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# Assessment Report on E-commerce (Evidence)

**Presentation at the**

**First Consultation Workshop for  
Working Group 1 – ITU-EC HIPCAR Project**

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# Background

- Integrity, availability, confidentiality, authenticity, authorship, and time of evidence of transactions are fundamental for e-commerce
- Hacking, cryptography, re-mailing, cloud computing, corporate frauds, and cybercrimes in general are challenges to e-evidence
- Digital signature, time-stamping, ISO Norms on Information security, frameworks of IT Governance, e-Notary, give the impression that e-evidence may be safer and more reliable than conventional evidence
- Regulating on e-evidence requires striking a balance between technical / procedural aspects, security /privacy
- Massive quantity of data to be analysed, constant development and update of technical skills: complex tasks for implementation
- Commonwealth Secretariat: Draft Model Law on Electronic Evidence (based on UNCITRAL, Singapore, Canada)
- ITU's "Toolkit for Cybercrime Legislation" and "Understanding Cybercrime: A Guide for Developing Countries"

# Some benchmarks – national laws:

- **France: e-evidence has same weight as of paper evidence where integrity and authorship are properly confirmed**
- **Germany: digital certificate providers shall provide tracking records of security measures, and offer time-stamping**
- **Italy: “informatics documents” are valid if they meet specified requirements**
- **USA (Illinois): electronic file is secure if advanced security procedure is adopted in line with good faith / commercially reasonable care**
- **Spain: conformity with technical standards published in the Official Gazette establishes legal presumption**
- **Budapest Convention, Article 14: “Each Party shall adopt such legislative and other measures as may be necessary (...)”**

# Connection with other areas:

- **Interception of communication**
- **Freedom of information**
- **Cybercrime**
- **Expedited preservation**
- **Production order**
- **Search and seizure**
- **Real-time collection**
- **Digital signature**

# E-EVIDENCE

## - Regional Laws

**Tables: General status by Country, and individual status by subject matter**

Obs.: Legends of classification:

Good - there is legislation which adequately addresses the key issues

Fair - there is some form of reference to the issues in legislation which does not adequately address the key issues

Limited - there is reference on the form of policy or consultation document or draft legislation. In case of Bill of Law, "Limited" is the default.

None - there is no reference in the legislative texts to the key issues.



<b>Country</b>	<b>Definitions</b>	<b>General admissibility of electronic records</b>	<b>Application of the best evidence rule</b>	<b>Authentication</b>	<b>Presumption of integrity</b>	<b>Standards, proof of affidavit and cross examination</b>	<b>Agreement of admissibility of electronic records</b>	<b>Admissibility of electronic signature</b>
<b>Grenada</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>
<b>Guyana</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>
<b>Haiti</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>
<b>Jamaica</b>	<b>Limited</b>	<b>Good</b>	<b>None</b>	<b>None</b>	<b>Fair</b>	<b>Good</b>	<b>None</b>	<b>None</b>
<b>St. Kitts &amp; Nevis</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>
<b>St. Lucia</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>
<b>St. Vincent &amp; the Grenadines</b>	<b>None</b>	<b>Good</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>Good</b>
<b>Suriname</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>
<b>Trinidad &amp; Tobago</b>	<b>Fair</b>	<b>Good</b>	<b>None</b>	<b>Good</b>	<b>Fair</b>	<b>Good</b>	<b>None</b>	<b>None</b>

# Definitions

- None country's legal texts in provide for all, nearly all or the most substantive portions of the key elements.
- The legal texts in 3 countries include some of the key elements but miss substantial points.
- 2 countries have reference on the form of policy or consultation document or draft legislation.
- In 10 countries there is no reference in the legislative texts to the key issues.

GOOD	FAIR	LIMITED	NONE
	Barbados, Belize, Trinidad & Tobago.	The Bahamas, Jamaica.	Antigua & Barbuda, Dominica, Dominican Rep., Grenada Guyana, Haiti, St. Kitts & Nevis, St. Lucia, Suriname, St. Vincent & the Grenadines



# General admissibility of electronic records

- 5 country's legal texts in provide for all, nearly all or the most substantive portions of the key elements.
- No country legal text includes some of the key elements but miss substantial points.
- 1 countries have reference on the form of policy or consultation document or draft legislation.
- In 9 countries there is no reference in the legislative texts to the key issues.

GOOD	FAIR	LIMITED	NONE
The Bahamas, Belize, Jamaica, St. Lucia, Trinidad & Tibago		Barbados	Antigua & Barbuda, Dominica, Dominican Rep., Grenada Guyana, Haiti, St. Kitts & Nevis, St. Vincent & the Grenadines, Suriname.

# Application of the best evidence rule

- Belize's legal text provides for all, nearly all or the most substantive portions of the key elements.
- In 14 countries there is no reference in the legislative texts to the key issues.

GOOD	FAIR	LIMITED	NONE
Belize			All the others.

# Authentication

- 3 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
- In 12 countries there is no reference in the legislative texts to the key issues.

GOOD	FAIR	LIMITED	NONE
Bahamas, Belize, Trinidad & Tobago			All the others.

# Presumption of integrity

- 3 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
- The legal texts in 2 countries include some of the key elements but miss substantial points.
- None country has reference on the form of policy or consultation document or draft legislation.
- In 10 countries there is no reference in the legislative texts to the key issues.

GOOD	FAIR	LIMITED	NONE
The Bahamas, Barbados, Belize	Jamaica, Trinidad & Tobago		Antigua & Barbuda, Dominica, Dominican Rep., Grenada Guyana, Haiti, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Suriname.

# Standards, proof of affidavit and cross examination

- 3 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
- In 12 countries there is no reference in the legislative texts to the key issues.

GOOD	FAIR	LIMITED	NONE
Belize, Jamaica, Trinidad & Tobago			All the others

# Agreement of admissibility of electronic records

- Belize's legal text provides for all, nearly all or the most substantive portions of the key elements.
- In 14 countries there is no reference in the legislative texts to the key issues.

GOOD	FAIR	LIMITED	NONE
Belize			All the others.

# Admissibility of Electronic Signature

- 3 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
- In 12 countries there is no reference in the legislative texts to the key issues.

GOOD	FAIR	LIMITED	NONE
The Bahamas, Barbados, St. Vincent & the Grenadines.			All the others

# Recommendations:

- **Glossary with proper definitions (“computer”, “electronic device”, “electronic document/file/record”)**
- **Address “content data”, “location data”, “traffic data”, “image”**
- **Define scope of Courts admissibility: civil, criminal, administrative, labour**
- **Regulate conditions for admissibility (concepts, standards, practices) and for presumption of integrity**
- **Refer to commonly accepted criteria (ex.: principle of equivalence between electronic and non-electronic)**
- **Establish procedural approach (to confirm integrity of document) in lieu of best evidence rule (where applicable); regulate on affidavits, cross-examination, search and seizure**
- **Recognize contractual agreements on admissibility of evidence**
- **Refer to digital signature (and certification of attributes, and time stamping), and to videoconferencing (where applicable)**