



eSri Lanka
smart people smart island

ICTA
ideas actioned

The ICTA logo graphic 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 grid of dots is arranged in a pattern that tapers from the top-right towards the bottom-left.

Enabling Legal Environment for Mobile Payments
UNCITRAL International Colloquium
Sri Lankan Perspective
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Introduction

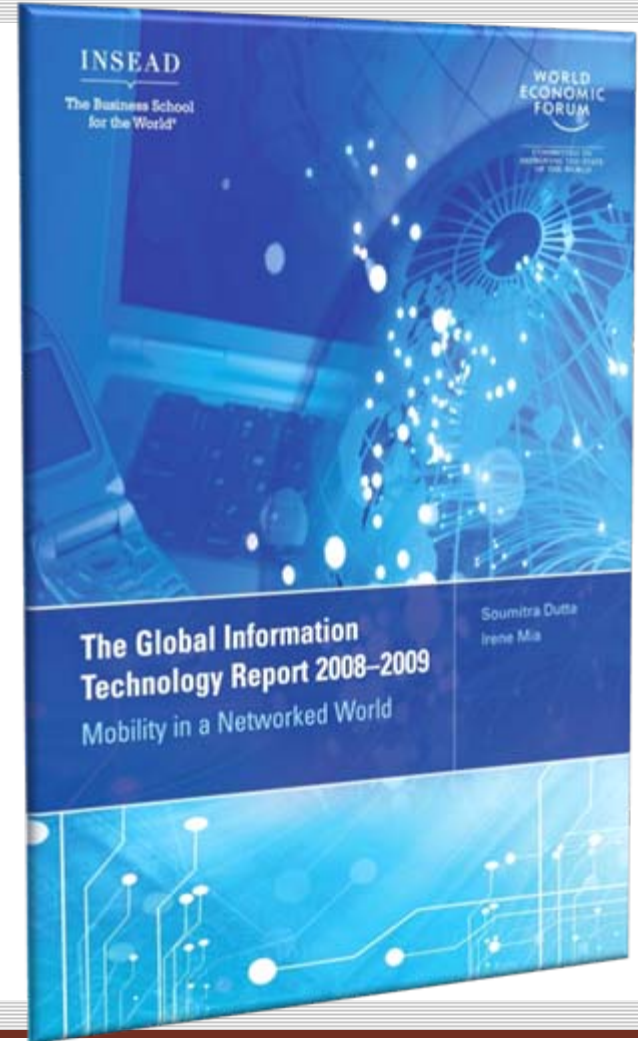
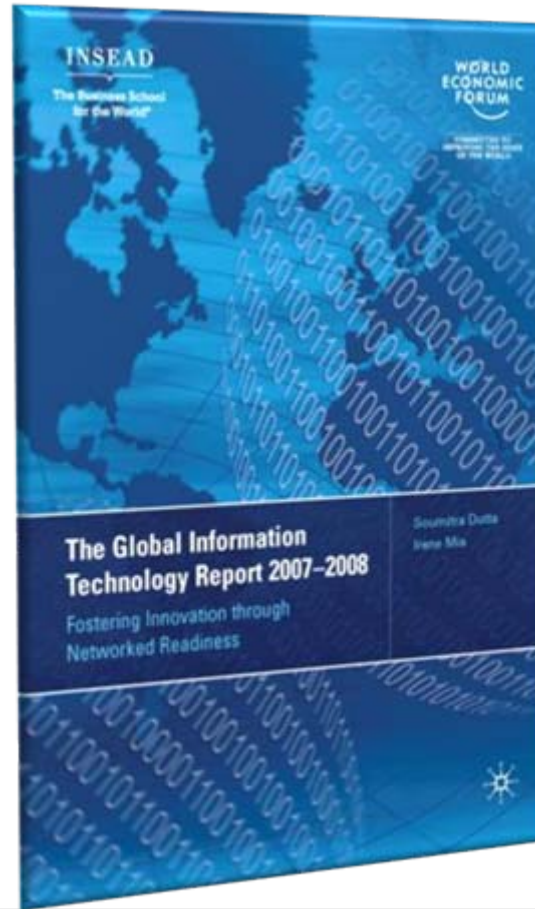
- Status of ICT Legal Regime in Sri Lanka
- Influence of UNCITRAL Texts
- Electronic Transactions Act No 19 of 2006
 - General Objectives
 - Policy principles
 - Status of Implementation (Enabling Environment for m-Transactions and SMS)
- Mobile Payment Legal Regime
 - Payment & Settlement Systems Act No. 28 of 2005
 - Mobile Payment Guidelines No. 1 and 2 of 2011
- Conclusions
 - Co-relationship between mobile transactions & Electronic Transactions
 - Possible work for UNCITRAL

Sri Lankan ICT Sector & Facts



- First in South Asia to Liberalise Telecom Sector – More than 100% penetration (Dec 2012) - 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 etc)
- 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)

Success of ICT adoption in Countries Measures by Network Readiness Index (NRI)



Sri Lanka's Network Readiness Index (NRI)

(Sri Lanka's Percentile ranking has improved - now within top 50)



Year	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2010/11
Countries	82	102	104	115	122	127	134	138
India		45	39	40	44	50	54	
Sri Lanka	54	66	71	83	86	79	72	66
Nepal		-	-	-	108	119	127	
Bangladesh		93	100	110	118	124	130	
Bhutan		-	-	-	-	-	-	
Maldives		-	-	-	-	-	-	
Pakistan		76	63	67	86	84	98	
Afganistan		-	-	-	-	-	-	
SL – Percentile Ranking	66 %	65 %	68 %	72 %	70 %	62 %	54 %	47.82

