to the criteria and requirements set out in the Third Schedule.

(5) The Controller may, within a period of 90 days from the effective date of the

application, grant or refuse an application made under paragraph (1).

- (6) Where the Controller grants the application, it shall, subject to regulation 7, issue a licence to the applicant on such terms and conditions as the Controller may determine.
- (7) A license issued by the Controller under this regulation –
 - (a) shall be valid for a period of 5 years from the date of issue; and
 - (b) may be renewed.
- (8) Where the Controller refuses an application, it shall forthwith notify the applicant by registered post of its refusal, giving reasons for the refusal.

6. Renewal of licence

- (1) An application for the renewal of a licence shall be -
 - (a) made to the Controller in such form and manner as it may determine, at least 90 days before the date of expiry of the licence; and
 - (b) accompanied by the appropriate application fee and such documents as the Controller may require.
- (2) Where the Controller receives an application made under paragraph (1), it –
 - (a) shall give public notice of the application in 2 daily newspapers having wide coverage in the country and invite any interested person wishing to object to the application to do so in writing within 14 days of the publication;
 - (b) may direct the applicant to furnish such additional information as it may reasonably require.
- (3) In considering an application made under paragraph (1), the Controller shall have regard to the criteria and requirements set out in the Third Schedule.

- (4) The Controller may, within a period of 90 days from the effective date of the application, grant or refuse an application made under paragraph (1).
- (5) Where the Controller grants the application, it shall, subject to regulation 7, renew the licence for a period of 5 years on such terms and conditions as the Controller may determine.
- (6) Where a licensed certification authority has no intention of renewing its licence, it shall -
 - (a) inform the Controller in writing, not later than 90 days before the date of expiry of its licence;
 - (b) inform all its subscribers in writing, not later than 60 days before the date of expiry of its licence;
 - (c) give public notice of its intention in 2 daily newspapers having wide coverage in the country and in such manner as the Controller may determine, not later than 60 days before the date of expiry of its licence; and
 - (d) take appropriate steps to maintain the validity of any certificate issued by it which is still valid.
- (7) Where the Controller refuses an application, it shall forthwith notify the applicant by registered post of its refusal, giving reasons for the refusal.

7. Procedure for taking out licence

- (1) Where the Controller grants an application under regulation 5 or 6, the applicant shall take out the licence upon payment of the appropriate initial fee and annual fee and upon provision of such performance bond described in paragraph 1 of the Third Schedule as may be determined by the Controller within a period of 90 days of the grant.
- (2) The applicant may make a request to the Controller in writing, upon reasonable cause shown and not later than 15 days prior to the expiry of the delay, to extend

the delay for another period of 90 days.

- (3) Where the Controller grants the extended period of 90 days and the applicant fails to take out the licence during that period, the Controller shall rescind its decision to grant or renew the licence and any fee, whether annual fee or initial fee, paid by the applicant shall not be refunded.

8. Refusal to grant application for licence or renewal of licence

- (1) The Controller may refuse to grant an application for a licence or for renewal of a licence where –
 - (a) the applicant is from a category other than the ones specified in regulation 5(1);
 - (b) the Controller requires additional information and the applicant fails to provide the information, to the Controller's satisfaction;
 - (c) the applicant or its majority shareholder is in the course of being wound up or liquidated;
 - (d) a Receiver or a Receiver and Manager has been appointed to the applicant or its majority shareholder or it is in the process of liquidation;
 - (e) the applicant or its majority shareholder has, whether in Mauritius or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
 - (f) the applicant or its majority shareholder or any trusted person has been convicted, whether in Mauritius or elsewhere, of an offence involving fraud or dishonesty, or has been convicted of any offence under the Act or these Regulations;
 - (g) the Controller is not satisfied as to the qualifications or experience of the trusted person who is to perform duties in connection with the holding of the licence by the applicant;

- (h) the applicant fails to satisfy the Controller that it is a fit and proper person to be licensed or that all its trusted persons and majority shareholders are fit and proper persons;
 - (i) the Controller has reason to believe that the applicant may not be able to act in the best interests of its subscribers, customers or participants having regard to the reputation, character, financial integrity and reliability of the applicant or any of its majority shareholders or trusted persons;
 - (j) the Controller is not satisfied as to the financial standing of the applicant or its majority shareholder;
 - (k) the Controller is not satisfied as to the record of past performance or expertise of the applicant or its trusted person having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;
 - (l) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the method of conducting the business of, the applicant or its majority shareholder or any of the trusted persons; or
 - (m) the Controller is of the opinion that it is in the public interest to do so.
- (2) For the purpose of paragraph (1), "majority shareholder", in relation to an applicant which is a company, has the same meaning as in the Companies Act.

