

**ATT TA' L-2001 DWAR IL-KOMUNIKAZZJONIJIET U
TRANSAZZJONIJIET ELETTRONICI
(ATT NRU. III TA' L-2001)**

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Naghti l-kunsens tiegħi.

(L.S.)

GUIDO DE MARCO
President

16 ta' Jannar, 2001

ATT Nru. III ta' l-2001

ATT sabiex jipprovdi għar-rigward tal-kummerċ elettroniku u sabiex jipprovdi dwar dak li għandu x'jaqsam ma' dan jew li hu anċillari għalih.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f' dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:-

TAQSIMA I - PRELIMINARI

Titolu fil-qosor u bidu fis-sehh.

1. It-titolu ta' dan l-Att hu l-Att ta' l-2001 dwar il-Komunikazzjonijiet u Transazzjonijiet Elettroniċi, u għandu jibda jsehh f' dik id-data li l-Ministru jista' jistabbilixxi b' avviż fil-Gazzetta, u jistgħu jiġu hekk stabbiliti dati differenti għal dispożizzjonijiet differenti u għal għanijiet differenti ta' l-Att.

Tifsir.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tehtieġx xort'ohra:-

“akkreditazzjoni volontarja” tfisser kull permess, li jistipula drittijiet u obligazzjonijiet speċifiċi għall-provdiment ta' servizzi ta' ċertifikazzjoni ta' firma li jingħata fuq talba mill-provditur ta'

servizz ta' ċertifikazzjoni ta' firma involut, minn korp pubbliku jew privat inkarigat bl-elaborazzjoni ta', u s-sorveljanza ta' konformità ma', dawk id-drittijiet u obligazzjoni, meta l-provditur ta' servizz ta' ċertifikazzjoni ta' firma ma jkollux jedd jeserċita d-drittijiet li joħorgu mill-permess sakemm din tkun irċeviet id-deċiżjoni tal-korp;

“apparat għal hżin ta' *data*” tfisser kull haġa, inkluż disk, li minn *data* u informazzjoni jkunu jistgħu jiġu riprodotti bl-ghajnuna jew mingħajr l-ghajnuna ta' kull haġa jew apparat;

“apparat ta' oriġinar ta' firma sigura” tfisser apparat ta' oriġinar ta' firma li jkun konformi mal-htigiet stipulati fir-Raba' Skeda li tinsab ma' dan l-Att;

“apparat ta' verifika ta' firma” tfisser *software* jew *hardware* konfigurati li jintuza biex jimplimenta d-*data* ta' verifika ta' firma;

“awtorità kompetenti” tfisser l-awtorità hekk imsemmija skond l-artikolu 20 ta' dan l-Att;

“ċertifikat” tfisser affermazzjoni elettronika, li tikkonnetti *data* ta' verifika ta' firma ma' persuna u tikkonferma l-identità ta' dik il-persuna;

“ċertifikat kwalifikat” tfisser ċertifikat li jkun konformi mal-htigiet stabbiliti b'dan l-Att jew tahtu u li jkun provdut minn provduttur ta' servizz ta' ċertifikazzjoni ta' firma li jwettaq il-htigiet stabbiliti b'dan l-Att jew tahtu;

“*data*” tfisser rappreżentazzjoni ta' informazzjoni, konnoxxenza, fatti, kunċetti jew struzzjonijiet li jkunu ġew preparati jew li jkunu qed jiġu preparati b'xi mod li jkun, u li jkunu ġew ipproċessati, jkunu qed jiġu proċessati jew ikunu mahsuba li jiġu proċessati f' sistema ta' informazzjoni, f' sistema ta' *computer* jew f' *network* ta' *computer*. Id-*data* tista' tkun f'kull għamla jew miksuba minn kull apparat jew oriġni, inkluża l-memorja ta' *computer*, *printouts* ta' *computer*, medja ta' hżin, elettronici jew xort'ohra u *punched cards*;

“*data* ta' verifika ta' firma” tfisser *data*, bħalma huma kodiċijiet jew kjavi kriptografiċi privati, li jintużaw bil-ghan ta' verifika ta' firma elettronika;

“firma elettronika” tfisser *data* f' għamla elettronika li jiġu annessi ma', inkorporati fi jew loġikament assoċjati ma' *data* elettronici ohra u li jservu bħala metodu kif tiġi awtentikata persuna;

“firma elettronika avvanzata” tfisser firma elettronika li tkun konformi ma’ dawn il-htigiet:

- (a) tkun unikament konnessa mal-firmatarju;
- (b) tkun kapaci tidentifika lill-firmatarju;
- (ċ) tinholoq bl-użu ta’ mezzi li l-firmatarju jista’ jzomm taht l-uniku kontroll tieghu;
- (d) tkun konnessa mad-data li jkollha x’taqsam maghha b’tali mod li kull bdil sussegwenti tad-data jkun jista’ jingharaf;

“indirizzat” ghar-rigward ta’ komunikazzjoni elettronika tfisser persuna li tkun intiza mill-originatur li tircievi l-komunikazzjoni elettronika, izda ma tinkludix persuna li tagħmilha ta’ provditur ta’ servizz ghar-rigward ta’ l-ipproċessar, riċezzjoni jew hżin ta’ dik il-komunikazzjoni elettronika jew li tipprovdi servizzi ohra dwarha;

“informazzjoni” tinkludi informazzjoni fl-ghamla ta’ *data*, kitba, xbiehat, hsejjes jew diskors;

“komunikazzjoni elettronika” tfisser informazzjoni generata, komunikata, proċessata, mibghuta, riċevuta, registrata, mahżuna jew murija b’mezzi elettronici;

“konsumatur” tfisser persuna naturali li taġixxi għal finijiet li ma jkunux jappartjenu għas-sengha, negozju jew professjoni tagħha;

“kuntratt elettroniku” tfisser kuntratt magħmul għalkollox jew f’parti minnu b’komunikazzjonijiet elettronici jew għalkollox jew f’parti minnu f’forma elettronika;

“Ministru” tfisser il-Ministru responsabbli għall-komunikazzjonijiet;

“originatur” ghar-rigward ta’ komunikazzjoni elettronika tfisser il-persuna li minnha, jew li f’isimha, il-komunikazzjoni elettronika tkun tidher li ntbagħtet jew giet generata qabel il-hżin, jekk ikun hemm, izda ma tinkludix lil xi persuna li tagħmilha ta’ provditur ta’ servizz dwar l-iggenerar, l-ipproċessar, it-trasmissjoni jew il-hżin ta’ dik il-komunikazzjoni elettronika jew il-provdiment ta’ servizzi ohra dwarha;

“post operattiv” ghar-rigward ta’ gvern, awtorità tal-gvern, korp pubbliku, istituzzjoni karitatevoli, filantropika jew simili, tfisser post fejn jitwettqu operazzjonijiet jew attivitajiet minn dak il-gvern, awtorità, korp jew istituzzjoni;

“preskritt” tfisser preskritt b’regolamenti magħmula mill-Ministru skond id-dispożizzjonijiet ta’ dan l-Att;

“provditur ta’ servizz ta’ ċertifikazzjoni ta’ firma” tfisser persuna li tohrog ċertifikati jew tipprovdi servizzi oħra relatati ma firem elettronici;

“rekwiżiti tat-teknoloġija ta’ l-informazzjoni” tinkludi *software*, *network* u kull meħtieġ għall-ħżin ta’ *data*;

“riċevitur” tfisser kull persuna li tuża servizz minn soċjetà ta’ informazzjoni għall-iskopijiet ta’ ksib ta’ informazzjoni jew li din tkun aċċessibbli;

“servizz minn soċjetà ta’ informazzjoni” tfisser servizz li jiġi pprovdut mill-bogħod, b’mezzi elettronici u b’talba individwali ta’ riċevitur tas-servizz, sew jekk dak is-servizz ikun provdut b’korrissettiv sew jekk le, u għall-finijiet ta’ din it-tifsira:

(a) “mill-bogħod” tfisser li s-servizz jiġi provdut minghajr ma l-partijiet ikunu preżenti simultanament;

(b) “b’mezzi elettronici” tfisser li s-servizz inizjalment jintbagħat u jiġi riċevut fid-destinazzjoni tiegħu permezz ta’ tagħmir elettroniku għall-ipproċessar (inkluża kompressjoni digitali) u ħżin ta’ *data*, u jiġi kollu kemm hu trasmess, trasportat u riċevut bil-fil, bir-radju, b’mezzi ottici jew b’kull mezz elettromanjetiku;

(ċ) “b’talba individwali ta’ riċevitur tas-servizz” tfisser li s-servizz ikun provdut permezz tat-trasmissjoni ta’ *data* fuq talba individwali;

“sistema ta’ informazzjoni” tfisser sistema biex jiġu generati, mibgħutin, riċevuti, reġistrati, maħżuna jew xort’oħra proċessati komunikazzjonijiet elettronici;

“transazzjoni” tinkludi transazzjoni ta’ xorta mhux kummerċjali.

TAQSIMA II - APPLIKAZZJONI TA' HTIĠIET LEGALI GHAL KOMUNIKAZZJONIJIET U TRANSAZZJONIJIET ELETTRONIĊI

Validità ta'
transazzjonijiet
elettroniċi.

3. Għall-finijiet ta' kull liġi f'Malta u bla hsara għad-dispożizzjonijiet l-oħra ta' dan l-Att, transazzjoni ma għandhiex titqies bħala waħda invalida sempliċement għaliex tkun saret għalkollox jew f'parti minnha permezz ta' xi mezz ta' komunikazzjoni elettroniku wiehed jew iktar.

Liġijiet esklużi.

4. (1) Kemm-il darba ma jkunx provdut xort'oħra, il-provvedimenti ta' l-artikoli 5 sa 15 ta' dan l-Att ma japplikawx għal –

(a) xi liġi li tirregola l-għemil, l-esekuzzjoni, l-emenda, t-tibdil jew ir-revoka –

(i) ta' testament jew ta' xi strument testamentarju iehor;

(ii) ta' *trust*; jew

(iii) ta' prokura;

(b) kull liġi li tirregola l-mod li bih id-drittijiet fuq il-proprjetà immobbli, li ma jkunux kirjiet, jistgħu jinholqu, jinkisbu, jitnehhew jew jiġu registrati;

(c) kull liġi li tirregola l-għemil ta' affidavit jew ta' dikjarazzjoni solenni, jew li tehtieg jew tippermetti l-użu tagħhom għal xi għan li jkun;

(d) kull provvediment tal-liġi dwar il-persuna;

(e) kull regola, prattika jew proċedura ta' xi qorti jew tribunal;

(f) liġi li tirrigwarda l-impożizzjoni, il-ġbir jew l-irkupru ta' xi tassazzjoni u haraġ iehor tal-Gvern, inklużi drittijiet, multi u ammendi, u penali;

(g) xi liġi li tirrigwarda l-garanzija u sigurtà kollaterali mogħtija minn persuni għal-fini tas-sengħa, negozju jew professjoni tagħhom; jew

(h) xi liġi li tirrigwarda l-ghoti ta' xieħda fi proċedimenti kriminali.

(2) Meta l-Ministru jkun tal-fehma li –

(a) t-teknoloġija tkun daqstant avvanzata, u l-aċċess għaliha jkun daqstant disponibbli, jew

(b) jkun żviluppaw proceduri u prattika adegwata fir-reġistrazzjoni pubblika jew f'servizzi oħra, sabiex jehtiegu tali azzjoni, jew

(ċ) l-interess pubbliku hekk jehtieġ,

huwa jista', wara konsultazzjoni ma' dak il-Ministru li fil-fehma tal-Ministru jkollu biżżejjed interess jew responsabbiltà dwar dik il-ħaġa, b'Ordni pubblikat fil-Gazzetta jestendi l-applikazzjoni ta' dan l-Att jew dispozizzjoni ta' dan l-Att għal jew dwar xi ħaġa speċifikata fis-subartikolu (1) ta' hawn aktar qabel, inkluża l-applikazzjoni għal xi settur jew sugġett partikolari, jew għal xi żmien, għall-finijiet ta' prova ta' xi teknoloġija u proceduri, bla hsara għal dawk il-kondizzjonijiet li jista' jqis xierqa.

5. (1) Jekk taht xi liġi f'Malta persuna tkun mehtieġa jew permessa li tagħti informazzjoni bil-miktub, dak ir-reqwizit għandu jitqies li jkun ġie sodisfatt jekk il-persuna tagħti l-informazzjoni permezz ta' komunikazzjoni elettronika:

Rekwizit jew permess li tinghata informazzjoni bil-miktub.

Iżda -

(a) fil-waqt li nġhatat l-informazzjoni, kien raġonevoli li jiġi mistenni li l-informazzjoni kienet tkun aċċessibbli fil-pront sabiex din tkun tista' tintuża għal kull riferenza sussegwenti; u

(b) jekk l-informazzjoni tkun mehtieġa li tinghata lil persuna, jew lil xi persuna oħra f'isimha, u l-ewwel persuna msemmija tkun tehtieġ li l-informazzjoni tinghata skond xi teknoloġija ta' l-informazzjoni partikolari, ir-reqwizit ta' dik il-persuna jkun twettaq; u

(ċ) jekk l-informazzjoni tkun mehtieġa li tinghata lil persuna, jew lil xi persuna oħra f'isimha, u l-ewwel persuna msemmija tkun tehtieġ li xi azzjoni partikolari tittiehed billi jiġi verifikat it-twassil ta' l-informazzjoni, ir-reqwizit ta' dik il-persuna jkun twettaq.

