

REPUBLIC OF TUNISIA

Law n°: 2000-83 of August 9th, 2000, relatif to the Electronic Exchanges and Electronic Commerce Bill

(Translated from the official Arabic text for information purposes only, not to be quoted)

Chapter I

General Regulations

Article 1 :

This law has been provided for the general organizing electronic exchanges and electronic commerce.

Electronic exchanges and electronic commerce are subject to legislation and regulations in use as long as they are not in contradiction with this law.

Electronic contracts are governed by written contracts procedures concerning the expression of will its legal power, its validity, its execution liability as long as they are not in contradiction with this law.

Article 2 :

Under this law, the following terms mean:

Electronic exchanges : exchanges that are accomplished using electronic documents and files.

Electronic commerce : commercial transactions that are accomplished using electronic exchanges.

Electronic certificate : the electronic document secured by the electronic signature of the issuing individual through which he certifies, after inspection, the validity of data included within.

Certificate service provider : any individual or organization that establishes, delivers, and administers certificates and provides other services related to electronic signature.

Encryption : either the use of symbols or signs that are made unavailable, which make information to be transmitted or sent not comprehensible to others or the use of symbols or signs without which information cannot be attained.

Signature establishment solution : a single set of personal encryption elements or a set of applications specifically designed to establish an electronic signature.

Signature verification solution : a set of public encryption elements or a set of applications that make it possible to verify the digital signature.

Electronic payment method : a method that allows its owner to make remote direct payment operations via public telecommunications networks.

Product : any service or product be natural, agricultural, craftwork or industrial and tangible or intangible.

Article 3 :

The use of encryption in electronic exchanges and electronic commerce via public telecommunications networks is regulated by the Telecommunications Value Added Services regulations.

Chapter II

The Electronic Document and the Electronic Signature

Article 4 :

Storage of an electronic document is considered as valid as the storage of a written document.

The sender vows to keep an electronic document in the same condition as it was sent and the recipient vows to keep this document in the same condition as it was received.

The electronic document stored on an electronic support that allows:

- To check its content all along its validity
- To store its final version in a way to guarantee the integrity of its content
- To store information related to its origin and destination as well as the date place of its transmission and delivery.

Article 5 :

Any person who wants to sign electronic document may do so by establishing his digital signature using a certified solution whose technical specifications are laid down by a decree from the minister in charge of telecommunications.

Article 6 :

Any person who uses an electronic signature solution should :

- Take the minimum precautions that are laid down in the decree provided for in Article 5 of this act in order to avoid any unauthorized use of the encryption elements or the personal device associated with his signature,
- Inform the certification service provider of any unauthorized use of this signature,

- Strive for the authenticity of all information that he provides to the certification service provider and to all parties he asked to put trust in his signature.

Article 7 :

In case of infringement to the rules provided for in Article 6 of this act, the owner of the signature is accountable for the damages caused to third parties.

Chapter III

On the National Certification Authority

Article 8 :

An administrative financially independent public agency called "the National Agency for Electronic Certification" is created. It is subject to commercial law in its relations with others. Its headquarter is in Tunis, TUNISIA.

Article 9 :

The agency carries specifically the following duties :

- 1- Licensing the activities of certification services provider allover the territories of the Republic of Tunisia.
- 2- Ensuring the certification services provider carries its duties in full respect of this law and its applicable texts.
- 3- Defining the specifications of signature establishment and verification solutions.
- 4- Issuing, delivering and storing of electronic certificates of public agents licensed to carry out electronic exchanges. Such duties may be achieved either directly or via public electronic certification services providers.
- 5- Participating in the activities of research, training and studiers related to electronic exchanges and commerce.

In general, the agency may carry any other duties requested by the institution under which its administrative supervision falls and that it is related to its domain of activity.

The agency is under the aegis of the ministry in charge of this domain of activity.

Article 10 :

The National Certification Agency may be supported by transferring under its control, through privatization, fixed or mobile State-owned estates that are necessary

to carry its duties. In case of dissolution of the enterprise, its assets shall be returned to the State which would be responsible of its obligations according to regulations in force.

