

HIPSSA PROJECT

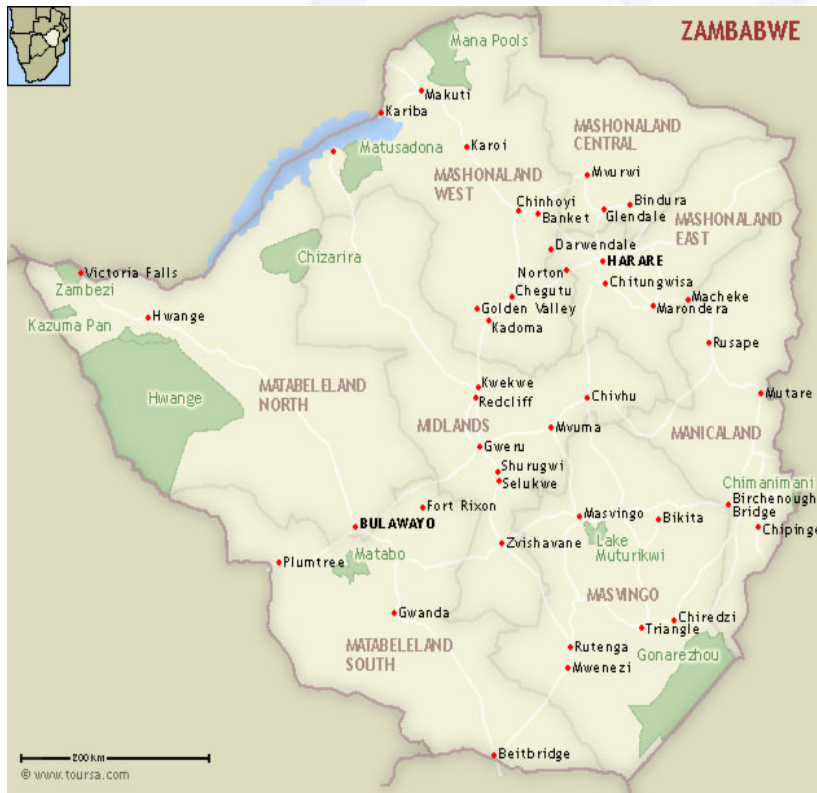
Presentation on Electronic Transactions and E-Commerce bill
15th and 16th July 2013

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Zimbabwe

Where we are



- Landlocked country
- SA biggest trading partner
- No e-commerce legislation
- Default e-transactions (Banking, mobile money, investment schemes)



Status of cyber laws (E-Transactions & E-commerce) in Zimbabwe

- no specific legal framework that addresses challenges and other issues brought by ICTs
- existing laws designed to facilitate paper-based transactions, not attuned to technology changes with legal rules that require the use of documents, and manuscript signatures.
- there are some provisions in the existing laws that are currently being used to address some of the issues on e-transactions and e-commerce.



LAWS

- CONTRACT LAWS – ROMAN DUTCH PRINCIPLES AND CASE LAW BASED ON PAPER BASED TRANACTIONS
- SIGNATURE - LIABILITY PREMISED ON HANDWRITTEN SIGNATURES
- EVIDENCE RULES – PREMISED ON PAPERS FILED REQUIRED TO BE ORIGINALS
- AUTHENTICATION – RELYING ON PHYSICAL VALIDATION
- COMMUNICATIONS & SERVICE OF PROCESS (PHYSICAL & POSTAL)



Objectives of the bill

-The objectives of the bill/outline

- To facilitate safe and secure use of electronic transactions
- to promote business (and) confidence in e-transactions
- foster the development of e-commerce through the use of electronic documents and secure e-signatures;
- establish the legal infrastructure necessary to implement secure electronic commerce and to remove legal uncertainties over writing, original documents, evidence and signature requirements



Part One

- **Preliminary provisions sections 1-5**
- Short title and commencement-s-1
- Interpretation-definitions of key terminologies –s-2
- Scope of the application-what transactions covered? .Are there any exclusion? –s-3



Some definitions

electronic transaction means the exchange of information or data, the sale or purchase of goods or services, between businesses, households, individuals, governments, and other public or private organizations, conducted over computer-mediated networks

Consumer means any person who enters or intends entering into an electronic transaction with a supplier as the end user of the goods or services offered by that supplier- definition extended to include juristic persons

Electronic communication means a communication by means of data messages;/ transfer of signs, signals, writing, images, sounds, data..