(2) Għall-finijiet ta' dan l-artikolu li tagħti informazzjoni jinkludi, iżda mhux limitat għal, dan li ġej:

- (a) li taghmel applikazzjoni;
- (b) li taghmel jew tivvanta pretenzjoni;
- (c) li taghti, tibghat jew tinnotifika notifikazzjoni;
- (d) li tippreżenta prospett;
- (e) li taghmel rikjesta;
- (f) li taghmel dikjarazzjoni;
- (g) li tippreżenta jew tohrog ċertifikat;
- (h) li taghmel oggezzjoni; u
- (i) li taghmel dikjarazzjoni.

(3) Ghall-finijiet ta' dan l-artikolu rekwiżit jew permess dwar persuna sabiex taghti informazzjoni ghandu jestendi ghal u ghandu jkun daqsinsaw applikabbli ghar-rekwiżit jew għall-informazzjoni li jiġu dikjarati bħala li qed jintbagħtu, jiġu ppreżentati, mogħtijin, notifikati jew xort'ohra trasmessi u jinkludu frażijiet simili jew li jixxiebhū ma' dan.

Firma.

6. Jekk taht xi liġi f'Malta tkun meħtieġa l-firma ta' xi persuna, dak ir-rekwiżit jitqies li jkun ġie sodisfatt jekk dik il-firma tkun firma elettronika u dik il-firma ma għandhiex tinċahad l-effettività legali minhabba f'li tkun:

- (a) f'għamla elettronika; jew
- (b) mhux imsejsa fuq ċertifikat kwalifikat; jew
- (c) mhux imsejsa fuq ċertifikat kwalifikat li jinhareġ minn provditur ta' servizz ta' ċertifikazzjoni ta' firma akkreditat; jew
- (d) mhux oriġinata minn apparat ta' oriġinar ta' firma sigura:

Izda jekk il-firma elettronika tkun fil-forma ta' firma elettronika avvanzata, li tkun imsejsa fuq ċertifikat kwalifikat u tkun oriġinata minn apparat ta' oriġinar ta' firma sigura, din għandha titqies, għall-finijiet u effetti kollha tal-liġi, li hi l-firma tal-firmatarju.

7. (1) Kemm-il darba ma jiġix xort'ohra provdut b'dan l-Att jew tahtu, jekk taht xi ligi f'Malta, persuna tenhtieg tipproduċi xi dokument li jkun fil-forma ta' karta, jew xi sustanza ohra jew materjal iehor, dak ir-rekwiżit jitqies bhala li jkun gie sodisfatt jekk il-persuna tipproduċi, permezz ta' komunikazzjoni elettronika, forma elettronika ta' dak id-dokument:

Rekwiżit jew permess għall-produzzjoni ta' dokument u integrità.

Izda –

(a) fil-qjies taċ-ċirkostanzi rilevanti kollha fil-waqt tal-komunikazzjoni, il-metodu ta' kif tiġi generata l-forma elettronika tad-dokument kien jipprovdi mezz fdat kif tiġi żgurata ż-żamma ta' l-integrità ta' l-informazzjoni li tkun tinsab fid-dokument;

(b) fil-waqt meta intbagħtet il-komunikazzjoni, kien raġonevoli li wiehed jistenna li l-informazzjoni li kienet tinsab fil-forma elettronika tad-dokument kienet se tkun aċċessibbli fil-pront sabiex din tkun tista' tintuża għal kull riferenza sussegwenti;

(ċ) jekk id-dokument ikun mehtieg li jinghata lil xi persuna, jew lil xi persuna ohra f'ismu, u l-ewwel persuna msemmija tkun tehtieg li għandha tinghata forma elettronika tad-dokument, skond rekwiżiti tat-teknoloġija ta' l-informazzjoni partikolari, permezz ta' xi xorta partikolari ta' komunikazzjoni elettronika, ir-rekwiżit ta' dik il-persuna jiġi sodisfatt; u

(d) jekk id-dokument ikun mehtieg li jinghata lil xi persuna, jew lil xi persuna ohra f'ismu, u l-ewwel persuna msemmija tkun tehtieg li għandha tittiehed xi azzjoni partikolari sabiex jiġi verifikat it-twassil ta' l-informazzjoni, ir-rekwiżit ta' dik il-persuna jiġi sodisfatt.

(2) Għall-finijiet ta' dan l-artikolu, l-integrità ta' informazzjoni li tkun tinsab f' dokument unikament tinzamm jekk l-informazzjoni tibqa' wahda shiġha u mhux mittiefsa, hlief għal -

(a) iż-żjieda ta' kull *endorsement*; jew

(b) kull tibdila li ma tkunx tibdila fl-informazzjoni, li tkun mehtieġa fil-kors normali ta' komunikazzjoni, hżin jew turija.

(3) Għall-finijiet tas-subartikoli (1) u (2) ta' dan l-artikolu u ta' l-artikolu 8 ta' dan l-Att, il-produzzjoni permezz ta' komunikazzjoni elettronika ta' forma elettronika ta' dokument jew il-ġenerazzjoni ta' forma elettronika ta' dokument ma tohloqx xi responsabbiltà għall-ksur tad-drittijiet ta' l-awtur f'xi xogħol jew suġġett topiku iehor li jkun inkorporat fid-dokument.

Żamma ta' informazzjoni, dokumenti u komunikazzjonijiet.

8. (1) Jekk taht xi ligi f'Malta, persuna tenhtieg tirreġistra xi informazzjoni bil-miktub, dak ir-rekwiżit jitqies bhala li jkun gie sodisfatt jekk il-persuna tirreġistra l-informazzjoni f'forma elettronika:

Iżda dik l-informazzjoni f'forma elettronika tkun aċċessibbli fil-pront sabiex din tkun tista' tintuża għal kull riferenza sussegwenti u tkun konformi ma' dawk ir-regolamenti li jistghu jkunu preskritti.

(2) Jekk taht xi ligi f'Malta, persuna tenhtieg iżzomm, għal perjodu partikolari, dokument li jkun fil-forma ta' karta jew ta' xi sustanza ohra jew materjal iehor, dak ir-rekwiżit jitqies bhala li jkun gie sodisfatt jekk il-persuna żzomm forma elettronika tad-dokument matul dak il-perjodu:

Iżda jekk –

(a) fil-qjies taċ-ċirkostanzi kollha rilevanti fil-waqt tal-generazzjoni tal-forma elettronika tad-dokument, il-metodu ta' generazzjoni tal-forma elettronika tad-dokument kien jipprovdi mezz fdat kif tiġi żgurata ż-żamma ta' l-integrità ta' l-informazzjoni li tkun tinsab f'dak id-dokument; u

(b) fil-waqt tal-generazzjoni tal-forma elettronika tad-dokument, kien raġonevoli li jiġi mistenni li l-informazzjoni li tkun tinsab fil-forma elettronika tad-dokument tkun aċċessibbli fil-pront sabiex din tkun tista' tintuża għal kull riferenza sussegwenti; u

(c) tkun konformi ma' dawk ir-regolamenti li jistghu jkunu preskritti.

(3) Għall-finijiet tas-subartikolu (2) ta' dan l-artikolu, l-integrità ta' informazzjoni li tkun tinsab f' dokument biss tinzamm jekk l-informazzjoni tkun baqgħet shiha u mhux mittiefsa, hlief għal:–

(a) iż-żjeda ta' kull *endorsement*; jew

(b) kull tibdila li ma tkunx tibdila fl-informazzjoni, li tkun mehtieġa fil-kors normali ta' komunikazzjoni, hżin jew turija.

(4) Jekk taht xi ligi f'Malta, persuna tenhtieg iżzomm, għal perjodu partikolari, informazzjoni li kienet is-sugġett ta' komunikazzjoni elettronika, dak ir-rekwiżit jitqies bhala li jkun gie sodisfatt jekk dik il-persuna żzomm, jew iġġieghel lil xi persuna ohra żzomm, f'forma elettronika, li:–

(a) fil-waqt tal-bidu taż-żamma ta' l-informazzjoni, kien raġonevoli li jiġi mistenni li l-informazzjoni kienet se tkun

aċċessibbli fil-pront sabiex din tkun tista' tintuża ghal kull riferenza sussegwenti; u

(b) fil-qjies taċ-ċirkostanzi kollha rilevanti, fil-waqt tal-bidu taż-żamma ta' l-informazzjoni, l-metodu ta' żamma ta' l-informazzjoni f'forma elettronika kien jipprovdi mezz fdat kif tiġi żgurata ż-żamma ta' l-integrità ta' l-informazzjoni li tkun tinsab f'dik il-komunikazzjoni elettronika; u

(ċ) matul dak il-perjodu l-persuna żżomm ukoll, jew iġġieghel lil xi persuna żżomm, f'forma elettronika, dik l-informazzjoni addizzjonali li tinkiseb daqskemm tkun suffiċjenti biex tkun tista' ssir l-identifikazzjoni ta' dan li ġej:

(i) l-origni tal-komunikazzjoni elettronika;

(ii) id-destinazzjoni ta' l-informazzjoni elettronika;

(iii) il-hin meta tkun intbaghtet l-komunikazzjoni elettronika;

(iv) il-hin meta tkun ġiet riċevuta l-komunikazzjoni elettronika; u

(d) fil-waqt tal-bidu taż-żamma ta' l-informazzjoni addizzjonali speċifikata fil-paragrafu (ċ) kien raġonevoli li jiġi mistenni li l-informazzjoni addizzjonali tkun aċċessibbli fil-pront sabiex din tkun tista' tintuża ghal kull riferenza sussegwenti; u

(e) tkun konformi ma' dawk ir-regolamenti li jistghu jkunu preskritti.

(5) Għall-finijiet tas-subartikolu (4) ta' dan l-artikolu, l-integrità ta' informazzjoni li tkun is-sugġett ta' komunikazzjoni elettronika biss tinzamm jekk l-informazzjoni tkun baqgħet shiha u mhux mittiefsa, hlief għal -

(a) iż-żjieda ta' kull endorsement; jew

(b) kull tibdila li ma tkunx tibdila fl-informazzjoni, li tidher fil-kors normali ta' komunikazzjoni, hżin jew turija.

TAQSIMA III - KUNTRATTI ELETTRONIĊI

9. (1) Kuntratt elettroniku ma għandux jiċċahhad milli jkollu Kuntratt elettroniku. effett, validità jew infurzar legali unikament minhabba f'li jkun għalkollox jew f'parti minnu f'forma elettronika jew li jkun sar

ghalkollox jew f'parti minnu permezz ta' komunikazzjonijiet elettronici jew xort'ohra.

(2) Għall-fini ta' kull liġi dwar il-kuntratti, offerta, aċċettazzjoni ta' offerta u kull komunikazzjoni relatata, inklużi kull emenda, thassir jew revoka sussegwenti ta' l-offerta, ta' l-aċċettazzjoni jew tal-kuntratt jistgħu, kemm-il darba ma jiġix miftiehem xort'ohra mill-partijiet fil-kuntratt, jiġu kkunikati permezz ta' komunikazzjonijiet elettronici.

Għemil ta' kuntratt elettroniku.

10. (1) Kemm-il darba ma jinqabilx xort'ohra minn partijiet li ma jkunux konsumaturi, meta l-indirizzat ta' komunikazzjoni elettronika jkun mehtieg li jagħti l-kunsens tiegħu b'mezzi teknoloġici:

(a) ma' l-aċċettazzjoni ta' l-offerta ta' l-originatur, kuntratt elettroniku jiġi konkluz meta l-indirizzat ikun irċieva minghand l-originatur, elettronikament, *acknowledgement* tat-twassil tal-kunsens ta' l-indirizzat; u

(b) għall-finijiet tal-paragrafu (a) ta' dan is-subartikolu, *acknowledgement* tat-twassil jitqies li jkun ġie riċevut meta l-indirizzat ikun jista' jidhol fiha.

(2) Kemm-il darba ma jinqabilx xort'ohra minn partijiet li ma jkunux konsumaturi, l-originatur għandu jipprovdi lill-indirizzat b'mezzi effettivi u aċċessibbli sabiex jidentifika u jikkorreġi diffikultajiet ta' maniġġ u transazzjonijiet aċċidentali qabel ma jiġi konkjuż il-kuntratt.

(3) Id-dispożizzjonijiet tal-paragrafu (a) tas-subartikolu (1) u tas-subartikolu (2) ta' dan l-artikolu ma għandhomx japplikaw għal kuntratti li jsiru esklużivament bil-posta elettronika jew b'mezzi teknoloġici simili ohra.

Rekwiżiti ta' informazzjoni dwar kuntratt elettroniku.

11. Kemm-il darba ma jinqabilx xort'ohra minn partijiet li ma jkunux konsumaturi, u mingħajr preġudizzju għal kull dritt tal-konsumatur taht id-dispożizzjonijiet ta' xi liġi ohra, l-originatur għandu jipprovdi informazzjoni li tiġi espressa b'mod ċar, komprensiv u mhux ambigwu dwar dak li hemm stipulat fl-Ewwel Skeda li tinsab ma' dan l-Att. Dik l-informazzjoni għandha tiġi pprovduta qabel ma ssir l-ordni mill-indirizzat.

TAQSIMA IV - TRASMISSJONI TA' KOMUNIKAZZJONIJIET ELETTRONIĊI

X'hin isir id-dispaċċ.

12. (1) Jekk komunikazzjoni elettronika tidhol f'sistema ta' informazzjoni singola 'l hinn mill-kontroll ta' l-originatur, għaldalqshekk, salv kif jista' jiġi xort'ohra miftiehem bejn l-originatur

u l-indirizzat tal-komunikazzjoni elettronika, id-dispaċċ tal-komunikazzjoni elettronika jigrri fil-waqt meta dan jidhol fis-sistema ta' informazzjoni.

(2) Jekk komunikazzjoni elettronika tidhol suċċessivament żewġ sistemi ta' informazzjoni jew iktar 'l barra mill-kontroll ta' l-originatur, għaldaqshekk, kemm-il darba ma jigrri miftiehem xort'ohra bejn l-originatur u l-indirizzat tal-komunikazzjoni elettronika, id-dispaċċ tal-komunikazzjoni elettronika jigrri meta dan jidhol fl-ewwel minn daww is-sistemi ta' informazzjoni.

