

Assessment Report on Electronic Commerce (Transactions)

Presentation at the

First Consultation Workshop for

Working Group 1 – ITU-EC HIPCAR Project

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Objective

This presentation seeks to provide initial assessments of regional Electronic Transactions frameworks against the defined best practice.

Overview

- Electronic Commerce Frameworks are largely geared to establishing legal equivalence between electronic documents and the paper-based alternative.
- By establishing this equivalence, the expectation is that prevailing contract law can be readily applied to transactions facilitated through electronic means.
- Key to the establishing of equivalence is the ability to confirm the authenticity of information and documents presented primarily in an electronic fashion

Overview

- To treat with the issue of authenticity, a body of work has developed on the role and function of ***electronic signatures*** in this regard
- Associated with this, is the consideration of appropriate administration of persons providing third-party electronic signature services
 - This is made all the more challenging by the necessary considerations of this form of business
 - Intensely associated with security of client's information
 - inherently about degrees of trust in the provider
 - Intrinsically cross border in nature

Developing an analytical benchmark

The Report identifies 7 areas of consideration which together encapsulate all principles:

- Definition of Key concepts
- Legal Effect of electronic transactions
- Legal Requirements for the validity of e-documents
- Formation of Contracts
- Electronic Signatures
- Consumer Protection
- Liabilities of Intermediaries and telecoms providers

Definition of Key Concepts: Key Questions

- Does the framework identify the legitimate parties in transactions affected?
- Does the framework clearly identify the environments appropriately considered “electronic” for the application of its principles and provisions ?
- Does the framework clearly identify key instruments and systems which are established to be equivalent to an existing paper-based instrument or system?

Legal Effect of electronic transactions: Key questions

- Does the Policy framework explicitly bind the State, thus facilitating e-government services?
- Does the policy framework identify classes of documents for which it will not be applied?
- Does the framework reinforce that the use of electronic means remains voluntary on the part of the users?

Legal Requirements for the validity of e-documents: Key questions

- Does the framework defer from identifying or describing any specific technological solution?
- Does the framework limit the validity of a document solely because of its electronic nature?
- Does the framework provide equivalence between electronic documents and its comparative in writing?
- Does the framework outline conditions to validate the authenticity of an electronic document as an original instrument?
- Does the framework address the admissibility of an electronic document for evidential weight?
- Does the framework require the retention of electronic documents?

Formation of Contracts: Key questions

- Does the framework outline how the source of an electronic document is to be attributed?
- Does the framework outline how the time of sending or receipt of an electronic document is established?
- Does the framework outline how the place of residence or work of either party in a transaction is established?
- Does the framework outline requirements treating with errors for a valid electronic contract?
- Does the framework state that the parties of a contract may agree to terms which vary from these provisions ?

Electronic Signatures: Key questions

- Does the framework identify what constitutes an electronic signature?
- Does the framework recognize different classes of electronic signature?
- Does the framework outline how providers of advanced signature services are to be administered?
- Does the framework outline the role, responsibilities and associated liabilities of advanced signature service providers

Consumer Protection: Key questions

- Does the framework provide specific requirements of the vendor in the execution of electronic contracts with consumers?
- Does the framework outline provide for the voidance of electronic contracts?
- Does the framework provide protection of the consumer from unwarranted communications?

Liability of Intermediaries:

Key questions

- Does the framework specify persons that can be identified as intermediaries?
- Does the framework outline responsibilities of intermediaries and telecommunications providers in the facilitation of an electronic contract, or transmittal of an electronic document?
- Does the framework outline limitations to the liabilities of these persons in the instance that there is illegal activity associated with the electronic document or contract?

Summary of findings

Country/ Region	1. Key Definitions	2. Legal effect of electronic transactions	3. Requirements for the validity of e-documents	4. Formation of Contracts
Antigua & Barbuda	GOOD	GOOD/ FAIR	GOOD	GOOD
Bahamas	GOOD	GOOD	GOOD	GOOD
Barbados	GOOD	GOOD/ FAIR	GOOD	FAIR
Belize	FAIR	GOOD	GOOD	GOOD
Dominica	NONE	NONE	NONE	NONE
Dominican Republic	NONE	NONE	NONE	NONE
Grenada*	(FAIR)	(GOOD)	(GOOD)	(GOOD)
Guyana	NONE	NONE	NONE	NONE
Haiti	NONE	NONE	NONE	NONE
Jamaica	GOOD/ FAIR	GOOD	GOOD	GOOD
St. Kitts & Nevis	NONE	NONE	NONE	NONE
St. Lucia	NONE	NONE	NONE	NONE
St. Vincent & the Grenadines	GOOD	GOOD	GOOD	GOOD
Suriname	NONE	NONE	NONE	NONE
Trinidad & Tobago*	(GOOD)	(GOOD)	(GOOD)	(GOOD)

Summary of findings (cont'd)

Country/ Region	5. Electronic Signatures	6. Consumer Protection	7. Intermediaries and Telcoms providers
Antigua & Barbuda	GOOD/ FAIR	FAIR	GOOD
Bahamas	POOR	NONE	GOOD
Barbados	GOOD/ FAIR	NONE	GOOD
Belize	NONE	GOOD	NONE
Dominica	NONE	NONE	NONE
Dominican Republic	NONE	NONE	NONE
Grenada*	(FAIR)	(GOOD)	(GOOD)
Guyana	NONE	NONE	NONE
Haiti	NONE	NONE	NONE
Jamaica	GOOD	GOOD	GOOD
St. Kitts & Nevis	NONE	NONE	NONE
St. Lucia	NONE	NONE	NONE
St. Vincent & the Grenadines	GOOD	GOOD	GOOD
Suriname	NONE	NONE	NONE
Trinidad & Tobago*	(GOOD)	(GOOD)	(GOOD)

Recommendations

- Resolve the divergence in the identification of documents/ transactions which are exempt from the framework.
- Harmonization needed in the definition of key terms: “electronic”, “record”, “data message”, “Certificate service provider”
 - Particular concern is variance in expected function of “e-signatures” and “advanced e-signatures” and the role and function of Certificate Service Provider.
- Harmonization of the administrative approach to Certificate Service Providers
- Harmonisation of the Consumer Protection provisions across the region:-
 - Should there be inclusion of broad “cooling off” periods as seen in Jamaica and St. Vincent?

THANK YOU

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