



eSri Lanka
smart people smart island

ICTA
ideas actioned

The logo graphic for ICTA consists of a square divided into four quadrants. The top-left quadrant is orange, the top-right is white, the bottom-left is white, and the bottom-right is orange. A black and white pixelated pattern is overlaid on the white quadrants.

Electronic Transactions Act

“Digital Signing in a Work from Home Environment”

FITIS Webinar

20th April 2020

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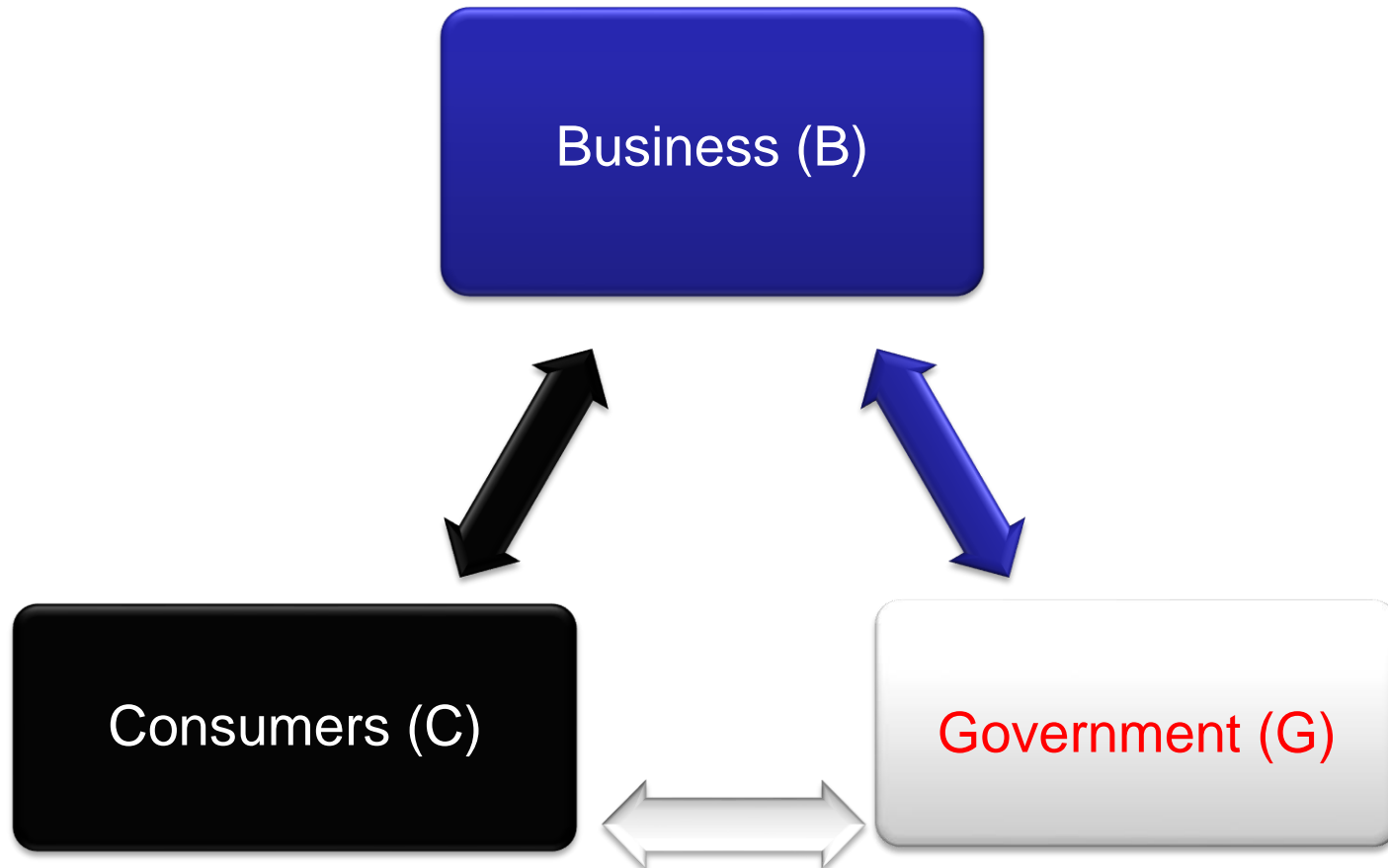
Co- Chair, National Certification Authority Task Force



