

Act on Electronic Signature (Poland) of 18th September 2001

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Ustawa o podpisie elektronicznym uchwalona 18. wrzeonia 2001

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Chapter I. General Provisions ➔

Article 1

This Act specifies conditions of the use of electronic signature, legal effects of its use, the principles of provision of certification services and principles of supervision over certification-service-providers.

Article 2

The provisions of this Act shall apply to certification-service-providers established in Poland or providing services within her territory.

Article 3

For the purposes of this Act:

1) electronic signature shall mean data in electronic form which are attached to or logically associated with other electronic data and which serve to confirm the identity of the signatory;

2) secure electronic signature shall mean an electronic signature which:

(a) is uniquely linked to the signatory;

(b) is created using secure-signature-creation devices and signature-creation data that the signatory can maintain under his/her sole control; and

(c) is linked to the data to which it has been attached, in such a manner that any subsequent change of the data is detectable;

3) signatory shall mean a natural person who holds a signature-creation device and acts either on his own behalf or on behalf of the natural or legal person, or an organisational unit other than legal person;

4) signature-creation data shall mean unique data linked to a natural person, which are used by that person to create an electronic signature;

5) signature-verification-data shall mean unique data linked to a natural person, which are used to confirm the identity of the signatory;

6) signature-creation device shall mean software or hardware configured in a manner enabling creation of electronic signature or authentication with the use of signature-creation or authentication-creation data;

7) secure-signature-creation device shall mean a signature-creation device which meets the requirements laid down in the Act;

8) signature-verification device shall mean software or hardware configured in a manner confirming the identity of the signatory being a natural person, with the use of signature-verification-data or in a manner confirming the identity of a certification-service-provider or an authority charged with issuing certification attestations, with the use of electronic-authentication-verification-data;

9) secure signature-verification device shall mean a signature-verification device which meets the requirements laid down in the Act;

10) certificate shall mean an electronic attestation which links signature-verification data to a signatory and confirms his/her identity;

11) certification attestation shall mean an electronic attestation which links authentication-verification data to a certification-service-provider or an authority referred to in Article 30, paragraph 1, and confirms the identity of such provider or authority;

12) qualified certificate shall mean a certificate which meets the requirements laid down in the Act and is provided by a qualified certification-service-provider who fulfils the requirements laid down in the Act;

13) certification services shall mean issuing of certificates, time- stamping or other services related to electronic signatures;

14) certification-service-provider shall mean an entrepreneur within the meaning of the provisions of the Act of 19th November 1999-Economic Activity Law (Dziennik Ustaw No. 101, item 1178; of 2000--No. 86, item 958 and No. 114, item 1193; and of 2001--No. 49, item 509 and No. 67, item 679), the National Bank of Poland, or a public authority, which provides at least one of the services referred to in subparagraph 13;

15) qualified certification-service-provider shall mean a certification-service-provider entered in the register of qualified certification-service-providers;

16) timestamping shall mean the service which consists in the attachment to data in

electronic form, logically associated with the data certified with electronic signature or authentication, of specification of time and electronic authentication (confirmation) of the data generated in such way by the provider of that service;

17) certification policy shall mean detailed solutions, including those of technical and organisational nature, indicating the manner, scope and security conditions for the generation and use of certificates.

18) recipient of certification services shall mean a natural person, a legal person or an organisational unit other than legal person, which:

(a) have concluded an agreement with a certification-service-provider for the provision of certification services, or

(b) may act, within the limits specified by certification policy, on the basis of the certificate or other data electronically authenticated by the certification-service-provider,

19) electronic authentication shall mean data in electronic form which are attached to or logically associated with other electronic data and which serve to confirm the identity of the certification-service-provider or the authority issuing certification attestations, and which meet the following requirements:

(a) are created using secure-signature-creation devices and electronic authentication-creation data that the certification-service-provider or the authority issuing the certification attestation can maintain under its sole control; and

(b) any subsequent change of the authenticated data is detectable;

20) electronic authentication-creation data shall mean unique data linked to the certification-service-provider or the authority issuing certification attestations which are used by the provider or authority to create an electronic authentication;

21) electronic authentication-verification data shall mean unique data linked to the certification-service-provider or the authority issuing certification attestations which are used to confirm the identity of the provider or authority creating an electronic authentication;

22) certification of a secure electronic signature shall mean activities which confirm identity of the person creating an electronic signature and prove that the signature has been created with the use of signature-creation data linked to that person, and that the data signed with that signature has not been changed after the creation of the electronic signature.

Article 4

A certificate issued by a certification-service-provider not established in the Republic of Poland and which does not provide services within her territory, shall be legally equivalent to qualified certificates issued by a certification-service-provider established or providing services within the territory of the Republic of Poland, if one of the following prerequisites is satisfied:

1) the certification-service-provider which issued the certificate is accredited,

2) this is stipulated in an agreement, to which Poland is a party, concerning mutual

recognition of certificates,

3) the certification-service-provider which issued the certificate is entered in the register of qualified certification-service-providers,

4) a certification-service-provider established in the European Community, which complies with the requirements of the Act, guarantees the certificate,

5) the certificate is recognised as a qualified certificate under an international agreement between the European Community on the one hand and third countries or international organisations on the other,

6) the certification-service-provider which issued the certificate is recognised under an international agreement between the European Community on the one hand and third countries or international organisations on the other.

Chapter II. Legal Effects of Electronic Signature ➔

Article 5

1. A secure electronic signature verified with the use of a qualified certificate shall have the legal effects specified by this Act, provided that it has been made within the period of validity of that certificate. A secure electronic signature made within the period of suspension of a qualified certificate used to verify it, shall take legal effect from the time of the repeal of such suspension.

2. The electronic data signed with a secure electronic signature verified with the use of a valid qualified certificate shall have legal effects equivalent to documents signed with a hand-written signature, unless separate provisions provide otherwise.

3. A secure electronic signature verified with the use of a qualified certificate shall ensure integrity of the data signed with that signature, and unique identification of a qualified certificate in such a manner that any change--effected after the creation of the signature--of the data and of the identification of a qualified certificate for the verification of that signature is detectable.

Article 6

1. A secure electronic signature verified with the use of a qualified certificate shall be a confirmation of the fact that it has been created by a person specified in that certificate as a signatory.

