



LAWS OF SARAWAK

ONLINE VERSION

Chapter 82

ELECTRONIC SARAWAK GOVERNMENT ACTIVITIES ORDINANCE, 2022

ELECTRONIC SARAWAK GOVERNMENT ACTIVITIES
ORDINANCE, 2022

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LAWS OF SARAWAK

Chapter 82

**ELECTRONIC SARAWAK GOVERNMENT ACTIVITIES
ORDINANCE, 2022**

An Ordinance to provide for legal recognition of electronic communication in dealings between the Government, local authorities, statutory bodies incorporated by State laws and the public, the use of electronic communication to fulfil legal requirements and to enable and facilitate the dealings through the use of electronic means and other matters connected therewith.

[1st June, 2023]

(*Swk. L.N. 200/2023*)

ENACTED by the Legislature of Sarawak—

**PART I
PRELIMINARY****Short title and commencement**

1.—(1) This Ordinance may be cited as the Electronic Sarawak Government Activities Ordinance, 2022.

(2) This Ordinance shall come into force on such date as the Premier may by notification in the *Gazette*, appoint, and the Premier may appoint different dates for the coming into force of different parts or provisions of this Ordinance.

Application

2. This Ordinance shall, unless exempted by the Minister by notification published in the *Gazette*, apply to all State written laws, electronic activities of the Government, local authorities and statutory bodies incorporated by State laws.

Reference to other written laws

3. The application of this Ordinance shall be supplemental and without prejudice to any other written laws regulating the dealings between the Government, local authorities, statutory bodies incorporated by State laws and the public.

Interpretation

4. In this Ordinance unless the context otherwise requires—

“addressee” means a person who is intended by the originator to receive the electronic communication, but does not include a person acting as an intermediary with respect to that electronic communication;

“electronic” means the technology of utilizing electrical, optical, magnetic, electromagnetic, biometric, photonic or other similar technology;

“electronic communication” means a communication of information by electronic means;

“electronic signature” in relation to information in electronic form, means a method used to identify a person and to indicate that person’s approval of that information;

“Government” means the Government of the State of Sarawak;

“information” includes information (whether in its original form or otherwise) that is in the form of a document, a signature, a seal, data, text, images, sound, or speech generated, sent, received or stored by an electronic means;

“information and communication technology directions” means the directions issued under section 5;

“information processing system” means an electronic system for generating, sending, receiving, storing or processing the electronic communication;

“Minister” means the Premier or any member of the Majlis Mesyuarat Kerajaan Negeri who has been assigned by the Premier, to have the responsibilities for communication, multimedia and for matters connected therewith;

“originator” means a person by whom, or on whose behalf, the

electronic communication has been sent or generated prior to storage, if any, but does not include a person acting as an intermediary with respect to that electronic communication.

PART II
INFORMATION AND COMMUNICATION TECHNOLOGY
DIRECTIONS

Information and communication technology directions

5.—(1) The Minister may issue information and communication technology directions which may include—

- (a) information and communication technology standards;
- (b) the criteria for the electronic signature and appropriate seal for the purpose for which they are used;
- (c) the process of recording the time and acknowledgment of receipt of the electronic communication;
- (d) security measures against any unauthorized access;
- (e) disaster recovery procedures;
- (f) accessibility rules for electronic government services and forms;
- (g) management and maintenance of the electronic communication;
- (h) methods relating to data entry and verification of the electronic communication;
- (i) guidelines for the payment and receipt of money; and
- (j) any other matters as may be required from time to time.

(2) Non-compliance with any of the information and communication technology directions shall not affect the validity or enforceability of the activities, which are undertaken electronically pursuant to this Ordinance.

PART III

LEGAL RECOGNITION OF ELECTRONIC COMMUNICATION

Legal recognition of electronic communication

6.—(1) Any information shall not be denied legal effect, validity or enforceability on the ground that it is wholly or partly in an electronic form.

(2) Any information shall not be denied legal effect, validity or enforceability on the ground that the information is not contained in the electronic communication that gives rise to such legal effect, but is merely referred to in that electronic communication, provided that the information being referred to is accessible to the person against whom the referred information might be used.

Formation and validity of contract

7.—(1) In the formation of a contract, the communication of proposals, acceptance of proposals, and revocations of proposals and acceptances or any related communication may be expressed by an electronic communication.

(2) A contract shall not be denied legal effect, validity or enforceability on the ground that an electronic communication is used in its formation.

PART IV

FULFILMENT OF LEGAL REQUIREMENTS BY ELECTRONIC MEANS

Writing

8. Where any law requires information to be in writing, the requirement of the law is fulfilled if the information is contained in an electronic communication that is accessible so as to be usable for subsequent reference.