9. Application by foreign certification authority for recognition

- (1) Every foreign certification authority wishing to obtain recognition in Mauritius to issue certificates shall make an application to the Controller in such form and manner as the Controller may determine for recognition.
- (2) Every application made under paragraph (1) shall be accompanied by –
 - (a) proof that the requirements under regulation 10 and the Third Schedule

have been satisfied;

- (b) the appropriate application fee; and
- (c) such other information or documents as the Controller may require.

10. Requirements for recognition

- (1) In order to qualify for recognition, every foreign certification authority shall -
 - (a) be licensed or otherwise authorised by the relevant competent entity in its country to carry on or operate as a certification authority in that country;
 - (b) issue certificates of a level of security equal to or more stringent than the level of security of certificates issued by a licensed certification authority in Mauritius;
 - (c) provide for or have a local agent for service of process in Mauritius;
 - (d) comply with the standards and other requirements under the Act and these Regulations; and
 - (e) comply with such other requirements as the Controller may consider appropriate.
- (2) Notwithstanding paragraph (1)(a), the Controller may grant recognition to a foreign certification authority which does not comply with the requirements of that paragraph on the ground that the country concerned does not require a licence or any other authority to carry on certification practice in that country, but which otherwise satisfies the requirements of paragraphs (1)(b), (c), (d) and (e).

11. Grant of application for recognition

- (1) Where the Controller receives an application under regulation 9, it -
 - (a) shall give public notice of the application in 2 daily newspapers having

wide coverage in the country and invite any interested person who wishes to object to the application to do so in writing within 14 days of the publication;

- (b) may direct the applicant to furnish such additional information as it may reasonably require.
- (2) The Controller may, within a period of 90 days from the effective date of the application, grant or refuse an application made under regulation 9.
- (3) In considering an application made under regulation 9, the Controller shall have regard to the criteria and requirements set out in the Third Schedule.
- (4) Where the Controller grants the application, it shall, subject to regulation 13, issue the recognition to the applicant in such form and on such terms and conditions as the Controller may determine.
- (5) A recognition issued by the Controller under this regulation -
 - (a) shall be valid for a period of 5 years from the date of issue; and
 - (b) may be renewed.
- (6) Where the Controller refuses an application, it shall forthwith notify the applicant by registered post of its refusal, giving reasons for the refusal.

12. Renewal of recognition

- (1) An application for the renewal of a recognition shall be -
 - (a) made to the Controller in such form and manner as it may determine, at least 90 days before the date of expiry of the recognition; and
 - (b) accompanied by the appropriate application fee and such other documents as the Controller may require.
- (2) Where the Controller receives an application made under paragraph (1), it –

- (a) shall give public notice of the application in 2 daily newspapers having wide coverage in the country and invite any interested person wishing to object to the application to do so in writing within 14 days of the publication;
 - (b) may direct the applicant to furnish such additional information as it may reasonably require.
- (3) In considering an application made under paragraph (1), the Controller shall have regard to the criteria and requirements set out in the Third Schedule.
- (4) The Controller may, within a period of 90 days from the effective date of the application, grant or refuse an application made under paragraph (1).
- (5) Where the Controller grants the application, it shall, subject to regulation 13, renew the recognition on such terms and conditions as it may determine.
- (6) Where a recognised foreign certification authority has no intention of renewing its recognition, it shall –
 - (a) inform the Controller in writing, not later than 90 days before the date of expiry of its recognition;
 - (b) inform all its subscribers in writing, not later than 60 days before the date of expiry of its recognition;
 - (c) give public notice of its intention in 2 daily newspapers having wide coverage in the country and in such manner as the Controller may determine, not later than 60 days before the date of expiry of its recognition; and
 - (d) take appropriate steps to maintain the validity of any certificate issued by it which is still valid.
- (7) Where the Controller refuses an application, it shall forthwith notify the applicant by registered post of its refusal, giving reasons for the refusal.

13. Procedure for taking out recognition

- (1) Where the Controller grants an application under regulation 11 or 12, the applicant shall take out the recognition upon payment of the appropriate initial fee and annual fee within a period of 90 days of the grant.
- (2) The applicant may make a request to the Controller in writing, upon reasonable cause shown and not later than 15 days prior to the expiry of the delay, to extend the delay for another period of 90 days.
- (3) Where the Controller grants the extended period of 90 days and the applicant fails to take out the recognition during that period, the Controller shall rescind its decision to grant or renew the recognition and any fee, whether annual fee or initial fee, paid by the applicant shall not be refunded.

14. Payment of annual fee

- (1) Every certification authority to which a licence or a recognition has been issued shall pay to the Controller the appropriate annual fee not later than 15 days before the anniversary date of the licence or the recognition, as the case may be.
- (2) Where a certification authority to which a licence or recognition has been issued fails to pay the annual fee within the time specified in these regulations, he shall, in addition to the amount due, pay a surcharge of 10 per cent.
- (3) Where the annual fee in respect of a valid licence or recognition remains unpaid for a period of 90 days as from the date the fee is due, the Controller may revoke the licence or recognition, as the case may be.