Chapter IV

On Electronic Certification Services

Article 11 :

Any person or corporate body wishing to engage in the activity of providing certification services shall be licensed in prior by the National Certification Agency.

Any person or the legal representative of a corporate body interested in being licensed to provide electronic certification services must meet the following criteria :

- To have been a Tunisian citizen for at least five years ;
- To be a resident of Tunisia ;
- Should be enjoying all civil and political rights and has no legal precedent ,
- Should have at least a Bachelor's Degree or its equivalent ;
- To have no other employment activity.

Article 12 :

Every certification services provider assumes the duties of issuing, delivering and storing of certificates according to a Schedules or Rules approved by a decree and according to this act in case of suspension or revoke of certificates.

The Schedules of Rules contains especially :

- Information on the operating cost of examination and followup of files of applications for certification ,
- Deadlines for completion of examination of files ;
- Physical, financial and human resources that must be provided to engage in the activity ;
- Conditions for securing the interoperability of certification solutions and of interrelation of certificate records ;
- Rules related to information concerning the provider's services and certificates issued that the certification provider must upkeep.

Article 13 :

Certification services provider must use certified methods for issuing, delivering, and storing of certificates and to take necessary measures to protect them

against imitation and counterfeit according to the Schedule or Rules mentioned in Article 12 of this act.

Article 14 :

Every certification services provider must make available an electronic record of certificates electronically accessible to users at all time to check the information included within.

The record of certificates includes, if necessary, information on the date of withdrawal or withdrawal or suspension of certificates.

The record and the certificate must be protected against unauthorized change.

Article 15 :

It is imposed on certification services providers and their agents to uphold the confidentiality of the information entrusted to them in the context of carrying their duties except those that the owner of the certificate authorized, in writing or electronically, their publication or their notification or in accordance with provisions stated in the law in force.

Article 16 :

when processing an application for a certificate, the certification services provider gathers personal information directly from the involved person and may get the information from a third party after the written or electronic approval of that person.

The certification services provider is forbidden from gathering information not required for the delivery of the certificate.

The certification services provider is forbidden the use of information gathered for the purpose of issuing the certificate outside the context of certification activities without the written or electronic approval of the involved person.

Article 17 :

The certification services provider issues certificates that meet the requirements of security and reliability. Technical specifications related to be certificate and its reliability are defined by a decree from the ministry in charge of telecommunications.

The certificate includes notably :

- The identity of the certificate owner ;
- The identity and the electronic signature of the certificate issuer ;
- Elements of verification of the signature of the certificate owner ,
- The certificate period of validity ;
- The areas where the certificate ought to be used.

Article 18 :

The certification services provider guarantees:

- The accuracy of information included in the certificate on the date of its delivery ;
- The relation between the owner of the certificate and his signature verification solution ;
- Exclusive ownership by the certificate owner of a signature establishment solution in compliance with the regulations of the decree mentioned in Article 5 of this act and in concordance with the signature verification solution referred to in the certificate at the date of delivery.

And when delivering the certificate to a corporate body, the certification services provider is required to verify in prior the identity of the person to receive the certificate and the title of his representation of the corporate body.

Article 19 :

The certification services provider assumes the responsibility to Immediately suspend the certificate by request of its owner or when it has determined :

- The certificate was delivered based on false or counterfeit information ;
- That the signature establishment solution was infringed ;
- That the certificate was used for forgery purposes ;
- That the information included in the certificate has changed.

The certification services provider assumes the responsibility to immediately inform the certificate owner when the certificate is suspended and the reasons behind such measure.

The suspension is immediately lifted when the information included in the certificate has been determined to be accurate and that its use is legitimate.

The owner of the certificate or a third party objects to the suspension decision of the certification services provider on the date of its publication in the electronic record mentioned in Article 14 this act.