13. (1) Jekk l-indirizzat ta' komunikazzjoni elettronika jkun għażel sistema ta' informazzjoni għall-iskop li jirċievi komunikazzjonijiet elettronici, għaldaqshekk, salv kif jista' jigrri xort'ohra miftiehem bejn l-originatur u l-indirizzat tal-komunikazzjoni elettronika, il-waqt tat-twassil tal-komunikazzjoni elettronika jkun il-hin meta l-komunikazzjoni elettronika tidhol fis-sistema ta' informazzjoni.

X'hin isir it-twassil.

(2) Jekk l-indirizzat ta' komunikazzjoni elettronika ma jkunx għażel sistema ta' informazzjoni għall-iskop li jirċievi komunikazzjonijiet elettronici, għaldaqshekk, salv kif jista' jigrri xort'ohra miftiehem bejn l-originatur u l-indirizzat tal-komunikazzjoni elettronika, il-waqt tat-twassil tal-komunikazzjoni elettronika jkun il-hin meta l-indirizzat isir jaf bil-komunikazzjoni elettronika.

14. (1) Salv kif jista' jigrri xort'ohra miftiehem bejn l-originatur u l-indirizzat ta' komunikazzjoni elettronika:-

Post tad-dispaċċ u tat-twassil.

(a) il-komunikazzjoni elettronika titqies li tkun intbagħtet fil-post fejn originatur ikollu l-post tan-negozju tiegħu; u

(b) il-komunikazzjoni elettronika titqies li tkun għet riċevuta fil-post fejn l-indirizzat ikollu l-post tan-negozju tiegħu.

(2) Għall-finijiet tas-subartikolu (1) ta' dan l-artikolu -

(a) jekk l-originatur jew l-indirizzat ikollu iktar minn post wiehed tan-negozju, u wiehed minn daww il-postijiet ikollu relazzjoni eqreb għat-transazzjoni sottostanti, dak il-post ta' negozju għandu jitqies li jkun il-post tan-negozju ta' l-originatur jew ta' l-indirizzat; u

(b) jekk l-originatur jew l-indirizzat ikollu iktar minn post wiehed tan-negozju, iżda l-paragrafu (a) ma jkunx

japplika, il-post ta' negozju principali ta' l-originatur jew ta' l-indirizzat ghandu jitqies li jkun il-post tan-negozju ta' l-originatur jew ta' l-indirizzat; u

(ċ) jekk l-originatur jew l-indirizzat ma jkollux post tan-negozju, il-post tan-negozju ta' l-originatur jew ta' l-indirizzat ghandu jitqies li jkun ir-residenza ordinarja ta' l-originatur jew ta' l-indirizzat.

Attribuzzjoni ta' komunikazzjoni elettronika.

15. (1) Salv kif xort'ohra miftiehem bejn l-originatur u l-indirizzat ta' komunikazzjoni elettronika, l-originatur ta' komunikazzjoni elettronika jkun marbut b'dik il-komunikazzjoni biss jekk il-komunikazzjoni kienet intbaghtet minnu jew taht l-awtorità tiegħu.

(2) Ebda haġa fis-subartikolu (1) ta' dan l-artikolu ma ghandha tolgot l-operat ta' xi liġi li tagħmel provdimenti dwar:-

(a) l-imġieba ta' xi persuna fl-iskop ta' l-awtorità attwali jew apparenti ta' dik il-persuna li ghandha tiġi attribwita lil xi persuna ohra; jew

(b) xi persuna li ghandha tintrabat bl-imġieba ta' xi persuna ohra fl-iskop ta' l-awtorità attwali jew apparenti ta' dik il-persuna l-ohra.

(3) Komunikazzjoni elettronika bejn originatur u indirizzat ghandha titqies li tkun ta' l-originatur jekk din tkun intbaghtet permezz ta' sistema ta' informazzjoni programmata biex taħdem awtomatikament mill-originatur jew f'ismu.

(4) Indirizzat ikollu jedd li jqis kull komunikazzjoni elettronika minnu riċevuta bhala komunikazzjoni elettronika separata u li jaġixxi fuq dik l-assunzjoni, hlief sal-limitu li dik il-komunikazzjoni tkun waħda duplikata ta' komunikazzjoni elettronika ohra u l-indirizzat kien jaf jew imissu kien jaf, li kieku ha hsieb kif imiss jew uża xi proċedura miftehma, li l-komunikazzjoni elettronika kienet waħda duplikata.

TAQSIMA V - PROVIDIMENT TA' SERVIZZI TA' CERTIFIKAZZJONI TA' FIRMA

Akkreditazzjoni ta' provdituri ta' servizz ta' ċertifikazzjoni ta' firma.

16. (1) Il-provdiment ta' servizzi ta' ċertifikazzjoni ta' firma jew ta' servizzi xort'ohra relatati ma' firem elettroniċi ma ghandux ikun suġġett għal awtorizzazzjoni bil-quddiem.

(2) Minghajr preġudizzju għall-generalità tas-subartikolu (1) ta' dan l-artikolu l-Ministru jista' b'regolamenti jintroduci u jmantni skema ta' akkreditazzjoni volontarja li jkollha bi skop il-provdiment ta' livelli għolja ta' servizz ta' ċertifikazzjoni ta' firma u jista' jinnomina awtoritajiet ta' akkreditazzjoni u jista' wkoll jagħmel regolamenti dwar kull haġ'ohra li jkollha x'taqsam ma' dik in-nomina hekk kif il-Ministru jista' jqis li jkun mehtieg.

17. (1) Il-Ministru għandu b'Ordni jinnomina awtorità kompetenti għas-sorveljanza ta' provdituri ta' servizz ta' ċertifikazzjoni ta' firma stabbiliti f'Malta li johorġu ċertifikati kwalifikati lill-pubbliku.

Sorveljanza ta' provdituri ta' servizz ta' ċertifikazzjoni ta' firma li johorġu ċertifikati kwalifikati.

(2) Il-Ministru jista' jippreskrivi dwar kull wahda minn dawn l-affarijiet r-Raba' Skeda:-

(a) is-setgħat u l-funzjonijiet ta' l-awtorità kompetenti;

(b) kull haġ'ohra li jkollha x'taqsam ma' l-awtorità kompetenti li tista' tidher lill-Ministru bhala li tkun neċessarja jew mixtieqa.

18. (1) Il-provdituri ta' servizz ta' ċertifikazzjoni ta' firma li johorġu ċertifikat bhala ċertifikat kwalifikat għall-pubbliku jew li jiggarantixxu tali ċertifikat għandhom ikunu responsabbli għal kull hsara li tiġi kaġunata lil xi persuna li tkun raġonevolment tafda f' tali ċertifikat.

Responsabbiltà ta' provdituri ta' servizz ta' ċertifikazzjoni ta' firma.

(2) Il-provditur ta' servizz ta' ċertifikazzjoni ta' firma li johorġ ċertifikat bhala ċertifikat kwalifikat għall-pubbliku jew li jiggarantixxi tali ċertifikat ikollu d-dmir li jiżgura raġonevolment:-

(a) l-eżattezza ta' kull informazzjoni fiċ-ċertifikat kwalifikat fil-waqt tal-hruġ tiegħu u li ċ-ċertifikat ikun fih id-dettalji kollha preskritti għar-rigward ta' ċertifikat kwalifikat;

(b) illi fil-waqt tal-hruġ taċ-ċertifikat, il-firmatarju identifika fiċ-ċertifikat kwalifikat kellu fil-pussess tiegħu l-apparat ta' oriġinar ta' firma li jikkorrispondi għall-apparat ta' verifika ta' firma mogħti jew identifika fiċ-ċertifikat;

(ċ) illi l-apparat ta' oriġinar ta' firma u l-apparat ta' verifika ta' firma jimxu flimkien b'mod komplimentari, f'dawk il-każijiet fejn il-provditur ta' servizz ta' ċertifikazzjoni ta' firma jkun jiġġenera t-tnejn li huma.

(3) Il-provdituri ta' servizz ta' ċertifikazzjoni ta' firma li jkun hareġ ċertifikat bhala ċertifikat kwalifikat għall-pubbliku, jew li

jkun iggarantixxa tali ċertifikat, ikun responsabbli għal kull hsara kaġunata lil xi persuna li tkun raġonevolment tafda fiċ-ċertifikat għal kull nuqqas li jirreġistra jew jippubblika r-revoka jew is-sospensjoni taċ-ċertifikat kemm-il darba l-provdituri ta' servizz ta' ċertifikazzjoni ta' firma ma jgħibx prova li ma jkunx aġixxa b'negligenza.

(4) Il-provdituri ta' servizz ta' ċertifikazzjoni ta' firma li johroġ ċertifikat bħala ċertifikat kwalifikat għall-pubbliku, jew li jiggarantixxi tali ċertifikat, jista' jindika fiċ-ċertifikat kwalifikat il-limiti relattivi għal kull użu li jista' jsir minn dak iċ-ċertifikat:

Iżda sakemm il-limiti jkunu ċari u identifikabbli fil-pront bħala limitazzjonijiet, il-provdituri ta' servizz ta' ċertifikazzjoni ta' firma ma għandux ikun responsabbli għal kull hsara li toriġina minn użu kuntrarju ta' ċertifikat kwalifikat li jinkludi limiti fuq l-utent tiegħu.

(5) Il-provdituri ta' servizz ta' ċertifikazzjoni ta' firma jista' jindika fiċ-ċertifikat kwalifikat il-limitu fuq il-valur ta' transazzjonijiet li dwarhom jista' jintuża iċ-ċertifikat. Kull tali indikazzjoni għandha tkun ċara u identifikabbli fil-pront bħala limitazzjoni.

TAQSIMA VI - PROVDITURI TA' SERVIZZ INTERMEDJI

Conduit sempliċi.

19. (1) Meta jiġi provdut servizz minn soċjetà ta' informazzjoni, u dak is-servizz ikun jikkonsisti fit-trasmissjoni, f'*network* ta' komunikazzjoni, ta' informazzjoni provduta mir-riċevitur tas-servizz, jew il-provdiment ta' dhul f'*network* ta' komunikazzjoni, il-provditur ta' dak is-servizz ma jkunx responsabbli, xort'ohra milli taht inibizzjoni, għall-informazzjoni trasmessa. B'dan illi dak il-provditur:

(a) ma jibdiex dik it-trasmissjoni;

(b) ma jagħzix lir-riċevitur tat-trasmissjoni; u

(ċ) ma jagħzix jew ma jimmodifikax l-informazzjoni li tkun tinsab fit-trasmissjoni.

(2) L-attijiet ta' trasmissjoni u tal-provdiment ta' dhul imsemmija fis-subartikolu (1) ta' dan l-artikolu, jinkludu il-ħżin awtomatiku, intermedju u transjenti ta' informazzjoni trasmessa sakemm dan jiġri għall-iskop uniku tat-twettiq tat-trasmissjoni fin-*network* ta' komunikazzjoni, u sakemm l-informazzjoni ma tiġix mahżuna għal xi perjodu li jkun itwal minn dak li jkun raġonevolment meħtieġ għat-trasmissjoni.

20. Meta jiġi provdut servizz minn soċjetà ta' informazzjoni, u *Caching.* dak is-servizz ikun jikkonsisti fit-trasmissjoni, f'*network* ta' komunikazzjoni, ta' informazzjoni provduta minn riċevitur tas-servizz, il-provditur ta' dak is-servizz ma jkunx responsabbli għad-danni għall-*hżin* awtomatiku, intermedju u transjenti ta' dik l-informazzjoni, mwettaq bl-iskop uniku li ssir iktar effiċjenti t-trasmissjoni ta' informazzjoni lejn riċevituri oħra tas-servizz fuq talba tagħhom. B'dan illi:

- (a) il-provditur ma jimmodifikax l-informazzjoni;
- (b) il-provditur jikkonforma ruhu mal-kondizzjonijiet tad-dhul fl-informazzjoni;
- (ċ) il-provditur jikkonforma ruhu ma' kull kondizzjoni li tirregola l-aġġornar ta' l-informazzjoni;
- (d) il-provditur ma jindahalx fit-teknoloġija użata biex jinkisbu *data* dwar l-użu ta' l-informazzjoni; u
- (e) il-provditur jaġixxi b'mod speditiv biex inehhi jew jimpedixxi d-dhul fl-informazzjoni meta huwa attwalment isir jaf b'xi wahda minn dawn l-affarijiet li ġejjin:
 - (i) l-informazzjoni fl-oriġni inizjali tat-trasmissjoni tkun tnehhiet min-*network*;
 - (ii) id-dhul fiha jkun ġie impedit;
 - (iii) il-Qorti jew xi awtorità kompetenti oħra tkun ordnat dik it-tnehhija jew impediment.

21. (1) Meta jiġi provdut servizz minn soċjetà ta' informazzjoni, *Hosting.* u dak is-servizz ikun jikkonsisti fil-*hżin* ta' informazzjoni provduta minn riċevitur tas-servizz, jew il-provdiment ta' dak is-servizz ma jkunx responsabbli għad-danni għall-informazzjoni mahżuna fuq talba ta' riċevitur tas-servizz.

B'dan illi:

- (a) l-provditur ma jkunx attwalment jaf li l-attività tkun wahda illegali u ma jkunx jaf bil-fatti jew biċ-ċirkostanzi li minnhom tkun tohroġ l-attività illegali; jew
- (b) il-provditur, meta jsir jaf jew ikun konoxxenti b'dan kollu, jaġixxi b'mod speditiv biex inehhi jew jimpedixxi d-dhul f'dik l-informazzjoni.