15. Application for approval of public sector agency

- (1) A public sector agency wishing to act as a certification authority shall make an application to the Minister for approval.
- (2) An application made under paragraph (1) shall be submitted to the Controller in such form and manner as the Controller may determine.

- (3) A public sector agency making an application under paragraph (1) shall –
 - (a) comply with the operational criteria and audit requirements set out in the Third Schedule;
 - (b) be exempted from the financial criteria set out in that Schedule.
- (4) Where the Controller receives an application made under paragraph (1), it may direct the applicant to furnish such additional information as it may reasonably require.
- (5) The Controller shall examine the application and submit its opinion and recommendations to the Minister.
- (6) Where the Minister receives the opinion and recommendations of the Controller in relation to an application under this regulation, he may –
 - (a) consult any other person or authority he considers necessary;
 - (b) direct the applicant or the Controller to furnish such additional information as he may reasonably require.
- (7) The Minister may grant or refuse the application, within a period of 90 days from the effective date of the application.
- (8) Where the Minister grants the application –
 - (a) he shall approve the public sector agency to act as a certification authority;
 - (b) he shall impose such terms and conditions as he may determine; and
 - (c) he shall direct the Controller to issue an approval to the applicant, subject to those terms and conditions.
- (9) (a) On receipt of a direction under paragraph (8)(c), the Controller shall issue an approval.

- (b) An approval issued under this paragraph –
 - (i) shall be valid for a period of 5 years from the date of issue; and
 - (ii) may be renewed.
- (10) Where the Minister refuses an application, he shall forthwith notify the Controller in writing of his refusal, giving reasons for the refusal.
- (11) On receipt of the notification under paragraph (10), the Controller shall forthwith notify the applicant by registered post that the application has been refused by the Minister, giving reasons for the refusal.
- (12) The Minister shall not approve a public sector agency to act as a certification authority under this regulation where the public sector agency intends to issue certificates for the purpose of, or in connection with, any profit-making commercial transaction.
- (13) Where a public sector agency wishes to issue certificates for the purpose of, or in connection with, any profit-making commercial transaction, it shall make an application for a licence to act as a certification authority under regulation 5.

16. Renewal of approval

- (1) An application for the renewal of an approval granted under regulation 15 shall be made to the Controller in such form and manner as it may determine, at least 90 days before the date of expiry of the approval.
- (2) Where the Controller receives an application made under paragraph (1), it may direct the applicant to furnish such additional information as it may reasonably require.
- (3) The Controller shall examine the application and submit its opinion and recommendations to the Minister.
- (4) The Minister may, after considering the opinion and recommendations of the Controller, grant or refuse the application, within a period of 90 days from the

effective date of the application.

- (5) Where the Minister grants the application -
 - (a) he shall renew the approval of the public sector agency to act as a certification authority;
 - (b) he shall impose such terms and conditions as he may determine; and
 - (c) he shall direct the Controller to renew the approval, subject to those terms and conditions.
- (6) Where the Minister refuses an application, he shall forthwith notify the Controller in writing of his refusal, giving reasons for the refusal.
- (7) On receipt of the notification under paragraph (6), the Controller shall forthwith notify the applicant by registered post that the application has been refused by the Minister, giving reasons for the refusal.
- (8) Regulation 15(12) shall apply to an application for the renewal of an approval as it applies to an application for approval.

17. Prohibition in relation to approved public sector agency

Where a public sector agency has been approved by the Minister under regulation 15 or 16 to act as a certification authority, it shall not use that approval to issue certificates for the purpose of, or in connection with, any profit-making commercial transaction.

18. Revocation or suspension of licence, recognition or approval

- (1) A licence, recognition or approval shall be deemed to have been revoked where the certification authority is wound up.
- (2) The Controller may revoke or suspend the licence or recognition, as the case may be, of a certification authority –
 - (a) on any ground on which the Controller may refuse to grant an application

for a licence or recognition;

- (b) where the certification authority no longer satisfies the requirements which led to the issue of the licence or recognition;
 - (c) where the certification authority fails to comply with a direction of the Controller made under section 43 of the Act;
 - (d) where the certification authority has entered into any composition or arrangement with its creditors;
 - (e) where the certification authority is in the process of winding up;
 - (f) where the certification authority, without any valid reason acceptable to the Controller, fails to carry on business for which it was licensed or recognised;
 - (g) where the Controller has reason to believe that the certification authority or its trusted person has not performed its or his duties efficiently, honestly or fairly; or
 - (h) where the certification authority contravenes or fails to comply with any condition or restriction applicable in respect of the licence or recognition.
- (3) The Controller shall not revoke or suspend the licence or recognition, as the case may be, under paragraph (2) without first giving the certification authority an opportunity of being heard.
- (4) The Minister may revoke or suspend the approval of a certification authority –
- (a) on any ground on which the Minister may refuse to grant an application for approval;
 - (b) where it no longer satisfies the requirements which led to the issue of the approval;
 - (c) where it fails to comply with a direction of the Controller made under

section 43 of the Act;