2. The provisions of paragraph 1 shall not apply to the certificate after the expiration of its validity date or the date of its revocation, and in the period of its suspension, unless it has been proven that the signature was created before the date of expiration of validity of the certificate or before its revocation or suspension.

3. No one may claim that the electronic signature verified with the use of a valid qualified certificate has not been created with the use of secure devices and data subjected to an exclusive supervision of the signatory.

Article 7

1. An electronic signature may be timestamped.
2. Timestamping carried out by a qualified certification-service-provider shall, in particular, have the legal effect of the certified date within the meaning of the Civil Code.
3. An electronic signature timestamped by a certification-service-provider shall be assumed to be created no later than at the time of the provision of such service. Such assumption shall exist until the day of expiration of the attestation used for verification of that stamping. Any extension of the assumption shall require a subsequent timestamping of the electronic signature together with the data used to the preceding verification by a qualified provider of that service.

Article 8

The validity and legal effectiveness of an electronic signature shall not be denied solely on the grounds that it is in electronic form, or the signature-verification data have no qualified certificate or that it has not been put with the use of a secure signature-creation device.

Chapter III. Obligations of Certification-Service-Providers ➔

Article 9

1. No licence and concession shall be required from those engaged in the provision of certification services.
2. Public authorities and the National Bank of Poland may provide certification services, subject to paragraph 3, solely for their own purposes or the purposes of other public authorities.
3. Local authority may provide certification services on a non-profit basis also for members of a local community.

Article 10

1. A qualified certification-service-provider issuing qualified certificates shall be obliged to:
 - 1) provide technical and organisational means for prompt and reliable issuance, suspension and revocation of certificates and for precise determination of the date and time of such activities,
 - 2) verify the identity of the person seeking a certificate,
 - 3) take measures against forgery of certificates and other data electronically authenticated by those providers, in particular by guaranteeing protection of the devices and data used in the course of the provision of certification services,
 - 4) obtain appropriate civil liability insurance for damages caused to receivers of certification services,
 - 5) before entering into a contractual relationship with a person seeking a certificate, inform that person about the terms and conditions regarding the acquisition and use of the

certificate, including any limitations on its use,

6) use systems to generate and store certificates in such a manner that only authorised persons can enter and change the data,

7) if the provider guarantees public access to the certificates, their publication shall require prior consent of the person to which the certificate has been issued,

8) make available to the receiver of certification services a complete list of secure signature-creation and verification devices, as well as technical requirements they should meet,

9) guarantee, in cases where the certification-service-provider generates signature-creation data, confidentiality during the process of generating them, and not store or copy such data or other data which would be used for their retrieval, and disclose them only to the person who will use them to create an electronic signature,

10) guarantee, in cases where the certification-service-provider generates signature-creation data, that the likelihood that they will appear only one time is close to certainty,

11) publish the data needed for verification, which may be done electronically, of the authenticity and validity of certificates and other data subject to electronic authentication by that provider and ensure access without payment to these data to receivers of certification services.

2. The qualified provider of certification services which consist in time- stamping is under an obligation to meet the requirements under paragraph 1 subparagraphs 3, 4 and 8, and to use the systems of time- stamping, making and storing certification attestations in a manner allowing only the authorised persons to feed in and change the relevant data, and also to ensure that the time they define is the time when the electronic authentication was made, and that these systems impede the stamping with a time different from the one when the timestamping service was performed.

3. The certification-service-provider shall:

1) have full capacity to enter into legal transactions,

2) not be validly sentenced for an offence against the reliability of documents, economic relations, money circulation, trading in securities, for a fiscal offence or for offences under chapter VIII of this Act,

3) have the necessary knowledge and skills with regard to the technology of producing certificates and performing other services related with electronic signature.

4. The Council of Ministers may issue a regulation defining in detail the technical specifications and organisational requirements, including the requirements pertaining to the physical security of the rooms where information under Article 12 paragraph 1 is stored, the qualified certification-service-provider shall meet. The relevant regulation shall allow for the sphere of application of the certificates he/she issues, for the requirement of their security and for the need to protect the interests of persons for whom certification service is intended.

5. The appropriate minister in charge of financial institutions shall, in consultation with the appropriate minister in charge of economy and having sought an opinion of the Polish Chamber of Insurance, issue a regulation explaining in detail the way and conditions how to meet the obligation to obtain insurance under paragraph 1 subparagraph 4. The regulation shall explain in particular the date of the inception of the obligation to conclude an insurance contract and the minimum guarantee sums, allowing for the need to guarantee the fulfilment of the obligation to conclude an insurance contract.

Article 11

1. Certification service receivers shall not hold the certification-service-provider responsible, apart from paragraphs 2 and 3, for any losses arising from his/her failure to meet his/her obligations or from the negligent fulfilment of his/her obligations regarding the services performed unless the failure to meet or the negligent fulfilment of these obligations is due to circumstances for which the certification-service-provider is not responsible and which he/she could not prevent, his/her due diligence notwithstanding.

2. Certification service receivers shall not hold the certification-service-provider responsible for the losses arising from the use of the certificate outside the scope provided for in the certification policy which was determined in the certificate. Particularly he/she will not be held responsible for the losses arising from the exceeding of the greatest boundary value of the relevant transaction, provided that value was indicated in the certificate.

3. Certification service receivers shall not hold the certification-service-provider responsible for the losses arising from the falsity of the data revealed in the certificate at the request of the person to have put his/her electronic signature.

4. Certification service receivers shall hold the certification-service-provider who underwrote the certificate pursuant to Article 4 paragraph 4 responsible for all the losses arising from the use of this certificate unless the loss arises from the use of this certificate outside the scope provided for in the certification policy which was determined in the certificate.

Art. 12

1. Information related to the providing of certification services, the unauthorised disclosure of which might cause the certification-service-provider or the certification service receiver to sustain a loss, and especially the data which serve to make certification authentications, is kept secret. Information about violations of this Act by the certification-service-provider shall not be kept secret.

2. The following persons shall be obliged to keep secret the information under paragraph 1:

1) those representing the certification-service-provider,

2) those having an employment, contract or another legal relationship of a similar character with the certification-service-provider,

3) those having an employment, contract or another legal relationship of a similar character with providers of services for the certification-service-provider,

4) people and organs who became in the secret under the procedure established under paragraph 3.

