

Commonwealth Law & Technology Workshop for the Asian Region  
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Report on the Status of ICT Laws in Sri Lanka

**1.0 Introduction**

The Government of Sri Lanka realizes that developments in Information and Communication Technologies have significantly affected the traditional legal concepts and has necessitated the review and the reform of the law receptive to modern electronic dimensions. In addition the Government also realizes the challenges posed by Cyber Crime etc.

In this regard the following is an outline of some of the reforms undertaken thus far by Sri Lanka.

**2.0 Administrative & Institutional Framework for ICT Policy Implementation**

Pursuant to the enactment of the Information and Communication Technology Act No. 27 of 2003, ICT Agency of Sri Lanka (ICTA) was established as the successor institution to CINTEC (Council for Information Technology). Therefore, ICTA is required by the said ICT Act to facilitate the Implementation of National Policy on Information and Communication Technology and Action Plan of the Government, which at present is embodied in the e-Sri Lanka program.

The principal development objectives of the *e-Sri Lanka program* is to (i) ensure more effective, citizen-centered, and business-friendly government through the re-engineering Government Program; (ii) empowerment of the rural sector, disabled, women, and youth through increased and affordable access to information and communication tools; (iii) developed leadership and skills in ICT; and (iv) employment creation through the ICT industry, ICT-enabled services, and enhanced competitiveness of user industries and services.

Consequent to the enactment of the ICT Act of 2003 the Government directed ICTA to pursue the *e-Laws program* and continue the work undertaken by its predecessor, the CINTEC Committee on Law & Computers. Further mandates have been given to the program areas of ICTA through decisions of Cabinet of Ministers and reforms initiatives have been undertaken by ICTA, through the participation of relevant stake-holders especially the Central Bank.

For instance an *e-Security Working Group* has been established by ICTA, with the participation of Government agencies such as the Central Bank and other stakeholders and Techno-legal aspects of e-Transactions/ e-commerce are being reviewed under this program area.

Under the *e-Laws* program some of the areas of Law reforms undertaken include:-

- (a) Review and preparation of e-Transaction Draft Legislation through the Legal Draftsman's Department.
- (b) Finalise appropriate Codes of practice embodying the Data Protection principles in consultation with the private sector.
- (c) Regulatory measures relating to Privacy and electronic Security including spamming.

### **3.0 Electronic Transaction Legislation**

The lack of e-Transactions legislation creates uncertainty with regard to the legal recognition of e-Commerce based activity. At present several laws in Sri Lanka impose barriers to electronic forms of contracting, especially with regard to enforceability.<sup>1</sup> Further, at present there is legislative uncertainty with regard to the manner in which Government Departments could accept electronic filings, which is an impediment to the development of e-governance.

It is in this context that the Government is formulating the required legislative provisions taking into consideration the UNCITRAL Model Law on e-Commerce (1996) and the Model Law on e-Signatures (2001). In this context the consideration of the Commonwealth Draft Model Law on e-Transactions at this workshop (which is based on UNCITRAL model) is most appropriate.

Most legislative reforms require careful study and take several years to be enacted by Parliament. Therefore, ICTA has been directed by the Cabinet of Ministers to introduce appropriate regulations under the ICT Act of 2003, to give legal effect to technology standards and facilitate e-Transactions, once techno-legal aspects of e-Transactions have been reviewed with the participation of Government and Private Sector stakeholders (until the legislative framework is enacted)

### **4.0 Legislative reforms to facilitate e-Transaction in the Banking sector**

Although there is legislative uncertainty with regard to e-commerce in general, one exception is in relation to Inter-banking arena.

Under the Monetary Law Act, Central Bank of Sri Lanka (CBSL) as the fiscal agent of the Government, is responsible for the management of Public Debt. The Public Debt Department of the CBSL is engaged in activities relating to the issuance, servicing and management of domestic debt and servicing of foreign debt on behalf of the Government. Domestic debt is confined mainly to instruments such as Rupee Loans, Treasury Bonds and Treasury Bills.

The Rupee Loans and Treasury Bonds are issued under the provisions of Registered Stock and Securities Ordinance (RSSO) whilst Treasury Bills are issued under the provisions of Local Treasury Bills Ordinance (LTBO).