- (d) where it, without any valid reason acceptable to the Minister, fails to carry on business for which it was approved;
 - (e) where the Minister has reason to believe that the public sector agency or its trusted person has not performed its or his duties efficiently, honestly or fairly; or
 - (f) where it contravenes or fails to comply with any condition or restriction applicable in respect of the approval.
- (5) The Minister shall not revoke or suspend the approval under paragraph (4) without first giving the certification authority an opportunity of being heard.
- (6) (a) A certification authority issued with a licence or recognition may apply to the Controller in writing for the revocation of its licence or recognition.
- (b) A certification authority issued with an approval may apply to the Minister in writing for the revocation of its approval.
- (7) Where a certification authority makes an application under paragraph (6), it shall, not less than 90 days before the date the application is submitted to the Controller or Minister, as the case may be, notify all its subscribers in writing of its intention to make the application.
- (8) A certification authority which contravenes paragraph (7) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 6 months.
- (9) (a) Where the Controller receives an application made under paragraph (6)(a), it may, after obtaining from the certification authority such information as may be required, revoke the licence or recognition.
- (b) (i) Where the Minister receives an application made under paragraph (6) (b), he may, after consultation with the Controller and after obtaining from the certification authority such information as may be required,

revoke the approval.

- (ii) Where the Minister revokes the approval under sub-subparagraph (i), he shall forthwith notify the Controller in writing of his decision.

- (10) The Controller shall cause any revocation under paragraph (9) to be published in 2 daily newspapers having wide coverage in the country and shall state the effective date of the revocation.
- (11) A revocation under paragraph (9) or (10) shall be without prejudice to a fresh application for a licence, recognition or approval, as the case may be, being made by the certification authority.
- (12) Any suspension under this regulation shall be for such period, or until the happening of such event, as the Controller may determine.

19. Powers of Controller or Minister in cases of misconduct

- (1) The Controller may inquire into any allegation that a certification authority or any of its officers or employees, is or has been guilty of any misconduct or is no longer fit to continue to remain licensed or recognised by reason of any other circumstances which have led, or are likely to lead, to the improper conduct of business by it or to reflect discredit on the method of conducting business.
- (2) The Minister may inquire into any allegation that a certification authority or any of its officers or employees, is or has been guilty of any misconduct or is no longer fit to continue to hold its approval by reason of any other circumstances which have led, or are likely to lead, to the improper conduct of business by it or to reflect discredit on the method of conducting business.
- (3) Where, after inquiring into an allegation under paragraph (1), the Controller has reasonable grounds to believe that the allegation is founded, it may –
 - (a) revoke the licence or recognition of the certification authority;
 - (b) suspend the licence or recognition of the certification authority for such period, or until the happening of such event, as the Controller may

determine; or

- (c) reprimand or warn the certification authority.
- (4) Where, after inquiring into an allegation under paragraph (2), the Minister has reasonable grounds to believe that the allegation is founded, he may, after consultation with the Controller –
- (a) revoke the approval of the certification authority;
 - (b) suspend the approval of the certification authority for such period, or until the happening of such event, as the Minister may determine; or
 - (c) reprimand or warn the certification authority.
- (5) The Controller or Minister, as the case may be, shall, at the hearing of an inquiry into an allegation under paragraph (1) or (2) against a certification authority, give the certification authority an opportunity of being heard.
- (6) The Controller may, on its own initiative or at the request of the Minister, issue directions to a certification authority for compliance under section 43 of the Act as a result of making an inquiry under this regulation.
- (7) For the purpose of this regulation, "misconduct" means –
- (a) any failure to comply with the requirements of the Act, these Regulations or any certification practice statement; and
 - (b) any act or omission relating to the conduct of business of a certification authority which is or is likely to be prejudicial to public interest.

20. Effect of revocation or suspension

- (1) A certification authority whose licence, recognition or approval is revoked or suspended under regulation 18 or 19 shall, for the purposes of these regulations, be deemed not to be licensed, recognised or approved from the date that the licence, recognition or approval, as the case may be, is revoked or suspended.

- (2) A revocation or suspension of a certification authority's licence, recognition or approval shall not operate so as to –
- (a) avoid or affect any agreement, transaction or arrangement entered into by the certification authority, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence, recognition or approval;
 - (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement; or
 - (c) affect the validity of certificates issued by that certification authority where appropriate steps have been taken by the certification authority to maintain the validity of those certificates.