3. The persons referred to under paragraph 2 shall be obliged to give information referred to under paragraph 1, with the exception of the data which serve to make certification authentications, exclusively on demand of:

1) the court or prosecutor--in connection with the action pending,

2) the appropriate minister in charge of economy--in connection with control he/she exerts under chapter VII over the performance of certification-service-providers,

3) other state organs authorized under separate acts- in connection with action pending in cases regarding the performance of certification-service-providers,

4. The duty to keep a secret under paragraph 1, subject to the provisions of paragraph 5, is valid for ten years from the end of the legal relationship under paragraph 2.

5. The duty to keep secret the data which serve to make certification authentications shall be for perpetuity.

Article 13

1. Subject to the provisions of paragraph 5 and of Article 10 paragraph 1 subparagraph 9, the certification-service-provider shall store in an archive those documents and data in an electronic form which are directly related with certification services performed in a manner which shall ensure the security of the documents and data stored.

2. In case of qualified certification-service-providers the duty to store documents and data under paragraph 1 shall be valid for 20 years since a given document or data was completed.

3. In case a given qualified certification-service-provider discontinues his activities, the documents and data under paragraph 1 shall be stored by the appropriate minister in charge of economy or by the person he/she shall indicate. For the maintenance of documents and data under paragraph 1 the appropriate minister in charge of economy shall collect charge, which will not exceed, however, the Polish zloty equivalent of 1 euro for each issued certificate whose file is liable to storage, which shall be calculated according to the average rate determined by the National Bank of Poland and going on the day the qualified certification-service-provider discontinues his activities. The charge shall be appropriated for the financing of the acts referred to in the first sentence.

4. The appropriate minister in charge of economy shall issue a regulation

establishing the procedure and the amount of charge referred to in paragraph 3, allowing for the number and the anticipated costs of the storage of the documents and data referred to in paragraph 1

5. The certification-service-provider shall destroy the data which serve to make a certification authentication as soon as the certification attestation shall be annulled or the validity of the certification attestation used for the verification of these authentications shall expire.

Chapter IV. Provision of Certification Services ➔

Article 14

1. The certification-service-provider shall issue a certificate on a contract basis.
2. Prior to the conclusion of a contract referred to in paragraph 1, the certification-service-provider shall in a lucid manner define in writing or in an electronic form the detailed conditions of the use of that certificate, including the way complaints shall be examined and disputes settled, particularly of the important conditions regarding:
 - 1) the scope of and limits to the use of such certificate,
 - 2) the legal consequences of putting electronic signatures verified with the use of this certificate,
 - 3) information about the system of voluntary registration of qualified providers and about their importance.
3. In case of certificates which shall not be qualified certificates, information referred to in paragraph 2 shall also point out that the electronic signature verified with the use of this certificate shall not produce legal consequences equivalent to the sign manual.
4. The certification-service-provider shall give anyone who shall request it the significant elements of information referred to in paragraph 2.
5. The certification-service-provider shall be obliged to acquire a written acknowledgement of his/her having become familiar with the information referred to in paragraph 2, prior to the conclusion of a given contract.
6. The certification-service-provider may, subject to the provisions of Article 10 paragraph 1 subparagraph 2, use the notary-established identity of the certification service receivers if the relevant certification policy provides for it.
7. When issuing qualified certificates, the certification-service-provider shall adopt such procedures of issuing them, which shall let him/her get the applicant's written consent to his/her utilising the data used to verify the applicant's electronic signature, which are revealed in the certificate issued.

Article 15

The certification service receiver is obliged to store the signature-creation data in a manner ensuring their protection against their unauthorised use in the validity period of the certificate used for verifying these signatures.

Article 16

1. The contract for the provision of certification services shall be made in writing under pain of invalidity.
2. Invalidity of contract for the provision of certification services shall not imply invalidity of the certificate with the proviso that its issuance met the requirements described in Article 14 paragraphs 2 and 5, and that consent referred to in Article 14 paragraph 7 has been given.

Article 17

1. The qualified certification-service-provider is obliged to define a certification policy. The certification policy comprises in particular:

- 1) the scope of its adoption,
- 2) the explanation of the way of creating and transmitting the electronic data the qualified certification-service-provider shall attest,
- 3) maximum validity of the certificates,
- 4) the way of identifying and authenticating the persons to whom certificates are issued as well as the certification-service-provider,
- 5) the methods and procedure of producing and making available certificates, lists of revoked and blocked certificates and other electronically attested data,
- 6) the description of the electronic record of the structure of the data revealed in the certificates and other electronically attested data,
- 7) the manner of managing the documents relating to the provision of certification services.

2. In consultation with the President of the National Bank of Poland, the Council of Ministers shall issue a regulation which shall describe the basic organisational and technical requirements applying to certification policies with regard to qualified certificates, which shall take into account the scope of these certificates' application, the periods of their validity, the need to ensure joint action of different devices to put and verify electronic signatures, the need to ensure security of legal transactions and to meet the relevant European Union standards.

Article 18

1. The secure-signature-creation device should at least:

- 1) make impossible the obtainment of signature-creation data or certification attestation,
- 2) not change the data which are to be signed or attested electronically and make it possible for the person to put an electronic signature to produce these data before he/she shall put his/her electronic signature,
- 3) guarantee that the warning that the continuing of the operation shall be tantamount to putting the electronic signature shall precede the putting of signature,
- 4) ensure an easy recognition of changes in the signature-creation device or of the certification authentication with security implications.

2. The secure-signature-verification device shall fulfil the following requirements:

- 1) the data used to verify the electronic signature shall correspond to the data revealed to the signature verifier,

2) the electronic signature shall be verified reliably, and the verification result pleaded correctly,

3) the verifier can beyond a doubt establish the contents to which the electronic signature relates,

4) the authenticity and validity of the certificates and other data electronically attested shall be verified reliably,

5) the result of the verification of the identity of the person putting an electronic signature shall be pleaded in a correct and persuasive manner,

6) the use of a pseudonym shall be indicated explicitly,

7) changes in the signature-verification device with security implications, shall be indicated.

3. The Council of Ministers shall issue a regulation which shall lay down detailed technical specifications to be followed by secure signature-verification devices and which shall take care of the need to ensure inviolability and confidentiality of the electronically signed data.

4. The compliance of the devices referred to in paragraphs 1 and 2 with the requirements of this Act shall be verified in pursuance of separate provisions.

