

The necessity of creating an enabling legal infrastructure has emerged as a critical element for the success of a Single Window (SW) facility at the national level and, to the extent possible, as a predicate for a harmonized approach at the regional and international levels. The extent to which trade facilitation can be achieved through the operation of a SW nationally and across borders indeed depends on the legal environment in which relevant stakeholders served by the SW, as well as those along the international supply chain, operate.¹ This legal environment, therefore, includes not only the Single Window enabling law at the national level but also the legal framework for electronic transactions that will provide a foundation on which the electronic Single Window will be operating. In this context, it is important to identify the essential legal issues related to the creation and operation of a single window in order to fully understand what types of legal gaps exist in national laws. This also presents an opportunity to consider how the technical architecture² of the single window can affect the range of legal issues that must be addressed. This exercise is useful to both governments that have already set up or are in the process of establishing SWs, particularly in locations where facilitating cross-border transactions would be a key benefit.

This *Guide* covers the wide-ranging legal issues that are related to the development and operation of a SW and, to a certain degree, some of the important electronic commerce legal concepts and approaches applicable to the single window environment. It is intended to give policymakers a broad understanding of the key considerations that should be addressed in effectively establishing the legal infrastructure for a SW. The *Guide* is not specifically aimed to be a resource strictly for lawyers but rather to those who are expected to drive the successful development of single window and paperless trade initiatives in their countries.

Many of the legal issues discussed in this *Guide* are generic to the legal infrastructure for both SW development and cross-border (or international) single window transactions as there can be substantial overlap between them. Therefore, as part of enabling the SW in national law, the *Guide* stresses the need for countries to adopt international legal standards to ensure as far as possible that the SW is interoperable, from a legal perspective, with other national and regional single window facilities.

Against this backdrop, the *Guide* examines the processes that can be employed to identify and assess those potential gaps in domestic law that would create barriers: (1) to the full operation of an electronic SW; (2) to the cross-border legal interoperability of electronic SWs; and (3) to the legal interoperability of the SW with non-governmental entities that will participate in the SW and electronic commerce transactions (domestic and cross-border). It also examines the essential legal elements that make up the areas of law that should be considered, as well as some of the organizational considerations that go into creating a SW. Furthermore, it aims to equip legal experts and policymakers with an appropriate and effective methodology for conducting the legal gap analysis as a key step in developing the national legal framework for a SW.

This *Guide* was developed based on the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Recommendation 33³ and Recommendation 35,⁴ the conventions and

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¹ See, Schermer, Bart "Legal Issues of Single Window Facilities for International Trade," UNCITRAL Congress Modern Law for Global Commerce (July 2007).

² Chong, K.W., "Legal and Regulatory Aspects of International Single Window Implementation: The ASEAN Experience", Global Trade and Customs Journal, 4, pp. 185–193 (Kluwer Law International, 2009).

³ UN/CEFACT Recommendation 33 – Recommendation and Guidelines on establishing a Single Window to Enhance the Efficient Exchange of Information between Trade and Government (July 2005).

⁴ UN/CEFACT Recommendation 35 – Establishing a Legal Framework for the International Trade Single Window (2010).



model laws of the United Nations Commission on International Trade Law (UNCITRAL),⁵ the international texts and work at the World Customs Organization (WCO) as well as the experiences and best practices that have emerged from the work done by governments, various United Nations organizations, and intergovernmental organizations (IGOs) and non-governmental organizations (NGOs) at the national, regional and international levels over the past eight or more years. It is the first edition of a living document that is expected to evolve as new legal standards and instruments continue to develop in the dynamic field of paperless trade and electronic commerce.⁶

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⁵ The UNCITRAL international texts and guidance documents related to electronic commerce are available at http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce.html

⁶ Revised and updated online versions of this and other UNNEXT capacity-building tools and guides are available at: <http://www.unescap.org/unnext/>