Part Two

EQUIVALENCE OF WRITTEN AND E-DOCUMENTS, E-COMMUNICATIONS, MANUSCRIPT AND DIGITAL SIGNATURES

- Functional equivalence is the establishment of equality of written and electronic documents, e-communications, manuscript and digital signatures i.e. The principle of non-discrimination against electronic information- Section 6
- Writing requirements
- Signature requirements (Regulations)



Examples of statements/provisions on *functional equivalence*

- ❖ Where a law requires information to be in writing, that requirement is met by an electronic communication

A stylized, handwritten signature in black ink, likely representing a traditional 'writing' requirement.

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- ❖ Where a law requires the signature (manuscript) of a person, that requirement is met by a **secure e-signature**



writing

Section 6(4) Excludes :

- the conveyance of immovable property or a contract for the transfer of any interest in immovable property;
- documents of title;
- the creation, performance or enforcement of an indenture, declaration of trust or power of attorney with the exception of constructive and resulting trusts;
- a contract for the long-term lease of immovable property in excess of 10 years;
- the execution, retention and presentation of a will or codicil;
- documents relating to family law and personal status;
- the execution of a bill of exchange; and
- such other documents or instrument as may be prescribed by Regulation.



signature

Section 7(5) excludes:

- the offer or acceptance of a contract for the alienation of immovable property;
- the signing of a contract for the long-term lease of immovable property in excess of 10 years;
- the creation or declaration of trust or power of attorney with the exception of constructive and resulting trusts;
- the execution, retention and presentation of a will or codicil;
- the execution of a bill of exchange;
- the execution of documents relating to family law and personal status; and
- such other laws or statutes as may be prescribed by Regulation.



Certification Authorities

- Section 7: Regulation of,
- Standards
- Licensing
- recognition of foreign certification authorities



PART III

ELECTRONIC TRANSACTIONS

Electronic contracts-

- laws that regulate contracts and other related agreements
- Consumer Contracts Act, Contractual Penalties Act
- The development of e-commerce and e-government, specifically the communication of legally significant information in the form of data, are likely to be hindered by obstacles or uncertainty about the legal effect or validity of using such data messages.



Bill provides for:

***Time of receipt of electronic communications- Section 14**

- when the electronic communication enters the designated information system;
- at the time when the electronic communication is capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address.

***Place of dispatch and receipt of electronic communications- Section 15**

***Time of contract formation**



PART IV

ELECTRONIC COMMERCE

Attribution of communications, signature

- A secure electronic signature is deemed to have been applied by the holder of the secure electronic signature, unless the contrary is proved.

Original information

- reliable assurance as to the integrity of the information from the time when it was first generated in its final form
- where it is required that information be presented, that information is capable of being displayed in the form of an electronic communication to the person to whom it is to be presented



Admissibility and evidential weight of electronic communications

Assessment of evidential weight

- reliability of the manner in which the electronic communication was generated, stored or communicated
- reliability of the manner in which the integrity of the electronic communication was maintained
- the manner in which its originator was identified
- any other relevant factor



Notarisation, acknowledgement and certification

- requirement is met if the secure electronic signature of the person authorised to perform those acts is attached to, incorporated in or logically associated with the electronic signature or electronic communication.
- printout certified to be a true reproduction of the document or information.
- an electronic copy of the document is certified to be a true copy thereof and the certification is confirmed by the use of a secure electronic signature



THANK YOU

