

In the Name of Allah, the Gracious The Merciful
The Electronic Transactions Act, 2007

Be it hereby passed, by the National Assembly, and signed, by the President of the Republic, in accordance with the provisions of the Interim National Constitution of the Republic of the Sudan, 2005, the following Act:-

Chapter I

Preliminary Provisions

Title and commencement

1. This Act may be cited as the, “Electronic Transactions Act, 2007”, and shall come into force, as of the date of signature .

Interpretation

2. In this Act, unless the context otherwise requires, :-
“Electronic transactions”, means the relations, financial disposals, personal status and all legal matters other than criminal matters, including individual disposals or contracts as may be concluded or executed totally or partially through electronic data message;
“Data message”, means the information produced, sent, received or saved by electronic, or visual means, or other technological means, including exchange of electronic data, electronic mail, telegraph, telex or telegraphic copying ;

- “Information”,** means the data, texts , photographs, images, voices, signs , data base, and computer programmes, and the like;
- “Electronic record”,** means the entry , contract or data message, initiated, sent, received or saved by electronic means;
- “Electronic instrument”,** means the document initiated, saved, retrieved, copied, sent , served or received by an electronic means on a tangible medium, or any other electronic medium, and retrievable in such form, as can be understood;
- “Digital signature”,** means the signature initiated, sent and saved by an electronic means. It may take the form of letters, digits, signs or signals having a distinct character, and allows identification and distinguishing the personality of the signatory from others;
- “Signature device”,** means the set, or any electronic data prepared in a distinct form, to act in an independent way, or jointly with other data sets; the same being for a particular specific digital status of a person. This operation includes any systems, or sets, as may generate, or receive distinct data, such as signs , arithmetical curricula , letters, digits, personal codes, identification

numbers or any other personal characteristics;

“Coding”,

means the use of signs, or uncirculated signals, whereby the information intended to be passed, or sent becomes incapable of understanding on the part of others, or the use of signs, or signals, without which access to the information cannot be made;

“Authentication Procedure”,

means the procedure followed, to verify that the electronic signature, or record has been made by a specific person, or trace such changes and errors, as may have occurred in an electronic record, after its establishment, including the use of analysis means, to identify the signs, words and digits, and decoding , reverse aid, or any other means , or procedure, as may achieve the purpose;

“Committee”,

means the National Electronic Licensing Committee;

“Person authenticating the signature”,

means any natural, or corporate person, who is licensed , according to the nature of the subject, to issue certificates asserting authentication of the digital signature, in order to

“Electronic medium”,	ascertain that such signature is issued by the person concerned; means the computer programme, or any other electronic device, used for carrying out any process, for the initiation, sending or receiving an information message, without personal intervention;
“Receiver, of the message”,	means the person, to whom the initiator of the message intends delivery of the information included therein ;
“Initiator, or sender of the message”,	means the person, who by himself, or by whoever he may authorize, initiates the data message, and sends the same, before saving it;
“Authentication certificates”,	mean the certificates issued by the person licensed to authenticate, for the proof of attribution of the digital signature, to a particular person, in accordance with the approved authentication procedure;
“Exchange of data”,	means the electronic transfer and exchange of data, between two or more parties;
“Signatory”,	means any person, who is in possession of a digital signature device, pertaining thereto, from the authenticating person, and effects signature personally , or through an

agent on a message, by the use of such device;

“Data processing system”, means any electronic system used to initiate data messages, send, deliver, process, save or prepare the same, in any other way;

“Electronic payment device”, means the device, which enables its owner to conduct direct remotely controlled payment operations, totally or partially through the networks; including the electronic cheque, and the photocopy of the cheque, or payment cards, and otherwise of means;

“Minister competent”, means the Minister to be determined by the President of the Republic;

“Broker” is the person, or body, who on behalf of any other body, effects sending, receipt or saving the data message, or renders any other services, with respect to the data message;

“Quarters of work”, means the site wherein the person practises his ordinary activity , and includes the electronic site agreed to, between the initiator and the receiver of the electronic message;

“Identification sign”,	means the sign allotted by the person licensed to authenticate electronic transactions to the person concerned to use, from the receiver in order to distinguish data messages issued by such person from other messages ;
"Financial institution",	means the licensed bank or financial institution authorized to make financial transactions in accordance with applicable laws ;
"Electronic instrument",	means financial or commercial paper which is negotiable electronically .

Chapter II

Electronic Contracting

Declaration and expression of will

3. The data message shall be deemed as a means of :-
- (a) declaration of rendering a service, or commodity;
 - (b) expression of will totally, or partially, for the manifestation of offer and acceptance, with the view of establishing contractual obligation .

Validity of the electronic contracts

- 4.(1) Electronic contracts shall be correct and valid when offer and acceptance coincide through data message exchanged by the parties to express two wills which coincide on the subject matter, and put obligation on each other.
- (2) Notwithstanding sub-section (1) the parties may agree that the contract shall be correct and valid if the will is expressed partially through data message.

Making offer and its receipt

5. Unless the parties otherwise agreed, the offer shall be deemed :
- (a) made through data message when sent or entered in an information a system not controlled by initiator or whoever may deputize therefore ;
 - (b) received by the receiver on entry of data message in an information system the use of which is previously agreed to by the parties, or entered an information system belonging to the receiver.

Making a acceptance and its receipt

6. Unless the parties otherwise agreed, acceptance shall be deemed :
- (a) made through data message at the time of entry in an information system not controlled by the initiator or whoever he may deputize therefore;
 - (b) received by the receiver on entry of data message in an information system the use of which is previously agreed to by the parties, or entered an information system belonging to the receiver .

Chapter III

Non-contractual transactions

Unilateral will

7. The data message which contains unilateral will as detailed in the Civil Transactions Act shall have the legal cogency of the formal document whenever issued by an approved digital signature.

Chapter IV

Digital Signature and Cogency

Legal effect of digital signature

- 8.(1) The legal effect of the digital signature shall not be denied with respect to its validity and the possibility of its being acted upon merely for its being set out totally or partially in an electronic form .
- (2) Where the law requires the signature of a document, or entails a legal effect for its being bereft of signature, then where an electronic record is used in this respect, the digital signature thereon shall satisfy the requirements of this Act .
- (3) Where, with respect to any proceedings, a digital signature is produced accompanied by an approved certificate to any person such signature shall be equivalent to his hand signature , where :
- (a) a mechanism is used to determine the identity of such person, and prove his assent to the information set out in the electronic data message;
 - (b) such mechanism is dependable, to an extent appropriate to purpose for which the electronic data message is initiated, in the light of the circumstance, including any other agreement connected with such person .
- (4) Where the electronic signature is not placed by the use of an approved certificate, the presumption of validity, prescribed under the provisions of the preceding sub-section, shall not affect any of the electronic signature or record .

Secrecy of information

- 9.(1) Data of the electronic signature, electronic mediums and information presented to the body licensed to issue electronic licence certificates are secret, and whoever they have been presented thereto, or come to his knowledge by virtue of his work, shall not

disclose the same to others, or use them otherwise than for the purpose for which they have been presented .

- (2) The provider of service having the system of data processing shall take the steps and procedure for protection of information by all means and available technologies.

Legal effect of electronic records

10.(1) The legal effect of the information, set out in electronic records, shall not be denied, as to its validity, and the possibility of action thereupon, merely for being set out totally, or partially, in the form of an electronic record, or being referred thereto in such record.

- (2) Where the law requires that information shall be reduced into writing, or entails a legal effect for non-abidance by the same; then setting out the information in an electronic record shall satisfy the requirements of this Act; on condition that such information shall be capable of access thereto and retrievable subsequently , by way of dissimulation , printing, or otherwise.

- (3) Where the law requires that the information, presented to another person, shall be reduced into writing; then presentation thereof, in the form of an electronic record, shall satisfy this purpose, where the following conditions are present :-

(a) the addressee is enabled access to such information, and retrieval thereof subsequently, whether by way of dissimulation, printing or otherwise;

(b) the addressee is enabled to preserve such information, in such way, as may enable the addressee to ascertain the origin of the data message, its destination, and the date and time of its arrival, sending and receipt.

- (4) Regard, in assessment of cogency of the electronic record in evidence shall, upon dispute as to its soundness, be had to the following :-

- (a) the extent of trust in the way, in the which the electronic record has been initiated, saved, or disseminated;
- (b) the extent of trust in the way in which, the electronic record has been signed;
- (c) the extent of trust in the way, which is used to preserve the soundness of the information, included in the electronic record;
- (d) any other matters, as may have a relation to the soundness of the electronic record .

Chapter V

Electronic Instruments

Negotiable electronic instrument

11. An electronic instrument shall be negotiable, where conditions of the negotiable instrument apply to it, in accordance with the Central Bank of Sudan Act.