Enabling Legal Environment for Digital Transactions

Actors of Electronic Transactions

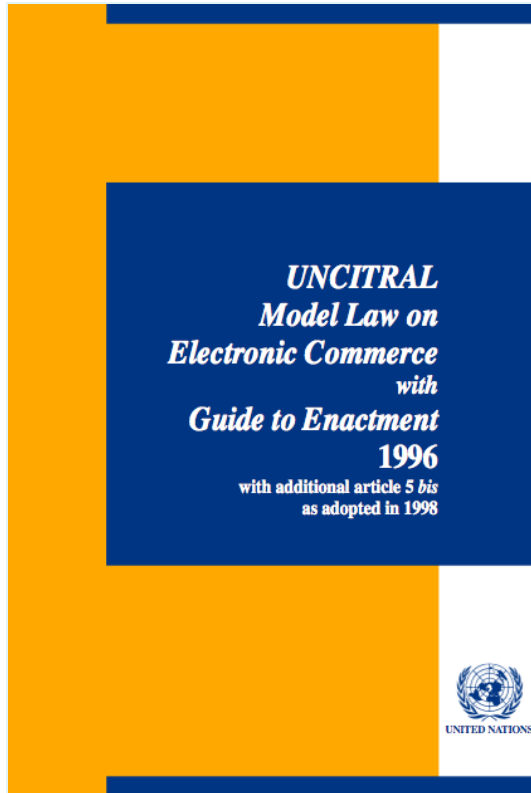
How to define Legal norms and standards ?



UNCITRAL Model Law on Electronic Commerce (MLEC) – Predates the Internet



- MLEC was intended to facilitate electronic means of communications and storage of information.
- Based on functional equivalence in electronic media for paper-based concepts such as "writing", "signature" and "original".
- Also establishes rules for the formation and validity of contracts concluded electronically and for the attribution and retention of data messages.
- More information
www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html
- Used by over 60 Countries as a Guide
- Does not create binding obligations between States**



Results of UNCITRAL Model Laws

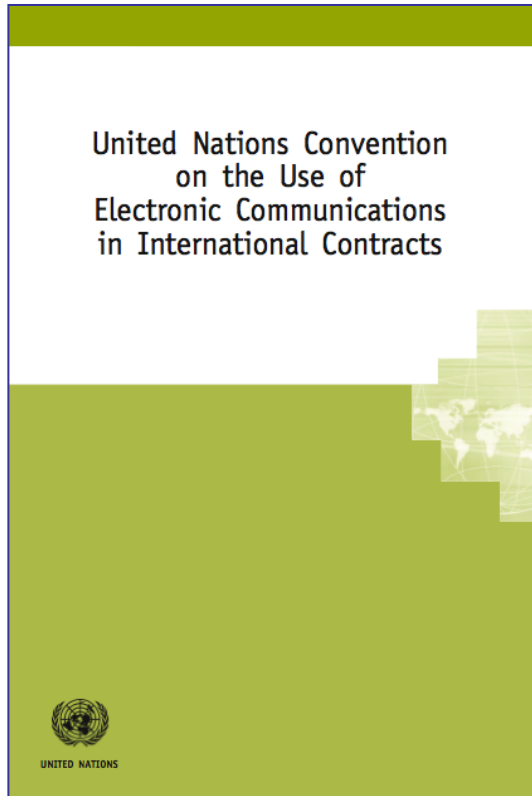


- Countries adopted various standards from Model Law templates
- No Harmonization between Countries
- Lack of uniformity in global e-Commerce Legislation
- E-Signatures – Lack of Interoperability
- Barrier to International e-Commerce

UN Electronic Communications Convention (e-CC)



Only International Treaty on Electronic Transactions



- Builds up on and updates the provisions of both Model Laws – **Binding between States once adopted**
- Enhances legal certainty and commercial predictability for electronic communications across borders.
- **e-CC enables cross border paperless trade** by: 1) validating the legal status of electronic transactions by ensuring functional equivalence of “writing”, an “original” document and “signature”; 2) preventing technology discrimination; 3) enabling cross-border recognition of electronic signatures; 4) permitting automated message systems all forms of e-Contracts with ability to correct input errors
- **E-Commerce Law 2.0 – Intl GOLD Standard**

Electronic Transactions Act No. 19 of 2006

Sri Lanka



- Originally based on UNCITRAL Model on e-Commerce 1996
- Now includes features of the ***UN of Electronic Communications Convention*** (UN ECC)
 - Sri Lanka took part in negotiation & drafting of UN ECC (2001-05).
 - Sri Lanka Ratified UN ECC on 7th July 2015
 - UN ECC entered into force in Sri Lanka 1st February 2016
 - **First Country in South Asia (2nd Country after Singapore in APEC)**
 - Australia, China, Japan, Korea and Malaysia on the way!!
- Electronic Transactions (Amendment) Act No. 25 of 2017
 - **Enabled Sri Lanka to stay Relevant with Global Norms**
 - **Sri Lanka used as Reference in Africa, Latin America, and Fiji**



