



Electronic Transactions
Electronic Commerce Stakeholder Questionnaire

This questionnaire has been prepared by the ITU Experts (Prof. Tana Pistorius and Mr. Eric Ntukanyagwe), in connection with the regional activities carried out under the HIPSSA Project for Cyber Security in Rwanda.

Reference to the “Electronic Transactions Act” is to the Law No 18/2010 relating to Electronic Messages, Electronic Signatures and Electronic Transactions.

Optional:
Name:

Position/Title/Sector:

E-mail:.....

A. BACKGROUND TO ELECTRONIC TRANSACTIONS AND ELECTRONIC COMMERCE AND THE PURPOSE OF THE QUESTIONNAIRE:

There is no doubt that the current development and use of ICT especially e-commerce and e-transactions globally is posing some socio-economic and legal challenges. The legal regime in Rwanda has been effectively changed to keep pace with these technological changes and to regulate electronic transactions and electronic commerce in Rwanda.

The ITU under the auspices of the HIPSSA project is providing expert assistance to Rwanda to draft a national assessment report; to review of the current Electronic Transactions Act in light of regional and international best practices; to determine the effectiveness of the implementation of the Electronic Transactions Act; to provide inputs into the draft e-Government Policy and related Cybersecurity Policy; to and to make recommendations for legislative reform.

This Questionnaire is aimed at obtaining key stakeholder inputs to ascertain the current position obtaining in Rwanda. Stakeholders should please specifically answer the relevant parts as indicated below and any additional parts as they deem fit.

Part 1: (Q1-9) LEGAL EFFECT OF ELECTRONIC MESSAGES:

Required: the Ministry of Justice (Legal practitioners and judiciary); MYICT; RURA; National Bank of Rwanda

Optional: All other stakeholders

Part II: (Q 10-20) CONSUMER PROTECTION

Required: MYICT; Consumers associations; Consumers; Department of Trade (Consumer regulator); the Ministry of Justice; National Bank of Rwanda

Optional: All other stakeholders

PART III: (Q 21-24) ADMISSABILITY & EVIDENTIARY VALUE OF E-EVIDENCE

Required: MYICT; the Ministry of Justice (Legal practitioners and judiciary); Department of Justice; National Bank of Rwanda

Optional: All other stakeholders

PART IV (Q 25-26) E-GOVERNMENT SERVICES

Required: MYICT; Government departments; public servants; RURA; Consumers; the Ministry of Justice ((Legal practitioners and judiciary)

Optional: All other stakeholders

Part V: (Q 27-30) SERVICE PROVIDERS

Required: MYICT; RURA; Service providers (MTN; other ISPs; Mobile providers; Application providers); Consumers

Optional: All other stakeholders

Part VI: (Q 31-39) Policy and Implementation

Required: ALL STAKEHOLDERS

PART 1: Questions 1-9

LEGAL EFFECT OF ELECTRONIC MESSAGES

Required: MYICT the Ministry of Justice (Legal practitioners and judiciary); RURA (signature regulator); National Bank of Rwanda

Optional: All other stakeholders

Legal Recognition of Electronic Writing and Electronic Signing:

1. The Rwanda Electronic Transactions Act provides in section 1 that the law shall not apply to the use of hard copies and which require the signature of the issuer and these are:

- a. a will;
- b. negotiable instruments;
- c. a power of attorney
- d. commercial agreement related to immovable property of any interest in such property;
- e. certificate of transfer of immovable property;
- f. authentication documents or any document deemed authentic.

2. Should the list of excluded documents/instruments/transactions be restricted or expanded (i.e. included or excluded from meeting the writing or signing requirements electronically):

() YES () NO

3. If you answered yes to question 2 please list the documents/instruments/transactions:

Secure (or Advanced) Electronic Signatures: A secure electronic signature is regarded as a valid signature where a law requires a signature. Section 20(1) provides that if a law requires the signature of a person, an electronic signature will be deemed to be valid.

4a. Public key infrastructure (PKI) is used to generate a digital signature (a secure electronic signature). Please explain what has been done to implement PKI in Rwanda:

4b. In your view should the criteria for a secure electronic signature be expanded to recognise:

- An asymmetric cryptosystem and a hash function;
- Biometrics combined with a trusted system;
- A crypto device (dongle) and password combined with a trusted system;
- No opinion; or
- Others (please specify):

5. Legal practitioners: Have you provided legal advice to clients or litigated on behalf of clients' cases in respect of the legal effect of electronic messages; electronic writing or signing or electronic contract formation?