5. State protection services shall, as understood by the provisions on protection of secret information, assess the usefulness of the devices referred to in 1 and 2 for the protection of secret information, and shall issue the relevant certificates of safety.

Article 19

1. For the transactions referred to in Article 18 paragraphs 4 and 5 costs shall be charged.

2. The costs referred to in paragraph 1 shall be in compliance with the provisions of the Act on protection of secret information of 22nd January 1999 (Dz. U., No. 11, item 95, from the year 2000--No. 12, item 136 and No. 39, item 462; from the year 2001--No. 22, item 247; No. 27, item 298 and No. 56, item 580).

Article 20

1. The qualified certificate shall contain as a minimum such data as:

1) the certificate number,

2) an indication that the certificate has been issued as a qualified certificate to be used in accordance with a definite certification policy,

3) a designation of the certification-service-provider and of the state where he/she is established, his/her number in the register of certification-service-providers,

4) the name of the signatory or pseudonym which must be indicated as such,

5) signature-verification-data,

- 6) an indication of the beginning and the end of the validity of the certificate,
- 7) an electronic authentication by the certification-service-provider concerned,
- 8) limitations of the validity of the certificate if provided for in the certification policy,
- 9) the greatest boundary value of the transaction where the certificate may be used if provided for in the certification policy or in the contract referred to in Article 14 paragraph 1.

2. At the request of the applicant, when issuing a qualified certificate, the certification-service-provider is obliged to include in this certificate other data than those referred to in paragraph 1, and particularly the indication whether the applicant acts-

- 1) on his/her own behalf or
- 2) on behalf of another natural or legal person or organisational unit with no legal entity or
- 3) as a member of an organ or an organ of a natural person or organisational unit with no legal entity or
- 4) as an official authority agency.

3. By issuing a qualified certificate, the certification-service-provider shall attest to the truthfulness of the data referred to in paragraph 2, and shall notify the persons referred to in paragraph 2 subparagraphs 2-4 about the certificate contents, and inform them of the possibility for revocation of the certificate at their request.

Chapter V. Validity of Certificates ➔

Article 21

1. The certificate is valid for the period indicated therein.
2. The certification-service-provider shall revoke a qualified certificate before the expiration of its validity if:
 - 1) the certificate was issued on the grounds of false or obsolete data as referred to in Article 20 paragraph 1 subparagraph 4 and paragraph 2,
 - 2) he/she did not fulfil the statutory obligations,
 - 3) the person to have put an electronic signature to be verified on the basis of this certificate did not fulfil the obligations referred to in Article 15,
 - 4) the certification-service-provider ceases operations and his/her rights and duties are not taken over by another qualified certification-service-provider,
 - 5) the signatory or the third party indicated in the certificate so requests,
 - 6) the appropriate minister for economy so requests,

- 7) the signatory lost the capacity to enter into legal transaction.
3. The revocation of the certificate pursuant to paragraph 2 subparagraph 2 shall not exclude certification-service-provider's liability for the damage inflicted on the signatory.
4. In case there are grounds for revoking the qualified certificate, the certification-service-provider shall suspend the certificate and take immediate measures to clear the justified doubts.
5. The suspension of the qualified certificate shall not last longer than seven days.
6. Upon lapse of the period referred to in paragraph 5, in case it is impossible to clear doubts, the certification-service-provider shall revoke the qualified certificate immediately.
7. The suspended certificate may next be revoked or its suspension reversed.
8. Once revoked, the certificate cannot be next recognised as valid.
9. The appropriate minister for economy shall file a request referred to in paragraph 2 subparagraph 6 on the grounds specified in paragraph 2 subparagraphs 1-4 and 7.
10. The certificate-service-provider shall notify the person putting an electronic signature to be verified on its grounds of the revocation or suspension of his/her certificate forthwith.
11. Retroactive suspensions or retroactive revocations shall not be permitted.

Article 22

1. The certificate-service-provider shall publish a list of suspended and revoked certificates.
2. The information about the suspension or revocation of a given certificate shall be on the list of suspended and revoked certificates to be published before the expiration of the certificate's validity and on the first list circulated thereafter.
3. The list of suspended and revoked certificates shall include in particular:
 - 1) the list's consecutive number and an indication that the list is published in conformity with a definite certification policy and that it applies to certificates issued in conformity with this policy,
 - 2) the date, including the exact time when the list is published--with the accuracy stipulated by the certification policy,
 - 3) the date of the envisaged circulation of another list,
 - 4) a depiction of the certification-service-provider who publishes the list and the state where he/she is established, his/her number in the register of qualified certification-service-providers,
 - 5) the number of every suspended or revoked certificate and an indication whether it was suspended or revoked,

6) the date and the time how long the specific certificate shall be suspended or revoked--with the accuracy stipulated by the certification policy,

7) a certification authentication by the certification-service-provider who publishes the list.

4. The certification-service-provider shall release information about the suspension or revocation of a given certificate on the list referred to in paragraph 1, in conformity with a definite certification policy, no later however than within an hour from the revocation or suspension of the certificate.

5. The suspension and revocation of a certificate shall produce legal consequences from the moment referred to in paragraph 3 subparagraph 6, which shall not precede however the date, including the exact time of the publication of the previous list of suspended and revoked certificates.

Chapter VI. Granting Accreditation and Entering into Register of Qualified Certification-Service-Providers ➔

Article 23

1. The qualified certification-service-provider or a person intending to take up such activity may apply for entry into the register of qualified certification-service-providers.

2. The provision of certification services in one's capacity as a qualified certification-service-provider requires that the applicant be entered into the register of qualified certification-service-providers and be issued a certification attestation which shall be used to verify certification authentications by this provider; his certification authentications shall be by the appropriate minister in charge of economy, subject to the provisions of paragraphs 4 and 5.

3. The appropriate minister in charge of economy shall publish, in an electronic form, the list of certification attestations referred to in paragraph 2 and the data to be used to verify the certification attestations by him/herself.

4. The appropriate minister in charge of economy may, under the procedures of the regulations on public orders, entrust a certification-service-provider with making and issuing such certification attestations as referred to in paragraph 2, with a publication of the list referred to in paragraph 3 and of the data to be used to verify the certification attestations issued.

5. At the request of the President of the National Bank of Poland, the appropriate minister in charge of economy shall authorise the National Bank of Poland or a person to have a dependency relationship with the Bank, which was indicated in the request, to provide the services referred to in paragraph 4. By virtue of the law the authorisation given to the dependent person expires with the end of his/her dependency relationship with the National Bank of Poland.

