UN Electronic Communications Convention & Electronic Transactions Act No. 19 of 2006

National Implementation

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Introduction

• Status of ICT related Laws

• Influence of UNCITRAL Texts on Sri Lankan Legislation

• Electronic Transactions Act No. 19 of 2006
  – General Objectives
  – Policy principles
  – Status of Implementation (admissibility of SMS and Mobile Payment guidelines)
  – National Certification Authority & Authentication framework

• Conclusions

• UN Electronic Communications Convention (2005)
  – Impact and Commitment to Ratify
Sri Lankan ICT Sector

- First in South Asia to Liberalise Telecom Sector – 88% mobile penetration (Sept 2011) - 5 mobile operators, 16 ISPs, 5 gateways
- A large pool of educated workers – per capita highest No. of Accountants & ICT workforce growth 66% from 2005 to 2010
- Sri Lanka ranked amongst the Top 20 emerging destinations in A.T Kearney Global Services Location Index
- Technology Driven Colombo Stock Exchange (replicated in Mauritius & Croatia)
- ICT Sector - 5th Largest Revenue Earner for Sri Lanka – ICT Services & Knowledge Based Economy. ICT Development driven by e-Sri Lanka Development Project, funded by several development partners
- Reached “Middle Income Status” (Source World Bank – 2011)
Status of e-Commerce & ICT Laws

- Telecommunications Act 1991 (as amended)
- Information & Communication Technology Act No. 27 of 2003 – Amended by Act No. 33 of 2008
- Payment & Settlement Systems Act No. 28 of 2005
- Electronic Transactions Act No. 19 of 2006
- Payment Devices Frauds Act No. 30 of 2006
- Computer Crimes Act No. 24 of 2007
Influence / Implications of UNCITRAL Texts

- Arbitration Act No. 11 of 1995
  - Largely Based on UNCITRAL Model Law
  - Gives effect to the New York Convention

- Electronic Transactions Act No. 19 of 2006
  - UN Electronic Communications Convention (2005)

- Secured Transactions Act No. 49 of 2009
  - Established online registry for Movable Assets (Secured Transactions Registry)
  - Movable asset registry for SME’s
  - Legislation based on “UNCITRAL Legislative Guide on Secured Transactions”

- More needed to be done – CISG ?? (commercial sales between merchants) – personal laws
Electronic Transactions Act No. 19 of 2006

• Preamble
  – 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 (b2b, b2c, G2b, G2C etc) except those specifically excluded under Section 23 (Last Wills, Power of Attorney, Transfer of immovable Property etc)

• Enacted – 7th March 2006, Operational w.e.f 1st October 2007
Electronic Transactions Act No. 19 of 2006
Section 2 - Objectives

• to facilitate domestic and international electronic commerce by eliminating legal barriers
• to encourage the use of reliable forms of electronic commerce
• to facilitate electronic filing of documents with Government and to promote efficient delivery of Government services by means of reliable forms of electronic communications; and
• to promote public confidence in the authenticity, integrity and reliability of data messages and electronic communications
• Key Definitions – Section 26
  – Data Messages
  – Electronic Documents
  – Electronic Records
  – Communications

• 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 establishes technology neutral framework (No preference to a specific Technology)

• Guarantee party autonomy/ freedom to contract for contracting parties to set rules when e-Contracts become valid

• Voluntary licensing / accreditation of Service providers

• Recognition of e-signatures from other countries

• Exempting liability for Intermediaries
• Policy Reforms
  – FR Circular 447/2010 – facilitate use of Credit cards for Government services provides through Electronic Means
  – E-Government Policy (December 2009)
• Successful e Government Applications
  – Lanka Gate / Country Portal accessible through www.srilanka.lk or www.lk
  – E – Revenue License (Western Province)
  – Patient Management Systems at Base Hospitals
  – Electronic Visa – Online process www.eta.gov.lk
  – 22 new e-Services launched on 3rd Sept 2012 (more to come)
• Section 7 and Section 26 – “Electronic Signatures”, “Certification Service Provider” (CSP)
• Generic term to cover all kinds of e-Signature technologies to ensure reliability, traceability, integrity and Authenticity.
• Framework for “Certification Service Providers” to function
• Lanka Clear Ltd & LGN have established sector specific “Certification Service Providers”
• Process to establish “National Certification Authority”
Sri Lanka CERT designated as the National CA – August 2012

• Vision
  “To promote confidentiality, integrity, authenticity and reliability of electronic transactions”

• Mission
  – To provide a secure environment for electronic transactions through a regulatory framework for the use of digital certificates and facilitate nation wide adoption of same by 2015.
• Provide a regulatory framework for the issue and management of digital identities at an affordable price through authorized CSPs
• Establish trust relationships internationally, through governmental, commercial and other channels to widen the acceptance of the root certificate.
• Adopt internationally accepted technological standards, algorithms and procedures to be applied in the generation, management and revocation of digital certificates.
• Audit Certification Service Providers for compliance with standards and regulations defined within the regulatory framework.
• Review and revise regulatory framework components as and when needed.
• New admissibility criteria based on regularity of business records – Section 21 (2)

• Presumption on the contents of e-documents – Section 21 (3)
   – “The Courts shall, unless the contrary is proved, presume the truth of information contained in a data message or communication, or in any electronic document or electronic record, and in the case of an electronic document or electronic record made by a person, that the electronic document or electronic record was made by the person who is purported to have made it and similarly, shall presume the genuineness of any electronic signature or distinctive identification mark therein”

• Even SMS admissible – Commercial High Court Decision
Mobile Transactions (m – Transactions)

- Mobile Penetration 86.6% or more in Sri Lanka
- More cell phones and tooth brushes
- Transition to m-Transactions
- Provisions of Electronic Transactions Act includes definitions and features to recognise m-Transactions as valid electronic transactions

- Mobile Payment Services
- **Mobile Payment Guidelines No. 1 and 2 of 2011**
  issued pursuant to Regulations under Payment and Settlement Systems Act No. 28 of 2005
Mobile Payment Guidelines - Features

- CBSL empowered by Act No. 28 of 2005 to formulate, adopt and monitor implementation of a payment system policy to facilitate overall stability of financial systems, promote payment system safety and control risk
- Mobile Payment Guidelines No 1 of 2011
  - Governs Bank-led Mobile Payment Services
  - Customers of Banks could debit/credit accounts, pay bills and check balances using Mobile devices
  - Ensure safety and effectiveness of Mobile Payment Services as well as broad principles and standards for Banking institutions to follow
- Mobile Payment Guidelines No. 2 of 2011
  - Custodian account based system for Non-Bank Service Providers
  - Allows Mobile Providers to provide e-cash to Customers who have deposited physical cash in “Custodian accounts” operated by Licensed Commercial Banks (LCB)
- Is a LCB needed for All mobile transactions? m-Commerce takes place (SIM is either be a debit or credit card)
- ICTA – CBSL Task Force setting technical standards
Conclusions
Electronic Communications Convention

• Electronic Transactions Act Modelled on the “UN Convention on the Use of Electronic Communications in International Contracts” (Electronic Communications Convention of 2005)
• Key Features influenced by UN ECC
  – Definition of “Communication”, “Addressee”, “Information System” and “Originator” based on the convention
  – Chapter III – Electronic Contracts similar to the Convention

• Sri Lanka – one of the first 3 countries in Asia to sign the convention (on 6th July 2006) along with China & Singapore

• Commitment to Ratify the Convention in 2012-2013
Thank You!

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