

Lesotho Electronic Transactions and Electronic Commerce Bill

Lesotho

Data Governance

Definitions of Data:

Data is not defined

Main Focus of Document:

The Bill provides for the regulation and facilitation of electronic communications and transaction.

Target Beneficiaries or Sectors:

n/a

Key Elements:

The Bill contains similar provisions to other electronic transaction regulations like consumer protection, however defers also in that it provides specific provisions for cryptography, providers and e-government services. Key sections include:

7. (1) A data message shall not be denied legal effect, validity or enforceability solely on the ground that it is wholly or partly in the form of an electronic communication.
- (2) Between the originator and the addressee of an electronic communication, a declaration of will, other statement or action shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of an electronic communication.

Electronic Signature 9. (1) Where a law requires the signature (manuscript) of a person, that requirement is met by a secure electronic signature. (2) Subject to subsection (1) an electronic signature shall not be denied legal force merely on the grounds that it is in electronic form. (3) The requirements for an electronic signature referred to in subsection 1 above will be met if: (a) the method is used to identify the person and to indicate the person's intention in regard to the information communicated; and (b) at the time the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated in light of all the relevant circumstances. 10. (1) Where electronic communications are used in the formation of a contract, that contract shall not be denied legal effect, validity or enforceability on the sole ground that an electronic communication was used to make an offer or to accept an offer for that purpose. (2) A proposal to conclude a contract made through one or more electronic communications, which is not addressed to one or more specific parties but is generally accessible to parties making use of information systems (including proposals that make use of interactive applications for the placement of orders through such information systems) is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

ELECTRONIC COMMERCE Attribution 18. (1) An electronic communication is that of the originator if it was sent by: (a) the originator himself; (b) by a person who had the authority to act on behalf of the originator in respect of that electronic communication; or (c) by an information system programmed by or on behalf of the originator to operate automatically. (2) A secure electronic signature is deemed to have been applied by the holder of the secure electronic signature, unless the contrary is proved.

Original information 19. (1) Where the law requires information to be presented or retained in its original form, that requirement is met by an electronic communication if: (a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as an electronic communication or otherwise; and (b) where it is required that information be presented, that information is capable of being displayed in the form of an electronic communication to the person to whom it is to be presented. (2) Sub-section 1 applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being presented or retained in its original form. (3) For the purposes of paragraph (a) of subsection 1: (a) 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 (b) the level of reliability shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

Register of cryptography providers 28. (1) The Minister must establish and maintain a register of cryptography providers who are for the time being approved under arrangements in force under this section. (2) The Minister must record the following particulars in respect of a cryptography provider in that register: (a) the name and address of the cryptography provider; (b) a description of the type of cryptography service (or cryptography product) being provided; and (c) such particulars as may be prescribed to identify and locate the cryptography provider or its product or services adequately. (d) the conditions of the approval. (3) A cryptography provider is not required to disclose confidential information or trade secrets in respect of its cryptography products or services.

Registration compulsory 29. (1) No person may provide cryptography services or cryptography products in the Kingdom of Lesotho until the

particulars refers to in section 28 in respect of that person have been recorded in the register contemplated in section 28. (2) A cryptography provider must in the prescribed manner furnish the Minister with the information required and pay the prescribed administrative fee. (3) A cryptography service or cryptography product is regarded as being provided in the Kingdom of Lesotho if it is provided: (a) from premises in Lesotho; (b) to a person who is present in the Republic when that person makes use of the service or product; or (c) to a person who uses the service or product for the purpose of a business carried on in the Lesotho or from premises in Lesotho.

E-GOVERNMENT SERVICES Acceptance of electronic filing and issuing of documents 33. Any public body that, pursuant to any law: (a) accepts the filing of documents, or requires that documents be created or retained; (b) issues any permit, licence or approval; or (c) provides for a manner of payment, may, notwithstanding anything to the contrary in such law: (i) accept the filing of such documents, or the creation or retention of such documents in the form of electronic communications; (ii) issue such permit, licence or approval in the form of an electronic communication; or (iii) make or receive payment in electronic form or by electronic means.