Cogency of the electronic satisfaction

- 12.(1) Electronic satisfaction , by any of the following means of electronic payment, shall have cogency against all .
- (2) Means of electronic payment shall be :
- (a) electronic cheque;
 - (b) electronic payment card;
 - (c) any other means of payment to be approved by orders of the Central Bank of Sudan.

Obligations of financial institutions

13. Every financial institution, which practices electronic transmission of money, in accordance with the provisions of this Act, shall abide by all the laws, relating to banking business, and such procedure and safeguards issued by the Central Bank of Sudan.

Chapter VI
The Committee

Establishment, seat and supervision of the Committee

- 14.(1) There shall be established a committee, to be known as the, “Electronic Licensing National Committee”, having corporate personality.
- (2) The Committee shall be constituted by a decision of the Council of Ministers, upon recommendation of the Minister Concerned ; from Chairperson and number of members, provided that regard in constitution thereof, shall be had to representation of Ministries of the Interior and Justice, central Bank of Sudan, all competent bodies, the private sector, civil society organizations and national expertise in this field .
- (3)The seat of the Committee shall be in Khartoum .
- (4)The Committee shall be subject to supervision of the Minister .

Functions and powers of the Committee

- 15.(1) The Committee shall be the highest administrative authority to lay down the bases of licensing any body it deems qualified to practise the work of authenticating the digital signature, and issue the necessary certificate and license services. Without prejudice to the foregoing, the Committee shall have the following functions and powers, to :-
- (a) carry out the operation of licensing to practise the work of authentication of the digital signature, after ascertaining the technical and financial capabilities of the applicant and investigation of the same;
- (b) lay down such systems and safeguards as may organize coding, security and periodical revisions;

- (c) issue decisions for specifying the liability of the licensed body where it is in breach of the duties of care and caution necessary for protection of the proprietor of the certificate;
 - (d) withdraw the licence and take any other measure where the licensed body does not abide by practicing the work as to such necessary rules and directions as the Committee may issue;
 - (e) follow-up and study the international and regional developments in the field of electronic licensing and the operations accompanying the same;
 - (f) facilitate the exchange of information with foreign parties under such agreements as it may conclude with such parties , for the purpose of exchange of recognition of certificates issued in Sudan and the other states;
 - (g) specify the foreign similar bodies for the purpose of dealing with them in the admission of certificates issued by licensed local bodies ;
 - (h) recommend to the Minister concerned to make the regulations concerning licensing conditions and organization of digital signature technology ;
 - (i) make regulations for organization of its business.
- (2) The Committee may delegate any of its powers and functions to any committee to be constituted thereby, and the decision of the constitution thereof shall specify its powers and functions, as it may deem fit.

Secretariate of the Committee

16. The Committee shall have a secretariate, presided over by a secretary, from its members to be appointed by the Committee in the first meeting thereof.

Meetings and decisions of the Committee

17. The Committee shall hold its meetings, and take its decisions , as to such manner, as the regulations to be made thereby, for the conduct of its business, may specify .

Conditions to be satisfied by the licensed person, or body

18. The body, or person licensed for practice of work in the field of authentication of signature, and licensing services, shall satisfy the following conditions :-
- (a) he is of good conduct, and has not previously been convicted of an offence involving honour, or honesty;
 - (b) the licensed body, or person , or whoever he may appoint, to manage the work shall academically and practically be qualified.

Duties of the licensed person, or body

19. The duties of the person, or body licensed to practise work in the field of authentication of signature and licensing services, shall be as follows, to :-
- (a) abide by acting in accordance with the data under which he has been granted the licence;
 - (b) exert the care necessary for ensuring the accuracy and fullness of whatever he may present of essential data, having relation to the certificate he issues;
 - (c) provide such necessary means, as may enable the party , who depends on his services, to ascertain the identity of the supplier of licensing services, and that he has full control over the signature device , referred to in the certificate;

- (d) provide such means , as may enable signatories to notify him of any impediment, as the signature device may be subjected to , and shall also secure provision of the service of cancellation of signature, at the appropriate time;
- (e) employ in rendering his services, approved systems and procedure, and human resources, attested to for competence and experience, and worthy of dependence thereon, in such work;
- (f) abide by all such rules and directions, as the Committee may make and issue;
- (g) keep all the documents, relating to those dealing with him;
- (h) keep such messages, as under which authentication certificates may have been issued, for such period, and as to such classification , as the Committee may lay down.