21. Trusted person

- (1) A certification authority shall seek the approval of the Controller prior to the appointment of any trusted person or prior to his subsequent replacement as a trusted person.
- (2) Every trusted person shall –
- (a) be a fit and proper person to carry out the duties assigned to him;
 - (b) not be an undischarged bankrupt in Mauritius or elsewhere; and
 - (c) not have been convicted, whether in Mauritius or elsewhere, of –
 - (i) an offence involving fraud or dishonesty; or
 - (ii) an offence under the Act or these Regulations.
 - (d) have a good knowledge of the Act and these Regulations;
 - (e) be trained in the certification authority's certification practice statement;

and,

- (f) possess the technical qualifications, expertise and experience to effectively carry out his duties.
- (3) Notwithstanding paragraph (2)(c), the Controller may allow the applicant to have a trusted person who has been convicted of an offence referred to in that paragraph, where the Controller is satisfied that 10 years have elapsed from –
- (a) the date of conviction; or
 - (b) the date of release from imprisonment if he was sentenced to a term of imprisonment, whichever is the later.

22. Trustworthy transaction logs

- (1) Every certification authority shall make and keep in a trustworthy manner the records relating to –
 - (a) activities pertaining to the issue, renewal, suspension and revocation of certificates, including the process of identification of any person requesting a certificate from a certification authority;
 - (b) the process of generating subscribers', where applicable, or the certification authority's own key pairs;
 - (c) the administration of a certification authority's computing facilities; and
 - (d) any critical activity of a certification authority as may be determined by the Controller.
- (2) Every certification authority shall archive all certificates issued by it and maintain mechanisms to access such certificates for a period of not less than 10 years as from the date the certificates are no longer used.
- (3) Every certification authority shall retain all records required to be kept under paragraph (1) and all logs of the creation of the archive of certificates referred to

in paragraph (2) for a period of not less than 10 years from the date of issue of the certificates irrespective of their validity period.

23. Trustworthy record keeping and archiving

- (1) Every certification authority shall keep its records in the form of paper-based documents, electronic records or such other form as may be approved by the Controller for a period of not less than 10 years as from the date of creation of the record.
- (2) Any records kept under paragraph (1) shall be indexed, stored, preserved and reproduced so as to be accurate, complete, legible and accessible to the Controller, an auditor or an authorised officer.

24. Issue of certificates

- (1) In addition to the requirements specified in section 26 of the Act, every certification authority shall comply with the requirements in this regulation in relation to the issue of certificates.
- (2) The practices and procedures set forth in the certification practice statement of a certification authority shall contain the conditions specified in section 26(2) of the Act.
- (3) The subscriber identity verification method employed for issue of certificates shall be specified in the certification practice statement and is subject to the approval of the Controller during the application for a licence.
- (4) Where a certificate is issued to a person (referred to as "new certificate") on the basis of another valid certificate held by the same person (referred to as "originating certificate") and, subsequently, the originating certificate has been suspended or revoked, the certification authority that issued the new certificate shall conduct investigations to determine whether it is necessary to suspend or revoke the new certificate.
- (5) The certification authority shall provide a reasonable opportunity for the subscriber to verify the contents of an issued certificate before the subscriber

accepts same.

- (6) Where the subscriber accepts an issued certificate, the certification authority shall publish a signed copy of the certificate in a repository.
- (7) Where the subscriber does not accept an issued certificate, the certification authority shall not publish it.
- (8) Once a certificate has been issued by the certification authority and accepted by the subscriber, the certification authority shall notify the subscriber within a reasonable time of any fact known to the certification authority that significantly affects the validity or reliability of the certificate.
- (9) Every certification authority who has issued certificates to its subscribers shall take appropriate measures to maintain the validity of those certificates.
- (10) The date and time of all transactions in relation to a certificate shall be logged and kept in a trustworthy manner.

25. Expiry date of certificates

Every certificate shall state the date on which it expires.

26. Renewal of certificates

- (1) Regulation 24 shall apply to the renewal of certificates as it applies to the issue of certificates.
- (2) Subject to the other provisions of these regulations, before renewing a certificate, a certification authority shall apply the subscriber identity verification method specified in the certification practice statement as approved by the Controller.
- (3) The date and time of all transactions in relation to the renewed certificate shall be logged and kept in a trustworthy manner.