Requirements may be specified 34. (1) In any case where a public body performs any of the functions referred to in section 33, such body may specify by [notice in the Gazette]: (a) the manner and format in which the electronic communications must be filed, created, retained or issued; (b) in cases where the electronic communication has to be signed, the type of electronic signature required (including, if applicable, a requirement that the sender use a digital signature or other secure electronic signature); (c) the identity of or criteria that must be met by any certification authority used by the person filing the document [or that or that such certification authority must be a preferred certification authority designated in accordance with subsection (2)]; (d) the appropriate control processes and procedures to ensure adequate integrity, security and confidentiality of electronic communications or payments; and (e) any other requirements for electronic communications or payments. [(2) For the purposes of subsection (1)(d) the Minister may designate a certification authority as a preferred certification authority.] (3) Nothing in this Act shall by itself compel any public body to accept or issue any document in the form of electronic communications.

CONSUMER PROTECTION Scope of application 36. (1) This Part applies only to contracts concerning goods or services concluded between a supplier and a consumer by means of electronic communications. (2) Section 39 does not apply to contracts: (a) for financial services, including but not limited to, investment services, insurance and reinsurance operations, banking services and operations relating to dealings in securities; (b) by way of an auction; (c) for the supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home, residence or workplace of the consumer; (d) for services which began with the consumer's consent before the end of the seven-day period referred to in section 39; (e) where the price for the supply of goods or services is dependent on fluctuations in the financial markets and which cannot be controlled by the supplier; (f) where the goods: (i) are made to the consumer's specifications; (ii) are clearly personalised; (iii) by reason of their nature cannot be returned; or (iv) are likely to deteriorate or expire rapidly; (g) where audio or video recordings or computer software were downloaded or unsealed by the consumer; (h) for the sale of newspapers, periodicals, magazines and books; (i) for the provision of gaming and lottery services; (j) for on-line gambling; or (k) for the provision of accommodation, transport, catering or leisure services and where the supplier undertakes, when the transaction is concluded, to provide these services on a specific date or within a specific period.

Suppliers' obligations 37. (1) A supplier offering goods or services for sale, for hire or for exchange by way of an electronic transaction shall make the following information available to consumers: (a) its full contact details, including its place of business, e-mail addresses and telefax number(s); (b) a sufficient description of the main characteristics of the goods or services offered by that supplier to enable a consumer to make an informed decision on the proposed electronic transaction; (c) the full price of the goods or services, including transport costs, taxes and any other fees or costs; (d) information regarding the payment system that is sufficiently secure with reference to accepted technological standards at the time of the transaction and the type of transaction concerned; (e) any terms of agreement and the manner and period within which consumers can access and maintain a full record of the transaction. (2) The supplier shall provide the consumer with an opportunity: (a) to review the entire electronic transaction; (b) to correct any mistakes; and (c) to withdraw from the transaction, before finally placing any order. (3) If a supplier fails to comply with the provisions of sub-sections 1 or 2, the consumer may cancel the transaction within 14 days of receiving the goods or services under the transaction. (4) If a transaction is cancelled in terms of subsection 3: (a) the consumer shall return the performance of the supplier or, where applicable, cease using the services performed; and (b) the supplier shall refund all payments made by the consumer minus the direct cost of returning the goods.

Performance 38. (1) The supplier shall execute the order within 30 days after the day on which the supplier received the order, unless the parties have agreed otherwise. (2) Where a supplier has failed to execute the order within 30 days or within the agreed period, the consumer may cancel the agreement with seven days' written notice. (3) If a supplier is unable to perform in terms of the agreement on the grounds that the goods or services ordered are unavailable, the supplier shall immediately notify the consumer of this fact and refund any payments within 30 days after the date of such notification.

Cooling-off period 39. (1) A consumer is entitled to cancel without reason and without penalty any transaction and any related credit agreement for the supply: (a) of goods within seven days after the date of the receipt of the goods; or (b) of services within seven days after the date of the conclusion of the contract. (2) The only charge that may be levied on the consumer is the direct cost of returning the goods. (3) If payment for the goods or services has been effected prior to a consumer exercising a right referred to in subsection (1), the consumer is entitled to a full refund of such payment, which refund must be made within 30 days of the date of cancellation. (4) This section must not be construed as prejudicing the rights of a consumer provided for in any other law.

Applicability of foreign law 40. The protection provided to consumers in this Part, applies irrespective of the legal system applicable to the agreement in question.

Consent Data Digital government Digital signature Electronic commerce Electronic communication Electronic signature

Policy/regulation mirrored:

Countries: