



e-Gibraltar

International e-Business Centre.

Government of Gibraltar announces enactment of Electronic Commerce Ordinance 2001.

The Electronic Commerce Ordinance 2001 was passed by the House of Assembly on Monday 5th March 2001.

The legislation facilitates the use of electronic means for transmitting and storing information and affords legal recognition to transactions effected electronically. It also provides a framework for the accreditation of electronic signatures and determines the activities and liability of service providers.

The enactment of the ordinance is a very important step in establishing Gibraltar as a favourable location for e-business activities and places Gibraltar as one of the few international jurisdictions to have an Electronic Commerce Ordinance legislation in place.

The Government of Gibraltar will seek to continue to provide e-commerce operations within a fiscally attractive environment. The treaty exemption from VAT enjoyed by Gibraltar may become of increasing importance, especially in the provision of services and non-physical products.

In summary the The Electronic Commerce Ordinance 2001 provides the following:

Part 1 – Information Society Services

This part contains important definitions that are pivotal to the main body of the legislation. In particular definitions are provided for “service provider”, “established service provider”, “information society services” and “intermediary service provider”.

Sections in this part include, Interpretation, General requirements for service providers, Commercial Communications, Contracts concluded by electronic means, Information in relation to and conclusion of electronic contract. Approved codes of conduct and prescribed standards.

Part 1 provides for the general requirements of service providers and various exclusions of liability in specific circumstances. Section 8 provides that a service provider is not subject to any civil or criminal liability in respect of the information contained in a data message if either he was not the originator of the message, has not modified the message in any way, has no actual knowledge that the information in the message could give rise to criminal liability or follows

the procedure set out in section 9 which explains the procedure for dealing with unlawful, defamatory, etc information.

Power is also given to approve codes of conduct for intermediaries and other persons who use electronic means to provide goods, services or information.

Part 2 – Issue of Accreditation Certificates for Electronic Signatures.

Part 2 establishes the framework for the authorisation and recognition of certification service providers. Applications for authorisation are to be made to the Minister for Trade, Industry and Telecommunications in the manner prescribed in sections 12 & 13. The recognition of overseas providers or classes or classes of such providers is dealt with through notice in the Gazette in the circumstances set out in section 14. Sub-section (2) provides the basis upon which recognition is granted.

Section 15 outlines the legal effect of electronic signatures supported by an accreditation certificate and Section 17 deals with the civil liability of approved certificate providers.

Subject to certain qualifications, the section imposes a duty of care on approved certification providers in favour of any person who reasonably relies on the accuracy of the accreditation certificate and provides for an action in damages in respect of any loss or damage suffered by reason of a breach of this duty.

Part 3 – Transactions effected by electronic means.

Section 19 -20 deals with the requirements to present or retain originals and to produce documents. Section 21 outlines the conditions for retention of documents etc, in electronic form.

Sections 22 & 23 make provision for various important issues including the admissibility and evidential weight of data messages in legal proceedings and matters relevant to the concluding of contractual obligations through electronic communication.

Part 4 - General

This part contains a number of general provisions. Section 24 provides that in the prescribed circumstances an offence committed by a body corporate may be attributed to any director, manager, secretary or similar officer.

Section 25 introduces a general power for the making of any necessary regulations by the Minister and section 26 extends the restrictions on service providers.

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