The government securities have been hitherto issued in the form of scrip (paper) securities. With the introduction of Scripless Securities Settlement System (SSSS), initially Treasury Bills and Treasury Bonds will be issued in scripless form. The SSSS is based on a computer network where trading and ownership of government securities are recorded on an electronic platform. The investor will not be subject to the hassle of dealing with physical certificates of government securities hitherto experienced.

The scripless securities will improve efficiency in the government debt securities market. With the introduction of the SSSS, the need for physical delivery and verification of certificates will not arise.

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<sup>1</sup> One such example is the *Prevention of Frauds Ordinance* of 1840 requires contract documents to be in writing and signed

LankaSecure an entity established by the Central Bank is the registry as well as the custodian for government securities. The payments on settlement of scripless securities transactions are based on a Real Time Gross Settlement System (RTGS) where funds are transferred electronically

The Local Treasury Bills Ordinance (Amendment) Act No.31 of 1995 and the Registered Stock and Securities Ordinance (Amendment) Act No.32 of 1995 provide the necessary legal provisions for the issue of Treasury Bills and Treasury Bonds in scripless form. The establishment of a central depository (CDS) and a settlement system for transactions on electronic basis were made possible by the Monetary Law Act as amended by Act No.32 of 2002.

The Local Treasury Bills Ordinance (Amendment) Act No. 1 of 2004 and the Registered Stock and Securities Ordinance (Amendment) Act No. 2 of 2004 provide for converting existing Treasury Bills and Treasury Bonds which had been issued in scrip form into scripless form. The system rules, regulations and guidelines issued to the participants in terms of the above legislations will facilitate the operations described above.

These legal reforms have facilitated the introduction of a unique system of bond and securities trading in Sri Lanka by the CBSL, the **first of its kind** in South Asia

## **5.0 Evidence Laws**

The Law of evidence which is governed by the Evidence Ordinance of 1895 regulates the admissibility and reception of information in Legal proceedings. In terms of this Law only oral or documentary evidence is admissible. The preferred medium of evidence is direct Oral Evidence and original documents. A copy, duplicate or reproduction of the original document is regarded as secondary evidence.

In terms of Section 67 of the Sri Lankan Evidence Ordinance proof of signature and handwriting of a person alleged to have signed or written a document is required before a document could be used in evidence. As held in a decided case<sup>2</sup>, Section 67 has the effect of requiring proof of signature by reference only to handwritten signatures.

Further, the law of evidence in Sri Lanka still maintains the requirement that original documents should be accompanied by the testimony of the maker of the document in order to overcome the hearsay restrictions. Copies, duplicates and reproductions of the original are considered to be secondary and are admissible subject to several restrictions.

The Evidence (Special Provisions) Act of 1995 deals with electronic dimensions of modern human activity and provides for

- (a) the admissibility of information/ statements produced by computers and
- (b) facts recorded by other electronic devices.

The law also provides for presumptions and procedures facilitating the efficient handling of admissible information whilst enabling the opposing party to challenge and inspect the information sought to be produced under the said Act.

With regard to the admissibility of electronic communications and other documents transacted over the internet, the limitations placed by the Prevention of Frauds Ordinance (as regards enforcement of contracts) and the aforesaid rules stipulated under the Evidence Ordinance (as

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<sup>2</sup> *Robin vs Grogan*, Per Howard CJ, (1942) 43 NLR 269, 270

regards proof of handwriting requirements), continue to prevail and the provisions contained in the Evidence (Special Provisions) Act of 1995 does not address the issue.

The Evidence laws in Sri Lanka does not facilitate the use of document imaging technologies (allowing users to keep paper documents in electronic media)

The Government at present has undertaken a review of the evidence law to address the above issues.

#### **4.0 Jurisdictional Issues**

The issue relating to the applicable law (Choice of Law) and jurisdiction is most often solved by the agreement between the parties. In some jurisdictions, the freedom to contract also gives the freedom to the contracting parties to choose the law and the forum. However, the fact that the parties can choose the law and jurisdiction does not necessarily mean that the choice is valid or enforceable and this is why the location where the contract was formed often has a bearing on the issue. Every jurisdiction has rules governing the freedom of contracting parties to choose the law or jurisdiction<sup>3</sup> and it is these rules which will determine whether or not the terms or choices themselves are valid.

In Sri Lanka choosing the court for resolution of a dispute (unlike the case of choosing a forum for resolution of an arbitrable dispute) is curtailed, as invoking a jurisdiction of a court is dependant on the statutorily defined Jurisdiction of each court. For example, the District Court of Colombo has its jurisdiction clearly defined as only extending to certain disputes, for example, where the defendant resides or the cause of action arises or the contract was entered into within its territorial jurisdiction.

