

LAW ON ELECTRONIC DOCUMENT

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I GENERAL PROVISIONS

Content of the Law

Article 1

This Law shall regulate the manner of use of electronic document in legal transactions, administrative, judicial and other proceedings, as well as rights, duties and liabilities of companies, entrepreneurs, legal and natural persons (hereinafter: legal and natural persons), state bodies, state administration bodies, bodies of local self-government units and bodies and organizations exercising public authorities (hereinafter: the competent bodies) regarding the electronic document, unless otherwise defined by the Law.

Legal validity of electronic document

Article 2

Electronic document shall have the same legal validity as a document made on paper, if its use and circulation are performed in accordance with this Law.

Definitions of certain terms

Article 3

Certain terms used in this Law shall have the following definitions:

- **electronic document** is a set of data which are electronically formed, sent, received or stored on electronic, magnetic, optical or other medium, and which contains the properties used for identification of creator, determination of authenticity of content and proving of immutability of content in time, and includes all forms of written text, data, images, drawings, maps, sound, music, speech, etc.;

- **documentation feature** is a set of obligatory data, such as electronic signature, the time of creation, the name of creator and other information incorporated into electronic document for the purpose of maintaining of authenticity, integrity and validity in the time period stipulated by the Law and other regulations, i.e. a legal affair;

- **electronic signature** is an advanced electronic signature stipulated by the law regulating the electronic signature;

- **creator** is a legal or natural person using electronic means to create, form and sign the electronic document with his/her advanced electronic signature;

- **sender** is a legal or natural person who sends the electronic document or on whose behalf the electronic document is sent to the receiver and does not include the information intermediary;

- **recipient** is a legal or natural person who receives the electronic document which is sent and does not include the information intermediary;

- **documentation cycle** is a circulation of the electronic document from the moment of creation to the archiving, including creation, sending, receiving, storing and keeping, procedures of entry and verification of data by which the creator, sender, recipient, time of dispatch, time of receipt, authenticity, integrity and validity of electronic document are verified.

- **information system** is a set of programs, information and telecommunication devices, methods and procedures applied in procedures of creating, sending, receiving, verifying and storing of electronic documents;

- **information intermediary** is a legal or natural person who performs, on behalf of all other persons, the dispatch, receipt, transmission, storage and keeping of electronic document;

- **electronic archive** is a set of electronic documents arranged into documentation units in accordance with the law regulating the procedures of storage and archiving of documents.

II ELECTRONIC DOCUMENT

Acceptance of the use and circulation of electronic document

Article 4

Use and circulation of electronic document for the needs of a legal or natural person may be performed only on the basis of explicitly and freely expressed will of acceptance of use of electronic document for personal or business needs and other relationships.

A legal or natural person, referred to in paragraph 1 of this Article, cannot reject the electronic document only because it was made, used or put into circulation in electronic form.

Requirements for legal validity of electronic documents

Article 5

Electronic document shall have the same legal validity as the document made on paper provided that:

- 1) it is created, dispatched, received, kept and stored by using available information technology;
- 2) it fully meets the conditions referred to in Article 6 of this Law;
- 3) it contains the basic structure stipulated in Article 7 of this Law;
- 4) it can be presented in a form that is in compliance with the form stipulated in Article 8 of this Law.

Requirements for Electronic Document

Article 6

Electronic document in documentation cycle must meet the following requirements:

- 1) to be uniquely marked, based on which the individual electronic document can be unambiguously identified;
- 2) to contain a unique mark by which the identification of the creator of the document can be performed unambiguously;
- 3) to have information integrity and ensured inviolability of electronic document;
- 4) to have ensured access to the content of electronic document, in each phase of documentation cycle.
- 5) to be in a form of a record which makes it easy to read the content.

Structure of Electronic Document

Article 7

Electronic document must consist of two inseparable parts:

- 1) the general part, which makes the content of the document, including the name of recipient, if the document is intended for dispatching;
- 2) the separate part, which consists of one or more embedded electronic signatures and of information on time of occurrence (completion of creation) of electronic document, as well as of other documentation features.

Form of appearance of electronic document

Article 8

Electronic document must contain the internal and external form of appearance.

Internal form of appearance, referred to in paragraph 1 of this Article, shall consist of technical and programming form of recording of content in electronic form on a medium which retains or transmits the electronic document.

External form, referred to in paragraph 1 of this Article, shall consist of a visual and clear outline of content of the electronic document on a screen of a computer or other electronic device, on paper or other material object, separated from the record in electronic form on a medium referred to in paragraph 2 of this Article.

The original electronic document

Article 9

Electronic document which is signed with electronic signature, within the meaning of this Law, shall be considered as the original.

Electronic document cannot have a copy in electronic form.

If the same person creates two documents with the same content, in electronic form or on paper, those documents shall be considered independent, and the document created on paper shall not be considered as a copy of the electronic document.

A copy of electronic document on paper

Article 10

A copy of electronic document on paper shall be created by verification of a print of external form of appearance of electronic document on paper, along with the use of procedures stipulated by the Law and other regulations.

Verification of a print of the electronic document on paper, in proceedings conducted by the competent bodies, shall be performed by authorized persons within these bodies, and in all other cases the verification of the print of the electronic document on paper shall be performed by a public notary.

A print on paper which is verified as a copy of the electronic document must contain an indication that it is a copy of the relevant electronic document.

Legal validity of the original and copy of electronic document

Article 11

Original electronic document and its copy on paper, created in accordance with Article 10 of this Law, shall have the same legal validity and may be used equally in all procedures and operations which require the use of documents in the original form or in form of a verified copy.

If the electronic documents are used in book-keeping services in accordance with provisions of this Law, the services of book-keeping and auditing may be entirely based upon the use of the electronic documents, unless otherwise defined by special regulations.

Electronic document as evidence

Article 12

Electronic documents may be used as evidence in proceedings conducted before the competent bodies and arbitration.

During the evaluation of legal validity of the electronic document, the particularities of its creation, storage, transmission, keeping, authenticity and immutability shall be evaluated.

III USE AND CIRCULATION OF ELECTRONIC DOCUMENTS

Principles on the use and circulation of electronic documents

Article 13

In all operations of documentation cycle of electronic document there must exist the opportunity of verifying its authenticity, originality and immutability.

During the use and circulation of the electronic document any available and applicable information and communication technology may be used, unless the Law explicitly defined the technology which must be applied.

Information system which is applied in operations of documentation cycle of the electronic document must have the appropriate protection of personal and other information, in accordance with the Law.

Unique mark of operation within documentation cycle

Article 14

Every operation with electronic document must be marked with unique mark and features, which must be incorporated into the electronic document.

The operation referred to in paragraph 1 of this Article must provide a direct connection of previous and the following operation with the electronic document.

Creation of electronic document

Article 15

Electronic document is created by electronic systems of preparation, design and storage of information contents in electronic record.

In creation operations which form the basis of its dispatch and keeping, the electronic document must be signed with electronic signature of the creator or a person authorized by him/her.

Dispatch of electronic document

Article 16

Electronic document shall be considered dispatched in the following cases:

- 1) if it was dispatched/ sent by the sender himself/herself;
- 2) if it was dispatched/sent by the person authorized by the sender to perform the dispatching/sending;
- 3) if it was sent by the information system of the sender, or the information system of the person authorized by the sender to perform those affairs.

Receipt of electronic document

Article 17

Electronic document shall be considered received in the following cases:

- 1) if it was received by the recipient himself/herself;
- 2) if it was received by the person authorized by the recipient to perform the receipt;
- 3) it was received by the information system of the recipient or the information system of the person authorized by the recipient to perform the receipt.

Confirmation of receipt of electronic documents

Article 18

In the case of requiring the confirmation of receipt of electronic document, the recipient must confirm the receipt within a deadline determined by the sender in his/her request for submission of a notification on the receipt.

The recipient must perform the confirmation of receipt by an action which confirms the receipt of electronic document in a material form, including automated systems of the receipt confirmation.

If the sender does not receive the confirmation of receipt of the sent electronic document within the deadline referred to in paragraph 1 of this Article, he/she is obliged to immediately inform the recipient that he/she did not receive the confirmation of receipt and to set a new deadline for submission of that confirmation.

If the sender does not receive the confirmation of receipt of the sent electronic document even after the expiry of the deadline referred to in paragraph 3 of this Article, it shall be considered that such electronic document has not been sent.

Sent electronic documents shall be considered received at the moment when the sender receives the confirmation of receipt by the recipient.

In the confirmation of receipt of the electronic document, the recipient shall also notify that the electronic document is in compliance with technical requirements agreed upon between the sender and the recipient.

Time of dispatch and receipt of electronic document

Article 19

Time of dispatch of the electronic document shall represent the time when the electronic document has come out from the information system of the recipient and entered into the information system which is not under control of the sender, or a person acting under the authority of the sender.

Time of receipt of the electronic document shall represent the time when the sent electronic document has entered into the information system of the recipient, or the information system of a person acting under the authority of the recipient.

In case of requiring the confirmation of receipt of the electronic document, the time of receipt shall represent the time when the recipient has sent the confirmation on receipt of the electronic document.

The time of receipt and dispatch shall be entered into a separate part of the electronic document and changing of the actual time of receipt and dispatch of the electronic document shall not be permitted.

The display of the actual time recorded by the information system must be in accordance with the standard for date and time display which is applicable in Montenegro.

Legal validity of electronic document

Article 20

The use of electronic document shall be considered legally valid provided that:

- 1) the electronic document contains the information on the creator, sender and recipient, as well as information on the time of dispatch and receipt;
- 2) the electronic document contains through the entire documentation cycle the same internal and external form which has been made during its creation and which remained unchanged by any operation related to the dispatch and use of that document;
- 3) the electronic document is available and readable to authorized persons at any time.