Signature

9.—(1) Where any law requires a signature of a person on a document, the requirement of the law is fulfilled if the document is in the form of an electronic communication, signed or accompanied by an

electronic signature which—

(a) is attached to or is logically associated with the electronic communication;

(b) adequately identifies the person and adequately indicates the person's approval of the information to which the signature relates; and

(c) is as reliable as is appropriate given the purpose for which, and the circumstances in which the signature is required.

(2) For the purposes of section 9(1)(c), an electronic signature is as reliable as is appropriate if—

(a) the means of creating the electronic signature is linked to and under the control of that person only;

(b) any alteration made to the electronic signature after the time of signing is detectable; and

(c) any alteration made to that document after the time of signing is detectable.

(3) The Digital Signature Act 1997 [*Act 562*] shall continue to apply to any digital signature used as an electronic signature in any Government activities.

Seal

10.—(1) Where any law requires a seal to be affixed to a document, the requirement of the law is fulfilled if the document is in the form of an electronic communication, signed or accompanied by a digital signature as provided under the Digital Signature Act 1997 [*Act 562*].

(2) Notwithstanding subsection (1), the Minister may, by order in the *Gazette*, prescribe any other electronic signature that fulfils the requirement of affixing a seal in an electronic communication.

Witness

11. Where any law requires the signature of a witness on a document, the requirement of the law is fulfilled if the document is in the form of an electronic communication, signed or accompanied by an electronic signature of the witness which complies with the requirement of section 9.

Original form

12.—(1) Where any law requires any document to be in its original form, the requirement of the law is fulfilled by a document in the form of an electronic communication if—

(a) there exists a reliable assurance as to the integrity of the information contained in the electronic communication from the time it is first generated in its final form; and

(b) the electronic communication is accessible so as to be usable for subsequent reference.

(2) For the purposes of section 12(1)(a)—

(a) the criteria for assessing the integrity of the information shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement or any change which arises in the normal course of communication, storage and display; and

(b) the standard of reliability required shall be assessed in the light of the purpose for which the document was generated and in the light of all other relevant circumstances.

Certified true copy

13. Where any law requires submission of a certified true copy of a document, the requirement of the law is fulfilled if the document is submitted in the form of an electronic communication and fulfils the requirement under section 12.

Copy

14. Where any law requires any document to be retained, served, sent or delivered in more than one copy, the requirement of the law is fulfilled if the document is in the form of an electronic communication, by retention, service, sending or delivery of the document in one copy.

Submission of a document

15.—(1) Where any law requires the filing or submission of any document, the requirement of the law is fulfilled if the document is filed or submitted in the form of an electronic communication, if the electronic communication is accessible so as to be usable for

subsequent reference.

(2) For the purposes of subsection (1), where any prescribed form is specified by an electronic means, the filing or submission of such document shall be in accordance with such specified form.

Prescribed form

16. Where any law requires any document to be in a prescribed form, the requirement of the law is fulfilled by a document in the form of an electronic communication if the electronic communication is—

- (a) formatted in the same or substantially the same way as the prescribed form;
- (b) accessible so as to be usable for subsequent reference;
- and
- (c) capable of being retained by the other person.

Requirement to issue licence, permit, approval, authorization, etc.

17. Where any law requires the issuance of any licence, permit, approval, authorization or similar document, the requirement of the law is fulfilled if the licence, permit, approval, authorization or similar document is issued in the form of an electronic communication provided that the electronic communication is accessible so as to be usable for subsequent reference.

Retention of document

18. Where any law requires any document to be retained, the requirement of the law is fulfilled by retaining the document in the form of an electronic communication if the electronic communication—

- (a) is retained in the format in which it was generated, sent or received, or in a format that does not materially change the information contained in the electronic communication that was originally generated, sent or received;
- (b) is accessible so as to be usable for subsequent reference;
- and
- (c) identifies the origin and destination of the electronic communication and the date and time it was sent or received.

Electronic register

19.—(1) Where any law requires a register to be established, operated and maintained, the requirement of the law is fulfilled if the register is in the form of an electronic communication and its contents cannot be altered by any means or by any person except by the person administering the register who has the power by law to alter the register.

(2) Any search made on a register established, operated and maintained by an electronic communication shall have the same legal validity as the register referred to in any law.

Service and delivery

20.—(1) Where any law requires any document to be served, sent or delivered, the requirement of the law is fulfilled by the service, sending or delivery of the document by an electronic means if an information processing system is in place—

(a) to identify the origin, destination, time and date of service, sending or delivery; and

(b) for the acknowledgement of receipt, of the document.

(2) This section does not apply to—

(a) any notice of default, notice of demand, notice to show cause, notice of repossession or any similar notices which is required to be served prior to commencing a legal proceeding; and

(b) any originating process, pleading, affidavit or other documents which is required to be served pursuant to a legal proceeding.

Personal service

21. Where any law requires a document to be submitted or delivered personally, the requirement of the law is fulfilled if the document is submitted or delivered in the form of electronic communication in accordance with section 20 and accompanied with an electronic signature.

