



General Legal Framework for Electronic Commerce and Electronic Signatures

Electronic commerce () plays a key role in economic growth and development. It reduces transaction costs for companies, consumers and public administrations, broadens the geographical scope in which products and services can be bought and sold and, through transactions, significantly increases the range of products and services available.

Indeed, e-commerce requires an effective and comprehensive legal framework in order to develop in a global, multilateral, interconnected and evolving world.

Thus, the aim of this decree-law is to provide Timor-Leste with a legal framework that promotes the development of electronic commercial transactions within the broader framework of the information society, offering significant opportunities for investment and employment while stimulating economic growth and innovation.

To this end, in drafting this decree-law, the opportunity has been taken to enshrine some underlying issues, outside the scope of commercial transactions, which are considered necessary to ensure the effectiveness of this legislative initiative, namely the provisions governing the validity of contracts concluded electronically, the use of electronic records and the legal status of electronic signatures. In this sense, the function of assessing and certifying the conformity of electronic signature products used in the provision of electronic signature services is entrusted to a certification body. Accordingly, in order to ensure better and greater oversight of these entities by holders and third parties, it was decided to create a register with the accrediting authority, which, although merely declaratory in nature, is compulsory for certifying entities that issue certificates.

Thus, electronic signatures issued by an accredited certification body have the probative force of a signed private document and can be used as evidence under the general terms of the law.

A supervisory body for e-signature and e-commerce is also established, whose functions are entrusted to the Information and Communication Technologies Agency I.P. (TIC TIMOR), including the investigation of administrative offenses, which are foreseen, and the imposition of the respective fines, in the event of infractions.

To this end, a system of penalties has been established for infringements in the field of electronic signatures and commerce, with fines set within very broad frameworks, so that they can be applied to the various situations that arise, and are a deterrent.

Among other things, this law establishes legal equivalence between and paper-based transactions, covering transactions in both the public and private sectors.

Likewise, the requirements governing transactions are established, including the specification of the information to be provided to consumers by e-commerce providers, adopting the principle of technological neutrality with regard to electronic signatures and records.

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In addition, this law defines the requirements for the execution and acceptance of electronic contracts and records, and the possibility of using electronic signatures.

It also lays down rules on the use of unsolicited commercial e-mail, commonly known as "spam", defines and prohibits the use of fraudulent e-mail and provides for a mechanism and jurisdiction for resolving disputes relating to commercial transactions.

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- t) "information system" means a system for producing, sending, receiving, storing, displaying or otherwise processing electronic communications or information;
- u) "intermediary" means a natural or legal person who, on behalf of another natural or legal person, sends, receives or stores, on a temporary or permanent basis, electronic communication or provides other services related to electronic communication, but is not the originator of the content that is sent, received or stored;
- v) "key pair" means public and private digital keys that are used to verify the identity of a holder of a digital or electronic transaction;
- y) "mobile commerce" or "m-commerce" means the use of portable wireless devices, such as cell phones, to conduct electronic commerce and includes the use of such devices to conduct financial transactions.
- z) "place of business" means any place where a party maintains a permanent establishment for the purpose of carrying on an economic activity other than the temporary supply of goods or services;
- aa) "Promissory note" means a written, signed and dated unconditional promise by which the author undertakes to pay a certain sum of money to the beneficiary or to his order, payable on demand or at another specified time.
- bb) "Sender" means the person or entity by whom or on whose behalf the electronic communication is sent or generated prior to storage, where applicable, excluding any intermediary acting in that electronic communication.
- cc) "secure electronic signature" means an electronic signature which has been confirmed by technological means, such as a public key infrastructure (PKI) certificate, as being unique to the person using it and which meets the other requirements of this Decree-Law relating to such signatures.
- dd) "Holder" means the natural or legal person who holds signature certification data and who acts in his or her own name or on behalf of the person he or she represents.
- ee) "Unsolicited commercial e-mail" means an electronic message sent to a recipient who has not given his or her consent to receive such message.
- ff) "transferable document or instrument" means a document or instrument issued on paper which confers on its holder the right to demand performance of the obligation stated therein and to transfer the right to perform the stated obligation by transferring that document or instrument, in particular:
 - i. Bills of exchange;

