



Communications for all in East Africa

EAC MODEL POLICY ON ELECTRONIC TRANSACTIONS

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1. Introduction

1.1. Background

In East Africa, Electronic Commerce (E-Commerce) has the potential to accelerate business development through increased efficiency and reduced costs in business operations. It provides new business opportunities by facilitating access to foreign markets. It also allows businesses to participate in new activities, such as data and records processing, customer service and call centers, and software application development. In fact, numerous governments have announced that fostering E-commerce is a major public policy objective to achieve economic growth. Governments themselves are often in the forefront of the E-commerce revolution in developing countries by launching their own Web sites to better communicate with and serve citizens, while reducing transaction costs.

The East African Communications Organization (“EACO”) recognizes the role and centrality of E-Commerce in today’s present information economy key being the scope of Transactions that are conducted electronically. To this end, EACO intends to promote the increased use and uptake of E-Commerce and subsequently Electronic Transactions (E-Transactions) in the East African Community (“EAC”) as the catalyst for economic growth and thrival for all member states that comprise the EAC.

For E-Transactions to flourish there must be a clear, precise and predictable legal environment that will drive confidence by customers, businesses and government institutions. Businesses must be able to make and enforce electronic contracts and have the confidence to invest in new technologies and take advantage of new opportunities. Consumers must be provided with the same protection that they have when conducting businesses face-to-face and using paper documents. The approach taken to provide legal certainty therefore must be compatible with internationally accepted best practices so that businesses and consumers can freely operate across international borders.

This policy therefore seeks to set out the Policy highlights towards the development of an all enabling E- Transactions framework. Through this the framework will seek to facilitate the development, growth and support for E-Transactions in the East African Community taking into

consideration that governments have the responsibility of providing an environment that allows for certainty and mitigates the risks of transacting electronically both locally and internationally.

1.2. **Definitions**

Electronic Transaction: is the sale or purchase of goods or services, whether between businesses, households, individuals, governments, and other public or private organizations, conducted over electronic networks. The goods and services are ordered over those networks, but the payment and the ultimate delivery of the good or service may be conducted on or off-line.

2. **E-Transactions in the EAC**

2.1. **Form of E- Transactions adopted by member states**

All five countries Uganda, Tanzania, Kenya, Rwanda and Burundi have adopted different forms of E-transactions comprising mainly of online and mobile payments. The status in each country with regards to forms of e-transaction is as below:

- i. Burundi has adopted various limited E-transactions comprised mainly of electronic payments and electronic banking.
- ii. Kenya has adopted numerous forms of E-transactions which include online ordering, payment, banking and delivery of electronic based services in Government and Private sectors. E.g. Huduma comprising of Passport, National ID, birth registration, driving license, application for marriage certificates, police abstracts etc.
- iii. Rwanda has adopted various forms of E-transactions in the payments and banking field.
- iv. Tanzania has adopted some forms of E-transactions as well with private sectors leading in providing E-transactions services ranging from ordering, payment and delivery. The Government of Tanzania is also providing various e-government services such as renewal of road license fee, driving license and Tax payments.

- v. Uganda has also adopted various forms of E-transactions with some electronic ordering and delivery but mainly electronic payments and banking largely by private sectors.

2.2. Status of e-transaction Policy and Regulations

All countries have taken different initiatives to address policy and regulatory issues in terms of National payment laws, e-commerce laws and regulations relating to electronic transactions. However, the policy is at different stages in their development.

The progress made by various countries towards development of the various E-transactions policy is as follows:

- i. **Burundi** – The Central Bank has developed draft regulations on E-transactions. The regulations are currently being considered by the government for adoption.
- ii. **Kenya** - The National ICT Sector Policy of 2006 contemplates E-transactions in the Kenyan market. The Kenya Information and Communications Act CAP 411 of 1998 (KICA) also makes various provisions for E-transactions. The Kenya Information and Communications (Electronic Certification and Domain Name Administration) Regulations 2010 provide a regulatory framework for E- transactions in Kenya. The Communications Authority of Kenya (CAK) has also developed a licensing framework for Electronic Certification Service Providers (E-CSP). Kenya has also put in place a National Public Key Infrastructure (NPKI) and National Cybersecurity Master Plan (NCMP). With regards to payments, the National Payments System Act has been enacted but yet to be operationalized by Government.
- iii. **Rwanda** – Law N° 18/2010 of 12/05/2010 relating to Electronic Messages, Electronic Signatures and Electronic Transactions has been enacted. Regulation N°07/2010 of 27/12/2010 of the National Bank of Rwanda on Electronic Fund Transfers and Electronic Money Transactions has been enacted. Rwanda also has a raft of regulation governing certification authorities and is currently developing an interoperability policy for Payment systems.

- iv. **Tanzania** – E-transactions are provided for in the National ICT Policy 2003. Further, E-transaction regulations are currently at the final stage of Government approval given those E-transactions processes has been adopted by many firms. Tanzania’s National Payment Systems Act has also been revised to take into consideration developments in payment systems including E-transaction which is currently receiving Government approval. Further E-Transactions are also contemplated in the Bank of Tanzania Act 2006, Agent Banking Guidelines of 2013 as well as in the Mobile Payment Regulations. Tanzania is also undertaking other initiatives to provide for E- transactions in the Electronic Transaction and Communications Bill 2013 as well as the Mobile Money Regulations but not yet officially being introduced.