Status of e-Commerce & ICT Laws



- Telecommunications Act of 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 (based on Budapest Convention)
- Sri Lanka has adopted recommendations of Financial Action Task Force (FATF)
 - Prevention of Money Laundering Act No. 5 of 2006
 - Financial Transactions Reporting Act No. 6 of 2006
- Planning to request accession to Budapest Convention (2013)

Influence 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
 - UNCITRAL Model Law on e-Commerce (1996)
 - 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 – Consider CISG ?? (commercial sales between merchants) – Application of personal laws & Common Law

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 (ETA)

Policy features



- Based on UNCITRAL Model Law on e-Commerce 1996
- Modelled on the “**UN Convention on the Use of Electronic Communications in International Contracts**” (2005) - UN Electronic Communications Convention (UN ECC)
- Sri Lanka – one of the first 3 countries in Asia to sign the convention (on 6th July 2006) along with China & Singapore
- Process underway to Ratify UN Electronic Communication Convention (UN ECC)



Electronic Transactions Act (ETA)

Status of Implementation

- Successful e Government Applications
 - Lanka Gate / Country Portal accessible through www.srilanka.lk or www.lk
 - E – Revenue License (Western Province)
 - ePensions, Birth Certificate Digitisation, e-Motoring, e-Divisional Secretariat, Government Information Centre (GIC)
 - Patient Management Systems at Base Hospitals
 - Electronic Visa – Online process www.eta.gov.lk
 - 30 new e-Services to be added (2012-14)
- Policy Reforms
 - FR Circular 447/2010 – facilitate use of Credit cards for Government services provides through Electronic Means
 - E-Government Policy (December 2009)

Electronic Transactions Act

Chapter V – Electronic Evidence



- New admissibility criteria Section 21 (2)
- Rebuttable Presumption 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 a 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*”
- **Commercial High Court Decision – 31st July 2008**
 - Marine Star Ltd vs Amanda Foods Lanka (pvt) Ltd
 - Case No. H.C. (Civil) 181/2007(MR)
 - *Admissibility of copies of SMS as evidence*

Mobile Transactions and Payment Regime



- Mobile Penetration -- 90% or more in Sri Lanka
- *“More cell phones than tooth brushes”*
- Transition to m-Transactions influenced by the Electronic Transactions Act No. 19 of 2006

- Payment & Settlement System Regime Governed by
 - Payment and Settlement Systems Act No. 28 of 2005
 - **Mobile Payments Regulated under Mobile Payment Guidelines No. 1 and 2 of 2011** issued pursuant to Regulations under Payment and Settlement Systems Act No. 28 of 2005



- Payment and Settlement Systems Act No. 28 of 2005 Empowers the Central Bank of Sri Lanka (CBSL) to:-
 - formulate, adopt and monitor the implementation of a payment system policy
 - to facilitate the overall stability of the financial system, promote payment system safety, efficiency and control risk
 - CBSL empowered Lanka Clear Ltd to Manage the Payment and Settlement System
- Lanka Clear Ltd - www.lankaclear.com
 - Public Pvt Partnership
 - Operates Sri Lanka Interbank Payment Systems (SLIPS) and Cheque Imaging & Truncation System (CITS)
 - Implemented the Digital Certificate System (Certification Service Provider) for Financial Sector on 22nd May 2009 – Under ETA (2006)
 - Volume of SLIPS Settlements increased by 40% (Rs 346 Bn in 2010)

Mobile Payment Guidelines 2011



- “*Service Providers of Payment Cards Regulations*” No.1 of 2009 (hereinafter referred to as (“Regulations”) were issued on 31 July 2009 under the Payment & Settlement Systems Act in order to :-
 - Better regulate the electronic payment mechanisms in the country and to protect the customers as well as service providers
- Mobile Payment Guidelines No. 1 and 2 of 2011 were issued pursuant to Regulation 21 of the aforesaid Regulations No.1 of 2009 of 31st July 2009
- The objective of the Mobile Payment guidelines is to:-
 - promote safety and effectiveness of mobile payment services and thereby enhance user confidence of such services.

Mobile Payment Guidelines - Features



- 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, based on physical cash deposited by the Provider in “Custodian accounts” operated by *Licensed Commercial Banks (LCB)*
- One License Issued to a lead Pvt Sector Operator (Dialog Axiata PLC)
 - <http://www.dialog.lk/personal/mobile/ez-cash/> (branded as eZ Cash)

Mobile Payment Guidelines - Features



- For more details of the Mobile Payment Guidelines see
 - www.cbsl.gov.lk/pics_n_docs/09_Ir/docs/directions/psd/14_mobile_payment_2011_2e.pdf
- In addition to safeguards to protect the consumer, foster innovation, handle grievances, ensure financial stability (by imposing obligations on the Custodian Bank) etc.. the guidelines require the Licensed Service Provider to adhere to all applicable laws, especially:-
 - Payment and Settlement Systems Act No. 28 of 2005
 - Financial Transactions Reporting Act No. 6 of 2006
 - Electronic Transactions Act No. 19 of 2006
 - Exchange Control Act No. 24 of 1953When offering mobile payment services, introducing new technologies and upgrading software/ hardware systems

Conclusions



- UNCITRAL Texts have influenced many developing countries to transform legislation & move towards greater economic development whilst ensuring harmonization of legislation
- In Sri Lanka, provisions of the Electronic Transactions Act (2006) includes features to recognise m-Transactions as legally valid electronic transactions
- Transition to m-Transactions largely influenced by the Electronic Transactions Act of 2006 (based on UNCITRAL Texts) –
“Interplay between m-Transactions and Electronic Transactions”
- UNCITRAL should consider future work in the context of UN ECC and the Model Law on International Credit Transfers



Thank You !

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