(2) Is-subartikolu (1) ta' dan l-artikolu ma għandux japplika meta r-riċevitur tas-servizz jkun qed jaġixxi taht l-awtorità jew il-kontroll tal-provditur tas-servizz.

Obbligazzjonijiet ta' provdituri ta' servizz intermedji.

22. Il-provdituri ta' servizz minn soċjetà ta' informazzjoni għandhom minnufih jgħarrfu lill-awtoritajiet kompetenti fil-materja b'kull attività allegatament illegali li tkun qed issir jew informazzjoni li tkun qed tinghata minn riċevituri tas-servizz tagħhom, u għandhom jagħtu lil kull tali awtorità, meta hekk jintalbu, informazzjoni li biha jkunu jistgħu jiġu identifikati r-riċevituri tas-servizz tagħhom li magħhom ikollhom ftehim ta' hżin:

Izda ebda haġa f'din it-Taqsima ta' l-Att ma għandha titfisser bhala li timponi xi obbligu fuq il-provdituri ta' servizz minn soċjetà ta' informazzjoni li jissorveljaw l-informazzjoni li jittrasmettu jew jaħznu jew biex jinvestigaw fatti jew ċirkostanzi li jindikaw xi attività illegali f'dak li għandu x'jaqsam ma' l-attivitàjiet imsemmija fl-artikoli 19 sa 21 ta' dan l-Att.

TAQSIMA VII - ĠENERALI

Projbizzjoni dwar l-użu mhux kif dovut ta' firem elettronici, apparat ta' oriġinar ta' firma, ċertifikati u frodi.

23. (1) Hadd ma jista' jidhol, jikkopja jew xort'ohra jikseb pussess jew jerga' joriġina l-apparat ta' oriġinar ta' firma ta' xi persuna ohra minghajr awtorizzazzjoni, bil-ghan li joriġina, jew jippermetti jew jikkaguna lil xi persuna li toriġina xi firma elettronika mhux awtorizzata billi juża dak l-apparat ta' firma.

(2) Hadd ma jista' jibdel, jiżvela jew juża l-apparat ta' oriġinar ta' firma ta' xi hadd iehor minghajr awtorizzazzjoni, jew b'eċċess ta' awtorizzazzjoni legittima, għall-fini ta' l-oriġinar, jew li jiġi permess jew mġieghel xi hadd iehor li joriġina firma elettronika mhux awtorizzata billi juża dak l-apparat ta' oriġinar ta' firma.

(3) Hadd ma jista' joriġina, jippubblika, jibdel jew xort'ohra juża ċertifikat jew firma elettronika għal xi skop frodulenti jew xort'ohra mhux legittimu.

(4) Hadd ma jista' jqarraq dwar l-identità jew l-awtorizzazzjoni tiegħu meta jkun qed jitlob jew jaċċetta ċertifikat jew meta jkun qed jitlob xi sospensjoni jew revoka ta' ċertifikazzjoni.

(5) Hadd ma jista' jidhol, jibdel, jiżvela jew juża l-apparat ta' oriġinar ta' firma ta' provditur ta' servizz ta' ċertifikazzjoni ta' firma li jintuża biex johroġ ċertifikati minghajr l-awtorizzazzjoni tal-provditur ta' servizz ta' ċertifikazzjoni ta' firma, jew b'eċċess ta' l-awtorizzazzjoni legittima, bl-iskop ta' oriġinar, jew li jiġi permess jew li jiġi mġieghel xi hadd iehor li joriġina, firma elettronika mhux awtorizzata billi juża dak l-apparat ta' oriġinar ta' firma.

(6) Hadd ma jista' jipubblika ċertifikat, jew xort'ohra xjentement jaghmlu disponibbli lil xi hadd li x' aktarx iqieghed il-fiduċja tiegħu fiċ-ċertifikat jew f'firma elettronika li tkun verifikabbli għar-rigward ta' data bħalma huma kodiċijiet, *passwords*, *algorithms*, kjavi kriptografiċi pubbliċi jew *data* ohra li jintużaw biex jivverifikaw firma elettronika, elenkata fiċ-ċertifikat, jekk dik il-persuna tkun taf li :-

(a) l-provditur ta' servizz ta' ċertifikazzjoni ta' firma elenkat fiċ-ċertifikat ma jkunx harġu; jew

(b) l-abbonat elenkat fiċ-ċertifikat ma jkunx aċċettah; jew

(c) iċ-ċertifikat jkun gie revokat jew sospiż, kemm-il darba dik il-pubblikazzjoni jkollha bħala skop tagħha li tivverifika firma elettronika originata qabel dik ir-revoka jew sospensjoni, jew l-ghoti ta' avviz ta' revoka jew sospensjoni.

(7) Hadd ma jista' juża xi kriptografija jew teknika ohra simili għal xi għan illegali.

24. Kull persuna li tikser xi provvediment ta' dan l-Att jew ta' xi Reati u pieni. regolamenti magħmula bis-sahha tiegħu tkun hatja ta' reat u tehel, meta tinsab hatja, multa ta' mhux iżjed minn mitt elf lira Maltija (Lm100,000) jew prigunerija għal żmien ta' mhux iżjed minn sitt xhur, jew dik il-multa u prigunerija flimkien, u fil-każ ta' reat kontinwat multa ta' mhux iżjed minn elf lira Maltija (Lm1,000) għal kull jum li matulu jkompli r-reat.

25. (1) Il-Ministru jista' jagħmel regolamenti biex jipprovdi dwar kull haġa li jkollha x'taqsam mal-kummerċ elettroniku sabiex jagħti effett iktar shih lid-dispożizzjonijiet ta' dan l-Att, u b'mod partikolari, iżda mingħajr preġudizzju għall-ġeneralità ta' dak hawn aktar qabel imsemmi, dawk ir-regolamenti jistgħu jipprovdu dwar:- Setgħa ta' għemil ta' regolamenti.

(a) kull deroga minn jew restrizzjoni dwar xi transazzjoni transkonfini meta dan ikun meħtieġ għal xi wahda mir-raġunijiet li ġejjin:-

(i) *public policy*, b'mod partikolari l-protezzjoni tal-minorenni, jew il-ġlieda kontra kull tqanqil ta' mibgheda minhabba fir-razza; s-sess, ir-religjon, l-opinjoni politika jew in-nazzjonalità;

(ii) il-harsien tas-sahha pubblika;

(iii) is-sigurtà pubblika;

- (iv) il-harsien tal-konsumatur;
- (b) l-identifikazzjoni ta':
 - (i) transazzjonijiet;
 - (ii) rekwiżiti jew permessi għall-ghoti ta' informazzjoni bil-miktub;
 - (iii) rekwiżiti jew permessi biex jingiebu dokumenti;
 - (iv) rekwiżiti għaż-żamma ta' informazzjoni, dokumenti u komunikazzjonijiet;
 - (v) firem;

li jistghu jkunu eżenti minn kull dispożizzjoni ta' dan l-Att;

(ċ) ir-rekwiżiti addizzjonali għall-użu ta' firem f'komunikazzjonijiet elettronici fis-settur pubbliku;

(d) ir-rikonoxximent ta' provduri ta' servizz ta' ċertifikazzjoni ta' firma illi, li kieku kienu jaħdmu f'Malta, kienu jissodisfaw ir-rekwiżiti stipulati għal dawk il-provduri;

(e) kull haġa li jkollha x'taqsam ma' komunikazzjonijiet kummerċjali, inklużi, iżda mhux limitata għal affarijiet relattivi għal :-

- (i) l-informazzjoni li għandha tiġi provduta f'komunikazzjonijiet kummerċjali;
- (ii) komunikazzjonijiet kummerċjali mhux mitlubin;
- (iii) komunikazzjonijiet kummerċjali minn professjonijiet regolati;
- (f) l-awtorizzazzjoni lill-awtorità kompetenti li timponi penalitajiet jew sanzjonijiet amministrattivi fuq kull persuna li tkun qed taġixxi bi ksur ta' dan l-Att jew ta' xi regolament magħmul bis-saħha tiegħu:

Iżda -

(i) il-penalitajiet amministrattivi li jkun provdut dwarhom taht dan l-artikolu ma ghandhomx jeċċedu l-ammont ta' ghaxart elef lira Maltija (Lm10,000) ghal kull reat u ta' elf lira Maltija (Lm1,000) ghal kull jum li matulu jibqa' jkun hemm in-nuqqas ta' osservanza tal-provvedimenti magħmulin bis-sahħa tieghu;

(ii) il-penalitajiet amministrattivi stipulati fil-paragrafu (i) ta' dan il-proviso jistghu permezz ta' regolamenti jiżdedu sa massimu ta' hamsin elf lira Maltija (Lm50,000) u ta' hamest elef lira Maltija (Lm5,000) ghal kull jum li matulu jibqa' jsehh il-ksur, rispettivament;

(iii) regolamenti magħmula taht dan il-paragrafu jistghu jippreskrivu li xi tali penalitajiet jew sanzjonijiet amministrattivi jkunu dovuti lill-awtorità kompetenti bhala dejn ċivili li jikkostitwixxi titolu eżekuttiv għall-finijiet tat-Titolu VII tat-Taqsima I tat-Tieni Ktieb tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili bhallikieku l-hlas ta' l-ammont tal-multa kien ordnat b'sentenza ta' qorti ta' kompetenza ċivili;

(iv) dawk ir-regolamenti jistghu jkunu wkoll jippreskrivu kull dritt ta' appell minn deċiżjonijiet ta' l-awtorità kompetenti li timponi penalitajiet jew sanzjonijiet amministrattivi;

(g) li jiġu stabbiliti proċeduri għal skemi barra mill-qorti kif jiġu paċuti tilwimiet li jitnisslu għar-rigward ta' servizzi minn soċjetà ta' informazzjoni inklużi l-miżuri elettronici adattati.

(2) Il-Ministru jista' wkoll b'regolamenti jemenda l-Iskedi li jinsabu ma' dan l-Att u jippreskrivi kull haġa li tista' jew li hi mehtieġa li tiġi preskritta taht dan l-Att.

26. Fil-każ ta' kunflitt bejn it-test Malti u dak Inġliż ta' dan l-Att, jipprevali t-test Inġliż.

It-test Inġliż
għandu
jipprevali.

TAQSIMA VIII - UŻU MHUX KIF DOVUT TAL-COMPUTER

27. Minnufih wara l-artikolu 337 tal-Kodiċi Kriminali għandhom jidhlu dan is-Sub-titolu u artikoli godda li ġejjin:

Emenda tal-Kodiċi
Kriminali, Kap. 9.

“Sub-titolu V

Fuq l-Użu mhux kif dovut tal-*Computer*

Tifsir.

337(B)(1) Ghall-finijiet ta' dan is-Sub-titolu, ghandhom japplikaw dawn it-tifsiriet li ġejjin, kemm-il darba r-rabta tal-kliem ma tehtiegħ xort'ohra:—

“*computer*” tfisser apparat elettroniku li jwettaq funzjonijiet ta' logika, aritmetika u memorja billi jimmanipola impulsi elettroniċi jew manjetiċi, u tinkludi kull *input*, *output*, proċessar, hżin, *software* u faċilitajiet ta' komunikazzjoni li huma konnessi jew relatati ma' *computer* f' sistema ta' *computer* jew *computer network*;

“*computer network*” tfisser l-interkonnessjoni ta' linji ta' komunikazzjoni u ċirkwiti ma' *computer* permezz ta' tagħmir remot jew kumpless li jkun magħmul minn żewġ *computers* interkonnessi jew iktar;

“*computer output*” jew “*output*” tfisser il-preżentazzjoni jew ix-xbieha ta' *data* sew f'ghamla miktuba, stampata, bi stampi, ta' wiri fuq skrin, fotografika jew filmata xort'ohra, grafika, bil-hoss, sew f'kull ghamla ohra li tiġi prodotta minn *computer*;

“*computer software*” jew “*software*” tfisser programm, proċedura jew dokumentazzjoni relattiva ta' *computer* li jintużaw fit-tħaddim ta' sistema ta' *computer*;

“dokumentazzjoni ta' appoġġ” tfisser kull dokumentazzjoni li tintuża fis-sistema tal-*computer* fil-kostruzzjoni, kjarifika, implementazzjoni, użu jew modifikazzjoni tas-*software* jew tad-*data*;

“funzjoni” tinkludi logika, kontroll, aritmetika, tħassir, hżin, ksib lura u komunikazzjoni ta' *data* jew telekomunikazzjoni lil, minghand jew ġewwa l-istess *computer*;

“provviesti tal-*computer*” tfisser *punched cards*, strixxa karta, strixxa manjetika, pakki ta' diski, disketti, *CD-roms*, *computer output*, inkluża l-karta u l-mikroforma u kull medja ta' hżin, sew elettronika sew xort'ohra;

“sistema tal-*computer*” tfisser sett ta’ taghmir tal-*computer* relatat, sew *hardware* sew *software*.

(2) Riferenza f’dan is-Sub-titolu ghal *software* tinkludi riferenza ghal parti mis-*software*.

(3) Riferenza f’dan is-Sub-titolu ghal *computer* tinkludi riferenza ghal *computer network*.

(4) Riferenza f’dan is-Sub-titolu ghal *data*, *software* jew dokumentazzjoni ta’ appoġġ li jinżammu f’xi *computer* jew sistema ta’ *computer* tinkludi riferenza ghal *data*, *software* jew dokumentazzjoni ta’ appoġġ li jigu trasmessi permezz ta’ *computer network*.

(5) Għall-iskopijiet ta’ dan is-Sub-titolu, persuna tuża *software* jekk il-funzjoni li ġġiegħel lill-*computer* jagħmel:

(a) tikkaguna li s-*software* jiġi esegwit; jew

(b) tkun fiha nnifisha funzjoni tas-*software*.