- v. **Uganda** – Uganda has developed the Electronic Signatures Act, 2011, the Electronic Transactions Act, 2011, the Computer Misuse Act, 2011, the Electronic Signatures Regulations (Statutory Instrument no. 43 of 2013), the Electronic Transactions Regulations (Statutory Instrument no. 42 of 2013), the Bank Of Uganda Mobile Money Guidelines, 2013 and also the National Payments Systems legislation. Uganda is also currently developing Infrastructure side regulations to facilitate mobile money operations.

EACO recognizes that the development of E-transactions in the region will also necessitate the harmonization of the various enacted E-transactions laws, data protection laws as well as establishment of the cyber security framework in each of the member states.

3. Policy Objectives

To address the emergence of E-Transactions in the EAC the objectives of this policy are to:

- a) Provide a harmonized regional policy for E-transactions in the EAC with internationally accepted principles;
- b) Propose a framework that will enable the growth and development of E-transactions in the EAC;

- c) Remove barriers and encourage uptake and use of E-Transactions to ease doing business in the EAC
- d) Propose measures to ensure safety and confidence of the Consumers of E-Transactions;
- e) Encourage investment and economic participation through E-Transactions

4. Principles

4.1. The EAC agrees to adopt and agree on the following interpretations and terms associated with E-Transactions:

4.1.1. The identity of legitimate parties involved in a transaction conducted via electronic means, including the originator and addressee of a communication.

4.1.2. The persons who will be deemed as “intermediaries” in the facilitation of an electronically mediated transaction.

4.1.3. The distinction between “intermediaries” and “telecommunication service providers” to consider the contexts where the terminologies denote either a sole entity or distinct entities.

4.1.4. The obligations of all legitimate parties involved in an electronic transaction, including the internet service provider and/or intermediary, the originator of a communication and the addressee of a communication.

4.1.5. The definitions related to the terms “record” and/ or “data message” so as to ensure a distinction between the two terms.

4.1.6. “electronic signature” as a technology neutral term and distinct from an “advanced electronic signature” or “digital signature,” which shall also be technology neutral as well as the distinction between an electronic signature as a tool of data authentication as opposed to identity identification

4.1.7. The definition of the term “certificate” or “qualified certificate” and the relevance of such a certificate in the context of signatory and advanced electronic signatures in the information society. This will also cover the definition of “certificate service provider”, its role and functions as opposed to that of the “certifying authority”.

4.2. The Member States shall provide a framework for electronic documents and transactions having legal effect. To this end:

4.2.1. EAC shall be bound by the legal mandate establishing the E-transactions framework.

4.2.2. EAC shall allow a wide scope as possible to the E-transactions legal framework.

4.2.3. The transactions or documents which may be exempted will be clearly set out in the legal framework characterized by a particular value due to their existence. These documents shall include but not limited to:

- Instruments of inheritance, including wills and trusts.
- Contracts for the sale or conveyance of real property.
- Instruments affecting the grant of power of attorney.

4.2.4. Subject to meeting specific law requirements as set by the relevant public authority within a Jurisdiction there will be standards established for transactions to fulfil appropriate technical standards in encryption, authentication, back up, recovery and disposal of data.

4.3. EAC shall adopt the following standards towards considering the validity of electronic documents:

4.3.1. Electronic documents will not be denied validity per se solely because the documents are electronic in nature.

4.3.2. Information shall not be denied legal effect solely because that information is referred to but not contained in an electronic document.

4.3.3. An electronic document will be deemed to be legally valid if it is materially unchanged, and can be retained and stored by the receiving party.

4.3.4. An electronic document shall meet all statutory requirements or rule of law for information being presented in writing.

4.3.5. An electronic document will be considered admissible with the appropriate evidential weight.

4.3.6. An electronic document shall meet any obligation of statute or general rule of law requiring the presentation of information in its original form if the information was originally collected by electronic means, and there is reliable assurance that the information remains unchanged. The standard of reliability will be assessed based on the purpose for which the information is required.

4.3.7. An electronic document shall include a valid electronic signature and will be deemed to be a valid electronic document and as effective as a document containing a non-electronic signature.

4.4. The EAC shall encourage the following default considerations to be applied in the formation of contracts through electronic means:

4.4.1. It will be presumed that an electronic document or data message is sent by the originator once there is sufficient reason to believe that the document or message was sent by the originator or an individual or electronic agent acting on the originator's behalf.

4.4.2. It will be presumed that an electronic document or message is received, in the general course of business where there may or may not be an agreement between the parties of the sending of acknowledgement notices.

4.4.3. the conditions to be satisfied where either party may not apply the general presumption of attestation.

4.4.4. The time when an electronic message is deemed to be sent shall be at the time when it is recorded to have left the information system or resource under the control of the originator.