Payment

22. Where any law requires any payment to be made, the requirement of the law is fulfilled if the payment is made by an electronic means and complies with any condition imposed by the Government.

Receipt

23. Where any law requires the issuance of any receipt of payment, the requirement of the law is fulfilled if the receipt is in the form of an electronic communication and the electronic communication is accessible so as to be usable for subsequent reference.

PART V

TRANSMISSION OF ELECTRONIC COMMUNICATION

Attribution of electronic communication

24.—(1) An electronic communication is that of the originator if it is sent by the originator himself.

(2) As between the originator and the addressee, an electronic communication is deemed to be that of the originator if it is sent by—

(a) a person who has the authority to act on behalf of the originator in respect of that electronic communication; or

(b) an information processing system programmed by, or on behalf of, the originator to operate automatically.

(3) As between the originator and the addressee, an addressee is entitled to regard an electronic communication as being that of the originator, and to act on that presumption, if—

(a) the addressee properly applies an authentication method agreed between the originator and the addressee for ascertaining whether the electronic communication was that of the originator; or

(b) the electronic communication as received by the addressee resulted from the actions of a person whose relationship with the originator or any agent of the originator enabled that person to gain access to an authentication method used by the

originator to identify electronic communication as its own.

(4) Subsection (3) does not apply if—

(a) the addressee has received a notice from the originator that the electronic communication is not that of the originator and has reasonable time to act accordingly; or

(b) the addressee knew or should have known that the electronic communication was not that of the originator had he exercised reasonable care or used any authentication method agreed between the originator and the addressee.

Contents of electronic communication

25. Where an addressee receives an electronic communication, the addressee is entitled to regard the electronic communication as being what the originator intended to send, and to act on that presumption, unless the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the electronic communication as received.

Each electronic communication to be regarded separately

26. Where an addressee receives an electronic communication, the addressee is entitled to regard each electronic communication received as a separate electronic communication and to act on that presumption, unless the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the electronic communication was a duplicate.

Time of dispatch

27. Unless otherwise agreed between the originator and the addressee, an electronic communication is deemed sent when it enters an information processing system outside the control of the originator.

Time of receipt

28. Unless otherwise agreed between the originator and the addressee, an electronic communication is deemed received—

(a) where the addressee has designated an information processing system for the purpose of receiving electronic

communication, when the electronic communication enters the designated information processing system; or

(b) where the addressee has not designated an information processing system for the purpose of receiving electronic communication, when the electronic communication comes to the knowledge of the addressee.

Place of dispatch

29. Unless otherwise agreed between the originator and the addressee, an electronic communication is deemed sent from the originator's place of dealing, and—

(a) where the originator has more than one place of dealings, from the place of dealing that has the closest relationship with the dealing or where there is no place of dealing that has the closest relationship with the dealing, from the originator's principal place of dealing; or

(b) where the originator does not have a place of dealing, from the originator's ordinary place of residence.

Place of receipt

30. Unless otherwise agreed between the originator and the addressee, an electronic communication is deemed received at the addressee's place of dealing, and—

(a) where the addressee has more than one place of dealings, at the place of dealing that has the closest relationship with the dealing or where there is no place of dealing that has the closest relationship with the dealing, at the addressee's principal place of dealing; or

(b) where the addressee does not have a place of dealing, at the addressee's ordinary place of residence.

Acknowledgement of receipt

31. —(1) This section applies where, on or before sending an electronic communication, or in the electronic communication, the originator has requested or agreed with the addressee that receipt of the electronic communication is to be acknowledged.

(2) Where the originator has requested and the addressee

has agreed that receipt of the electronic communication is to be acknowledged, the electronic communication is treated as though it has never been sent until the acknowledgement is received.

(3) Where the addressee has agreed that the electronic communication is to be acknowledged, the addressee may propose a particular form or particular method of acknowledgement.

(4) Where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by—

(a) any communication by the addressee, automated or otherwise; or

(b) any conduct of the addressee sufficient to indicate to the originator that the electronic communication has been received.

(5) Where the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed, within a reasonable time, the originator may—

(a) give notice to the addressee stating that no acknowledgement has been received and specifying a reasonable time by which the acknowledgement must be received; and

(b) if the acknowledgement is not received within the time specified in subsection 4 (a), give notice to the addressee to treat the electronic communication as though it had never been sent and exercise any other rights he may have.

(6) Where the originator receives the addressee's acknowledgement of receipt, it is presumed that the addressee received the related electronic communication.

(7) Where the acknowledgement of receipt states that the related electronic communication fulfils technical requirements, either agreed upon or set forth in applicable standards, it is presumed that those requirements have been fulfilled.

PART VI
MISCELLANEOUS

Regulations

32. The Minister may, with the approval of Majlis Mesyuarat Kerajaan Negeri, make such regulations as may be necessary or expedient for giving full effect to the provisions of this Ordinance.

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