6. The persons referred to in paragraphs 4 and 5 shall fulfil the requirements of the Act regarding qualified certification-service-providers, pertaining to security, issuance, storage and revocation of certificates; these persons may not provide services involving the issuing of certificates.

7. In the cases referred to in paragraphs 4 and 5, when making an entry into the register, referred to in 1, the appropriate minister in charge of economy shall point out to the certification-service-provider the name and the location of the person authorised to make and issue certification attestations.

Article 24

1. Entry into the register of qualified certification-service-providers shall be made at the request of the person intending to or providing certification services.

2. A request for an entry into the register of qualified certification-service-providers shall contain:

- 1) the forename and surname or the name (company name) of the applicant,
- 2) definition of the certification policy according to which qualified certificates are to be produced or other services relating to electronic signature provided,
- 3) the applicant's abode or location and address,
- 4) a current excerpt from the registers of entrepreneurs and insolvent debtors,
- 5) the forenames and surnames of the persons referred to in Article 10 paragraph 3, the applicant employs or intends to employ,
- 6) information about the qualifications and professional experience, and also a certificate stating that the persons referred to in Article 10 paragraph 3 have no criminal record,
- 7) an indication of technical and organisational feasibility of performing acts related to the provision of certification services,
- 8) an indication of the way how to prevent the revealing of information the use of which might violate the interest of the receivers of certification services,
- 9) documents outlining the financial standing, the organisational plan and financial forecast regarding the applicant,
- 10) the payment receipt for the considering of an application to be entered in the register of qualified certification-service-providers,
- 11) electronic-authentication-verification-data produced by the person within the framework of the certification services provided by him/her,
- 12) the applicant's taxpayer's identification number,
- 13) the applicant's number in the REGON Register of Units of the National Economy.

3. The provisions of paragraph 2 subparagraphs 4, 9 and 13 shall not apply to the application submitted by an official authority or the National Bank of Poland.

4. In case of any defects in the application, the appropriate minister in charge of economy shall summon the applicant to correct a defect, fixing a time limit no shorter than seven

days.

5. At the applicant's substantiated request, the time limit referred to in paragraph 4 may be extended.

6. Non-correction of a defect in the application in the time limit fixed shall cause a dismissal of the application.

7. For the considering of an application to be entered in the register of qualified certification-service-providers a fee shall be charged. Once paid, the fee shall not be refundable.

8. The appropriate minister in charge of economy shall issue a regulation deciding on:

1) a specimen and the detailed scope of the application, allowing for a possibility of an electronic processing of the data produced on printed sheets,

2) a detailed procedure of making and issuing a certification attestation, also by the persons authorised on the grounds of Article 23 paragraph 4 or 5, taking into consideration the need to ensure confidentiality of the making and issuing of a certification attestation,

3) the amount due for the considering of the application to be entered in the register of qualified certification-service-providers, taking into account the reasonable expenses borne in connection with the registration proceedings and the holding of records.

Article 25

1. Upon carrying out an inspection, within a time frame of two months since the submission of the request which fulfilled the requirements referred to in Article 24 paragraph 2, the appropriate minister in charge of economy shall enter the applicant in the register of qualified certification-service-providers or make a decision refusing to enter the applicant in the register of qualified certification-service-providers.

2. The entry into the register, referred to in paragraph 1, of the certification-service-provider acknowledges that he/she is an institution with sufficient essential and technical potential and fulfils the requirements described in this Act.

3. The decision to enter the applicant in the register should, in particular, give the name of the certification policy within the framework of which a given person may issue qualified certificates or provide other services related to electronic signature.

4. The appropriate minister in charge of economy shall deny entry in the register referred to in paragraph 1, provided-

1) the application and the documents enclosed do not satisfy the conditions set out by this Act,

2) provisions of the applicant's organisational documents can threaten the security or in some other way violate the interest of the receivers of certification services,

3) the applicant has been entered into the register of insolvent debtors,

4) the technical and organisational feasibility of the performing of acts related to the provision of certificate services indicated in the application do not satisfy the conditions set out on the grounds of Article 10 paragraph 4, Article 17 paragraph 2 and Article 18 paragraph 3,

5) the persons referred to in Article 24 paragraph 2 subparagraph 5 do not fulfil the requirements referred to in Article 10 paragraph 3.

Article 26

1. Entry into the register of qualified certification-service-providers shall comprise:

1) the forename and surname or the name (company name) of the respective qualified certification-service-provider,

2) the way the respective qualified certification-service-provider is represented, the entry number in the register of entrepreneurs and the identification of the court that holds this register,

3) the forenames and surnames of the persons representing the respective qualified certification-service-provider,

4) the name of the certification policy within the framework of which a given person may issue qualified certificates or provide other services related with electronic signature,

5) information on the insurance sum and terms of the contract referred to in Article 10 paragraph 1 subparagraph 4, and the name of the respective insurance agency,

6) the date of the entry into the register or of the decision on the removal of the given entry.

2. The person entered into the register of qualified certification-service-providers is obliged, within a time frame of 30 days from the day the decision to enter him/her into the register was delivered to him/her, to supply a proof of the conclusion of a contract referred to in Article 10 paragraph 1 subparagraph 4, and to provide information referred to in paragraph 1 subparagraph 5.

3. As soon as the appropriate minister in charge of economy shall obtain information referred to in paragraph 1 subparagraph 5, he/she shall add it to the entry into the register of qualified certification-service-providers.

4. If the person entered into the register of qualified certification-service-providers does not meet the obligation referred to in paragraph 2 in time, the appropriate minister in charge of economy shall decide on the removal of his/her entry from the register of qualified certification-service-providers.

5. Right upon the entry into the register of qualified certification-service-providers, no earlier however than on the day when the certification-service-provider concerned meets his/her obligation referred to in paragraph 2, the appropriate minister in charge of economy shall issue the certification attestation referred to in Article 23 paragraph 2.

Article 27

1. The register of qualified certification-service-providers shall be kept by the appropriate

minister in charge of economy.

2. The register referred to in paragraph 1 and certification attestations referred to in Article 23 paragraph 2 are open and available to the public, the electronic form included.