27. Suspension of certificates

- (1) This regulation shall apply only to every certification authority which allows subscribers to request for suspension of certificates.
- (2) Every certification authority may provide for immediate revocation instead of suspension where the subscriber has agreed to it in writing.
- (3) Where a subscriber or authorised agent makes a request for suspension of a certificate under section 28 of the Act, the certification authority shall use the subscriber identity verification method specified in the certification practice statement to confirm the identity of the subscriber or authorised agent making the request.
- (4) A certification authority shall, after verifying the identity of the subscriber or authorised agent and after being satisfied that the request for suspension is validly made, suspend the certificate and publish notice of the suspension in the repository in accordance with section 31 of the Act.
- (5) A certification authority may suspend a certificate issued by it where it has reasonable grounds to believe that the certificate is unreliable, regardless of whether the subscriber consents to the suspension.
- (6) Where a certification authority suspends a certificate under paragraph (5), it shall complete its investigation into the reliability of the certificate and decide within a reasonable time whether to reinstate the certificate or to revoke the certificate in accordance with section 29 or 30 of the Act.
- (7) Where the certification authority considers that revocation is justified in the light of all the evidence available to it, the certificate shall be revoked in accordance with section 29 or 30 of the Act.
- (8) A certification authority shall inform the subscriber or his authorised agent whether the certificate is to be reinstated or whether the certificate has been revoked under paragraph (7).
- (9) A certification authority shall terminate a suspension initiated by request where the certification authority discovers and confirms that the request for suspension was made without authorisation by the subscriber or his authorised agent.

- (10) Where the suspension of a certificate leads to a revocation of the certificate, the requirements for revocation under section 30 of the Act shall apply.
- (11) It shall be the responsibility of any person relying on a certificate to check whether a certificate has been suspended.
- (12) The date and time of all transactions in relation to the suspension of certificates shall be logged and kept in a trustworthy manner.
- (13) A certification authority shall maintain facilities to receive and act upon requests for suspension at all times of the day and on all days of every year.

28. Revocation of certificates

- (1) Where a subscriber or authorised agent makes a request for revocation under section 29 of the Act, the certification authority shall not revoke the certificate unless it uses the subscriber identity verification method specified in the certification practice statement to confirm the identity of the subscriber or authorised agent making the request.
- (2) A certification authority shall, after verifying the identity of the subscriber or authorised agent and after being satisfied that the request for revocation is validly made, revoke the certificate and publish notice of it under section 32 of the Act.
- (3) A certification authority shall maintain facilities to receive and act upon requests for revocation at all times of the day and on all days of the year.
- (4) A certification authority shall give notice to the subscriber immediately upon the revocation of a certificate.
- (5) The date and time of all transactions in relation to the revocation of certificates shall be logged and kept in a trustworthy manner.
- (6) A certification authority shall maintain facilities to receive and act upon requests for revocation at all times of the day and on all days of every year.

29. Review of decision under regulation 27 or 28

Any subscriber who is dissatisfied with the decision of a certification authority to suspend or revoke its certificate under regulation 27 or 28 may refer the matter for dispute resolution in accordance with the rules in relation thereto specified in the certification practice statement.

30. Certification practice statement

- (1) Every certification authority shall –
 - (a) use the Internet draft of the Internet X.509 Public Key Infrastructure Certificate Policy and Certification Practices Framework, adopted by the Internet Engineering Task Force and reproduced by the Controller on its Internet website, as a guide for the preparation of its certification practice statement; and
 - (b) ensure that its certification practice statement complies with the latest version of the Internet draft of the document referred to in subparagraph (a).
- (2) Every certification authority shall -
 - (a) in relation to any dispute or claim arising under, in connection with or relating to the certification practice statement or any certificate issued by it, specify dispute resolution rules in the certification practice statement;
 - (b) draw its subscribers' attention to the dispute resolution rules referred to in subparagraph (a).
- (3) Any change to the certification practice statement during the term of the licence requires the prior approval of the Controller.
- (4) Every certification authority shall highlight to its subscribers any limitation of their liabilities and, in particular, it shall draw the subscribers' attention to the implication of reliance limits on their certificates.

- (5) Every certification authority shall specify the subscriber identity verification method it uses for the issue, suspension, revocation and renewal of a certificate in the certification practice statement.
- (6) Every certification authority shall, in relation to the certificate practice statement –
 - (a) submit a copy of the latest version, together with its effective date, to the Controller;
 - (b) where a subscriber requests a copy thereof, provide him with same;
 - (c) take appropriate steps to make a copy thereof available to the public for inspection.
- (7) After the effective date, the latest version submitted to the Controller shall be the prevailing version for every certificate issued by the certification authority.
- (8) Every certification authority shall keep a log of every change to the certification practice statement together with the effective date of that change.
- (9) Every certification authority shall keep in a trustworthy manner a copy of each version of the certification practice statement, together with the date it comes into effect and the date it ceases to have effect.

31. Security guidelines

- (1) Every certification authority shall have the sole responsibility concerning the integrity, confidentiality and protection of information employed in its operation, including the classification, declassification, labelling, storage, access and destruction of information according to their value, sensitivity and importance in the operations of the certification authority.
- (2) The Controller shall, from time to time, issue in the form of directives or guidelines, Information Technology Security Guidelines and Security Guidelines for Certification Authorities which are aimed at protecting the integrity, confidentiality and availability of service of certification authorities.

