

# ATTRIBUTION, ACKNOWLEDGEMENT AND DISPATCH OF ELECTRONIC RECORDS

## A. ATTRIBUTION OF ELECTRONIC RECORDS (SECTION 11)

Attribution means an action that can be regarded as being caused by someone.

An electronic record shall be attributed to the originator, if the electronic record is sent—

- (a) by the originator himself;
- (b) by a person authorised by the originator to do so (i.e. his agent); or
- (c) by an information system programmed by or on behalf of the originator to operate automatically.

Please note that:

- **Originator** means a person who sends or transmits any electronic record or message
- **Addressee** is a person who receives the electronic record or message. But it does not include an intermediary.

## B. ACKNOWLEDGEMENT OF ELECTRONIC RECORDS (SECTION 12)

1. No mode of acknowledgement prescribed:

Where the originator has not stipulated that the acknowledgment of receipt of electronic record be given in a particular form or by a particular method, an acknowledgment 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 record has been received.

2. Originator stipulates that the addressee must acknowledge the receipt of record.

Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then **unless acknowledgment has been so received**, the electronic record shall be **deemed to have been never sent by the originator**.

3. Originator does not stipulate that the addressee must acknowledge the receipt of record.

Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the **acknowledgment has not been received** by the originator

- **within the time specified** or agreed or,
- **within a reasonable time** if no time has been specified or agreed to,

then the **originator** may **give notice** to the addressee stating that no acknowledgment has been received by him and **specifying a reasonable time** by which the acknowledgment must be received by him and **if no acknowledgment is received within the aforesaid time limit**, he may after giving **notice to the addressee**, treat the **electronic record** as though it has **never been sent**.

### C. DETERMINATION OF TIME AND PLACE OF DISPATCH AND RECEIPT OF ELECTRONIC RECORDS (SECTION 13)

1. Time of dispatch of electronic record by the originator

when the record **enters a computer resource outside the control of the originator**.

2. Time of receipt of electronic record by the addressee

- (a) if the addressee has designated a computer resource for the purpose of receiving electronic records-
- (i) the receipt occurs at the time when the electronic record enters the designated computer resource; or
  - (ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;
- (b) if the addressee has neither designated a computer resource nor has specified the timings, the receipt occurs when the electronic record enters the computer resource of the addressee.

3. Place of dispatch of electronic record

Unless otherwise agreed between the parties (originator and addressee), an electronic record is deemed to be dispatched at the place where the originator has his place of business.

4. Place of receipt of electronic record

In absence of any contract to the contrary, the place of receipt of electronic record shall be deemed to be the place where the addressee has his place of business.

5. For the purposes of this section, the place of business shall be as follows-

- a. if the originator or the addressee has more than one place of business, the principal place of business, shall be considered as the place of business;
- b. if the originator or the addressee does not have a place of business, then his usual place of residence shall be deemed to be the place of business;
- c. The usual place of residence, in relation to a body corporate, means the place where it is registered.

## D. SECURE ELECTRONIC RECORDS AND SECURE ELECTRONIC SIGNATURES

The IT Act provides that for any electronic record or signature to be valid, it must be made secure as per the provisions contained in Section 14-16.

### Secure Electronic Record (Section 14)

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

### Secure Electronic Signature (Section 15)

An electronic signature shall be deemed to be a secure electronic signature if-

- (a) the signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and
- (b) the signature creation data was stored and affixed in such exclusive manner as may be prescribed.

In case of digital signature, the signature creation data means the private key of the subscriber.

### Security Procedures and Practices (Section 16)

The Central Government may prescribe the security procedures and practices for the purposes of this Act after take into account the commercial circumstances, nature of transactions and such other related factors as it may consider appropriate.

## E. VALIDITY OF CONTRACTS FORMED THROUGH ELECTRONIC MEANS [Inserted vide IT (Amendment) Act, 2008 (Sec. 10A)]

Where in a **contract formation**, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or **by means of an electronic** record, such contract **shall not be deemed to be unenforceable** solely on the ground that such electronic form or means was used for that purpose. This section seeks to provide validity to electronic contracts

### **Communication of Offer, Acceptance and Revocation in case of E-Contracts**

In case of e-contracts the promisor and promisee both have to act as originator and addressee. The rules with respect to communication of offer and acceptance are different and are in addition to the contract law. Under IT Act, it is mandatory to send acknowledgement of electronic records and the communication will be complete only after receipt of acknowledgement by concerned parties. The place of conclusion of contract would be where acknowledgement is received by the acceptor. The place of receipt of electronic record is the principal place of the business of addressee.