3. The appropriate minister in charge of economy shall issue a regulation deciding on the way how the register of qualified certification-service-providers shall be kept, on the specimen register and detailed procedure to be adopted in registration proceedings, allowing for the need to ensure the third party's access to the register and the possibility for entering all the data obtained in the course of registration proceedings with regard to qualified certification-service-providers, including the information on the liquidation or bankruptcy of a given certification-service-provider.

Article 28

1. The qualified certification-service-provider is obliged to notify the appropriate minister in charge of economy of every change in the data produced in his/her application referred to in Article 24 paragraph 2 forthwith, no later than within a time frame of seven days since the change of the facts of the case or of the regulatory environment.

2. The person referred to in paragraph 1 is obliged without delay to notify the appropriate minister in charge of economy of the date when he/she plans to cease providing certification services, no later however than three months ahead of the planned date of the cessation of his/her operations.

Article 29

1. In case of the institution of liquidation proceedings concerning a qualified certification-service-provider, the appropriate minister in charge of economy shall decide on the removal of this person's entry from the register of qualified certification-service-providers.

2. In case of the declaration of a qualified certification-service-provider's bankruptcy, the removal of this person's entry from the register of qualified certification-service-providers shall take place by virtue of the law.

3. If separate provisions do not provide for the liquidation of a given certification-service-provider, the appropriate minister in charge of economy shall decide on the removal of this person's entry from the register of qualified certification-service-providers in case this provider ceases operations.

4. The duty to notify the appropriate minister in charge of economy of the declaration of bankruptcy or of the closing of a given liquidation shall rest with the official receiver or liquidator.

5. In case the bankruptcy petition is dismissed for reasons referred to in Article 13 of the regulation by the President of the Republic, dated 24th October 1934, "Bankruptcy Act" (Dz. U., No. 118, 1991, item 512; No. 1, 1994, item 1; No. 85, 1995, item 426; No. 6, 1996, item 43; No. 43, 1996, item 189; No. 106, 1996, item 496; No. 149, 1996, item 703; No. 28, 1997, item 153; No. 54, 1997, item 349; No. 117, 1997, item 751; No. 121, 1997, item 770; No. 140, 1997, item 940; No. 117, 1998, item 756; No. 26, 2000, item 306; No. 84, 2000, item 948; No. 94, 2000, item 1037; No. 114, 2000, item 1193; No. 3, 2001, item 18) paragraph 2 shall apply respectively. The duty to notify the appropriate minister in charge of economy shall rest with members of the organ of the juridical person, general partners in

commercial partnerships or with partners in registered partnerships.

Chapter VII. Supervision over Performance of Certification-Service-Providers ➔

Article 30

1. The appropriate minister in charge of economy shall supervise compliance with this Act, guaranteeing protection of the interests of the receivers of certification services.

2. The appropriate minister in charge of economy shall carry out the task referred to in paragraph 1 particularly through:

- 1) keeping a register of qualified certification-service-providers,
- 2) issuing and revoking certification attestations referred to in Article 23 paragraph 2,
- 3) control over the performance of certification-service-providers from the point of view of their performance's compliance with this Act,
- 4) imposing penalties this Act provides for.

3. The appropriate minister in charge of economy may entrust the keeping of the register of qualified certification-service-providers to the persons referred to in Article 23 paragraphs 4 and 5, who fulfil this Act's requirements with regard to qualified certification-service-providers in the areas of security, the issuance, storage and revocation of certificates and who do not provide certification services consisting in the issuance of certificates.

Article 31

1. The appropriate minister in charge of economy shall decide on the removal of an entry from the register of qualified certification-service-providers if a given certification-service-provider-

- 1) conducts business contrary to this Act's regulations, to the prejudice of the interests of the receivers of certification services or
- 2) requests to have his/her entry into the register cancelled or
- 3) plans to cease operations and notifies the appropriate minister in charge of economy of his/her decision pursuant to Article 28 paragraph 2 or
- 4) refuses to submit him/herself to inspection referred to in Article 38.

2. In case referred to in paragraph 1 subparagraph 1, the appropriate minister in charge of economy may, instead of taking a decision, summon a given certification-service-provider to correct the faults pointed out to him/her within a definite period of time and to make his/her operations compatible with the provisions of this Act.

3. When taking a decision referred to in paragraph 1, the appropriate minister in charge of

economy may revoke the certification attestation referred to in Article 23 paragraph 2 and place it on the list of revoked certification attestations originally issued to qualified certification-service-providers. Regulations concerning the list of revoked certificates referred to in Article 22 shall apply accordingly.

4. The revocation of a certificate attestation referred to in Article 23 paragraph 2, used to verify the certification authentication by qualified certification-service-providers, annuls the relevant authentications unless it has been proved that a given authentication was made prior to the revocation of the certificate attestation concerned.

5. The revocation of the electronic authentication referred to in paragraph 4, used to verify the validity of certifications issued by the qualified certification-service-provider, shall annul these certificates.

6. In case the certification authentication, used to verify the validity of the timestamping service supplied by the qualified certification-service-provider, referred to paragraph 4, has been annulled, Article 7 paragraphs 2 and 3 shall not apply.

Article 32

1. When issuing a summons referred to in Article 31 paragraph 2, the appropriate minister in charge of economy may impose on the certification-service-provider a cash penalty of up to 50,000 zloty if the irregularities revealed were particularly flagrant.

2. In case the irregularities were not corrected within a fixed time limit, the appropriate minister in charge of economy may impose on the certification-service-provider concerned a cash penalty of up to 50,000 zloty.

3. When determining the amount of cash penalties referred to in paragraphs 1 and 2, the appropriate minister in charge of economy is obliged to take into consideration the kind and importance of the irregularities revealed.

4. The cash penalty shall be liable to enforcement under enforcement proceedings taken in the administration.

Article 33

1. In case an electronic authentication was made in flagrant violation of this Act, the decision on the removal of a given entry from the register of qualified certification-service-providers shall be enforceable forthwith.

2. In the case referred to in paragraph 1, Article 40 of The Supreme Administrative Court Act of 11th May 1995 (Dz. U., No. 74, item 368 and No. 104, 1995, item 515; No. 75, 1997, item 471; No. 106, 1997, item 679; No. 114, 1997, item 739; No. 144, 1997, item 971; No. 162, 1998, item 1126; No. 75, 1999, item 853; No. 2, 2000, item 5; No. 48, 2000, item 552; No. 60, 2000, item 704; No. 91, 2000, item 1008; No. 49, 2001, item 508f) shall not apply.

Article 34

From the day the decision on the removal of a given entry from the register of qualified certification-service-providers, the certification-service-provider concerned may not conclude a contract of provision of certification services regarding the certification policy this decision concerns.

Article 35

1. Supervision shall be carried out by employees of an organisational division of a ministry that attends to the appropriate minister in charge of economy, hereinafter referred to as "supervisors," on the basis of their respective identity card and the individual authorisation which shall define the certification-service-provider coming under supervision, the scope of supervision and the legal grounds for supervision.
2. Individual authorisations to carry out supervision shall be given by the appropriate minister in charge of economy or by the director of the organisational division of a ministry that attends to the appropriate minister in charge of economy the minister in charge of economy has authorised to give such authorisations.
3. Supervision referred to in paragraph 1 may be carried out also by the minister in charge of economy-authorized supervisors who work for the person referred to in Article 23 paragraph 5 or for the certifying organ within the meaning of the provisions referred to in Article 18 paragraph 4.
4. In case supervision is carried out under authorisation of the appropriate minister in charge of economy, the person or the certifying organ referred to in paragraph 3 deserves a fee for the supervision carried out.
5. The minister in charge of economy shall issue a regulation establishing the principles of remuneration for carrying out supervision on authorisation from the minister, taking into consideration the scope and kind of supervision and its reasonable expenses.

Article 36

The minister in charge of economy shall carry out supervision-

- 1) ex officio,
- 2) on demand of the prosecutor or court, or other state organs authorised to make such demand on the basis of the relevant laws in connection with the proceedings they have instituted with regard to the operations of certification-service-providers.

Article 37

The aim of supervision is to establish whether the operations of a given certification-service-provider is in compliance with this Act. The scope of supervision is outlined by the authorisation referred to in Article 35 paragraph 1 or paragraph 3.

Article 38

In order to carry out supervision properly-

- 1) the managers of certification-service-providers shall be obliged, on the supervisor's demand, to submit all documents and evidence indispensable to the arrangement for and the carrying out of supervision--subject to the regulations on information protected by law,
- 2) supervisors have a right to-

- (a) enter the buildings and premises of the certification-service-providers supervised,
- (b) inspect documents and other sources of information except for the data used to put an electronic signature or to make authentication which can serve to reconstruct these data, directly related with the operations supervised, and to secure documents and other evidence subject to the regulations on information protected by law,
- (c) inspect the buildings, other constituents of property and transactions linked with the provision of certification services,
- (d) demand that all employees of the certification-certificate-providers furnish an oral or written explanation,
- (e) receive expert assistance.

Article 39

To supervisory proceedings shall apply provisions of Articles 31, 32, 35-41, 53-55, 57 and 59 of the Act of 23rd December 1994 on the Supreme Chamber of Control (Dz. U., No. 13, 1995, item 59; No. 64, 1996, item 315; No. 89, 1996, item 402; No. 28, 1997, item 153; No. 79, 1997, item 484; No. 96, 1997, item 589; No. 121, 1997, item 770; No. 133, 1997, item 883; No. 148, 1998, item 966; No. 155, 1998, item 1016; No. 162, 1998, items 1116 and 1126; No. 60, 2000, item 704) respectively, on condition that whenever this Act makes a reference to-

- 1) the Supreme Chamber of Control, this shall be construed as meaning a ministry attending to the appropriate minister in charge of economy,
- 2) the President of the Supreme Chamber of Control, this shall be construed as meaning the appropriate minister in charge of economy,
- 3) the director of the appropriate supervisory agency, this shall be construed as meaning the director of the appropriate organisational division of a ministry that attends to the appropriate minister in charge of economy, referred to in Article 35 paragraph 1,
- 4) a supervisor, this shall be construed as meaning the supervisor referred to in Article 35 paragraph 1 or paragraph 3.

Article 40

Upon becoming familiar with the record, reservations and explanations furnished by the certification-service-provider supervised, the appropriate minister in charge of economy shall notify this provider of the supervision results and in case any irregularities were revealed, shall fix a time limit for their emendation, this limit being however not lower than 14 days.

Article 41

- 1. The supervisor is obliged to keep secret the information he/she obtained in connection with the performance of his/her on-duty acts.
- 2. The obligation to preserve a secret shall last also after the termination of employment.

Article 42

The appropriate minister in charge of economy shall consider complaints against certification-service-providers. Doing this, he/she shall adhere to the rules of the Code of Administrative Procedure.

Article 43

1. Employees of an organisational division of a ministry that attends to the appropriate minister in charge of economy, who execute tasks specified in statutory law, shall not be engaged in any economic activity, be partners or shareholders or carry out the duties of a representative or member of the supervisory board or the audit committee of the certification-service-provider, establish employment, contract or any other legal relationship of a similar nature with the certification-service-provider.

2. The regulation of paragraph 1 does not contravene the regulations on limitation of running of a business by persons in government service.

Article 44

Employees of organisational divisions of a ministry that attends to the appropriate minister in charge of economy, who execute tasks specified in statutory law, and also persons performing acts specified in this Act on behalf of these divisions on the basis of contract or another legal relationship of a similar nature are obliged to keep secret the information obtained in connection with the performance of these acts.

Chapter VIII. Criminal Regulations ➔

Article 45

Who provides certification services in his/her capacity as qualified certification-service-provider without having first concluded a contract for civil liability insurance against damages done to the receivers of this service is liable to a fine of up to 1,000,000 zloty.

Article 46

The certification-service-provider who, when providing certification services, in defiance of the obligation specified in statutory law, does not inform the person applying for a certificate about the conditions of obtaining and using the certificate, is liable to a fine of up to 30,000 zloty.

Article 47

Who puts a secure electronic signature by means of data that are linked to another person is liable to a fine or penalty of up to three years' imprisonment or to both.

Article 48

Who, when providing certification services, copies or stores data which serve to put a secure electronic signature or electronic authentication, or other data which might serve

their reconstruction is liable to a fine or penalty of up to three years' imprisonment or to both.

Article 49

1. Who, when providing certification services, issues a certificate revealing fictitious data, referred to in Article 20 paragraph 1, is liable to a fine or penalty of up to three years' imprisonment or to both.

2. The person who on behalf of the certification-service-provider enables the issue of the certificate referred to in paragraph 1 is liable to the same penalty.