Article 20 :

The certification services provider revokes the certificate immediately when the following conditions occur:

- Upon request of the certificate owner ;
- Upon being informed of the death of the person or the dissolution of the corporate body owner of the certificate ;
- Upon conclusion after thorough testing after its withdrawal, that the information is false or counterfeit or that it does not correspond to reality or that the signature establishment solution has been breached or that the certificate has been used in a forged manner.

The owner of the certificate or a third party objects to the revoke decision of the certification service provider on the date of its publication in the electronic record mentioned in Article 14 of this act.

Article 21 :

- The owner of the certificate is the sole responsible on the confidentiality and the security of the signature establishment solution he is using, and any use of this solution is considered emanating from him.
- The owner of the certificate shall inform the certification services provider on any change of information included in the certificate.
- The owner of the suspended or revoked certificate ;ay not use the personal signature encryption elements of that certificate to seek certification of the same elements anew at another certification services provider.

Article 22 :

- The certification services provider shall be responsible on each one of the damages ensuing to every person who trusted in good will in the guarantees mentioned in Article 18 of this act.
- The certification services provider shall also be responsible on the damage ensuing to every person caused by failure to suspending or revoking of a certificate according to Articles 19 and 20 of this act.
- The certification services provider shall not be responsible on the damage ensuing from the non6compliance by the owner of the certificate with its usage rules or with the rules of his signature establishment solution.

Article 23 :

Certifications delivered by a certification services provider residing in a foreign country shall be considered the same as certificates delivered by a certification services provider residing in Tunisia if the foreign provider is recognized within the context of a mutual recognition agreement signed by The National Certification Agency.

Article 24 :

The certification services provider that intends to cease its activities shall inform The National Certification Agency at least three months prior to the date of cessation of activities.

The certification services provider may transfer a portion or all of its activities over to another provider , such transfer shall occur according to the following rules:

- Informing the owners of active certificates of his intention to transfer the certificates to another provider one month at least prior to the expected transfer ;

- Informing the owners of the certificates of the possibility of refusing the expected transfer as well as of the deadlines and methods for the refusal. Certificates, whose owners expressed by this deadline their refusal in writing or electronically, shall be revoked.

In the case of death or bankruptcy or dissolution or liquidation of the certification services provider, his inheritors or his agents or the liquidators are subject to the provisions of paragraph two of this Article during a three-month deadline period.

In all cases of cessation of activity, personal information that remained under the control of the provider shall be destroyed in the presence of a representative of The National Certification Agency.

Chapter V

On the Electronic Commerce Transactions

Article 25 :

In electronic commerce transactions, the merchant must provide the consumer, in a clear and comprehensible manner and before the execution of the contract, with the following information :

- Identity, address and phone number of the merchant or the service provider ;
- A complete description of all transaction steps ;
- Nature, specifications and pricing of the product ;
- Product delivery and insurance costs as well as due taxes ;
- Period for which the products is displayed with the indicated prices ;
- Commercial guarantees and after6sale service conditions ;
- Payment methods and procedures and, when necessary, conditions for available loans ;
- Methods and time of delivery and of execution of contract and results of non-fulfillment of engagements.
- Possibility of purchase cancellation and its deadline ;
- Method for order confirmation ;
- Method for product return or exchange and cost refund ;
- Costs for using telecommunications technologies when they are priced differently from regular ;
- Conditions for canceling a contract with unlimited period of time or a period exceeding one year ;
- The minimum period for contracts relating to providing the consumer with a product or service for a long period of time or periodically.

This information must be provided electronically and must be made available to the consumer to refer to at all transaction steps.

Article 26 :

It's forbidden for the merchant to deliver products with the condition of payment on delivery when the consumer has issued no order.

In case the product is delivered to the consumer without any order issued for it, the consumer cannot be asked for paying the price and delivery costs of the product.

Article 27 :

Before executing the contract, the merchant must allow the consumer to do a final review of all his choices and enable him to voluntarily confirm (execute) the order or to change it as well as to view the electronic certificate related to his signature.

Article 28 :

The electronic contract is produced with the name of the merchant and on the date of his approval of the order through an electronically signed document addressed to the consumer unless the two parties agree on a different process.

