

***UNNExT Workshop on Legal Framework  
for the Single Window***  
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**LEGAL RECOGNITION OF  
ELECTRONIC COMMUNICATIONS**

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# Definitions

- ***Electronic Communication***

- “... any communication that the parties make by means of data messages”

- ***Data Messages***

- “... information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy”

UN Electronic Communications  
Convention (ECC), Article 4(b) and (c)

# Functional Equivalence

- Paper Documents versus Electronic Documents?
- “A **communication** or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication.”

ECC, Article 8 (1), *Legal recognition of electronic communications*

- “Where the law requires that a **communication** or a contract should be **in writing**, or provides consequences for the absence of a writing, that **requirement is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.**”

ECC, Article 9 (2)

# Single Window Environment

- *“Within the context of Recommendation 33, a Single Window is defined as a facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfill all import, export, and transit-related regulatory requirements. **If information is electronic, then individual data elements should only be submitted once.**”*

# Single Window Environment

- **National Single Window (NSW) usually involves**
  - **Customs Administration**
  - **Other Participating Government Ministries/Agencies**
  - **Traders, shippers, financing facilities, etc.**
- **Transactions within the NSW**
  - **B2G**
  - **G2B**
  - **G2G**
  - **(B2B)**

# **Establishing the e-Transactions Legal Environment for the NSW**

- **Create National enabling law that provides legal recognition for electronic communications and transactions domestically and across borders**
- **This Law should be applicable to all government ministries/agencies as well as private sector entities**
  - **Except in a few legal areas, each Ministry should be authorized to accept and use electronic communications**
  - **Authorization should supersede existing legal mandates providing only for 'written' documents**

# **Establishing the e-Transactions Legal Environment for the NSW**

- **Uniform (harmonized) regulations should be adopted by each Ministry participating in the NSW that provides for all necessary requirements for participation through electronic communications**
- **When establishing the overall legal framework for the recognition of electronic communications and transactions, Governments should address the underlying legal and technical considerations important to the framework (e.g., information security, data protection, etc.)**

# Electronic Evidence

- **Ultimately, issues of the admissibility of electronic communications in judicial and administrative proceedings will arise**
- **Establishing judicial rules of procedure and evidence to address admissibility issues**
  - **In most countries, established judicial rules of procedure and evidence address admissibility issues**
  - **Courts in many countries have recently been adapting their rules of procedure and evidence to accommodate the growing emergence of information, data, and other types of documentation in electronic or digital form**
- **Challenges for Admissibility and Authentication**



# Electronic Evidence

- **Four elements of admissibility:**
  1. Authentication
  2. *Best Evidence*
  3. Hearsay
  4. Relevance
- **Key “Foundation” Questions for a Court:**
  - Description of data/information in the system
  - Credentials of those who designed and operate the system
  - Enterprise architecture of the system
  - Security controls
  - Chain of custody

# Electronic Evidence

- **To insure admissibility:**
  1. **All Single Window systems should be built around the key concepts of security and integrity**
  2. **Ensure that NSWs are properly designed, maintained, and kept secure**
  3. **If done, electronic (and paper) information in the system can be properly authenticated and used in court should the need arise**
  4. **Review national law (including judicial procedures and evidence law) for the acceptance of electronic evidence in judicial/administrative proceedings.**

- **Comments?**

- **Questions?**

*Thank you!*

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