Storage of electronic documents

Article 21

Legal persons, natural persons and competent bodies are obliged to store the electronic documents originally in the information systems or on the media which provide the continuity of the electronic record for a determined storage time, in accordance with the Law, i.e. a legal affair.

The electronic documents referred to in paragraph 1 of this Article shall be stored in electronic archive.

The electronic archives must ensure that:

- 1) the electronic documents are stored in the form in which they have been created , dispatched, received and stored and which does not change materially the content of the documents;
- 2) the electronic documents are available in a readable form during the whole storage time to persons who have the right to access those documents;
- 3) data on electronic signatures with which the electronic documents have been signed, as well as data for verification of those signatures are stored;
- 4) the electronic signatures are stored in a form and with the use of technology and procedures which, along with the incorporated electronic signatures, provide a reasonable guaranty for their authenticity and integrity during the entire storage time and that they cannot be changed or removed without authorization within the time period stipulated by the Law and a legal affair;

5) it is possible to determine authentically for every electronic document the origin, creator, time, manner and form in which it has been received into the system for storage;

6) the procedures of maintenance and replacement of media for storage of the electronic document do not impair the integrity and inviolability of the electronic documents.

Obligations of information intermediary in storage of electronic documents

Article 22

Legal and natural persons may entrust the storage of electronic documents in original form to the information intermediary.

The information intermediary is obliged to perform the activities referred to in paragraph 1 of this Article in accordance with this Law and the concluded legal affair.

Services performed by information intermediary

Article 23

The information intermediary may perform the dispatch, receipt, transmission, storage and keeping of the electronic documents with the authorization of legal or natural persons participating in the circulation and use of the electronic documents.

The information intermediary shall not be liable for the original material content of the electronic documents, for which, by authorization, performs the activities related to the circulation, storage and keeping of the electronic documents.

Protection of electronic documents

Article 24

Appropriate technological procedures and equipment, which ensure the protection of electronic document, must be applied in the documentation cycle of the electronic document, in accordance with the Law.

In procedures in which information equipment and communication system of the information intermediary are used, the protection of the electronic documents shall be ensured by the information intermediary.

IV ELECTRONIC DOCUMENTS WITH SECRET DATA

Treatment of electronic documents containing secret data

Article 25

Treatment of electronic documents containing data which are considered as secret shall be performed in accordance with the Law.

During the circulation and use of the electronic data referred to in paragraph 1 of this Article, legal and natural persons are obliged to act in a manner which provides physical and technical protection of those documents.

Legal and natural persons and information intermediaries who exchange directly the electronic documents containing secret data, are obliged to provide organizational procedures and technical equipment by which the access to their content is protected as well as physical protection.

Certification of equipment for use of electronic documents containing secret data by the competent bodies

Article 26

Information and communication equipment for protection of electronic documents which are used by the competent bodies and which contain secret data must be certified, in accordance with special law.

The equipment referred to in paragraph 1 of this Article shall be certified by the body competent for the security of information systems.

V. SUPERVISION

The body competent for supervision

Article 27

Supervision over the implementation of this Law shall be conducted by state administration body competent for the information society, through the inspectors, in accordance with the Law.

In order to conduct the supervision, the subjects of the supervision are obliged to provide access to computer equipment and devices to the authorized person within the body referred to in

paragraph 1 of this Article, as well as to show or submit to him/her without delay the necessary data and documentation regarding the subject of the supervision.

VI. PENALTY PROVISIONS

Infringements

Article 28

A legal person shall be fined in the amount of from ten to twenty times the minimum wage in Montenegro for an infringement if:

- 1) rejects the use or the circulation of electronic document despite its previously expressed will on acceptance of the use and the circulation of the electronic document(Article 4 paragraph 2);
- 2) disables or prevents the verification of authenticity, originality or immutability of electronic document (Article 13 paragraph 1);
- 3) does not confirm the receipt of electronic document pursuant to the previous sender's request for the notification of receipt (Article 18 paragraph 1);
- 4) changes the actual time of dispatch of electronic document (Article 19 paragraph 4);
- 5) changes the actual time of receipt of electronic document (Article 19 paragraph 4);
- 6) in the use of electronic document does not meet the conditions of legally valid use of the electronic document(Article 20);
- 7) does not act in accordance with the Article 21 of this Law in storage of electronic documents;

For infringements referred to in paragraph 1 items 1, 2, 3, 4, 5, 6 and 7 of this Article, a natural person and an authorized person within a legal person shall be fined in the amount of from ten to twenty times the minimum wage in Montenegro.

In case of repetition of infringements referred to in paragraph 1 items 1, 2, 3, 4, 5, 6 and 7 of this Article, a prohibition on performing of activities within the period from three to six months may be declared.

VII FINAL PROVISION

Article 29

This Law shall enter into force eight days following the day of its publication in the 'Official Gazette of the Republic of Montenegro'.