Article 29 :

The merchant must provide the consumer, on the request of the latter and in the ten (10) days following the execution of the contract, a written or electronic document that includes all the information related to the sales transaction.

Article 30 :

With consideration to the Article 25 of this act, the consumer may cancel the purchase in a period of 10 working days, counted from:

- The day of delivery to the consumer, in the case of a product ;
- The day of contract conclusion, in the case of a service.

The cancellation is announced through all the means mentioned in the contract.

In this case the merchant must refund the paid price to the consumer in a period of ten working days starting from, the date of the return of the product or the cancellation of the service.

The consumer shall bear all the costs resulting from the product return.

Article 31 :

Notwithstanding the compensation of damages in favor of the consumer, the latter may return a product in its condition if it doesn't correspond to the order or if the merchant doesn't respect the delivery deadline, and this during ten working days starting from the date of delivery.

In this case, the merchant shall return the paid price and related costs to the consumer during ten working days starting from the date of the product return.

Article 32 :

With consideration to regulations in Article 30 of this act and with exception to case of apparent or hidden defects, the consumer cannot cancel a purchase in the following cases :

- When the consumer asks to be provided with the service before the expiration of the cancellation deadline and the merchant provides the service
- If the consumer has been provided with the products according to personalized specifications or products that cannot be reshipped or that could be damaged or spoiled due to the expiration of their validity period ;
- When the consumer removes the seal off audio or video recordings or computer software and date delivered r file-transferred ;

Article 33 :

If the purchase is the total or partial result of a loan provided to the consumer by the merchant or a third party on the basis of contract between the merchant and the third party, then the cancellation of the purchase by the consumer cancels the loan contract without refund.

Article 34 :

With the exception of cases of misuse, in trial-based sales, the merchant shall bear the risks that the product might encounter until the end of the trial period. Any condition for exoneration in contradiction with the regulations of this article shall be considered void.

Article 35 :

In case of unavailability of the product or the service, the merchant must inform the consumer in a time period not exceeding 24 hours before the delivery date mentioned in the contract and must refund the total cost to the consumer.

Except the cases of unforeseen reason, the contract is cancelled if the merchant did not fulfill his engagements and the consumer is refunded for the amount paid regardless of the compensation of damages occurring to him.

Article 36 :

The merchant prove the existence of prior notification, the information confirmation, the respect of deadlines and the approval of the consumer and any other conflicting agreement shall be considered void.

Article 37 :

All payment operations related to electronic exchanges and electronic commerce are subjected to the act and regulation in force.

The owner of the electronic payment method must notify its issuer of its loss or theft or the loss or theft of devices enabling its use as well as any fraudulent use of it.

The issuer of an electronic payment method must specify the appropriate ways for such notification in the contract concluded with the owner.

- Assumes, until the date of notifying the issuer, the consequences of loss or theft of the payment method or its fraudulent use by a third party ;
- Bears no responsibility of the use of the payment method after notifying the issuer.

Chapter VI

On protecting Private Information

Article 38 :

The certification services provider cannot process personal data without the approval of the involved owner of the electronic certificate.

The electronic notification of approval can be used if the certification services provider guarantees ;

- The notification of the certificate owner of his right to cancel his approval at any time ;
- The possibility of identifying the parties using the personal data ;
- The conservation of the proof of approval in a way that cannot be changed.

Article 39 :

Except in the case of the certificate owner's approval, the certification services provider or one of his agents cannot gather information related to the certificate owner except the information needed to build the contract, to specify its content and to execute it and to prepare and to issue the invoice.

The certification services provider or a third party cannot use the data gathered according to the first paragraph of this Article for other than the above mentioned reason unless the certificate owner has been informed of that and he has not objected to it.

Article 40 :

It is forbidden for users of personal data gathered according to Article 39 of this act to send electronic documents to the certificate owner who clearly refuses to accept them.

The certificate owner must notify The National Certification Agency of his objection via a registered letter with notification of delivery.

This notification is considered as a legal presumption that all certificate service providers or third parties are aware of this objection.