(6) Riferenza f’dan is-Sub-titolu ghal xi *software* jew *data* miżmuma f’*computer* tinkludi riferenza ghal kull *software* jew *data* li jinżamm f’xi medjum ta’ hżin li jista’ jinqala’ u li għal dak iż-żmien ikun jinsab fil-*computer*.

Access
mhux
legittimu
għall-
informazzjoni
jew użu
tagħha.

337(C)(1) Persuna li minghajr awtorizzazzjoni tagħmel xi wiehed minn dawn l-attijiet li ġejjin tkun hatja ta’ reat kontra dan l-artikolu -

(a) tuża *computer* jew xi taghmir jew apparat iehor biex tidhol f’xi *data*, *software* jew dokumentazzjoni ta’ appoġġ li jinżammu f’dak il-*computer* jew f’xi *computer* iehor, jew tuża, tikkopja jew timmodifika kull *data*, *software* jew dokumentazzjoni ta’ appoġġ bhal dawk;

(b) tagħmel *output* ta’ xi *data*, *software* jew dokumentazzjoni ta’ appoġġ mill-*computer* li jkun qegħdin jinżammu fih, sew billi dawn jittellghu bi xbieha jew b’kull mod iehor li jkun;

(c) tikkopja kull *data*, *software* jew dokumentazzjoni ta’ appoġġ għal kull medjum ta’ hżin li ma jkunx dak li soltu jinżamm fih jew għal mkien differenti fil-medjum ta’ hżin fejn soltu jinżamm;

(d) tipprejjeni jew tostakola d-dhul ghal xi data, *software* jew dokumentazzjoni ta' appogg;

(e) tgharraq it-thaddim ta' xi sistema, *software* jew l-integrità jew affidabilità ta' xi data;

(f) tiehu pussess ta' xi data, *software* jew dokumentazzjoni ta' appogg jew taghmel użu minnhom;

(g) tinstalla, tnehhi, tbiddel, tikkanċella, teqred, tvarja jew iżżid ma' xi data, *software* jew dokumentazzjoni ta' appogg;

(h) tiżvela xi *password* jew kull mod iehor ta' dhul, kodiċi ta' dhul jew xi taghrif iehor dwar kif isir id-dhul lil xi persuna mhux awtorizzata;

(i) tuża l-kodiċi ta' dhul, *password*, isem l-utent, indirizz postali elettroniku jew xi mezz iehor ta' dhul jew informazzjoni ta' identifikazzjoni ta' xi persuna ohra f' *computer*;

(j) tikxef xi data, *software* jew dokumentazzjoni ta' appogg kemm-il darba dan ma jkunx mehtieg fil-qadi ta' dmirijietha jew b'xi ligi ohra.

(2) Ghall-ghanijiet ta' dan is-Sub-titolu:

(a) persuna titqies li taġixxi minghajr awtorizzazzjoni jekk ma tkunx debitament awtorizzata minn persuna intitolata;

(b) persuna titqies bħala persuna intitolata jekk il-persuna nnifisha jkollha jedd tikkontrolla l-attivitajiet imfissra fil-paragrafi (a) sa (j) tas-subartikolu (1) ta' dan l-artikolu jew fil-paragrafi (a) u (b) ta' l-artikolu 4 ta' dan is-Sub-titolu.

(3) Ghall-ghanijiet tas-subartikolu (1) ta' dan l-artikolu:

(a) persuna titqies li tkun ghamlet reat irrispettivament jekk, fil-każ ta' xi modifikazzjoni, dik il-modifikazzjoni tkunx mahsuba li tkun wahda permanenti jew temporanja;

(b) il-forma kif jinħareġ *output* ta' xi *software* jew *data* u partikolarment jekk din tkunx forma jew le li fiha, fil-każ ta' *software*, tkun tista' tigi esegwita jew, fil-każ ta' *data*, tkun tista' tigi pprocessata minn *computer*, mhix importanti.

(4) Għall-ghanijiet tal-paragrafu (f) tas-subartikolu (1) ta' dan l-artikolu, persuna li minhabba li jkollha fil-kustodja tagħha jew taht il-kontroll tagħha xi *data*, *computer software* jew dokumentazzjoni ta' appoġġ li ma tkunx awtorizzata li jkollha, għandha titqies bhala li tkun hadithom fil-pussess tagħha.

Użu mhux
kif dovut ta'
hardware.

337(D) Kull persuna li mingħajr awtorizzazzjoni tagħmel xi wiehed minn dawn l-attijiet li ġejjin tkun hatja ta' reat kontra dan l-artikolu -

(a) timmodifika tagħmir jew provvisti tal-*computer* li jintużaw jew li huma mahsubin li jintużaw f'xi *computer*, sistema ta' *computer* jew *computer network*;

(b) tiehu pussess ta', tagħmel hsara fi jew teqred xi *computer*, sistema ta' *computer*, *computer network*, jew provvisti ta' *computer* li jintużaw jew huma mahsubin li jintużaw f'xi *computer*, sistema ta' *computer* jew *computer network* jew thassar it-thaddim ta' xi wiehed minnhom.

Għemil ta'
reat barra
minn Malta.

337(E) Jekk reat isir barra minn Malta illi, li kieku sar f'Malta kien jikkostitwixxi reat kontra d-dispożizzjonijiet ta' dan is-Sub-titolu, dan għandu, jekk dak l-għemil ikun jolqot lil xi *computer*, *software*, *data* jew dokumentazzjoni ta' appoġġ li jkunu jinsabu Malta jew li b'xi mod ikollhom x'jaqsmu jew ikunu konnessi ma' *computer* f'Malta, jitqies li jkun sar f'Malta.

Reati u pieni.

337(F)(1) Mingħajr preġudizzju għal xi piena ohra stabbilita taht dan is-Sub-titolu, kull min jikser xi wahda mid-dispożizzjonijiet ta' dan is-Sub-titolu ikun hati ta' reat u jista' jehel, meta jinsab hati, multa ta' mhux iżjed minn Lm 10,000 jew priġunerija għal żmien mhux iktar minn erba' snin, jew għal dik il-multu u priġunerija flimkien.

(2) Meta reat bħal dak ikun jikkostitwixxi att li b'xi mod ikun ta' hsara għal xi funzjoni jew attività tal-Gvern, jew itellef, jgħarraġ jew jinterrompi b'xi mod li jkun l-ghoti ta' xi servizz jew utilità pubbliċi, sew jekk dak is-servizz jew

dik l-utilità jkunu provduti jew imhaddma minn xi enti tal-Gvern, il-penali ghandha tizzied ghal multa ta' mhux inqas minn Lm 100 u mhux iktar minn Lm 50, 000 jew ghal prigunerija ghal zmien minn tliet xhur sa ghaxar snin, jew ghal dik il-multa u prigunerija flimkien:

Izda meta persuna tinsab hatja ta' reat kontra dan is-subartikolu ghat-tieni darba jew iktar, l-inqas piena ghal dak ir-reat ma ghandhiex tkun taht il-Lm 500.

(3) Il-pieni stabbiliti taht is-subartikolu (2) ta' dan l-artikolu ghandhom ukoll japplikaw fil-każ ta' reat kontra xi wahda mid-dispożizzjonijiet ta' dan is-Sub-titolu:—

(a) meta r-reat isir f'xi post minn impjegat bi preġudizzju tal-prinċipal tiegħu jew bi preġudizzju ta' terzi, jekk il-pożizzjoni tiegħu ta' impjegat, sew vera sew fittizja, tkun ghamlitha faċli ghalih li jagħmel ir-reat;

(b) bl-eċċezzjoni tas-subartikolu (2) ta' dan l-artikolu, meta r-reat li persuna tagħmel ikun it-tieni reat jew reat sussegwenti kontra xi wahda mid-dispożizzjonijiet ta' dan is-Sub-titolu.

(4) Persuna li tipproduċi xi materjal jew li tagħmel xi att iehor preparatorju ghal jew bi tkomplija ta' l-ghemil ta' xi reat taht dan is-Sub-titolu tkun hatja ta' dak ir-reat u tehel, meta tinsab hatja, l-istess piena li hemm ghar-reat.

(5) Persuna li tkun kompliċi fl-ghemil ta' reat kontra dan is-Sub-titolu jew li b'xi mod tghin jew thajjar dak l-ghemil tista' tehel dawk l-istess pieni bhalma hemm mahsuba ghal dak ir-reat.

(6) Il-prosekuzzjoni ma tkunx mehtieġa li ġġib provi biex twaqqa' l-effett ta' xi awtorizzazzjoni mehtieġa taht dan is-Sub-titolu u l-oneru li tingieb prova dwar awtorizzazzjoni bhal dik ikun jinkombi fuq il-persuna li tkun qed tallega li ghandha dik l-awtorizzazzjoni:

Izda dan l-oneru ma ghandux jitqies bhala li jkun tneħħa biss bix-xiehda mhux korroborata tal-persuna akkużata.

Tfittix u qbid. 337(G) Il-Ministru jista', għall-finijiet ta' dan is-Sub-titolu, b'regolamenti jippreskrivi:

(a) il-mod kif il-Pulizija tista' taghmel tfittix fuq *computers*, sistemi tal-*computer* jew provvisti tal-*computer* u taqbad *data* jew *software* li jkunu mahżuna go fih;

(b) il-proċeduri u l-metodi għal dak li għandu jsir minn provi li jkollhom format elettroniku.

28. L-Att dwar l-Estradizzjoni għandu jiġi emendat billi tiżdied din il-partita minnufih wara l-partita 30 ta' l-Iskeda li tinsab ma' dak l-Att -

Emendi
konsegwenzjali ta'
l-Att dwar l-
Estradizzjoni, Kap.
276.

"31. Reat kontra l-ligi dwar l-użu mhux kif dovut tal-*computer*".

L-EWWEL SKEDA

(Artikolu 11)

Rekwiżiti ta' Informazzjoni relattivi ghal Kuntratti Elettronici

- (a) l-isem u l-indirizz fejn l-oriġinatur ikun stabbilit;
- (b) l-indirizz postali elettroniku (*e-mail address*) fejn l-oriġinatur ikun jista' jiġi kkuntattjat b'mod dirett;
- (c) in-numru ta' registrazzjoni ta' l-oriġinatur f'xi registru kummerċjali jew ta' xi korp professjonali jekk dan japplika;
- (d) meta l-attività ta' l-oriġinatur tkun suġġetta ghal xi awtorizzazzjoni, l-attivitàjiet koperti bl-awtorizzazzjoni mogħtija lill-oriġinatur u l-partikolaritajiet ta' l-awtorità li tkun qegħda tipprovdi dik l-awtorizzazzjoni;
- (e) in-numru ta' registrazzjoni tal-VAT (Taxxa fuq il-Valur Miżjud) ta' l-oriġinatur, meta l-oriġinatur jagħmel attività suġġetta għall-VAT;
- (f) id-diversi stadji li hemm biex il-kuntratt isir;
- (g) dikjarazzjoni dwar jekk il-kuntratt li jkun sar ikunx ser jiġi ppreżentat mill-oriġinatur u jekk hux se jkun hemm aċċess għalih.

IT-TIENI SKEDA

(Artikolu 2)

Rekwiziti ghal Certifikati Kwalifikati

Certifikati kwalifikati ghandu jkun fihom:

- (a) indikazzjoni li ċ-certifikat ikun qed jinhareġ bhala ċertifikat kwalifikat;
- (b) l-identifikazzjoni ta' provditur ta' servizz ta' ċertifikazzjoni ta' firma u l-Istat fejn dan ikun stabbilit;
- (ċ) l-isem tal-firmatarju jew psewdonimu, li ghandu jiġi identifikat bhala tali;
- (d) provvediment dwar xi attribut speċifiku tal-firmatarju li ghandu jiġi inkluż jekk dan ikun wiehed rilevanti, kif jiddependi mill-fini li ghalih ikun mahsub iċ-certifikat;
- (e) data ta' verifika ta' firma li jkunu jikkorrispondu ghal data ta' originar ta' firma taht il-kontroll tal-firmatarju;
- (f) indikazzjoni tal-bidu u t-tmiem tal-perjodu ta' validità taċ-certifikat;
- (g) il-kodiċi ta' identità taċ-certifikat;
- (h) il-firma elettronika avanzata tal-provditur ta' servizz ta' ċertifikazzjoni ta' firma li jkun qed johroġha;
- (i) limitazzjonijiet dwar il-fini ta' l-użu taċ-certifikat, jekk dan ikun japplika; u
- (j) limiti fuq il-valur ta' transazzjonijiet li ghalihom jista' jintuza ċ-certifikat, jekk dan ikun japplika.