Please provide information:

Automated Transactions: Article 19 of the Rwandan Electronic Transactions Act makes provision for the effect of errors in the transmission of an electronic message. Other jurisdictions also make provision for input errors, namely errors which occur during the transactions with an automated message system (where the actions are not reviewed by a natural person). A natural person who made an input error in an electronic communication with an automated message system (i.e. automated transactions) should be able to withdraw the message in which the error was made.

6. Should the law in Rwanda allow for the cancellation of the contract for:

- Any input error; or
- Only a material input error.

Any experiences in this regard:

Incorporation by Reference

7. Do you think the Rwanda laws or regulations should provide for incorporation of reference (the incorporation of terms and conditions or other documents through referring to the documents via a hyperlink)?

- YES NO

8. If yes, should the link meet any standards (legible (font size; font colour); visibility due to placement in message etc.):

- YES NO

9. If you answered yes to question 8 above, please provide motivation/ share relevant experiences:

Part II: Questions 10-20
CONSUMER PROTECTION

Required: MYICT; Consumers associations; Consumers; Department of Trade (Consumer regulator); the Ministry of Justice (Legal practitioners and judiciary); National Bank of Rwanda

Optional: All other stakeholders

International instruments contain two alternative definitions for a consumer, namely:

- (a) a natural person or non-profit organisation that purchase goods and services for the direct satisfaction of individual wants or collective needs of a community; or
- (b) natural person who enter into transactions with a supplier as the as end-user of goods and services;
- (c) A third option is to include natural and corporates in the definition of a consumer.

10. Which definition of a consumer should be used in implementing the Rwanda Electronic Transactions Act (for purposes of consumer protection):

- (a) (b) (c) (d) None of the above.

11. If you selected (d) to question 11 above, please provide motivation or alternative definition:

12. Rwanda's consumers who buy goods or subscribe to services on-line should be given a cooling off right (that is, the right to cancel purchases within a specified time after the contract was formed) for all transactions. Other jurisdictions provide for exceptions to the cooling-off right.

Please indicate, in your opinion, which of the following transactions or contracts should be included (YES) and which should be excluded (NO) for purposes of cooling off:

- i. for financial services, including but not limited to investment services, insurance and reinsurance operations, banking services and operations relating to dealings in securities:
() Yes () No
- ii. goods by way of an auction;
() Yes () No
- iii. for the supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home, residence or workplace of the consumer:
() Yes () No
- iv. for services which began with the consumer's consent before the end of the seven-day period:
() Yes () No
- v. where the price for the supply of goods or services is dependent on fluctuations in the financial markets and which cannot be controlled by the supplier:
() Yes () No
- vi. where the goods:
 - a. are made to the consumer's specifications;
 - b. are clearly personalised;
 - c. by reason of their nature cannot be returned; or
 - d. are likely to deteriorate or expire rapidly:() Yes () No

- vii. where audio or video recordings or computer software were downloaded or unsealed by the consumer:
 Yes No
 - viii. for the sale of newspapers, periodicals, magazines and books:
 Yes No
 - ix. for the provision of gaming and lottery services:
 Yes No
 - x. for online gambling:
 Yes No
 - xi. for the provision of accommodation, transport, catering or leisure services and where the supplier undertakes, when the transaction is concluded, to provide these services on a specific date or within a specific period:
 Yes No
- Other exclusions:

13. Have you ever made use of the cooling-off provision?

Yes No

14. Have you ever lodged a complaint as a consumer; either directly to the provider or to the relevant authorities?

Yes No

If yes, was it effectively solved? Please elaborate:

15. SPAM is a world-wide problem. Please indicate the extent of the problem in Rwanda:

- Yes SPAM is a huge significant problem
- Yes SPAM is a problem
- SPAM is only to some extent a problem
- SPAM is not a problem at all

16. The opt-out requirement is currently in force in Rwanda. Have you ever tried to opt-out of an electronic message?

Yes No

17. If yes you answered “yes” to the question in 14 above, was it effectively solved? Please elaborate:

18. In your opinion should the contravention of the rules relating to unsolicited commercial communications lead to civil and criminal liability?

Civil Criminal

19. Would you recommend the adoption of opt-in¹ or opt-out² measures in Rwanda:

¹ The opt-in requirement will be met if a consumer indicates that it wishes to receive commercial communications from the service provider. The opt-in requirement will also be deemed to have been met where:

Opt-in Opt-out

20 Please share any experiences regarding the enforcement of on-line consumer rights:

PART III: Questions 21-24
ADMISSABILITY AND EVIDENTIARY VALUE OF E-EVIDENCE

Required: MYICT; the Ministry of Justice (Legal practitioners and judiciary); National Bank of Rwanda;

Optional: All other stakeholders

21. Are the provisions on the evidentiary value of electronic evidence sufficient to guide courts to give due evidentiary weight to:

electronic messages

YES NO

business records

YES NO

Kindly motivate your answer above:

22. Have you presented evidence in court regarding:

an SMS message;

an e-mail message

an electronic document

electronic writing

electronic signature

an advanced electronic signature

electronic record (archived document)

23. If you selected any of the items in question 22 please relate the experience/outcome:

24. Have the Rules of Court adequately been amended to provide for all aspects relating to the serving of documents; pleadings; discovery and other related civil procedure rules?