- (3) Every certification authority shall formulate its Information Technology and Security Policy for its operations in compliance with the guidelines referred to in paragraph (2) and shall submit it to the Controller for approval before the commencement of its operation.
- (4) A certification authority shall submit any change made by it to its Information Technology and Security Policy to the Controller within 14 days of effecting the change and the Controller shall notify the certification authority whether the change is approved.

32. Incident handling

- (1) A certification authority shall implement an incident management plan which shall cover, inter alia, the following incidents –
 - (a) compromise of key;
 - (b) unauthorised or unlawful penetration of the certification authority's system and network;
 - (c) unavailability of its infrastructure; and
 - (d) registration, generation, use, suspension or revocation of certificates which is fraudulent.
- (2) Where an incident referred to in paragraph (1) occurs, the certification authority shall report the incident to the Controller within 24 hours.

33. Confidentiality

- (1) Every certification authority and its authorised agent shall keep all subscriber-specific information confidential except for the purposes of Part XII of the Act, or for any prosecution under any enactment or pursuant to an order of Court.
- (2) Any disclosure of subscriber-specific information by the certification authority or its agent shall have the prior approval of the subscriber.

- (3) This regulation shall not apply to subscriber-specific information which –
- (a) is contained in the certificate for public disclosure;
 - (b) is otherwise provided by the subscriber to the certification authority for this purpose; or
 - (c) relates to the fact that the certificate has been revoked or suspended.
- (4) In this regulation –
- "authorised agent" means a person acting as verifier for the certificate authority before a certificate is issued to an applicant.

34. Disclosure

- (1) Every certification authority shall, after completing 6 months' operation, submit half-yearly progress and financial reports to the Controller.
- (2) The half-yearly progress reports shall include information on –
- (a) the number of subscribers;
 - (b) the number of certificates issued, suspended, revoked, expired and renewed;
 - (c) system performance including system up and down time and any extraordinary incidents;
 - (d) changes in the organisational structure of the certification authority;
 - (e) changes since the preceding progress report submitted or since the application for the licence; and
 - (f) changes in the particulars of any trusted person since the last submission to the Controller, including the name, identification number, residential address, designation, function and date of employment of the trusted

person.

- (3) The certification authority shall have a continuing obligation to disclose to the Controller any changes in the information submitted.
- (4) All current versions of the certification authority's applicable certification practice statements together with their effective dates shall be published in the certification authority's website.

35. Discontinuation of operations of certification authority

- (1) Where a certification authority intends to discontinue its operations, it shall arrange for its subscribers to re-subscribe to another certification authority.
- (2) The certification authority which intends to discontinue its operations shall ensure that its records and certificates have been archived in a trustworthy manner.
- (3) Where the records are transferred to another certification authority, the transfer shall be done in a trustworthy manner.
- (4) A certification authority shall -
 - (a) give the Controller a minimum of 90 days' written notice of its intention to discontinue its operations;
 - (b) give its subscribers a minimum of 60 days' written notice of its intention to discontinue its operations;
 - (c) advertise, in such daily newspaper and in such manner as the Controller may determine, at least 60 days' notice of its intention to discontinue its operations; and
 - (d) take appropriate steps to maintain the validity of each certificate issued by it which is still valid.

36. Appeal against decision of Controller

- (1) For the purposes of these regulations and Part VIII of the Information and Communication Technologies Act, a decision of the Controller shall be deemed to be a decision of the Authority.
- (2) Where the Controller -
 - (a) grants an application under regulation 5, 6, 11 or 12 subject to any terms or conditions;
 - (b) refuses an application under regulation 5, 6, 11 or 12;
 - (c) invokes a performance bond under regulation 7;
 - (d) revokes or suspends a licence or recognition under regulation 18; or
 - (e) revokes a licence, suspends a licence or reprimands or warns a certification authority under regulation 19,

any person aggrieved by the decision of the Controller may, within 21 days from the date of the decision, appeal in the manner provided for under Part VIII of the Information and Communication Technologies Act.

37. Appeal against decision of Minister

Where the Minister -

- (a) grants an application under regulation 15 or 16 subject to any terms or conditions;
- (b) refuses an application under regulation 15 or 16.
- (c) revokes or suspends an approval under regulation 18; or
- (d) revokes or suspends an approval or warns a certification authority under regulation 19,

any person aggrieved by the decision of the Minister may, from the date the Controller notifies the person of the decision, seek a judicial review of the decision before the Supreme Court.

38. Offences

Any person who fails, without any reasonable excuse, to comply with these regulations shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 6 months.