IT-TIELET SKEDA

(Artikolu 2)

Rekwiżiti għal Provdituri ta' Servizz ta' Ċertifikazzjoni ta' Firma li jhorġu Ċertifikati Kwalifikati

Il-provditur ta' servizz ta' ċertifikazzjoni ta' firma għandhom:

- (a) juru li għandhom ikunu fdati li jipprovdu servizzi ta' ċertifikazzjoni ta' firma;
- (b) jiżguraw l-operat ta' direttorju aċċessibbli fil-pront u sigur kif ukoll servizz ta' revoka sigur u immedjat;
- (ċ) jiżguraw li d-data u l-hin meta jinhareġ jew jiġi revokat ċertifikat ikun jista' jiġi stabbilit bi preċiżjoni;
- (d) jivverifikaw, b'mezzi idoneji skond il-liġi nazzjonali tagħhom, l-identità u, jekk dan ikun japplika, kull attribut speċifiku tal-persuna li lilha jinhareġ ċertifikat kwalifikat;
- (e) jimpjegaw persunal li jkollhom il-konozzenza esperta, l-esperjenza u l-kwalifiki meħtieġa għas-servizzi provduti, b'mod partikolari il-kompetenza f'livell maniġerjali, konozzenza esperta fit-teknoloġija dwar il-firma elettronika u familjarità mal-proċeduri ta' sigurtà adattati; għandhom ukoll japplikaw proċeduri amministrattivi u ta' maniġġ li jkunu adegwati u jikkorrispondu għal *standards* rikonoxxuti;
- (f) jużaw sistemi u prodotti ta' min jafdhom li jkunu protetti kontra kull modifikazzjoni u li jiżguraw is-sigurtà teknika u kriptografika tal-proċessi li jkunu jappoggaw;
- (g) jieħdu miżuri kontra l-falsifikazzjoni ta' ċertifikati, u, fil-kazijiet fejn il-provditur ta' servizz ta' ċertifikazzjoni ta' firma jiġġenera data ta' oriġinar ta' firma, jiggerantixxu konfidenzjalità matul il-proċess ta' l-iġġenerar ta' dawk id-data;
- (h) ikollhom riżorsi finanzjarji biżżejjed biex ikunu jistghu joperaw f'konformità mar-rekwiżiti stipulati fl-Att, b'mod partikolari li jgħorru r-riskju ta' responsabbiltà għad-danni, b'eżempju, billi jkollhom assigurazzjoni adattata;
- (i) jirreġistraw kull informazzjoni rilevanti dwar ċertifikat kwalifikat għal perjodu ta' zmien adattat, b'mod partikolari għall-fini li jipprovdu prova ta' ċertifikazzjoni għall-finijiet ta' proċedimenti legali. Dik ir-reġistrazzjoni tista' ssir b'mod elettroniku;

(j) ma jaħnux jew jikkupjaw data ta' originar ta' firma tal-persuna li lilha l-provditur ta' servizz ta' ċertifikazzjoni ta' firma jkun ipprovda servizzi ta' manigg ta' kjavi;

(k) qabel ma jidhlu f'relazzjoni kontrattwali ma' persuna li tkun qed titlob ċertifikat ta' appoġġ għall-firma elettronika tagħha, jinfurmaw lil dik il-persuna b'mezz ta' komunikazzjoni li jibqa' bil-pattijiet u l-kondizzjonijiet preċiżi li jirrigwardaw l-użu ta' ċertifikat, inkluża kull limitazzjoni dwar l-użu tiegħu, l-eżistenza ta' skema ta' akkreditazzjoni volontarja u proċeduri dwar ilgħenti u tpaċija ta' tilwimiet. Dik l-informazzjoni, li tista' tiġi trasmessa elettronikament, għandha tkun bil-miktub u f'islen li jftiehem malajr. Partijiet rilevanti ta' din l-informazzjoni għandhom ukoll ikunu disponibbli fuq talba ta' terzi li jqegħdu l-fiduċja tagħhom fuq iċ-ċertifikat;

(l) jużaw sistemi fiduċjarji biex jaħznu ċertifikati f'forma verifikabbli sabiex:

- ikunu persuni awtorizzati biss li jistgħu jdaħhlu informazzjoni jew jagħmlu tibdiliet fihom;

- tkun tista' tiġi verifikata l-awtentiċità ta' l-informazzjoni;

- iċ-ċertifikati jkunu disponibbli pubblikament biex jittieħdu lura biss f'dawk il-każijiet li għalihom ikun inkiseb il-kunsens tad-detentur ta' ċertifikat;
u

- l-operatur jkun jista' jara sew kull bidla teknika li tkun tikkomprometti dawn ir-rekwiziti ta' sigurtà.

IR-RABA' SKEDA

(Artikolu 2)

Rekwiziti ghal Apparat ta' Orìginar ta' Firma Sigura

01. Apparat ghall-orìginar ta' firma sigura ghandu, b'mezzi adattati tekniċi u proċedurali, ghall-inqas jiżgura illi:

(a) *d-data* ghall-orìginar ta' firma użati ghall-orìginar ta' firma jistghu prattikament jokkorru ghal darba biss, u li tiġi raġonevolment żgurata s-segretezza tagħhom;

(b) *d-data* ghall-orìginar ta' firma użati ghall-orìginar ta' firma ma jkunux jistghu, b'assigurazzjoni raġonevoli, jinkisbu u l-firma tkun protetta kontra kull falsifikazzjoni billi tiġi użata t-teknoloġija disponibbli f' dak iż-żmien;

(ċ) *d-data* ghall-orìginar ta' firma użati ghall-orìginar ta' firma jistghu jkunu protetti b'mod fdat mill-firmatarju legittimu kontra kull użu li jista' jsir minn persuni ohra.

02. Apparat ta' orìginar ta' firma sigura ma ghandux jibdel id-*data* li ghandhom jiġu ffirmati jew tipprevjani lil dawk id-*data* milli jiġu ppreżentati lill-firmatarju qabel il-proċess tal-firma.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 460 tat-8 ta' Jannar, 2001

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

ELECTRONIC COMMERCE ACT, 2001

(ACT NO. III OF 2001)

Arrangement of articles

Articles

Part I - Preliminary

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2. Interpretation

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Part III – Electronic Contracts

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16. Accreditation of signature certification service providers

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17. Supervision of signature certification service providers that issue qualified certificates
18. Liability of signature certification service providers

Part VI – Intermediary Service Providers

19. Mere conduit
20. Caching
21. Hosting
22. Obligations of intermediary service providers

Part VII – General

23. Prohibition on misuse of electronic signatures, signature creation devices, certificates and fraud
24. Offences and penalties
25. Power to make regulations
26. English text to prevail

Part VIII – Computer Misuse

27. Amendment to the Criminal Code, Cap. 9
28. Consequential amendment to the Extradition Act, Cap. 276

FIRST SCHEDULE

Information requirements relating to electronic contracts

SECOND SCHEDULE

Requirements for qualified certificates

THIRD SCHEDULE

Requirements for signature certification service providers issuing qualified certificates

FOURTH SCHEDULE

Requirements for secure signature creation devices

I assent.

(L.S.)

GUIDO DE MARCO
President

16th January, 2001

ACT No. III of 2001

AN ACT to provide in relation to electronic commerce and to provide for matters connected therewith or ancillary thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled and by the authority of the same, as follows:-

Part I - Preliminary

1. The title of this Act is the Electronic Commerce Act, 2001 and shall come into force on such date as the Minister may by notice in the Gazette appoint and different dates may be so appointed for different provisions or different purposes of this Act.

Short title and commencement.

2. In this Act, unless the context otherwise requires:

Interpretation.

“addressee” in relation to an electronic communication means a person who is intended by the originator to receive the electronic communication, but does not include a person acting as a service provider with respect to the processing, receiving or storing of that electronic communication or providing other services with respect to it;

“advanced electronic signature” means an electronic signature which meets the following requirements:

- (a) it is uniquely linked to the signatory;

(b) it is capable of identifying the signatory;

(c) it is created using means that the signatory can maintain under his sole control; and

(d) it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable;

“certificate” means an electronic attestation, which links signature verification data to a person and confirms the identity of that person;

“competent authority” means the authority so designated in terms of article 20 of this Act;

“consumer” means any natural person who is acting for purposes which are outside his trade, business or profession;

“data” means a representation of information, knowledge, facts, concepts or instructions that has been prepared or is being prepared in any manner and has been processed, is being processed or is intended to be processed in an information system, a computer system or a computer network. Data may be in any form or derived from any device or source, including computer memory, computer printouts, any storage media, electronic or otherwise and punched cards;

“data storage device” means any thing, including a disk, from which data and information is capable of being reproduced with or without the aid of any thing or device;

“electronic communication” means information generated, communicated, processed, sent, received, recorded, stored or displayed by electronic means;

“electronic contract” means a contract concluded wholly or partly by electronic communications or wholly or partly in an electronic form;

“electronic signature” means data in electronic form which are attached to, incorporated in or logically associated with other electronic data and which serve as a method of authentication;

“information” includes information in the form of data, text, images, sound or speech;

“information society service” means any service which is provided at a distance, by electronic means and at the individual request of a recipient of the service, whether such service is provided for consideration or not, and for the purposes of this definition:

(a) “at a distance” means that the service is provided without the parties being simultaneously present;

(b) “by electronic means” means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by any electromagnetic means;

(c) “at the individual request of a recipient of the service” means that the service is provided through the transmission of data on individual request;

“information system” means a system for generating, sending, receiving, recording, storing or otherwise processing electronic communications;

“information technology requirements” includes software, network and data storage requirements;

“Minister” means the Minister responsible for communications;

“originator” in relation to an electronic communication means the person by whom, or on whose behalf, the electronic communication purports to have been sent or generated prior to storage, if any, but does not include a person acting as a service provider with respect to the generating, processing, sending or storing of that electronic communication or providing other services with respect to it;

“place of business” in relation to a government, an authority of a government, a public body, a charitable, philanthropic or similar institution means a place where any operations or activities are carried out by that government, authority, body or institution;

“prescribed” means prescribed by regulations made by the Minister in accordance with the provisions of this Act;

“qualified certificate” means a certificate which meets the requirements established by or under this Act and is provided by a signature certification service provider who fulfils the requirements established by or under this Act;

“recipient” means any person who uses an information society service for the purposes of seeking information or making it accessible;

“signature certification service provider” means a person who issues certificates or provides other services related to electronic signatures;

“secure signature creation device” means a signature creation device which meets the requirements laid down in the Fourth Schedule to this Act;

“signature verification data” means data, such as codes or private cryptographic keys, which are used for the purpose of verifying an electronic signature;

“signature verification device” means configured software or hardware used to implement the signature verification data;

“transaction” includes a transaction of a non-commercial nature;

“voluntary accreditation” means any permission, setting out rights and obligations specific to the provision of signature certification services, to be granted upon request by the signature certification service provider concerned, by the public or private body charged with the elaboration of, and supervision of compliance with, such rights and obligations, where the signature certification service provider is not entitled to exercise the rights stemming from the permission until it has received the decision by the body.

Part II – Application of Legal Requirements to Electronic Communications and Transactions

Validity of
electronic
transactions.

3. For the purposes of any law in Malta and subject to the other provisions of this Act, a transaction is not deemed to be invalid merely because it took place wholly or partly by means of one or more electronic communications.

4. (1) Unless otherwise prescribed, the provisions of articles 5 ^{Excluded laws.} to 15 of this Act shall not apply to –

(a) the law governing the creation, execution, amendment, variation or revocation of –

- (i) a will or any other testamentary instrument;
- (ii) a trust; or
- (iii) a power of attorney;

(b) any law governing the manner in which rights over immovable property other than leases may be created, acquired, disposed of or registered;

(c) any law governing the making of an affidavit or a solemn declaration, or requiring or permitting the use of one for any purpose;

(d) any provision of the law of persons;

(e) the rules, practices or procedures of a court or tribunal;

(f) any law relating to the imposition, collection or recovery of taxation and other Government imposts, including fees, fines and penalties;

(g) any law relating to contracts of suretyship and collateral security furnished by persons for the purpose of their trade, business or profession; or

(h) any law relating to the giving of evidence in criminal proceedings.

(2) Where the Minister is of the opinion that –

(a) technology has advanced to such an extent, and access to it is so widely available, or

(b) adequate procedures and practices have developed in public registration or other services, so as to warrant such action, or

(c) the public interest so requires,

he may, after consultation with the Minister as in the Minister's opinion has sufficient interest or responsibility in relation to the matter, by Order in the Gazette extend the application of this Act or a provision of this Act to or in relation to a matter specified in subarticle (1) above, including the applicability to a particular area or subject, or for a particular time, for the purposes of a trial of the technology and procedures, subject to such conditions as he thinks fit.

Requirement or permission to give information in writing.

5. (1) If under any law in Malta a person is required or permitted to give information in writing, that requirement shall be deemed to have been satisfied if the person gives the information by means of an electronic communication:

Provided that -

(a) at the time the information was given, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference; and

(b) if the information is required to be given to a person, or to another person on his behalf, and the first mentioned person requires that the information be given in accordance with particular information technology requirements, by means of a particular kind of electronic communication, that person's requirement has been met; and

(c) if the information is required to be given to a person, or to another person on his behalf, and the first mentioned person requires that a particular action be taken by way of verifying the receipt of the information, that person's requirement has been met.

(2) For the purposes of this article, giving information includes, but is not limited to, the following:

- (a) making an application;
- (b) making or lodging a claim;
- (c) giving, sending or serving a notification;
- (d) lodging a return;
- (e) making a request;
- (f) making a declaration;

- (g) lodging or issuing a certificate;
- (h) lodging an objection; and
- (i) making a statement.

(3) For the purposes of this article, a requirement or permission in relation to a person to give information shall extend to and shall be equally applicable to the requirement or information which is stated to be sent, filed, submitted, served or otherwise transmitted and includes similar or cognate expressions, thereof.

6. If under any law in Malta the signature of a person is required, such requirement is deemed to have been satisfied if such signature is an electronic signature and such signature shall not be denied legal effectiveness on the grounds that it is:— Signature.

- (a) in electronic form; or
- (b) not based upon a qualified certificate; or
- (c) not based upon a qualified certificate issued by an accredited signature certification service provider; or
- (d) not created by a secure signature creation device:

Provided that if the electronic signature is in the form of an advanced electronic signature, which is based on a qualified certificate and is created by a secure creation device, it shall for all intents and purposes of law be presumed to be the signature of the signatory.

7. (1) Unless otherwise provided by or under this Act, if under any law in Malta, a person is required to produce a document that is in the form of a paper, or of any other substance or material, that requirement is deemed to have been satisfied if the person produces, by means of an electronic communication, an electronic form of that document:

Requirement or permission for production of document and integrity.

