

သက်သေခံအက်ဥပဒေကိုပြင်ဆင်သည့် ဥပဒေ

(၂၀၁၅ ခုနှစ်၊ ပြည်ထောင်စုလွှတ်တော်ဥပဒေအမှတ် ၇၃။)

၁၃၇၇ ခုနှစ်၊ နတ်တော်လဆန်း ၁၃ ရက်

(၂၀၁၅ ခုနှစ်၊ ဒီဇင်ဘာလ ၂၄ ရက်)

ပြည်ထောင်စုလွှတ်တော်သည် ဤဥပဒေကိုပြဋ္ဌာန်းလိုက်သည်။

၁။ ဤဥပဒေကို သက်သေခံအက်ဥပဒေကိုပြင်ဆင်သည့် ဥပဒေ ဟုခေါ်တွင်စေရမည်။

၂။ သက်သေခံအက်ဥပဒေပုဒ်မ ၃ တွင် -

(က) “Document” ဆိုသည့်စကားရပ် အဓိပ္ပာယ်ဖွင့်ဆိုချက်၏နောက်တွင် “In this expression, electronic record and information are included” ဆိုသည့် စကားရပ်ကို ဖြည့်စွက်ရမည်။

(ခ) “Document” ဆိုသည့်စကားရပ်၏ ဥပမာကို အောက်ပါအတိုင်း အစားထိုးရမည် -

“Illustrations

- (1) any map, plan, graph or drawing;
- (2) any photograph;
- (3) any label, marking or other writing which identifies or describes anything of which it forms a part, or to which it is attached by any means whatsoever;
- (4) any disc, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (5) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (6) any paper or other material on which there are marks, impressions, figures, letters, symbols or perforations having a meaning for persons qualified to interpret them; and

(7) Any record generated, sent, received or stored by means of electronic, magnetic, optical or any other similar technologies in an information system or for transmission from one information system to another;”

(ဂ) သက်သေခံအက်ဥပဒေပုဒ်မ ၃ တွင်ပါရှိသော “Document” ဆိုသည့်စကားရပ် အဓိပ္ပာယ် ဖွင့်ဆိုချက်နှင့် ဥပမာတို့၏နောက်တွင် “စာတမ်းအမှတ်အသား မိတ္တူ”ဆိုသည့် စကားရပ် အဓိပ္ပာယ်ဖွင့်ဆိုချက်ကို အောက်ပါအတိုင်း ဖြည့်စွက်ရမည် -

“Copy of a document” includes-

- (1) in the case of a document falling within paragraph (4) of above illustration of the definition of “document,” a transcript of the sounds or other data embodied in it;
- (2) in the case of a document falling within paragraph (5) of above illustration of that definition, a reproduction or still reproduction of the image or images embodied in it, whether enlarged or not;
- (3) in the case of a document falling within paragraph (4) and (5) of that definition, such a transcript together with such a still reproduction; and
- (4) in the case of a document not falling within paragraph (5) of that definition of which a visual image is embodied in a document falling within that clause, a reproduction of that image, whether enlarged or not, and any reference to a copy of the material part of a document must be construed accordingly.”

၃။ သက်သေခံအက်ဥပဒေ ပုဒ်မ ၉ ဥပမာ(စ)၏နောက်တွင် (ဆ)အဖြစ် အောက်ပါအတိုင်း ဖြည့်စွက်ရမည်-

“(g) *A* seeks to adduce evidence against *B* in the form of an electronic record.

The method and manner in which the electronic record was (properly or improperly) generated, send, received or stored (by *A* or *B*), the reliability of the devices and the circumstances in which the devices were (properly or improperly) used or operated to generate, sent, receive or store the electronic record, may be relevant facts (if the contents are relevant) as

authenticating the electronic record and therefore as explaining or introducing the electronic record, or identifying it as the relevant electronic record to support a finding that the record is, or is not, what its proponent *A* claims.”