Powers of arbitration and courts

- 20.(1) In case of dispute between the Committee and other party the Minister of Justice shall constitute arbitration tribunal.
- (2) The contest of the decisions of the arbitration tribunal shall be before the national supreme court .

Chapter VII

Finance, Accounts and Audit

Financial resources of the Committee

- 21. The financial resources of the committee shall consist of :-
 - (a) such appropriations, as the State may allocate thereto;
 - (b) contributions of institutions and individuals;

- (c) such funds, as it may obtain as a result of its activity, or the consideration of such business and services, as may be rendered thereby;
- (d) such funds, as it may borrow;
- (e) any other resources, as may be accepted by the Committee.

Budget of the Committee

22. The Committee shall have an independent budget, to be prepared as to such sound accountancy bases , as the State may prescribe from time to time; and the Committee shall submit, to the competent bodies, within sufficient time before the end of every financial year, the annual budget of the revenues and expenditure of the coming financial year, for approval thereof .

Use of financial resources of the Committee

- 23(1) The financial resources of the Committee shall be used to achieve its objects. Without prejudice, to the generality of the foregoing, such resources shall be used in the following :-
- (a) payment of wages of employees of the Committee, and remuneration of members of the Committee;
 - (b) any other items of expenditure necessary for running of business of the Committee .

Keeping of accounts and books

- 24.(1) The Committee shall keep accurate and comprehensive accounts of its business, in accordance with sound accountancy bases; and keep the books and records, relating thereto.

- (2) The Committee shall deposit its funds with banks, in current, or deposit accounts; provided that dealings in such accounts and withdrawal therefrom shall be made as to such manner, as the Committee may specify .

Audit

25. The National Audit Chambers, shall audit the accounts of the Committee, after the end of every financial year.

Statement of the final account and the National Auditing Chambers' report

26. The Committee shall annually submit, to the Minister, concerned within a period not exceeding six months of the end of the financial year, a statement of the final account of the committee accompanied by a report of the national Auditing Chambers..

Chapter VIII

General Provisions

Competent court

27. The General Court, shall be the competent court, to consider disputes, relating to application of the provisions of this Act.

Penalties

- 28.(1) In addition to any other penalty provided for in any other law, there shall be punished upon conviction :-

- (a) with imprisonment for a term not exceeding ten years or with fine or with both, whoever :-

- (i) discloses the code keys, deposited at the coding office;
- (ii) discloses the codified information saved thereby, otherwise than permitted cases;

- (i) misuses the information saved thereby;**
- (b) with imprisonment for a term not exceeding twelve years or with fine or with both whoever.**
 - (i) uses a system, or programme, to impede the completion of any transactions, or trade by electronic means , by modification thereof, erosion of their data, spoiling, destroying the same or disrupting the systems thereof;**
 - (ii) manufactures, possesses, or obtains a system, or programme for the preparation of an electronic signature, without the consent of the person having competence;**
 - (iii) forges, or imitates a document, or electronic signature, or an authentication certificate of an electronic signature, or uses a forged document, a forged electronic identification, or a forged certificate for the authentication of an electronic signature, while he knows the same;**
 - (iv) peruses secret information, or discloses such information ;**
- (c) whoever presents inaccurate information to any body licensed to practise the business of authentication, with intent to extract a certificate, or suspend its validity or cancel the same, shall be punished, with imprisonment, for a term, not exceeding seven years, and with fine, or with both;**
- (d) where any body, which practises the business of authentication, and rendering electronic services, supplies inaccurate information, in the registration application, or discloses the secrets of any of its customers, or contravenes the systems and instructions, issued under this Act, shall be**

punished with imprisonment for a term, not exceeding ten years or with fine , or with both.

- (2) Without prejudice to any severer penalty, provided for by any other law, whoever commits an act in contravention of the provisions of any law, by using an electronic means, shall be punished, with imprisonment, for a term, not exceeding seven years, or with fine, or with both .

Application and saving

- 29.(a) The provisions of Civil Transactions Act, Evidence Act and Civil Procedure Act shall apply where no express provision is made in this Act.
- (b) The provisions of this Act shall not apply to marriage and divorce .

Power to make Regulations

- 30.(1) The Minister concerned may make such regulations, necessary, for the implementation of the provisions of this Act.
- (2) Without affecting the provisions of sub-section (1), such regulations may include the following matters :-
- (a) conditions of licensing;
 - (b) such procedure, as may organize arbitration in the suits submitted to the Committee ;
 - (c) such procedure, as may organize the technique of digital signature.