

The Electronic Transactions Act



MYERS, FLETCHER & GORDON
ATTORNEYS-AT-LAW

Electronic Transactions Act

- Effective since April 2, 2007.
- Affects ALL Jamaican legislation which refers to “writing”.
- Act covers many aspects of electronic communications generally.



Purpose of Act

- To fulfill Government's E-Transactions Policy
- To build legal and regulatory framework
- Secure confidence for Jamaicans in e-commerce
- To conform with international positions



Purpose of Act

Act will confirm legal basis for:

- our purchase of goods and services online
- the privacy and security of our E-transactions
- Transacting E-business with Government departments
- although arguable that electronic transactions are already legitimate



Objects of Act

- Facilitate electronic transactions
- Promote compatible legal and business infrastructure
- Eliminate uncertainties
- Promote public confidence in E-transactions
- Facilitate E-Filing with Government



Objects of Act

Excluded transactions:

- Wills
- Transfer of Land
- Matters re Trust Law or powers of attorney
- Procedures governed by Civil Procedure Rules 2002



Main Provisions of Act

- No obligation for E-commerce
- But Act applies to all E-transactions
- Government can stipulate that a transaction with it must be E-transaction



Main Provisions of Act

- E information = written information
- Where law requires written information, E information is acceptable if:
 - a) its accessible and capable of retention
 - b) If information to Government, information meets the set technological requirements and verification requirements
 - c) For non-Government entity, recipient consents to E information



Main Provisions of Act

“giving of information” means:

- making application
- serving notice
- making request
- issuing certificate
- lodging objection
- giving statement



Main Provisions of Act

E-signature is valid if:

- clear method to identify signatory
- method is reliable
- if information is to Government, method satisfies set requirements
- if non-Government, person consents



Main Provisions of Act

Presumption of acceptability of E-signature if:

- uniquely linked to signatory
- capable of identifying signatory
- Signature-creation under sole control of signatory
- subsequent alteration is detectable



Main Provisions of Act

Document may be attested, notarised or verified or made under oath electronically.



MYERS, FLETCHER & GORDON
ATTORNEYS-AT-LAW

Main Provisions of Act

Where law requires "original" information, E information qualifies if:

- method of protection is reliable
- its accessible for subsequent reference
- if information is to Government, information meets set technological and verification requirements
- Non-Government person consents



Main Provisions of Act

Where law requires information to be “kept”, it can be kept electronically

- E information admissible in court
- In assessing evidential weight, regard to:
 - a) reliability of storage and communication
 - b) manner of identification of origination
 - c) any other relevant factor



Main Provisions of Act

E information can satisfy service or delivery requirements



MYERS, FLETCHER & GORDON
ATTORNEYS-AT-LAW

Main Provisions of Act

- Where law prescribes a form, Minister to make regulations to contemplate E form
- Where law requires payment to Government, regulations should cover E-payment.



Main Provisions of Act

- Unless otherwise agreed, an offer and acceptance may be expressed electronically
- Contract may be formed by automated interaction of computers
- Sender can require acknowledgment receipt



Consumer Protection Provisions in Act

E merchant's website must provide consumers with merchant's:

- Full name, address, email address and telephone numbers
- Address for legal service
- Corporate status, if any
- Membership in self-regulatory or accredited bodies



Consumer Protection Provisions in Act

- code of conduct
- characteristics of goods and services
- full price (including taxes, fees or costs)
- required method of payment
- full terms and conditions of contract
- time for delivery
- return, exchange and refund policy
- dispute resolution code



Consumer Protection Provisions in Act

- Online customer must be given opportunity to review entire electronic transaction.
- Online customer free to cancel E-transaction without charge or penalty within seven (7) days, subject to exceptions.



Consumer Protection Provisions in Act

Exceptions:

- Financial, insurance or banking service
- Auctions
- Where price fluctuates and not controllable by supplier
- Goods are personalised or are perishable
- Audio or video recordings or computer software



Consumer Protection Provisions in Act

Other exceptions:

- sale of newspapers, magazines or books
- gaming or lottery services
- Provision of accommodation, transport or catering services



MYERS, FLETCHER & GORDON
ATTORNEYS-AT-LAW

Consumer Protection Provisions in Act

Sender of unsolicited E-communication must give consumers:

- opportunity to decline future receipt
- if requested, source of consumer's contact information.
- Failure gives rise to offence. No agreement if consumer fails to respond.



Consumer Protection Provisions in Act

- E-supplier must meet agreed delivery time or, if none, must deliver within thirty (30) days
- If late delivery, consumer can cancel



Practical Consequence (general)

- Increase in E transactions. Effective website essential
- Encouragement of online sales to foreigners
- More Government E-filing
- Increased on-line fraud
- Boost for encryption and protection services
- More demand for computer-savvy workers



Practical Consequences

Websites will need:

- updating
- more detail about profile and policies
- easily facilitate on-line purchase of goods and services
- integrate easy delivery of goods
- to be user-friendly and robust
- Contain all appropriate disclaimers



Practical Consequences

Forms & Agreements should:

- be reviewed to ensure compatibility with law and practice
- protect company
- be clear to customer
- synchronise paper and E-forms
- allow E-transactions



MYERS, FLETCHER & GORDON
ATTORNEYS-AT-LAW

Practical Consequences

Codes of Conduct re computer use will need updating

- Better internal procedures to keep customer's personal information confidential.
- Need staff with computer skills
- Good record-keeping needed



MYERS, FLETCHER & GORDON
ATTORNEYS-AT-LAW

Practical Consequences

Improved I.T. Management with:

- necessary encryption and protection services
- monitor internal activities
- Good customer assurance



MYERS, FLETCHER & GORDON
ATTORNEYS-AT-LAW

Practical Consequences

Fraud prevention

- Education
- Regular review
- Clear confirmation
- Appropriate software and firewall



Practical Consequences

Biometrics

- Faces
- Finger prints
- Eyes



MYERS, FLETCHER & GORDON
ATTORNEYS-AT-LAW

Practical Consequences

Unsolicited Communication

- Customers must be able to decline communication
- Customers can unsubscribe
- Records kept of unwilling customers



Electronic Transactions Act

THE END

Peter S. Goldson
Myers, Fletcher & Gordon
Attorneys-at-Law
21 East Street
Kingston, Jamaica
Tel: 876-922-5860
Fax: 876-922-7575

website: www.myersfletcher.com
email: peter.goldson@mfg.com.jm



MYERS, FLETCHER & GORDON
ATTORNEYS-AT-LAW