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- a) the geographical location where the certificate is issued or the electronic signature, electronic record or transferable electronic record is created or used; or
 - b) Geographical location of the sender's, owner's, creator's or user's place of business.
- 3 A certificate issued or used abroad has the same legal effect in Timor-Leste as a certificate issued in national territory, if it offers a substantially equivalent level of reliability.
- 4 An electronic signature created or used abroad has the same legal effect in Timor-Leste as an electronic signature created or used in the national territory, if it offers a substantially equivalent level of reliability.
- 5 An electronic record issued or used abroad has the same effect in Timor-Leste as an electronic record created or used in Timor-Leste as an electronic record created or used in the national territory, if it offers a substantially equivalent level of reliability.
- 6 A transferable electronic record issued or used abroad has the same effect in Timor-Leste as a transferable electronic record created or used in the national territory, if it offers a substantially equivalent level of reliability.
- 7 In determining whether an electronic record, an electronic certificate or signature or a transferable electronic record offers a substantially equivalent level of reliability, due account shall be taken of recognized international standards.
- (8) Notwithstanding the provisions of this Article, where the parties agree between themselves on the use of certain types of electronic signatures or certificates, electronic records or transferable electronic records, such agreement shall be deemed sufficient for the purposes of cross-border recognition, unless such agreement is ! is –

- b) Place where the information system can be accessed by other parties.
- 2 The mere fact that a person uses an e-mail address or other element of an information system linked to a specific country does not create a presumption that their place of business is in that country.

Nothing in this Decree-Law shall affect the application of any legal rule requiring a person to disclose his or her identity, place of business or other information, nor shall it exempt a person from the legal consequences of making inaccurate, incomplete or false statements in this regard.

- 1. No one is obliged to use, provide or accept information in electronic form without their consent.
- 2. The provisions of this decree-law apply only to transactions in which each party to a deal has

1. Where a law requires the retention of certain documents, records or information, that requirement shall be satisfied by retention in the form of an electronic record if the following conditions are met:
 - a) The information it contains remains accessible so that it can be used for later reference;
 - b) The electronic record is kept in the format in which it was originally generated, sent or received, or in a format that can demonstrate that it accurately represents the information originally generated, sent or received;
 - c) Where appropriate, information is kept that makes it possible to identify the origin and destination of an electronic record, as well as the date and time it was sent or received.
 2. The obligation to retain documents, records or information pursuant to paragraph (1) shall not extend to information generated necessarily and automatically solely to enable a record to be sent or received.
 3. Nothing in this Article shall apply:
 - a) Overrides any law that expressly provides for the retention of documents, records or information in the form of electronic records;
 - b) Prevents any public body from specifying additional requirements for the retention of electronic records that are subject to the jurisdiction of its service.
- (1) Where there is a legal requirement that a document, record or information be produced or retained in its original form, or which provides for certain consequences if it is not, that requirement shall be met by producing or retaining the document, record or information in the form of an electronic record, where appropriate:
- a) There is a reliable guarantee as to the integrity of the information as soon as it has been generated for the first time in its definitive form, either as a written document or as an electronic record;
 - b) It is required to be presented or shown to the person to whom it is to be presented.
- (2) For the purposes of point (a) of the preceding paragraph, the integrity assessment criteria are whether the information has remained complete and unaltered, with the exception of any irrelevant changes arising in the normal course of communication, storage and display, as well as compliance with the reliability standard set out in Article 7.
- (1) Where a law requires a signature or provides for certain consequences if a document or record is not signed, or if the parties to a transaction agree that an electronic signature is required, the requirement is satisfied in relation to the electronic record by an electronic signature, if:
- a) a method is used to identify the person and indicate that person's intention with regard to the information contained in the electronic record;
 - b) the method used is determined to be reliable in accordance with the standards specified in Article 7.

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2. Where a law requires or the parties to a transaction specify that a secure electronic signature be used, that requirement is satisfied if it can be verified that an electronic signature at the time it was executed is secure:

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The accreditation of certification bodies for the purposes of this law is the responsibility of the accrediting authority.