Provided that:

- (a) having regard to all the relevant circumstances at the time of the communication, the method of generating the electronic form of the document provided a reliable means of assuring the maintenance of the integrity of the information contained in the document;

(b) at the time the communication was sent, it was reasonable to expect that the information contained in the electronic form of the document would be readily accessible so as to be useable for subsequent reference;

(c) if the document is required to be given to a person, or to another person on his behalf, and the first mentioned person requires that an electronic form of the document be given, in accordance with particular information technology requirements, by means of a particular kind of electronic communication, the person's requirement is satisfied; and

(d) if the document is required to be given to a person, or to another person on his behalf, and the first mentioned person requires that a particular action be taken by way of verifying the receipt of the information, the person's requirement is satisfied.

(2) For the purposes of this article, the integrity of information contained in a document is only maintained if the information remains complete and unaltered, save for -

(a) the addition of any endorsement; or

(b) any change not being a change to the information, which is necessary in the normal course of communication, storage or display.

(3) For the purposes of subarticles (1) and (2) of this article and of article 8 of this Act, the production by means of an electronic communication of an electronic form of a document or the generation of an electronic form of a document shall not give rise to any liability for infringement of the copyright in a work or other subject matter embodied in the document.

Retention of
information,
documents and
communications.

8. (1) If under any law in Malta, a person is required to record information in writing, that requirement is deemed to have been satisfied if the person records the information in electronic form:

Provided that such information in electronic form is readily accessible so as to be useable for subsequent reference and it complies with such regulations as may be prescribed.

(2) If under any law in Malta, a person is required to retain, for a particular period, a document that is in the form of a paper or of any other substance or material, that requirement is deemed to have

been satisfied if the person retains an electronic form of the document throughout that period:

Provided that if –

(a) having regard to all the relevant circumstances at the time of the generation of the electronic form of the document, the method of generating the electronic form of the document, provided a reliable means of assuring the maintenance of the integrity of the information contained in that document; and

(b) at the time of the generation of the electronic form of the document, it was reasonable to expect that the information contained in the electronic form of the document would be readily accessible so as to be useable for subsequent reference; and

(c) it complies with such regulations as may be prescribed.

(3) For the purpose of subarticle (2) of this article, the integrity of information contained in a document is only maintained if the information has remained complete and unaltered, save for:-

(a) the addition of any endorsement; or

(b) any change not being a change to the information, which is necessary in the normal course of communication, storage or display.

(4) If under any law in Malta, a person is required to retain, for a particular period, information that was the subject of an electronic communication, that requirement is deemed to have been satisfied if that person retains, or causes another person to retain, in electronic form, that:-

(a) at the time of commencement of the retention of the information, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference; and

(b) having regard to all the relevant circumstances, at the time of commencement of the retention of the information, the method of retaining the information in electronic form provided a reliable means of assuring the maintenance of the integrity of the information contained in the electronic communication; and

(c) throughout that period that person also retains, or causes another person to retain, in electronic form, such additional information obtained as is sufficient to enable the identification of the following:

- (i) the origin of the electronic communication;
- (ii) the destination of the electronic communication;
- (iii) the time when the electronic communication was sent;
- (iv) the time when the electronic communication was received; and

(d) at the time of commencement of the retention of the additional information specified in paragraph (c) it was reasonable to expect that the additional information would be readily accessible so as to be useable for subsequent reference; and

(e) it complies with such regulations as may be prescribed.

(5) For the purposes of subarticle (4) of this article, the integrity of the information which is the subject of an electronic communication is only maintained if the information remains complete and unaltered, save for -

- (a) the addition of any endorsement; or
- (b) any change not being a change to the information, which arises in the normal course of communication, storage or display.

Part III - Electronic Contracts

Electronic contract.

9. (1) An electronic contract shall not be denied legal effect, validity or enforceability solely on the grounds that it is wholly or partly in electronic form or has been entered into wholly or partly by way of electronic communications or otherwise.

(2) For the purposes of any law relating to contracts, an offer, an acceptance of an offer and any related communication, including any subsequent amendment, cancellation or revocation of the offer, the acceptance of the contract may, unless otherwise agreed by the contracting parties, be communicated by means of electronic communications.

10. (1) Unless otherwise agreed by parties who are not consumers, where the addressee of an electronic communication is required to give his consent through technological means:

Formation of
electronic contract.

(a) in accepting the originator's offer, an electronic contract is concluded when the addressee has received from the originator, electronically, an acknowledgement of receipt of the addressee's consent; and

(b) for the purposes of paragraph (a) of this subarticle, an acknowledgement of receipt is deemed to have been received when the addressee is able to access it.

(2) Unless otherwise agreed by parties who are not consumers, the originator shall provide the addressee with effective and accessible means to identify and correct handling errors and accidental transactions prior to the conclusion of the contract.

(3) The provisions of paragraph (a) of subarticle (1) and of subarticle (2) above shall not apply to contracts concluded exclusively by electronic mail or by any other similar technological means.

11. Unless otherwise agreed by parties who are not consumers, and without prejudice to any consumer rights under the provisions of any other law, the originator shall provide information in clear, comprehensive and unambiguous terms regarding the matters set out in the First Schedule to the Act. Such information shall be provided prior to the placement of the order by the addressee.

Information
requirements
relating to
electronic contract.

Part IV – Transmission of Electronic Communications

12. (1) If an electronic communication enters a single information system outside of the control of the originator, then, save as otherwise agreed between the originator and the addressee of the electronic communication, the dispatch of the electronic communication occurs at the time when it enters the information system.

Time of dispatch.

(2) If an electronic communication enters successively two or more information systems outside of the control of the originator, then, unless otherwise agreed between the originator and the addressee of the electronic communication, the dispatch of the electronic communication occurs when it enters the first of those information systems.

13. (1) If the addressee of an electronic communication has designated an information system for the purpose of receiving electronic

Time of receipt.

communications, then, save as otherwise agreed between the originator and the addressee of the electronic communication, the time of receipt of the electronic communication is the time when the electronic communication enters the information system.

(2) If the addressee of an electronic communication has not designated an information system for the purpose of receiving electronic communications, then, save as otherwise agreed between the originator and the addressee of the electronic communication, the time of receipt of the electronic communication is the time when the electronic communication comes to the attention of the addressee.

Place of dispatch
and receipt.

14. (1) Save as may be otherwise agreed between the originator and the addressee of an electronic communication:-

(a) the electronic communication is deemed to have been dispatched at the place where the originator has his place of business; and

(b) the electronic communication is deemed to have been received at the place where the addressee has his place of business.

(2) For the purposes of the subarticle (1) of this article:-

(a) if the originator or the addressee has more than one place of business, and one of those places has a closer relationship to the underlying transaction, that place of business shall be deemed to be the originator's or the addressee's place of business; and

(b) if the originator or the addressee has more than one place of business, but paragraph (a) does not apply, the originator's or the addressee's principal place of business shall be deemed to be the originator's or the addressee's place of business; and

(c) if the originator or addressee does not have a place of business, the originator's or the addressee's place of business shall be deemed to be the originator's or addressee's ordinary residence.

Attribution of
electronic
communication.

15. (1) Save as otherwise agreed between the originator and the addressee of an electronic communication, the originator of an electronic communication is bound by that communication only if the communication was sent by him or under his authority.

(2) Nothing in subarticle (1) of this article shall affect the operation of any law that makes provision for:-

(a) the conduct engaged by a person within the scope of the person's actual or apparent authority to be attributed to another person; or

(b) a person to be bound by conduct engaged in by another person within the scope of the other person's actual or apparent authority.

(3) An electronic communication between an originator and an addressee shall be deemed to be of the originator if it was sent by an information system programmed to operate automatically by or on behalf of the originator.

(4) An addressee shall have the right to consider each electronic communication received by him as a separate electronic communication and to act on that assumption, except to the extent that such communication is a duplicate of another electronic communication and the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the electronic communication was a duplicate.

Part V – Provision of Signature Certification Services

16. (1) The provision of signature certification services or services otherwise related to electronic signatures shall not be subject to prior authorisation.

Accreditation of signature certification service providers.

(2) Without prejudice to the generality of subarticle (1) of this article the Minister may by regulations, introduce and maintain a voluntary accreditation scheme aiming at enhanced levels of signature certification service provision and may designate accreditation authorities and may also make regulations on any other matter relating to such designation as the Minister may deem necessary.

17. (1) The Minister shall by Order designate a competent authority for the supervision of signature certification service providers established in Malta which issue qualified certificates to the public.

Supervision of signature certification service providers that issue qualified certificates.

(2) The Minister may prescribe on any of the following matters:-

(a) the powers and functions of the competent authority;

(b) any other matter relating to the competent authority which may appear to the Minister to be necessary or desirable.

Liability of
signature
certification service
providers.

18. (1) Signature certification service providers who issue a certificate as a qualified certificate to the public or who guarantee such certificate shall be liable for any damage caused to any person who reasonably relies on such certificate.

(2) It shall be the duty of the signature certification service provider who issues a certificate as a qualified certificate to the public or who guarantees such certificate to reasonably assure:-

(a) the accuracy of all information in the qualified certificate as of the time of issue and that the certificate contains all the details prescribed in relation to a qualified certificate;

(b) that at the time of the issue of the certificate, the signatory identified in the qualified certificate held the signature creation device corresponding to the signature verification device given or identified in the certificate;

(c) that the signature creation device and the signature verification device act together in a complementary manner, in cases where the signature certification service provider generates the two.

(3) A signature certification service provider who has issued a certificate as a qualified certificate to the public or who has guaranteed such certificate is liable for damage caused to any person who reasonably relies on the certificate for failure to register or publish revocation or suspension of the certificate unless the signature certification service provider proves he has not acted negligently.

(4) A signature certification service provider who issues a certificate as a qualified certificate to the public or who guarantees such certificate may indicate in the qualified certificate limits on the uses of that certificate:

Provided that the limits are clear and readily identifiable as limitations, the signature certification service provider shall not be liable for damages arising from a contrary use of a qualified certificate which includes limits on its user.

(5) A signature certification service provider who issues a certificate as a qualified certificate to the public or who guarantees such certificate may indicate in the qualified certificate a limit on the value of transactions for which the certificate can be used. Any such indication must be clear and readily identifiable as a limitation.

Part VI – Intermediary Service Providers

19. (1) Where an information society service is provided, and such service consists in the transmission, in a communication network, of information provided by the recipient of the service, or the provision of access to a communication network, the provider of such a service shall not be liable, otherwise than under a prohibitory injunction, for the information transmitted. Provided that such provider: Mere conduit.

- (a) does not initiate the transmission;
- (b) does not select the receiver of the transmission; and
- (c) does not select or modify the information contained in the transmission.

(2) The acts of transmission and of the provision of access referred to in subarticle (1) hereof, include the automatic intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

20. Where an information society service is provided, and such service consists in the transmission, in a communication network, of information provided by a recipient of the service, the provider of that service shall not be liable for damages for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request. Provided that: Caching.

- (a) the provider does not modify the information;
- (b) the provider complies with the conditions on access to the information;
- (c) the provider complies with any conditions regulating the updating of the information;
- (d) the provider does not interfere with the technology used to obtain data on the use of the information; and
- (e) the provider acts expeditiously to remove or to bar access to the information upon obtaining actual knowledge of any of the following:

(i) the information at the initial source of the transmission has been removed from the network;

(ii) access to it has been barred;

(iii) the Court or other competent authority has ordered such removal or barring.

Hosting.

21. (1) Where an information society service is provided, and such service consists in the storage of information provided by a recipient of the service, the provider of that service shall not be liable for damages for the information stored at the request of a recipient of the service.

Provided that:

(a) the provider does not have actual knowledge that the activity is illegal and is not aware of facts or circumstances from which illegal activity is apparent; or

(b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

(2) Subarticle (1) hereof shall not apply when the recipient of the service is acting under the authority or the control of the provider of the service.

Obligations of intermediary service providers.

22. Information society service providers shall promptly inform the public authorities competent in the matter of any alleged illegal activity undertaken or information provided by recipients of their service and shall grant to any such authority upon request information enabling the identification of recipients of their service with whom they have storage agreements:

Provided that nothing in this Part of the Act shall be interpreted as imposing an obligation on information society service providers to monitor the information which they transmit or store or to actively seek facts or circumstances indicating illegal activity in connection with the activities described in articles 19 to 21 above.

Part VII – General

Prohibition on misuse of electronic signatures, signature creation devices, certificates and fraud.

23. (1) No person shall access, copy or otherwise obtain possession of or recreate the signature creation device of another person without authorisation, for the purpose of creating, or allowing or causing

another person to create an unauthorised electronic signature using such signature device.

(2) No person shall alter, disclose or use the signature creation device of another person without authorisation, or in excess of lawful authorisation, for the purpose of creating or allowing or causing another person to create an unauthorised electronic signature using such signature creation device.

(3) No person shall create, publish, alter or otherwise use a certificate or an electronic signature for any fraudulent or other unlawful purpose.

(4) No person shall misrepresent his identity or authorisation in requesting or accepting a certificate or in requesting suspension or revocation of a certification.

(5) No person shall access, alter, disclose or use the signature creation device of a signature certification service provider used to issue certificates without the authorisation of the signature certification service provider, or in excess of lawful authorisation, for the purpose of creating, or allowing or causing another person to create, an unauthorised electronic signature using such signature creation device.

(6) No person shall publish a certificate, or otherwise knowingly make it available to anyone likely to rely on the certificate or on an electronic signature that is verifiable with reference to data such as codes, passwords, algorithms, public cryptographic keys or other data which are used for the purposes of verifying an electronic signature, listed in the certificate, if such person knows that:-

(a) the signature certification service provider listed in the certificate has not issued it; or

(b) the subscriber listed in the certificate has not accepted it; or

(c) the certificate has been revoked or suspended, unless such publication is for the purpose of verifying an electronic signature created prior to such revocation or suspension, or giving notice of revocation or suspension.

(7) No person shall use cryptographic or other similar techniques for any illegal purpose.

Offences and penalties.

