# A new e-bill for Kenya

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Kenyans may soon realise e-commerce if both the Executive and Legislative arms of Government fast-track legislation expected to address several issues in the sub-sector.

The legislation, which the Highway Africa News Agency (HANA) has learned about is at an advanced stage, and is expected to spur e-commerce and put Kenya at par with other nations, which have embraced the same. It means that individuals and businesses within and outside Kenya will be able to transact without necessarily seeing or even having to know each other physically.

Simply put, e-commerce is a form of business transaction in which the parties interact electronically rather than by physical exchanges or direct physical contact. It is also a means of doing business online through the World Wide Web by purchasing goods and services online.

In addition, e-commerce includes business-to-business connections that make purchasing easier for big corporations. It also includes the so-called micro transactions that allow businesses or consumers to pay small amounts of cash to access online content or games.

Statistics show that e-commerce is estimated to be worth over US$2 trillion and extraordinary growth is expected in the next few years. Kenya only needs to tap 1% of this business to thrive.

Today, very little business is transacted online in Kenya. E-commerce has great potential to expand markets, productivity and competitiveness, according to experts.

Kenya's competitive edge is agriculture, manufacturing, tourism, arts and handicrafts, hotels and restaurants and shipping sectors.

As of June, this year, it was projected that the total number of credit card users would have increased and surpassed 100,000 if the pace of subscription remained consistent.

There are more than one million debit cards. This forms the basis upon which e-commerce could be developed, improved and sustained. However, despite the availability of the necessary infrastructure, e-commerce has not taken off in Kenya strongly due to the absence of enabling legislation.

At the heart of the matter has been the Government's failure or slowness to address ICT policy and strategy in a cohesive and comprehensive manner, which would have provision for an e-transactions bill.

The recently withdrawn Kenya Communications Amendment Act 2007 was also lacking in many areas that would have enabled the growth of e-commerce.

Legislation to fast-track electronic-commerce is now being developed by the e-Government Secretariat at the Office of the President.

Dubbed the Electronic Transactions Bill 2007, the legislation, if passed by Parliament and becomes law, will "facilitate and promote the use of electronic transactions in Kenya by creating legal certainty and public trust around transactions which are conducted with various forms of information and communications technologies (ICTs).

The Bill states that it "aims at encouraging the use of ICTs and e-government and e-commerce services as well as to protect the privacy of the public and the interests of consumers and clients due to potential misuse and unauthorised use of ICTs".

It says it "may be cited as the 'Electronic Transactions Act, 2007' and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and in this regard the Minister may appoint different dates for different provisions."

It further claims that its "overall object is to create a safe, secure and efficient legal environment for individual consumers and investors, businesses, Government, and other relevant entities to conduct and use electronic transactions".

The Act to be administered under the auspices of the sector regulator, the Communication Commission of Kenya (CCK), addresses among other things the legal recognition of e-Signatures, cyber crime, data protection and privacy.

According to the draft Bill, the Act will have several functions among them:
* To facilitate electronic commerce, eliminate barriers to electronic commerce resulting from uncertainties over writing and signature requirements, and to promote the development of the legal and business infrastructure necessary to implement secure electronic commerce;
* To facilitate electronic government-related transactions such as electronic filing of documents with government agencies and statutory corporations, and to promote efficient delivery of government services by means of reliable electronic records;
* To minimise the incidence of forged electronic records, intentional and unintentional alteration of records, and fraud in electronic commerce and other electronic transactions;
* To promote public confidence in the integrity and reliability of electronic records and electronic commerce, and to foster the development of electronic commerce through the use of electronic signatures to lend authenticity and integrity to correspondence in any electronic medium;
* To facilitate coordination between and among the various ministries so as to ensure the effective development of harmonized and inter-operable e-government services.

On electronic signatures, it states that, "where any law requires a signature of a person on a document, the requirement of the law is fulfilled, if the document is in the form of electronic message, by an electronic signature which: adequately identifies the person and adequately indicates the person's approval of the information to which the signature relates; and is as reliable as is appropriate given the purpose for which and the circumstances in which signature is required."

On privacy and protection of data and information systems, the Bill proposes that the minister responsible for Information and Communication Technology may, by notification in the Kenya Gazette "declare any computer system or computer network a protected Information System".

The minister may also prescribe minimum security standards or prohibitions for protected information systems in respect of: "Physical security including back-up and offsite retention; Access, control and transfer of information; Relocation of computer hardware and software; Disaster recovery plans; and any other matter required for adequate security and management of such systems."

The proposed law provides for actionable offences ranging from unauthorised access to an electronic system, data, and password to unauthorised interception. It also provides penalties for data interference, electronic fraud and forgery.

And upon conviction, offenders will be liable to fines ranging between $2,985 and $4,478 or imprisonment for terms between two and three years or both.

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