1. Accreditation of digital signature certification bodies is granted, upon application to the accrediting authority, to bodies that meet the following requirements:
 - a) Have adequate capital and financial means;
 - b) Provide guarantees of absolute integrity and independence when carrying out the activity of certifying digital signatures;
 - c) They have the technical and human resources to meet the safety and efficiency standards laid down in the regulations referred to in Article 33;
 - d) Maintain a valid insurance contract to adequately cover civil liability arising from the certification activity.
2. The accreditation is valid for three years and may be renewed for equal periods.

1. The application for accreditation as an electronic signature certification body must be accompanied by the following documents:
 - a) Articles of association of the legal person and, in the case of a company, articles of association;
 - b) In the case of a company, a list of all shareholders, specifying their respective holdings, as well as the members of the management and supervisory bodies, and, in the case of a public limited company, a list of all shareholders with significant direct or indirect holdings;
 - c) Declarations signed by all natural and legal persons referred to in Article 23(1) that they are not in any of the situations that indicate a lack of good repute referred to in the respective paragraph 2;
 - d) Proof of the assets and financial means available and, in particular, in the case of a company, full payment of the share capital;
 - e) Description of the internal organization and security plan;
 - f) Demonstration of conformity of electronic signature products issued by a recognized certification body accredited under the terms of article 53;
 - g) Appointment of the security auditor;
 - h) General program of activities planned for the first three years;
 - i) A general description of the activities carried out over the last three years or the time elapsed

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- b) Declared bankrupt or insolvent by a national or foreign judgment or held liable for the bankruptcy or insolvency of a company it controls or of whose management or supervisory bodies it has been a member;
- c) Subject to sanctions, at home or abroad, for breaches of the legal or regulatory rules

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the request of the certifying body or the interested parties, together with proof that they meet the requirements set out in that article, failing which the accreditation will be revoked.

2. The certifying body or the interested parties may request provisional registration before they assume any of the qualities referred to in Article 21(1), and conversion of the registration into definitive must be requested within 30 days of the designation, failing which it will lapse.
3. In the event of reappointment, this is entered in the register at the request of the certifying body or the interested parties.
4. Registration shall be refused in the event of unfitness, under the terms of article 23, and the refusal shall be communicated to the interested parties and to the certification body, which shall take the appropriate measures to ensure that they immediately cease to function or cease to be related to the legal person in the relationship provided for in the same article, following, where applicable, the provisions of article 31;
5. Without prejudice to other applicable legal provisions, failure to register does not in itself invalidate the legal acts carried out by the person concerned in the performance of their duties.

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- g) Entering into mutual recognition agreements with accreditation authorities in foreign countries, provided that this has been previously authorized by the member of the Government responsible;
- h) Maintaining information on the internet about the list of certification bodies, and the suspension and revocation of digital certificates, as well as other relevant aspects of certification;
- i) Define the technical requirements that qualify the suitability of the activities carried out by certification bodies;
- j) Evaluate the activities carried out by authorized certifying

- b) Time of receipt, whereby an electronic communication is deemed to have been received when it becomes accessible to the recipient at an electronic address designated by the recipient or, in any other case, when the recipient becomes aware that the electronic communication has been sent.
- c) Place of sending, considering that an electronic communication is sent from:
 - i. The workplace of the sending organization;
 - ii. If the source entity has more than one place of business, the place of business that has the closest relationship to the underlying transaction; or
 - iii. If there is no place of business to U

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3. The provisions of this article do not exclude the resolution of disputes based on machines, such

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3. The provisions of this Decree-Law shall be without prejudice to the inclusion of information in a transferable electronic record other than that contained in a transferable document or instrument.

1. Where the law requires or permits possession of a transferable document or instrument, that requirement shall be satisfied in relation to a transferable electronic record if a reliable method is used to:
 - a) Establish exclusive control of that transferable electronic record by one person;
 - b)

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3 Once the electronic transferable record has been issued in accordance with paragraphs

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occurrence of situations that could jeopardize the efficiency, reliability and safety of the equipment and systems used in the certification activity.

The accrediting authority may ask the police and judicial authorities and any other public authorities and services for any collaboration or assistance it deems necessary for the accreditation and supervision of the certification activity.

The regime established in this chapter is without prejudice to the application of the special regimes of administrative sanctions in force, provided for in other legislation.

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The Minister of Finance

The Minister of Transport and Communications

The Minister for Trade and Industry

Promulgated on ____ of _____ of _____

To be published.

The President of the Republic,