39. Transitional provision

Where a certification authority has been in operation prior to the coming into operation of these regulations, it shall –

- (a) be deemed to be licensed, recognised or approved, as the case may be, for a period not exceeding 90 days after the coming into operation of these regulations;
- (b) prior to the expiry of the 90 days referred to in paragraph (a), apply to the Controller for a licence, recognition or approval, as the case may be, in accordance with these regulations;
- (c) pay the appropriate annual fee not later than 15 days before the anniversary of the licence.

40. Commencement

These regulations shall come into operation on 1 December 2010.

Made by the Minister on 25 November 2010.

FIRST SCHEDULE

[Regulation 3(1)]

Particulars of Certification Authorities

1. The Controller of Certification Authorities issued a licence / recognition / approval to
to act as licensed / foreign recognised / approved public sector agency certification authority under the Electronic Transactions (Certification Authorities) Regulations 2010.

2.has started operation as a licensed / foreign recognised / approved public sector agency certification authority on

3. The certification authority's licence / recognition / approval has since been renewed yearly, as follows:

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.....

4. The certification authority's current licence / recognition / approval is valid from (date of issue) to(date of expiry).

5. Contact Details:
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.....
.....
.....

6. Certification authority's Certificates:

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7. Repository:

URL of repository:

8. Certification Practice Statement and Certificate Policies:

The certification authority's Certification Practice Statement and relevant Certificate Policies can be assessed at URL

SECOND SCHEDULE

[Regulation 2]

		Fee (Rs)
1.	Licence or renewal of licence (under regulation 5 or 6)	
(1)	Application fee	5,000
(2)	Initial fee	50,000
(3)	Annual fee	50,000
2.	Recognition or renewal of recognition (under regulation 11 or 12)	
(1)	Application fee	5000
(2)	Initial fee	50,000
(3)	Annual fee	50,000

THIRD SCHEDULE

[Regulations 5, 6, 7, 9, 11, 12 and 15]

Criteria and Requirements

1. Financial criteria

- (a) An applicant for a licence or recognition shall –
 - (i) submit a business plan showing that it has sufficient funds to operate as a certification authority;
 - (ii) be insured against liability for such sum as may be determined by the Controller for each claim arising out of any error or omission on the part of the applicant, its officers or employees;
- (b) In addition, an applicant for a licence shall be required to obtain a performance bond in favour of the Controller in such sum as may be determined by the Controller.
- (c) The performance bond referred to in subparagraph (b) may be invoked –
 - (i) for payment of an offer of composition made by the Controller;
 - (ii) for payment of liabilities and rectification costs attributed to the negligence of the certification authority, its officers or employees; or
 - (iii) for payment of the costs incurred in the discontinuation or transfer of operations of the licensed certification authority, if the certification authority's licence or operations is discontinued.

2. Operational criteria

- (a) An applicant for a licence or recognition shall -
 - (i) have a certification practice statement approved by the Controller;

- (ii) undergo and pass an initial audit before a licence or recognition can be granted by the Controller; and
 - (iii) undergo and pass such audit as the Controller may, by notice in writing, require.
- (b) The audits referred to in subparagraph (a) shall be -
 - (i) conducted in accordance with the auditing requirements specified in paragraph 3; and
 - (ii) completed within such time as the Controller may, by notice in writing, specify.

3. Auditing requirements

- (a) An applicant shall pass any audit required under paragraph 2(a) for compliance with -
 - (i) security guidelines referred to in regulation 31;
 - (ii) licensing conditions;
 - (iii) its certification practice statement; and
 - (iv) the Act and these Regulations.
- (b) An applicant shall subject itself to audits that shall be carried out by such auditor as the Controller may appoint or determine.
- (c) Such audits shall be based on the latest version of the Internet draft of the Internet X.509 Public Key Infrastructure Certificate Policy and Certification Practices Framework, adopted by the Internet Engineering Task Force and which shall be made available by the Controller on its website.
- (d) Auditing fees, as may be invoiced by the auditor, shall be borne by the applicant.

- (e) A copy of every audit report shall be submitted to the Controller within 4 weeks of the completion of an audit –
 - (i) by the auditor to the Controller; or
 - (ii) by the auditor to the applicant who shall forward same to the Controller.

 - (f) Failure to pass the audit may be a ground for the Controller to –
 - (i) refuse an application for a licence under regulation 5 or 6;
 - (ii) refuse an application for recognition under regulation 11 or 12;
 - (iii) suspend a licensed certification authority's licence or a foreign certification authority's recognition for such period, or until the happening of such event, as the Controller may determine under regulation 18;
 - (iv) revoke a certification authority's licence under regulation 18, where the certification authority fails to comply with any condition imposed on it during the period for which its licence is suspended under sub-subparagraph (iii);
 - (v) revoke a foreign certification authority's recognition under regulation 18, where the foreign certification authority fails to comply with any condition imposed on it during the period for which its recognition is suspended under sub-subparagraph (iii).
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