၄။ သက်သေခံအက်ဥပဒေပုဒ်မ ၆၀ ၏ နောက်တွင် ပုဒ်မ ၆၀-က အဖြစ် အောက်ပါအတိုင်း ဖြည့်စွက်ရမည်-

Evidence through live video or live television links

- “60 A. (1) Notwithstanding anything contained in this Act, a person may, the permission of the court, give evidence through a video conferencing or live television link in any proceedings, if -
- (a) the witness is below the age of 16 years;
 - (b) it is expressly agreed between the parties to the proceedings that evidence may be so given;
 - (c) the witness is outside the Republic of the Union of Myanmar; or
 - (d) the court is satisfied that it is expedient in the interests of justice to do so.
- (2) In considering whether to give permission for a witness outside the Republic of the Union of Myanmar to give evidence by live video or live television link under this section, the court shall have regard to all the circumstances of the case including the followings:
- (a) the reasons for the witness being unable to give evidence in the Republic of the Union of Myanmar.
 - (b) the administrative and technical facilities and arrangements made at the place where the witness is to give his evidence; and
 - (c) whether any party to the proceedings would be unfairly prejudiced.
- (3) The court may, in giving permission under sub-section (1), make an order on all or any of the following matters:
- (a) the persons who may be present at the place where the witness is giving evidence;

- (b) the person who may be excluded from the place while the witness is giving evidence;
 - (c) the persons in the court who must be able to be heard, or seen and heard, by the witness and by the persons with the witness;
 - (d) the person in the court who must not be able to be heard, or seen and heard, by the witness and by the persons with the witness;
 - (e) the person in the court who must be able to see and hear the witness and the persons with the witness;
 - (f) the stages in the proceedings during which a specified part of the order is to have effect;
 - (g) the method of operation of the live video or live television link system including compliance with the appropriate technical standards as may be determined by the Chief Justice of the Union; and
 - (h) any other order the court considers necessary in the interests of justice.
- (4) The court may revoke, suspend or vary any order made under this section if-
- (a) the live video or live television link system stops working and it would cause unreasonable delay to wait until a working system becomes available;
 - (b) it is necessary for the court to do so to comply with its duty to ensure that the proceedings are conducted fairly to the parties thereto;
 - (c) it is necessary for the court to do so, so that the witness can identify a person or a thing or so that the witness can participate in or view a demonstration or an experiment;
 - (d) it is necessary for the court to do so because part of the proceedings is being heard outside a court; or

- (e) there has been a material change in the circumstances after the court has made an order.
- (5) The court shall not make an order under this section, or include a particular provision in such an order, if to do so would be inconsistent with the court's duty to ensure that the proceedings are conducted fairly to the parties to the proceedings.
- (6) An order made under this section shall not cease to have effect merely because the person in respect of whom it was made attains the age of 16 years before the proceedings in which it was made are finally determined.
- (7) Evidence given by a witness, whether in the Republic of the Union of Myanmar or elsewhere, through a video conferencing or live television link by virtue of this section shall be deemed for the purposes of section 193, 194, 195, 196, 205 and 209 of the Penal Code as having been given in the proceedings in which it is given.
- (8) Where a witness gives evidence in accordance with this section, he shall, for the purpose of this Act, be deemed to be giving evidence in the presence of the court.”

၅။ သက်သေခံ အက်ဥပဒေ ပုဒ်မ ၆၂ ရှင်းလင်းချက်(၂)နှင့် ဥပမာ၏နောက်တွင် အောက်ပါအတိုင်း ဖြည့်စွက်ရမည် -

“Explanation 3 – Notwithstanding anything contained in Explanation 2, if a copy of a document expressed in section 3 in the form of an electronic record is shown to reflect that document accurately, then the copy is primary evidence.

Illustrations

- (a) An electronic record, which has been manifestly or consistently acted on, relied upon, or used as the information recorded or stored on the computer system, is primary evidence of that document.
- (b) If the electronic record has not been manifestly or consistently acted on, relied upon, or used as a record of the information in the document, the electronic record may be treat as secondary evidence of that document.”