4.4.5. The time when an electronic data message is deemed to have been received is the time it is recorded to have entered an information system or resource under the control of the originator.

4.4.6. The determination of the effective address of either party, the originator or addressee, in an electronic transaction.

4.4.7. Address errors in the preparation or transmission of an electronic document or data message considering:

- The general instance where the error is noted before any subsequent action has been taken by either party;
- The general instance where the error is noted after subsequent action has been taken by either party, but before such action may be reasonably reversed by the action of the parties;
- The general instance where the error is noted after subsequent action has been taken that cannot be readily reversed.

4.5. EAC shall establish the frameworks for use of Electronic signature and provide for the Proper administration of Providers of such services in their jurisdictions. To this end the EAC Member states shall:

4.5.1. Ensure that electronic signatures are related to the authentication of data or information within an electronic document or record.

- 4.5.2. Identify electronic signatures in such terms to provide broad applicability of technologies, while achieving the objective of:
- Adequately identifying the signatory, and indicating the signatories approval of the information to which the signature relates; and
 - Appropriate reliability for the purpose for which it was used.
- 4.5.3. •clarify the obligation of the person relying on an electronic signature to verify reliability of the electronic signature.
- 4.5.4. Specify types of “advanced” electronic signatures which are more sophisticated in nature, and require greater tests of applicability. The identification of such advanced electronic signatures should as much as possible refrain from the use of specific technologies or methodologies of digital signing.
- 4.5.5. Specify greater recognition of authentication capacity of advanced electronic signatures. Where there is such recognition the law may provide for the determination of specific legal requirements be met by advanced signatures exclusively.
- 4.5.6. Recognition of “certificates” which provide attribution of electronic signatures to particular signatories under specified conditions. To this end, there will be greater validity of certificates qualified as being issued in accordance with industry standards and practices to enhance reliability associated with advanced electronic signatures.
- 4.5.7. Provide for the recognition of certificates issued by parties irrespective of where that certificate was issued, or where that party is located.
- 4.5.8. Provide for the establishment of persons within the jurisdiction who provide third party electronic signature generation services, as well as the generation, issuance and management of associated certificates (hereinafter referred to as “certificate service providers”).
- 4.5.9. Limit the non - tariff barriers of entry to such service providers to that which is necessary to ensure oversight of appropriate general business practice.
- 4.5.10. Provide for the definition of appropriate operational requirements to ensure confidence of the public in the operation of certificate service providers established in the jurisdiction.
- 4.5.11. Ensure that the service provider issuing a certificate is liable for any damage caused by the reliance of that certificate where guidelines for appropriate use of the certificate is adhered to by the person relying on that certificate.

- 4.5.12. Establish a designated agency responsible for the ongoing verification that service providers established in the jurisdiction operate in alignment with industry and business best practice.
- 4.6. EAC shall provide minimum requirements of persons trading through electronic means to facilitate adequate consumer protection in an electronic environment including:
- 4.6.1. The obligation on persons who offer goods and services to trade (“vendors”) through electronically mediated means to provide certain minimum information to the consumer, such information to include:
- The legal name, principle geographic address and forms of contact for the vendor,
 - Specific details of the items made available for sale, or the service being offered;
 - Terms, conditions and methods of payment;
 - The means by which queries can be lodged of disputes settled.
- 4.6.2. The obligation on vendors who trade through electronically mediated means to provide the consumer with an opportunity before the completion of a transaction to review a summary of the sales agreement, including the verification and/ or correction of the subjects of the transaction;
- 4.6.3. Providing the consumer with the option to void without penalty any contract with a vendor who does not provide an opportunity to review, verify and/ or correct the electronic agreement before the completion of the agreement.
- 4.6.4. The obligation on a person who sends unsolicited commercial communications to consumers to explicitly provide an option for that consumer to opt in or opt- out of the receipt of other such communications from that person.
- 4.7. EAC shall establish the framework of liability of intermediaries to an electronic transaction which shall include:
- 4.7.1. The formal recognition of parties, called intermediaries, who facilitate the electronic transactions between two parties, but themselves are not involved in the subject of the contract. Such persons include telecommunications providers, website hosts, application hosts.
- 4.7.2. The distinguishing of an intermediary or telecommunications provider from the parties involved in the transactions through their role as a mere conduit: - a passive agent

providing transport, storage or other automatic, technical services which do not modify the content of the electronic document.

4.7.3. The provision for the exemption of liability of the intermediary from any civil or criminal penalties associated with an electronic document for which it performed no role other than as a mere conduit.

4.7.4. Obliging the intermediary to report to the relevant authorities any instance where it believes or has reason to believe that an electronic document for which it is acting as a conduit is in breach of any law.

4.7.5. Identifying the relevant record which the intermediary shall produce in the instance where there is an investigation pursuant to its actions with respect to a given electronic document.

4.7.6. Providing for the intermediaries' limitation of liability for any civil suit in the instance that in good faith, the intermediary deletes or makes unavailable an electronic document that was stored with its facilities pursuant to an order of the Court, or on obtaining actual knowledge of the illegal activity.