3. The person who makes use of the certificate referred to in paragraph 1 is liable to the same penalty.

Article 50

Who, when providing certification services, in defiance of the obligation referred to in Article 21 paragraph 2 subparagraphs 5 and 6, desists from revocation of the certificate, is liable to a fine or penalty of up to three years' imprisonment or to both.

Article 51

Who, when providing a timestamping service in his/her capacity as qualified certification-service-provider, enables specification of time different from that when the service was actually provided and authenticates electronically the thus created data is liable to a fine or penalty of up to three years' imprisonment or to both.

Article 52

1. The person obliged to preserve a secret related to the provision of certification services who reveals or exploits secret information in contravention of conditions specified in statutory law is liable to a fine of up to 1,000,000 zloty or penalty of up to three years' imprisonment or to both.

2. If the perpetrator resorts to an act referred to in paragraph 1 in a capacity as a certification-service-provider or as a supervisor or for the purpose of gaining a financial or personal benefit, he/she is liable to a fine of up to 5,000,000 zloty or penalty of up to five years' imprisonment or to both.

Article 53

Who resorts to acts referred to in these regulations, acting on behalf or in the interest of another natural or legal person or organisational division with no legal personality, is liable to penalties specified in Articles 45-51.

Chapter IX. Changes in Provisions in Force, in Transitory and Final Provisions ➔

Article 54

To the Act of 23rd April 1964 on the Civil Code (Dz. U., No. 16, item 93; from 1971--No. 27, item 252; from 1976--No. 19, item 122; from 1982--No. 11, item 81; No. 19, item 147; No. 30, item 210; from 1984--No. 45, item 242; from 1985--No. 22, item 99; from 1989--No. 3, item 11; from 1990--No. 34, item 198; No. 55, item 321; No. 79, item 464; from 1991--No. 107, item 464; No. 115, item 496; from 1993--No. 17, item 78; from 1994--No. 27, item 96; No. 85, item 388; No. 105, item 509; from 1995--No. 83, item 417; from 1996--No. 114, item 542; No. 139, item 646; No. 149, item 703; from 1997--No. 43, item 272; No. 115, item 741; No. 117, item 751; No. 157, item 1040; from 1998--No. 106, item 668; No. 117 item 758; from 1999--No. 52, item 532; from 2000--No. 22, item 271; No. 74, items 855 and 857; No. 114, item 1191; from 2001--No. 11, item 91; No. 71, item 733) introduced are the following amendments:

1) Article 60 now reads:

"Article 60. Barring the exceptions provided for by statutory law the intention of a person performing an act in law may be expressed by any behaviour of that person which manifests that intention sufficiently, including the manifestation of that intention in an electronic form (declaration of intent)."

2) Article 78 now reads:

"Article 78. Paragraph 1. For the observance of the written form of an act in law it is sufficient to append one's autograph signature to the document containing the declaration of intent. For the conclusion of the contract it shall suffice to exchange the documents each of which carries the declaration of intent of one of the parties and is signed by it.

Paragraph 2. The declaration of intent made in an electronic form and with a secure electronic signature verified with the aid of a valid qualified certificate affixed to it shall be equivalent to the written form."

Article 55

To the Act of 29th August 1997 on The Banking Law (Dz. U., No. 140, item 939; from 1998--No. 160, item 1063; No. 162, item 1118; from 1999--No. 11, item 95; No. 40, item 399; from 2000--No. 93, item 1027; No. 94, item 1037; No. 114, item 1191; No. 116, item 1216; No. 119, item 1252; No. 122, item 1316; from 2001--No. 8, item 64) introduced are the following amendments:

1) to Article 6 paragraph 1 introduced is subparagraph 6a which reads:

"6a) provide certification services within the meaning of the provisions on electronic signature, exclusive of the issuance of qualified certificates used by banks when concluding transactions to which they are parties;"

2) Article 7 paragraph 4 now reads:

"4. Having sought an opinion of the President of the National Bank of Poland, the Council of Ministers shall issue a regulation establishing the rules of the producing, making accessible, storing and securing, also with the use of electronic signature, of the bank documents referred to in paragraph 2."

Article 56

To the Act of 4th September 1997 on the Branches of Government Administration (Dz. U., No. 82, 1999, item 928; No. 12, 2000, item 136; No. 43, 2000, item 489; No. 48, 2000, item 550; No. 62, 2000, item 718; No. 70, 2000, item 816; No. 73, 2000, item 852; No. 109, 2000, item 1158; No. 122, 2000, items 1314 and 1321; No. 3, 2001, item 18; No. 5, 2001, item 43f; No. 42, 2001, item 475; No. 63, 2001, item 634; No. 73, 2001, item 761), Article 9 paragraph 2, after subparagraph 4, introduced is subparagraph 5 which reads:

"5) supervision over the provision of services related to electronic signature within the meaning of regulations on electronic signature."

Article 57

Until 31st December 2003, requests referred to in Article 24 paragraph 2, instead of an up-to-date extract from the register of entrepreneurs, may include an extract from the records of economic activity.

Article 58

1. By 31st December 2002, banks and agencies of official authority shall have brought into line their activities regarding the provision of certification services and the use of electronic information systems related to the provision of these services with the requirements of this Act.

2. Within a time frame of four years from the date this Act becomes effective, agencies of official authority shall make it possible for receivers of certification services to submit applications and requests and to perform other acts in an electronic form whenever the relevant legal provisions demand that these be submitted in a definite form or after a definite pattern.

3. The appropriate minister in charge of economy, in agreement with the appropriate minister in charge of public service, shall issue a regulation laying down technical specifications and safety conditions regarding the making of printed forms and patterns, referred to in paragraph 2, available.

4. Within a time frame of one year from the date this Act becomes effective, the appropriate minister in charge of public finances shall adjust the regulations concerning the payment of charges for acts of administration to the requirements of the conduct of legal transactions with the use of electronic signature.

Article 59

1. This Act shall come into force after the expiry of nine months from the date of its promulgation, with the exception of Article 4 points 3-6 and Article 11 paragraph 4 which shall come into force on the day the Republic of Poland becomes a member of the European Union.

2. The provision of Article 4 point 2 becomes vacated on the day the Republic of Poland becomes a member of the European Union.

PRESIDENT OF THE REPUBLIC OF POLAND

Translated by Albert Pol and Maria Chmielewska-Szlajfer