၆။ သက်သေခံအက်ဥပဒေပုဒ်မ ၆၃၊ ပုဒ်မခွဲ (၂)ကို အောက်ပါအတိုင်း အစားထိုးရမည်-

“(2) except for copies referred to Explanation 3 to Section 62, copies made from the original by electronic, electrochemical, chemical, magnetic, mechanical, optical, telematics or other technical processes, which in themselves ensure the accuracy of the copy, and copies compared with such copies;”

၇။ သက်သေခံအက်ဥပဒေပုဒ်မ ၆၇ ၏ နောက်တွင် ပုဒ်မ ၆၇-က အဖြစ် အောက်ပါအတိုင်း ဖြည့်စွက်ရမည်-

Require-
ment for
signature

“67A. Where any existing law requires a signature, or provides for certain consequences if a document or a record is not signed, that requirement is satisfied in relation to an electronic record if-

- (a) a method is used to identify the person and to indicate that person's intention in respect of the information contained in the electronic record; and
- (b) the method is used either-
 - (i) as reliable as appropriate for the purpose for which the electronic record was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
 - (ii) proven in fact to have fulfilled the functions described in sub-section (a), by itself or together with further evidence.

၈။ သက်သေခံအက်ဥပဒေပုဒ်မ ၁၁၄ ၏ နောက်တွင် ပုဒ်မ ၁၁၄-က အဖြစ် အောက်ပါအတိုင်း ဖြည့်စွက်ရမည်-

Presumpti-
ons in relation
to electronic
records

“114A. (1) Unless evidence sufficient to raise doubt about the presumption is adduced, where a device or process is one that, or is of a kind that, if properly used, ordinarily produces or accurately communicates an electronic record, the court shall presume that in producing or communicating that electronic record on the occasion in question, the device or process produced or accurately communicated the electronic record.

Illustration

A seeks to adduce evidence in the form of an electronic record or document produced by an electronic device or process. *A* proves that the electronic device or process in question is one that, or is of a kind that, if properly used, ordinarily produces that electronic record or document. This is a relevant fact for the court to presume that in producing the electronic record or document on the occasion in question, the electronic device or process produced the electronic record or document which *A* seeks to adduce.

- (2) Unless evidence to the contrary is adduced, the court shall presume that any electronic record generated, recorded or stored is authentic if it is established that the electronic record was generated, recorded or stored in the usual and ordinary course of business by a person who was not a party to the proceedings on the occasion in question and who did not generate, record or store it under the control of the party seeking to introduce the electronic record.

Illustration

A seeks to adduce evidence against *B* in the form of an electronic record. The fact that the electronic record was generated, recorded or stored in the usual and ordinary course of business by *C*, a neutral third party, is a relevant fact for the court to presume that the electronic record is authentic.

- (3) Unless evidence to the contrary is adduced, where an electronic record was generated, recorded or stored by a party who is adverse in interest to the party seeking to adduce the evidence, the court shall presume that the electronic record is authentic in relation to the authentication issues arising from the generation, recording or storage of that electronic record.

Illustration

A seeks to adduce evidence against B in the form of an electronic record. The fact that the electronic record was generated, recorded or stored by B, who opposes the relevance of the evidence is a relevant fact for the court to presume that the electronic record is authentic.

- (4) For the purposes of subsection (2), in criminal proceedings a party to the proceedings shall include –
 - (a) the police officer or other officer of a law enforcement agency who was involved in the investigation of offences allegedly committed by the accused person; or
 - (b) an accomplice of the accused person even though he is not charged with an offence in the same proceedings.
- (5) The matters referred to in this section may be established by an affidavit given to the best of the deponent's knowledge and belief.”

ပြည်ထောင်စုသမ္မတမြန်မာနိုင်ငံတော် ဖွဲ့စည်းပုံအခြေခံဥပဒေအရ ကျွန်ုပ်လက်မှတ်ရေးထိုးသည်။

(ပုံ) သိန်းစိန်
နိုင်ငံတော်သမ္မတ
ပြည်ထောင်စုသမ္မတမြန်မာနိုင်ငံတော်