YES NO

Please elaborate:

-
- a. the addressee's e-mail address and other personal information was collected by the originator of the message "in the course of a sale or negotiations for a sale";
 - b. the originator only sends promotional messages relating to its "similar products and services" to the addressee;
 - c. when the personal information and address was collected by the originator, the originator offered the addressee the opportunity to opt-out (free of charge except for the cost of transmission) and the addressee declined to opt-out; and
 - d. the opportunity to opt-out is provided by the originator to the addressee with every subsequent message.

² The opt-out requirement requires a service provider to remove the consumer from the address list for future marketing efforts.

PART IV: Questions 25- 26
E-GOVERNMENT SERVICES

Required: MYICT; Government departments; public servants; RURA; Consumers; the Ministry of Justice (Legal practitioners and judiciary)

Optional: All other stakeholders

The Rwanda Act provides that public bodies be able to provide for:

- The manner in which electronic services will be delivered;
- The format in which electronic documents should be filed; and
- The electronic signature or secure electronic signature requirements.

25. Have you made use of any e-Government service?

YES NO

26. If you answered yes to question 25 above, please inform us if the instructions were clear and were you able to create the communication in the correct format and sign as instructed?

Please provide examples:

Part V: Questions 27-30
SERVICE PROVIDERS

Required: MYICT; RURA; Service providers (MTN; other ISPs; mobile providers; application services providers) Consumers

Optional: All other stakeholders

27. In your opinion, should adherence to a Code of Conduct for ISPs and telecommunications service providers be a pre-condition for the limitation of liability?

Yes No

28. Which procedures should Internet Services Providers (ISPs) follow when they receive notification of some unlawful activity perpetrated by users of their services?

29. Please explain which critical elements should be included in such a Code of Conduct if you answered yes to question 27 above:

30. Is it necessary to devise rules to regulate advertising, marketing and content by wireless application service providers (WASPS)?

YES NO

Please motivate your answer:

Part VI: Questions 31-39
Policy and Implementation
Required: ALL STAKEHOLDERS

31. Should Rwanda consider acceding to regional and/or international conventions on ecommerce and on e-signatures, beyond having its own statutory laws on these matters?

Yes No

32. What should the criterion/criteria for the recognition of foreign electronic signatures (emanating from other jurisdictions) by Rwanda be:

- Multilateral or bilateral international treaties between concerned countries;
- Accredited international organization attesting to equivalence of criteria and/or infrastructure between both countries;
- A regional Accreditation System and Authority; or
- Other (please, specify):

33. What is, in your opinion necessary for the implementation (and uptake by citizens) of the Electronic Transactions Act:

- Regulations
- Private entities should adopt policies/procedures for internal and external compliance
- Public entities should adopt guidelines; policies; or procedures

Comments, if any:

35. In your opinion, should Codes of Conduct or Industry Codes be adopted to guide behavior (e.g. dispute resolution mechanisms; service standards and remedies) for:

- Consumers
- Suppliers
- Community Groups
- Public bodies
- Other groups

Comments if any:

36. In your opinion, should Best Business Practices be identified and promoted for:

- Consumer transactions
- Obligations of Suppliers
- Rights and responsibilities of Community Groups
- Other groups

Comments (if any):

37. Priorities for the full implementation of the Electronic Transactions Act are (please indicate priority by ranking the items listed below from 1-5; 1 being the highest priority and 5 being the lowest priority):

- Regulations
- Co-regulation with industry
- self-regulation by role-players in ICT industry
- Education and awareness
- Resource centers for small businesses and consumers

OTHER COMMENTS

38. Kindly note any other matter related to e-transactions or e-commerce that you would like to bring to the attention of the ITU Experts:

39. Kindly indicate which aspects of electronic commerce and electronic transactions the ITU Experts should focus on during capacity building and training:

- () legal effect of data messages (case law)
- () secure electronic signatures (practical explanation and illustration)
- () time and place of contract formation (case law)
- () admissibility and evidentiary weight of data messages; original information and document production (case law)
- () consumer protection (illustration of compliant web design)
- () ISP liability (case law)
- () other aspects (please specify):