24. Any person contravening any of the provisions of this Act or of any regulations made thereunder shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding one hundred thousand Maltese liri (Lm100,000) or to imprisonment not exceeding six months, or to both such fine and imprisonment, and in the case of a continuous offence to a fine not exceeding one thousand Maltese liri (Lm1,000) for each day during which the offence continues.

Power to make regulations.

25. (1) The Minister may make regulations to provide for any matter related to electronic commerce in order to give fuller effect to the provisions of this Act, and in particular, but without prejudice to the generality of the aforesaid, such regulations may provide for:-

(a) any derogation from or restriction in relation to any cross-border transaction where this is necessary for one of the following reasons:-

(i) public policy, in particular the protection of minors, or the fight against any incitement to hatred on grounds of race, sex, religion, political opinion or nationality;

(ii) the protection of public health;

(iii) public security;

(iv) consumer protection;

(b) identifying:

(i) transactions;

(ii) requirements or permissions to give information in writing;

(iii) requirements or permissions to produce documents;

(iv) requirements to retain information, documents and communications;

(v) signatures;

that may be exempt from any provision of this Act;

(c) additional requirements for the use of signatures in electronic communications in the public sector;

(d) the recognition of signature certification service providers who had they been operating in Malta would have satisfied the requirements set out for such providers;

(e) any matter relating to commercial communications, including, but not limited to matters relating to:-

(i) information to be provided in commercial communications;

(ii) unsolicited commercial communications;

(iii) commercial communications by regulated professions;

(f) the authorisation to the competent authority to impose administrative fines or sanctions on any person acting in contravention of any provision of this Act or of any regulation made thereunder:

Provided that –

(i) any administrative fine provided for by regulations made under this article shall not exceed the amount of ten thousand Maltese liri (Lm10,000) for each offence and one thousand Maltese liri (Lm1,000) for each day during which failure to observe the provisions of this Act or of any regulation made thereunder persists;

(ii) administrative fines stipulated in paragraph (i) of this proviso may be increased by regulation up to a maximum of fifty thousand Maltese liri (Lm50,000) and five thousand Maltese liri (Lm5,000) for each day during which any contravention persists, respectively;

(iii) regulations made under this paragraph may prescribe that any such administrative penalty or sanction shall be due to the competent authority as a civil debt constituting an executive title for the purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure as if the payment of the amount of the fine had been ordered by a judgement of a court of civil jurisdiction;

(iv) such regulations may also prescribe any right of appeal from decisions of the competent authority to impose an administrative sanction;

(g) procedures to be established for out of court schemes, for the settlement of disputes arising in relation to information society services including appropriate electronic measures.

(2) The Minister may also by regulations amend the Schedules to this Act and prescribe anything that may or is required to be prescribed under this Act.

English text to prevail.

26. In the case of conflict between the Maltese and English texts of this Act, the English text shall prevail.

Part VIII - Computer Misuse

Amendment to the Criminal Code, Cap. 9.

27. Immediately after article 337 of the Criminal Code there shall be inserted the following new Sub-title and Articles:

“Sub-title V of Computer Misuse

Interpretation.

337(B)(1) For the purposes of this Sub-title the following definitions, unless the context otherwise requires, shall apply:

“computer” means an electronic device that performs logical, arithmetic and memory functions by manipulating electronic or magnetic impulses, and includes all input, output, processing, storage, software and communication facilities that are connected or related to a computer in a computer system or computer network;

“computer network” means the interconnection of communication lines and circuits with a computer through a remote device or a complex consisting of two or more interconnected computers;

“computer output” or “output” means a statement or a representation of data whether in written, printed, pictorial, screen display, photographic or other film, graphical, acoustic or other form produced by a computer;

“computer software” or “software” means a computer program, procedure or associated documentation used in the operation of a computer system;

“computer supplies” means punched cards, paper tape, magnetic tape, disk packs, diskettes, CD-roms, computer output, including paper and microform and any storage media, electronic or otherwise;

“computer system” means a set of related computer equipment, hardware or software;

“function” includes logic, control, arithmetic, deletion, storage, retrieval and communication of data or telecommunication to, from or within a computer;

“supporting documentation” means any documentation used in the computer system in the construction, clarification, implementation, use or modification of the software or data.

(2) A reference in this Sub-title to software includes a reference to a part of the software.

(3) A reference in this Sub-title to a computer includes a reference to a computer network.

(4) A reference in this Sub-title to data, software or supporting documentation held in a computer or computer system includes a reference to data, software or supporting documentation being transmitted through a computer network.

(5) For the purposes of this Sub-title, a person uses software if the function he causes the computer to perform:

- (a) causes the software to be executed; or
- (b) is itself a function of the software.

(6) A reference in this Sub-title to any software or data held in a computer includes a reference to any software or data held in any removable storage medium which is for the time being in the computer.

Unlawful
access to, or
use of,
information.

337(C)(1) A person who without authorisation does any of the following acts shall be guilty of an offence against this article —

- (a) uses a computer or any other device or equipment to access any data, software or supporting

documentation held in that computer or on any other computer, or uses, copies or modifies any such data, software or supporting documentation;

(b) outputs any data, software or supporting documentation from the computer in which it is held, whether by having it displayed or in any other manner whatsoever;

(c) copies any data, software or supporting documentation to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;

(d) prevents or hinders access to any data, software or supporting documentation;

(e) impairs the operation of any system, software or the integrity or reliability of any data;

(f) takes possession of or makes use of any data, software or supporting documentation;

(g) installs, moves, alters, erases, destroys, varies or adds to any data, software or supporting documentation;

(h) discloses a password or any other means of access, access code or other access information to any unauthorised person;

(i) uses another person's access code, password, user name, electronic mail address or other means of access or identification information in a computer;

(j) discloses any data, software or supporting documentation unless this is required in the course of his duties or by any other law.

(2) For the purposes of this Sub-title:

(a) a person shall be deemed to act without authorisation if he is not duly authorised by an entitled person;

(b) a person shall be deemed to be an entitled person if the person himself is entitled to control the

activities defined in paragraphs (a) to (j) of subarticle (1) of this article or in paragraphs (a) and (b) of article 4 of this Sub-title.

(3) For the purposes of subarticle (1) of this article:

(a) a person shall be deemed to have committed an offence irrespective of whether in the case of any modification, such modification is intended to be permanent or temporary;

(b) the form in which any software or data is output and in particular whether or not it represents a form in which, in the case of software, it is capable of being executed or, in the case of data, it is capable of being processed by a computer, is immaterial.

(4) For the purposes of paragraph (f) of subarticle (1) of this article, a person who for the fact that he has in his custody or under his control any data, computer software or supporting documentation which he is not authorised to have, shall be deemed to have taken possession of it.

Misuse of hardware.

337(D) Any person who without authorisation does any of the following acts shall be guilty of an offence against this article -

(a) modifies computer equipment or supplies that are used or intended to be used in a computer, computer system or computer network;

(b) takes possession of, damages or destroys a computer, computer system, computer network, or computer supplies used or intended to be used in a computer, computer system or computer network or impairs the operation of any of the aforesaid.

Commission of an offence outside Malta.

337(E) If any act is committed outside Malta which, had it been committed in Malta, would have constituted an offence against the provisions of this Sub-title, it shall, if the commission affects any computer, software, data or supporting documentation which is situated in Malta or is in any way linked or connected to a computer in Malta, be deemed to have been committed in Malta.

Offences and penalties.

337(F)(1) Without prejudice to any other penalty established under this Sub-title, any person who contravenes any of the provisions of this Sub-title shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding Lm10,000 or to imprisonment for a term not exceeding four years, or to both such fine and imprisonment.

(2) Where any such offence constitutes an act which is in any way detrimental to any function or activity of Government, or hampers, impairs or interrupts in any manner whatsoever the provision of any public service or utility, whether or not such service or utility is provided or operated by any Government entity, the penalty shall be increased to a fine (*multa*) of not less than Lm100 and not exceeding Lm50,000 or to imprisonment for a term from three months to ten years, or to both such fine and imprisonment:

Provided that where a person is found guilty of an offence against this subarticle for a second or subsequent time, the minimum of the penalty for such an offence shall not be less than Lm500.

(3) The penalties established under subarticle (2) of this article shall also apply in the case of any offence against any of the provisions of this Sub-title—

(a) where the offence is committed in any place by an employee to the prejudice of his employer or to the prejudice of a third party, if his capacity, real or fictitious, as employee, shall have afforded him facilities in the commission of the offence; and

(b) with the exception of subarticle (2) of this article, where the offence committed by a person is the second or subsequent offence against any of the provisions of this Sub-title.

(4) A person who produces any material or does any other act preparatory to or in furtherance of the commission of any offence under this Sub-title shall be guilty of that offence and shall on conviction be liable to the same punishment provided for the offence.

(5) Any person who is an accomplice in the commission of an offence against this Sub-title or who in any way aids or abets such commission shall be liable to the same penalties contemplated for such an offence.

(6) It shall not be necessary for the prosecution to negative by evidence any authorisation required under this Sub-title and the burden of proving any such authorisation shall lie with the person alleging such authorisation:

Provided that this burden shall not be considered to have been discharged with the mere uncorroborated testimony of the person charged.

Search and seizure.

337(G) The Minister may, for the purposes of this Sub-title, by regulations prescribe:

(a) the manner in which the Police may search computers, computer systems or computer supplies and seize data or software stored therein;

(b) procedures and methods for handling evidence that is in an electronic form”.

28. The Extradition Act shall be amended by the addition of the following item immediately after item 30 of the Schedule to the said Act -

Consequential amendments to the Extradition Act, Cap. 276.

“31. An offence against the law relating to computer misuse”.

FIRST SCHEDULE

(Article 11)

Information Requirements Relating to Electronic Contracts

- (a) the name and address where the originator is established;
- (b) the electronic-mail address where the originator can be contacted in a direct manner;
- (c) the registration number of the originator in any trade register or of any professional body if applicable;
- (d) where the activity of the originator is subject to an authorisation, the activities covered by the authorisation granted to the originator and the particulars of the authority providing such authorisation;
- (e) the Value Added Tax (VAT) registration number of the originator, where the originator undertakes an activity that is subject to VAT;
- (f) the different steps to follow to conclude the contract;
- (g) a statement of whether the concluded contract will be filed by the originator and whether it will be accessible.

SECOND SCHEDULE

(Article 2)

Requirements for Qualified Certificates

Qualified certificates must contain:

- (a) an indication that the certificate is issued as a qualified certificate;
- (b) the identification of the signature certification service provider and the State in which it is established;
- (c) the name of the signatory or a pseudonym, which shall be identified as such;
- (d) provision for a specific attribute of the signatory to be included if relevant, depending on the purpose for which the certificate is intended;
- (e) signature-verification data which correspond to signature-creation data under the control of the signatory;
- (f) an indication of the beginning and end of the period of validity of the certificate;
- (g) the identity code of the certificate;
- (h) the advanced electronic signature of the signature certification service provider issuing it;
- (i) limitations on the scope of the use of the certificate, if applicable; and
- (j) limits on the value of transactions for which the certificate can be used, if applicable.

THIRD SCHEDULE

(Article 2)

Requirements for Signature Certification Service Providers Issuing Qualified Certificates

Signature Certification service providers must:

- (a) demonstrate the reliability necessary for providing signature certification services;
- (b) ensure the operation of a prompt and secure directory and a secure and immediate revocation service;
- (c) ensure that the date and time when a certificate is issued or revoked can be determined precisely;
- (d) verify, by appropriate means in accordance with national law, the identity and, if applicable, any specific attributes of the person to whom a qualified certificate is issued;
- (e) employ personnel who possess the expert knowledge, experience, and qualifications necessary for the services provided, in particular competence at managerial level, expertise in electronic signature technology and familiarity with proper security procedures; they must also apply administrative and management procedures which are adequate and correspond to recognised standards;
- (f) use trustworthy systems and products which are protected against modification and ensure the technical and cryptographic security of the processes supported by them;
- (g) take measures against forgery of certificates, and, in cases where the signature certification service provider generates signature-creation data, guarantee confidentiality during the process of generating such data;
- (h) maintain sufficient financial resources to operate in conformity with the requirements laid down in the Act, in particular to bear the risk of liability for damages, for example, by obtaining appropriate insurance;
- (i) record all relevant information concerning a qualified certificate for an appropriate period of time, in particular for the purpose of providing evidence of certification for the purposes of legal proceedings. Such recording may be done electronically;

(j) not store copy signature-creation data of the person to whom the signature certification service provider provided key management services;

(k) before entering into a contractual relationship with a person seeking a certificate to support his electronic signature, inform that person by a durable means of communication of the precise terms and conditions regarding the use of the certificate, including any limitations on its use, the existence of a voluntary accreditation scheme and procedures for complains and dispute settlement. Such information, which may be transmitted electronically, must be in writing and in readily understandable language. Relevant parts of this information must also be made available on request to third-parties relying on the certificate;

(l) use trustworthy systems to store certificates in a verifiable form so that:

- only authorised persons can make entries and changes;
- information can be checked for authenticity;
- certificates are publicly available for retrieval in only those cases for which the certificate-holder's consent has been obtained; and
- any technical changes compromising these security requirements are apparent to the operator.

FOURTH SCHEDULE

(Article 2)

Requirements for Secure Signature-Creation Devices

01. Secure signature creation devices must, by appropriate technical and procedural means, ensure at the least that:

(a) the signature creation data used for signature generation can practically occur only once, and that their secrecy is reasonably assured;

(b) the signature creation data used for signature generation cannot, with reasonable assurance, be derived and the signature is protected against forgery using currently available technology;

(c) the signature-creation-data used for signature generation can be reliably protected by the legitimate signatory against the use of others.

02. Secure signature creation devices must not alter the data to be signed or prevent such data from being presented to the signatory prior to the signature process.

Passed by the House of Representatives at Sitting No. 460 of 8th January, 2001

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives