



ANALYSIS

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2011, No. 11

An Act to allow persons who are required or permitted to file, register, or maintain information or documents under certain Acts of Parliament –

- (a) to file, register, and maintain the information or documents in digital formats; and
- (b) to transmit information and documents directly to a digital database for that purpose.

(9 December 2011)

Price \$6.00

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Title - This Act is the Digital Registers Act 2011.
2. Commencement - This Act comes into force on 10 December.

PART 1
PRELIMINARY

3. Interpretation - In this Act, unless the context otherwise requires, –

“digital document” means a document in digital format that –

- (a) is to be filed, or has been registered, on a digital register; or
- (b) was registered on a register in hard copy format and subsequently converted into digital format

“digital format” –

- (a) means a format in which information, a document, or a specified register may be stored, accessed, and displayed by a computer or similar device; and
- (b) means a format specified in regulations made under this Act; and
- (c) includes any format (other than a photocopy document) produced by making a digital copy, image, or reproduction of a document that is in hard copy format

“digital information” means information in digital format that –

- (a) is to be filed, or has been registered, on a digital register; or
- (b) was registered on a register in hard copy format and subsequently converted into digital format

“digital register” means a specified register that is in digital format

“file” means to file, give, provide, submit, deposit, deliver, apply, or otherwise make available for registration on a specified register

“hard copy format” means material that is in 1 or more of the following formats:

- (a) typewritten:
- (b) printed:
- (c) handwritten:
- (d) a photocopy document

“offshore Act” means –

- (a) the International Companies Act 1981-82;
- (b) the International Partnership Act 1984;
- (c) the International Trusts Act 1984;
- (d) the Limited Liability Companies Act 2008;
- (e) the Trustee Companies Act 1981-82;
- (f) any other Cook Islands Act of Parliament that is designated by regulations made under this Act as being an offshore Act for the purposes of this Act;
- (g) all regulations and subsidiary legislation made under an Act that is–
 - (i) listed in paragraphs (a) to (e); or
 - (ii) designated as being an offshore Act in accordance with paragraph (f)

“offshore register” means a specified register that –

- (a) is authorised by, required by, or established by or for the purposes of, an offshore Act; and
- (b) is in digital format

“photocopy document” means a hard copy format reproduction of a document that is in hard copy format by a machine using either a xerographic process or an integrated scanning and printing process

“published terms of use” means terms of use that are available to the public –

- (a) in hard copy format at the offices of a registrar; or
- (b) in digital format, directly or indirectly, from the Internet home page of a digital register

“registered” means registered, filed, deposited, or otherwise entered on a specified register

“registrar” means an officer or agent of the Crown who is statutorily responsible for, or empowered to keep, a specified register

“specified Act” means –

- (a) each of the offshore Acts; and
- (b) the Companies Act 1970-71 and all regulations and subsidiary legislation made under it; and
- (c) any other Cook Islands Act of Parliament that is designated by regulations made under this Act as being a specified Act for the purposes of this Act; and

- (d) all regulations and subsidiary legislation made under an Act that is designated as being a specified Act in accordance with paragraph (c)

“specified register” means a register that –

- (a) is authorised by, required by, or established by or for the purposes of, a specified Act; and
- (b) a registrar is statutorily responsible for or empowered to keep

“terms of use” means the terms on which –

- (a) a person may file or register digital information and digital documents on a digital register; and
- (b) a person may access and use digital information and digital documents on a digital register.

- 4. Application - (1) This Act applies to every specified register.
(2) In the event of a conflict between this Act and a specified Act, this Act prevails unless the specified Act states that the specified Act is to prevail.

PART 2

GENERAL REQUIREMENTS FOR DIGITAL REGISTERS

- 5. Digital registers authorised - (1) A specified register may be kept in digital format.
(2) If a specified register is kept in digital format, the registrar must keep that register by means of a computer or similar device that –
 - (a) records or stores information in a reliable and secure manner; and
 - (b) allows that information to be readily –
 - (i) accessed, displayed, and inspected; and
 - (ii) reproduced in commonly understandable form (for example, text or graphics).
- 6. Digital registers preferred format - (1) The registrar of a specified register must –
 - (a) take all reasonable steps to –
 - (i) convert the register into digital format; and
 - (ii) record and store all information and documents on the register in digital format; and
 - (iii) convert all existing information and documents on the register that are in hard copy format into digital format; and
 - (b) comply with all regulations made under this Act that relate to the matters in paragraph (a).

(2) However, the registrar does not have to comply with subsection (1)(a)(iii) if, in the opinion of the registrar, it would be unduly onerous or expensive to do so.

7. Requirements for filing documents on digital registers - (1) If a registrar receives a document in a format that does not enable it to be registered on a digital register, the registrar may refuse to register the document and, in that event, must request that the document be re-filed in a format that enables it to be registered on the register.

(2) Subsection (3) applies if a specified Act requires a document registered on, or reproduced from, a specified register to have 1 or more of the following on it:

- (a) a signature:
- (b) an attestation:
- (c) a seal:
- (d) handwriting.

(3) The requirements of the specified Act are deemed to be satisfied if –

- (a) a copy of the required signature, attestation, seal, or handwriting in digital format is on the document; or
- (b) an authentication procedure specified in regulations made under this Act is completed for the document in substitution for the required signature, attestation, seal, or handwriting.

8. Security of digital registers - (1) The registrar of a digital register must –

- (a) take all necessary and reasonable steps to ensure the security and integrity of the digital register and all digital information and digital documents registered on it; and
- (b) maintain 1 or more secondary systems (whether digital or in some other format) to ensure the integrity of the register and all digital information and digital documents registered on it in the event of the loss of, damage to, or destruction of all or part of the digital register; and
- (c) comply with all regulations made under this Act that relate to the security and integrity of digital registers and all digital information and digital documents registered on them.

(2) The Audit Office must monitor –

- (a) ongoing compliance with this Act by registrars of digital registers; and
- (b) other matters affecting the general operation of this Act.

(3) In this section, “Audit Office” has the same meaning as in section 2(1) of the Public Expenditure Review Committee and Audit Act 1995-96.

9. Copies of documents and information on specified registers - (1) The registrar of a specified register may do any of the following:

- (a) produce for inspection in a digital format a document registered on the register;
- (b) produce for inspection in a digital format information registered on the register;
- (c) provide in a hard copy format or a digital format a copy of a document registered on the register;
- (d) provide in a hard copy format or a digital format a copy of information registered on the register;
- (e) provide a certified copy of a document or information registered on the register that is produced for inspection under paragraph (a) or (b).

(2) Subsection (1) applies regardless of whether the specified register is kept in a digital format.

(3) A copy of a document or information registered on a specified register may be certified by –

- (a) use of a signature or seal in hard copy format or digital format; or
- (b) affixing to it a certificate in the prescribed form in hard copy format or digital format; or
- (c) use of an authentication procedure or mark specified in regulations made under this Act.

10. Status of digital documents - (1) In the event of a conflict between a digital document registered on a digital register and a hard copy format of that document, the digital document (or a printed copy of the digital document) prevails over the hard copy format of that document except in the case of –

- (a) obvious fraudulent manipulation of the digital document; or
- (b) corruption of the digital document by any means.

(2) A copy of digital information or a digital document in a hard copy format is deemed for all purposes (including notarisation and apostille) to be an original document in hard copy format, and to be admissible in evidence as such, if the copy –

- (a) is generated by, or reproduced from, the digital register on which it is registered; and
- (b) is in a readily understandable form (for example, text or graphics); and
- (c) is certified in accordance with section 9(3).

(3) Subsection (2) applies regardless of whether there is an original copy of the digital information or digital document in hard copy format.

11. Powers of registrar regarding digital register - (1) The registrar of a digital register may –

- (a) produce and publish terms of use for the register:

Digital Registers

- (b) establish rules, procedures, and guidelines (including the hours of operation and the opening and closing times of the register) to govern the operation of the digital register:
 - (c) approve the form and digital format in which digital information and digital documents may be filed or registered on the digital register:
 - (d) establish rules, procedures, and guidelines for the filing of digital information and digital documents by direct digital transmission and may require that digital information and digital documents be filed by direct digital transmission:
 - (e) establish the manner in which supporting evidence that may be required under the relevant specified Act must be included in digital information or a digital document and approve the digital format for that supporting evidence:
 - (f) specify the information that is to be included in a digital document:
 - (g) establish rules, procedures, and guidelines governing searches of the digital register:
 - (h) provide for the locations in which the digital register may be maintained:
 - (i) provide for the locations from which the digital records may be accessed and the time and manner in which they may be accessed:
 - (j) authorise persons or classes of persons to search the digital register and establish conditions and requirements for becoming an authorised person for this purpose:
 - (k) authorise persons or classes of persons to file digital information and digital documents, by direct digital transmission or otherwise, and establish conditions and requirements for becoming an authorised person for this purpose:
 - (l) do any other thing permitted by regulations made under this Act.
- (2) However, the registrar must not exercise the powers under subsection (1) in a manner that is inconsistent with the relevant specified Act unless that—
- (a) is necessary to give full effect and utility to the relevant digital register; or
 - (b) is otherwise provided for in this Act.
- (3) Subsection (4) applies if —
- (a) a specified Act requires —
 - (i) the deregistration, striking off, or removal of any registered person or thing from a specified register; or
 - (ii) the amendment, endorsement, or removal of any entry on a specified register; or

- (iii) any other similar action that would affect the hard copy format of a specified register or the information or documents registered on it; and
- (b) that specified register is kept in a digital format.
- (4) If this subsection applies, the registrar of the digital register must –
 - (a) establish the register in a manner that preserves the integrity of all digital information and digital documents registered on it; and
 - (b) provide some programmable manner of affirmatively recording –
 - (i) the status of the person, thing, or entry; or
 - (ii) the manner in which the digital register, or the digital information and digital documents registered on it, is intended to be affected.

12. Registration of documents on digital register - (1) A digital document filed on a digital register by direct digital transmission is not registered, or deemed to have been registered, until the document is registered on the digital register in the manner notified in the published terms of use of the register.

(2) Subsection (1) applies unless the published terms of use of the register state otherwise.

13. Deemed notice of published terms of use - (1) A person who accesses or uses a digital register, or files digital information or a digital document on a digital register, is –

- (a) deemed to have notice of the published terms of use of the digital register; and
- (b) bound by those terms of use.

(2) Subsection (1) applies regardless of whether or not the person has confirmed his, her, or its assent to those terms of use.

14. Protection of digital register - (1) A person must not file digital information or a digital document on a digital register except –

- (a) as permitted by the digital register's published terms of use; or
- (b) in the manner and form specified by a webpage or other similar digital portal associated with the digital register.

(2) Unless specifically authorised by the registrar of a digital register, a person must not –

- (a) interfere or tamper with, alter, or damage the hardware on which a digital register is hosted or stored; or

- (b) interfere or tamper with, alter, damage, reverse engineer, disassemble, decompile, circumvent a restriction in, or attempt to circumvent a restriction in, the software, machine code, digital information, or a digital document of, or comprising, the digital register.

15. Rectification of specified register - (1) The registrar of a specified register may correct the register if –

- (a) either –
 - (i) a person applies to the registrar for the correction to be made; or
 - (ii) it appears to the registrar that a clerical error was made when information or a document was registered on the register; and
- (b) the registrar is satisfied that –
 - (i) incorrect information has been registered on the register; or
 - (ii) information has been incorrectly registered on the register; or
 - (iii) information has been incorrectly omitted from the register.

(2) Before the registrar corrects the register under subsection (1)(a)(i), the registrar must –

- (a) give written notice to all persons the registrar reasonably believes may be directly affected or concerned by the proposed correction setting out the following information:
 - (i) that an application has been made to correct the register; and
 - (ii) the name of the applicant; and
 - (iii) the name of the person or thing that is proposed to be corrected on the register; and
 - (iv) the reasons for, and details of, the changes sought to be made to the register; and
 - (v) the date by which a written objection to the proposed correction must be received by the registrar, being a date that is not less than 20 working days after the date on which the written notice is given; and
- (b) in the case of an offshore register, give public notice of the matters set out in paragraph (a).

(3) Any person may deliver to the registrar, not later than the date specified in accordance with subsection (2)(a)(v), a written objection to a proposed correction of the register.

(4) The registrar must, as soon as practicable, give the applicant a copy of all objections received by the registrar by the date specified in accordance with subsection (2)(a)(v).

(5) If the registrar receives a written objection to the proposed correction by the date specified in accordance with subsection (2)(a)(v), the registrar must not correct the register unless the registrar is satisfied that the objection –

- (a) has been withdrawn; or
- (b) is incorrect; or
- (c) is vexatious.