- **Long title**

- AN Act TO **RECOGNISE** AND **FACILITATE** THE FORMATION OF CONTRACTS, THE CREATION AND EXCHANGE OF **DATA MESSAGES, ELECTRONIC DOCUMENTS, ELECTRONIC RECORDS** AND OTHER **COMMUNICATIONS** IN ELECTRONIC FORM IN SRI LANKA; AND TO PROVIDE FOR THE APPOINTMENT OF A CERTIFICATION AUTHORITY AND ACCREDITATION OF CERTIFICATION SERVICE PROVIDERS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OF INCIDENTAL THERETO
- All transactions and business done in “electronic” form would be recognised under the Act, except those specifically excluded under Section 23 (Last Wills, Power of Attorney, Transfer of immovable Property etc)
- Legislation enacted – 7th March 2006

Electronic Transactions Act – Key Provisions



- Section 3 – Broad Principles
 - recognition to Data Messages, electronic documents, electronic records and other communications should not be denied legal effect
- The term “data messages”, “electronic documents”, “electronic records” and “Communications” have been defined to give a wide connotation to all forms of electronic transactions
- Definitions based on International Standards

Electronic Transactions Act – Key Provisions



Contd

- Section 4 - Electronic equivalent of “Writing”
 - “Functional equivalence” principle
- Section 5 & 6
 - Maintaining originality and Retention in Electronic Form
- **Section 7 – Legal Validity of Electronic Signatures**
- Section 8 – Facilitates e Government
- Section 11 to 17 – Electronic Contracts
- Section 18- 20 Service Providers (Governance)
- Section 21 – Rules Governing Electronic Evidence

Technology Neutral Legal Standard - Recognition of “Electronic Signatures”



- Legal effect of electronic signature (Section 7)
 - method used is proven in fact to have fulfilled the functions of identifying the party and proving the party’s intention in respect of the information contained in the message, by itself or together with further evidence
 - method is as reliable as appropriate for the purpose for which the electronic communication was generated or communicated in the light of all the circumstances, including any relevant agreement;
 - Any technology is acceptable -- PIN No, QR Codes, Biometrics, Scanned signature etc.
 - Digital Certificates issued by “Certificate Service Provider” ensures Legal validity
- e-CC also facilitates cross-border recognition of electronic signatures based on the “substantive equivalence” standards

Electronic Transactions Act

Key Provisions Facilitating e-Government



- Section 8 – Recognises e-Gov activities
 - Provides for the filing, creation, retention, issue and grant of licenses, receipt of payment of money or procurement in electronic form
 - Facilitates e-Government
- Section 8 (2)
 - Procedures and criteria for Use of Electronic Records and e-Signatures in Government (to be effected by Regulations)
 - To be read with Section 24 (2)
- **Section 10 – Amended in 2017**

Electronic Signature Framework Administrative Set up - Chapter IV



- Section 18
 - Designation of a Certification Authority at National Level (NCA)
 - Sri Lanka CERT performs NCA functions
- Section 19
 - Powers of NCA
- Section 20
 - Provides for the “Authorization and Licensing” of Certification Service providers (CSPs)
 - Authorization given to Lanka Clear CSP – “Lanka Sign”
- Section 18, 19 and 20 Amended in 2017
 - **National CA Task Force –Ministry Level function**
 - (Section 18A)
 - **Task Force is the Governance Body for the NCA**

Electronic Transactions Act

Chapter V – Rules on Electronic Evidence



- Electronic Evidence
- Section 21 – Background
 - Departure from the rules found in Evidence (Special Provisions) Act No. 14 of 1995
 - New Admissibility Criteria
 - Rebuttable presumption
 - Applicability to Civil and Commercial Transactions (based on recent Case Law)
- Section 3 of the ETA

Electronic Transactions Act No. 19 of 2006

e- Evidence – Recent Case law



- New admissibility criteria based on regularity of business records – Section 21 (2)
- Presumption on the contents of e-documents – Section 21 (3)
- Broad Admissibility Framework
 - *Commercial High Court Decision in Marine Star Case (2007) – **Admissibility of SMS***
 - *Commercial High Court Case in Millennium IT (2012) – **Admissibility of Contents of a website as an “Electronic Record”***
 - *People’s Leasing Company VS M I Fernando – (15th February 2016) – **Computerised Accounts Ledgers admitted as “electronic records”***

ETA & Recent Amendments in Sri Lanka

Conclusions



- Provide ultimate legal certainty for Digital Transactions and Digital Documents, including Electronic Contracts
 - Recognition of having modernised e-Commerce legislation
- Ensures Legal Recognition for electronic signatures (including cross border recognition – UN eCC)
 - Mutual legal recognition of Electronic Signatures
- Admissibility of Electronic Documents, Electronic Records and evidence in Courts of Law
 - Including Electronic Signatures



Thank You !

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