Article 41 :

Before any processing of personal data, the certificate services provider must inform the certificate owner, via a special notification, of the procedures he follows for protecting personal data. Those procedures must allow the certificate owner to review the content to the date in an automatic and simplified manner.

Those procedures must specify the identity of the processing manager, the nature of data, the purposes for the processing, the categories and the sites of the processing and eventually, all information needed to ensure a secured data processing.

Article 42 :

The certificate owner may, at any time, upon a hand or electronically signed request, have access to his personal information and update it. The access and update right covers entering all personal data areas related to the certificate owner.

The certification services provider shall install all necessary technical means to allow the owner of the certificate to send his signed request for updating or deleting information in an electronic manner.

Chapter VI

On Infractions and Penalties

Article 43 :

Infractions to this act are subject to investigation by the judicial police and sworn agents of the ministry in charge of communication Technologies and of the National Certification Agency and the agents of Economic Inspection according to the rules mentioned in Act n : 64 of the year 1991 dated 29 July 1991 related to competition and pricing and the texts amending and supplementing it.

Article 44 :

The license is withdrawn from the certification services provider and his activity is stopped, if he breaches his obligations stipulated in this act or in its enforcements texts. The National Certification Agency shall carry the withdrawal duty after hearing the involved provider.

Article 45 :

In addition to the sanctions stated in Article 44 of this act, each certification services provider who did not comply with the requisites of the Schedule of Rules states in Article 12 of this act shall be reprimanded to pay a fine ranging from 1,000 to 10,000 dinars.

Article 46 :

Anyone who engages in the activity of certification services provider without prior procuring a license in conformity with Article 11 of this act, shall be penalized with a jail term ranging two months and three years and to pay a fine ranging from 1,000 to 10,000 dinars.

Article 47 :

Anyone who gives with premeditation false information to a certification services provider and to all parties he has requested to have confidence in his signature, shall be penalized with a jail term ranging from six months and two years and with a fine ranging from 1,000 and 10,000 dinars or with one of the two penalties.

Article 48 :

Anyone who illegally uses personal encryption elements related to someone else's signature shall be penalized with a jail term ranging from six months and two years and a fine ranging from 1,000 to 10,000 dinars or with one of the two penalties.

Article 49 :

Anyone who breaches the rules stated in Articles 25, 27 and 29, and in the second paragraph of Article 31 and in Article 34 and in the first paragraph of Article 35 of this act, shall be penalized with a fine ranging from 500 and 5,000 dinars.

Article 50 :

Anyone who exploits the weakness or ignorance of a person in the context of electronic sales operations by pushing him to agree presently or in the future in any manner shall be penalized with a fine ranging from 1,000 and 20,000 dinars, and this if it has been proved within the facts of circumstances that this person is unable to distinguish the dimensions of his contractual commitments or uncovering tricks and ploys used in agreements or if it has been proved that he was coerced, penalization takes into account the regulations of the Penal Code.

Article 51 :

Any one who breaches the rules of Articles 38 and 39 shall be penalized with a fine ranging from 1,000 and 10,000 dinars.

Article 52 :

The certification services provider and his agents who divulge, encourage or participate in the divulgation of information entrusted to them in the context of carrying their activities, except the information that the owner of the certificate has approved in writing or electronically their publication or reporting or following situations stated in regulations in force, shall be penalized according to Article 254 of the Penal Code.

Article 53 :

While ensuring the protection of civil rights of the victims, the minister in charge of commerce may carry out conciliation in the infractions stated in Article 49 of this act, which are investigated according to the provisions of this act.

While ensuring the protection of civil rights of the victims, the minister in supervision of The National Certification Agency may carry out conciliation in the infractions stated in Article 45 of this act, which are investigated according to the provisions of this act.

Conciliation methods and procedures shall occur by virtue of the letter of act in force governing economic inspection especially the Act n 64 of the year 1991 dated 29 july 1991 related to competition and pricing and the texts amending and supplementing it without affecting the rights of others.

The legal proceeding shall be lifted when the amount specified in the conciliation agreement has been paid.

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