PART 3
SPECIFIC REQUIREMENTS FOR OFFSHORE REGISTERS

16. Integrity of offshore financial centre - (1) The registrar of an offshore register must –

- (a) take all reasonable steps to ensure that the server, back-up data, and all related storage and access devices and media on which the offshore register is kept, maintained, backed up, or archived cannot be accessed by a person unless, at the time of access, the person is physically present in the Cook Islands and is –
 - (i) a trustee company; or
 - (ii) an officer or employee of a trustee company acting in that capacity; or
 - (iii) a person authorised by a trustee company to access the register; or
 - (iv) a person authorised by the registrar to access the register; or
 - (v) a person authorised by the High Court to access the register; and
- (b) take all reasonable steps to enter into an access agreement with each trustee company that wishes to access the offshore register; and
- (c) comply with all regulations made under this Act that relate to the matters in this subsection.

(2) In this section, “access agreement” means an agreement between a registrar of an offshore register and a trustee company that outlines the terms of access the trustee company has to the offshore register.

17. Digital filing under offshore Acts - A person must not file digital information or a digital document on an offshore register unless, at the time of filing, the person is physically present in the Cook Islands and is –

- (a) a trustee company; or
- (b) an officer or employee of a trustee company acting in that capacity; or
- (c) a person authorised by a trustee company to file digital information or a digital document on the register; or

- (d) a person authorised by the registrar of the offshore register to file digital information or a digital document on the register; or
- (e) a person authorised by the High Court to file digital information or a digital document on the register.

18. Access to offshore registers - (1) A person must not search or have access to an offshore register unless, at the time of the search or access, that person is physically present in the Cook Islands and is –

- (a) a trustee company; or
- (b) an officer or employee of a trustee company acting in that capacity; or
- (c) a person authorised by a trustee company to search or access the register; or
- (d) a person authorised by the registrar of the offshore register to search or access the register; or
- (e) a person authorised by the High Court to search or access the register.

(2) Despite subsection (1), a person who accesses digital information or a digital document in accordance with that subsection may give a copy of that information or document to any other person (“person B”) regardless of whether person B is physically present in the Cook Islands.

(3) Subsection (2) is subject to –

- (a) the requirements of the offshore Acts, this Act, regulations made under this Act, and any published terms of use of the register; and
- (b) any other terms or conditions that apply to the register or on which access to the register was granted.

(4) Nothing in this section applies to a person who, for the purpose of maintenance, repair, servicing upgrade, or other similar purpose has access to the software programming (but not the data comprising digital information or digital documents) under which a digital register is operated.

PART 4 MISCELLANEOUS MATTERS

19. Offences - A person who breaches section 14, 17, or 18 commits an offence and is liable on conviction, –

- (a) if the person is an individual, to a fine not exceeding \$5,000, or imprisonment for a term not exceeding 1 year, or both; or
- (b) in any other case, to a fine not exceeding \$25,000.

20. Regulations - The Queen’s Representative may from time to time, by Order in Executive Council, make regulations for all or any of the following purposes:

- (a) designating offshore Acts for the purposes of this Act;
- (b) designating specified Acts for the purposes of this Act:

- (c) prescribing the manner in which the registrar of a specified register must –
 - (i) convert the register into digital format; and
 - (ii) record and store all information and documents on the register in digital format; and
 - (iii) convert all information and documents on the register that are in hard copy format into digital format:
- (d) specifying an authentication procedure that may be completed for a document in substitution for a signature, an attestation, a seal, or handwriting that is required by a specified Act:
- (e) prescribing matters that relate to the security and integrity of digital registers and all digital information and digital documents registered on them:
- (f) prescribing the form of a certificate to be affixed in order to certify a copy of a document or information registered on a specified register:
- (g) specifying an authentication procedure or mark in order to certify a copy of a document or information registered on a specified register:
- (h) prescribing matters that may otherwise be dealt with by a registrar under the provisions of section 11:
- (i) prescribing steps that must be taken by a registrar of an offshore register to protect access to the register:
- (j) prescribing matters that relate to access agreements between a registrar of an offshore register and a trustee company:
- (k) prescribing the digital format in which information, a document, or a specified register may be stored, accessed, and displayed by a computer or similar device (for example, the visible appearance, computer file type, or characteristics of the computer file type):
- (l) governing the time of registration assigned when the information or a document is filed on a digital register in digital format or by direct digital transmission:
- (m) designating parts of the Cook Islands where information may be filed in accordance with this Act:
- (n) governing the filing or registration of information or a document that is presented in a prescribed digital format:
- (o) governing the filing or registration of information or a document by direct digital transmission:
- (p) prescribing the digital records to be maintained by each registrar:
- (q) governing the custody, disposition, and destruction of digital information and digital documents and of written documents that have been registered in a digital format and permitting registrars to dispose of such documents by returning them to the parties:

- (r) governing the time, manner, and circumstances in which information or a document registered in a digital format may be altered or corrected:
- (s) governing the receipt of digital information or a digital document, the time and manner of submitting and registering digital information or a digital document, and the hours of opening and closing of a digital register:
- (t) governing the protection against unauthorised access to or use of a digital register:
- (u) governing the security of any digital register and the maintenance of a secondary system, whether digital or in a hard copy format, to ensure the integrity of the register:
- (v) exempting any person, document, or thing from any of the provisions of this Act or regulations made under this Act:
- (w) prescribing anything that is required to be prescribed under this Act:
- (x) prescribing the fees that may be charged by a registrar in respect of any matter or thing that a registrar may or must do in respect of any digital information or digital document:
- (y) providing for such other matters as are contemplated by, or necessary for giving full effect to, this Act and for its due administration.

21. Consequential amendments to other Acts - The Acts specified in the Schedule are amended in the manner set out in that schedule.

SCHEDULECONSEQUENTIAL AMENDMENTS TO OTHER ACTS1 Public Expenditure Review Committee and Audit Act 1995-96 consequentially amended

Section 27 of the Public Expenditure Review Committee and Audit Act 1995-96 is amended by adding the following subsection:

- “(2) In discharging its duties under subsection (1), the Office must –
- (a) have regard to the need for, and desirability of, promoting the cost-effective, efficient, and secure implementation of –
 - (i) information technology within Government; and
 - (ii) the Digital Registers Act 2011; and
 - (b) ensure that all audit and inspection activities review and examine –
 - (i) the ongoing implementation of the Digital Registers Act 2011; and
 - (ii) the security, integrity, efficiency, and cost-effectiveness of information technology used by the Government; and
 - (iii) the security, integrity, efficiency, and cost-effectiveness of the Government’s digital registers (as that term is defined in section 3 of the Digital Registers Act 2011).”

2 Crimes Act 1969 consequentially amended

(1) Section 2(1) of the Crimes Act 1969 is amended by inserting the following definitions in their appropriate alphabetical order:

““document” means a document in any form; and includes –

- (a) any writing on any material; and
- (b) information recorded or stored by means of any recording device, computer, electronic device, or any other device, and material subsequently derived from information so recorded or stored; and
- (c) a book, manuscript, newspaper, periodical, pamphlet, magazine, sheet of letterpress, sheet of music, map, plan, chart, painting, picture, etching, print, table, graph, or drawing; and
- (d) a photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced; and
- (e) a second or subsequent edition of any of the above;

“electronic” includes electrical, digital, magnetic, optical, electromagnetic, biometric, and phototonic;”.

(2) The definition of “Indecent document” in section 2(1) of the Crimes Act 1969 is amended by omitting “book, newspaper, picture, photograph, print, or writing, and any paper or other thing of any description whatsoever,” and substituting “document”.

(3) Section 80(a) is amended by omitting “sketch, photograph, map, plan, model, design, pattern, specimen, article, note, or document” and substituting “sketch, model, design, pattern, specimen, article, note, or document”.

(4) Section 258(b) is amended by omitting “paper or parchment” and substituting “document”.

(5) Section 275 is amended by omitting “book,” in each place where it appears.

(6) Section 276(a) is amended by omitting “book,”.

(7) The definition of “Document” in section 286(1) of the Crimes Act 1969 is repealed and the following definition is substituted:

“document” does not include any trade mark on any goods, or any inscription on stone or metal or other like material;”.

3 Evidence Act 1968 consequentially amended

(1) Section 2 of the Evidence Act 1968 is amended by inserting the following definitions in their appropriate alphabetical order:

““document” means a document in any form; and includes—

- (a) any writing on any material; and
- (b) information recorded or stored by means of any recording device, computer, electronic device, or any other device, and material subsequently derived from information so recorded or stored; and
- (c) a book, manuscript, newspaper, periodical, pamphlet, magazine, sheet of letterpress, sheet of music, map, plan, chart, painting, picture, etching, print, table, graph, or drawing; and
- (d) a photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced; and
- (e) a second or subsequent edition of any of the above;

“electronic” includes electrical, digital, magnetic, optical, electromagnetic, biometric, and phototonic;”.

(2) Section 21(1) of the Evidence Act 1968 is amended by repealing the definition of “Document”.

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