Thus it is imperative that factual evidence should be forthcoming on these matters before the court can entertain any dispute on electronic transactions. Parties cannot confer a jurisdiction on the court which would not otherwise have by virtue of the provisions of the Civil Procedure Code.

This aspect is presently being considered by the Government.

#### **5.0 Data Protection and Privacy**

The lack of a framework on data protection prevents the free flow of personal data and information from the European Union (EU) for data center and call center operations in Sri Lanka. Therefore, the Government recognizes the need to have legislative measures or other measures such as the adoption of a “Codes of Practice” embodying principles that would ensure protection of personal information to benefit from Call center / Data Centre operations and BPO operations.

In this context ICTA has been directed finalise appropriate Codes of practice embodying Data Protection principles and measures, in consultation with the private sector. ICTA is taking into consideration the Private Sector Model Data protection Code adopted by Singapore in 2002. Initial work in this regard has commenced.

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<sup>3</sup> Eg – The Brussels Convention – Schedule 1

## **6.0 General Law of Confidence and Recent Statutory measures**

Under the general law, confidential information could be protected through appropriate contractual measures such as Non-disclosure agreements. In *Precision Tech Services (Pvt) Ltd vs Ingram Micro Asia Ltd*,<sup>4</sup> the Commercial High Court of Colombo recognized in principle the concepts embodied in a non-disclosure Agreement.

Legislative provisions introduced through the Code of Intellectual Property Act No. 36 of 2003 gives adequate protection to “undisclosed information” in accordance with Article 39 of the TRIPS Agreement, by providing that the disclosure and acquisition of undisclosed information without the consent of the “the rightful holder” would constitute an act of unfair competition.

Similarly sector-specific legislative provisions such as the Banking Act of 1988 also provide specific protection for personal data and information.

As regards freedom of information specific forms of activity such as Company Registration information and Domain registry information are available to the members of public through the web. Work is presently being pursued on a freedom of Information Bill by the Ministry of Justice.

## **7.0 IPR and Technology**

The obligations placed on Sri Lanka under the TRIPS Convention required Sri Lanka to update the Code of Intellectual Property to meet the minimum requirements placed by the Convention. A new Code of Intellectual property was made effective in 2003 (Act No. 36 of 2003).

Under the new IP Act, Computer Programs are protected works, within the ambit of literary, scientific and artistic works. In addition, the words “*Computer*” and “*Computer Program*” have been defined in accordance with the Model Provisions for the protection of Computer Software prepared by WIPO. Thus, Sri Lanka has complied with Article 10 (1) of the TRIPS Agreement<sup>5</sup> requiring countries to provide adequate and meaningful protection to intellectual property rights in Computer Software.

In addition provisions dealing with layout designs and Integrated Circuits have also been introduced for the first time in Sri Lanka. These provisions are based on Article 35 to 38 of TRIPS and are consistent with the IPIC treaty (Intellectual Property in respect of Integrated Circuits).

Sri Lanka has a thriving multi million dollar software industry which is benefiting through the enhanced IPR provisions embodied in the new IP Act.

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<sup>4</sup> H C (Civil) 156/2001 (1)

<sup>5</sup> Requires that Computer Programs be protected as literary and artistic works

## **8.0 Computer Crime Legislation**

One area of technology law which is ready to be placed before Parliament is the Draft Computer Crimes Prevention Bill. Background work on this Bill was completed by the CINTEC Committee on Law & Computers (ICTA's predecessor) and thereafter review and amendments were carried out by the Law Commission of Sri Lanka and by the officials of the Ministry of Justice. The Cabinet of Ministers has granted approval to the Ministry of Justice to present this Bill before Parliament.

An earlier version of the Draft Bill could be viewed at [www.justiceministry.gov.lk](http://www.justiceministry.gov.lk)

A detailed presentation on the Computer Crimes Bill would be made during this workshop.

## **9.0 CONCLUSIONS**

Most legislative reforms require careful study and take several years to be enacted by Parliament. Therefore, ICTA has been directed to introduce appropriate regulations under the ICT Act of 2003, to give legal effect to technology standards and facilitate e-Transactions, once techno-legal aspects of e-Transactions have been reviewed with the participation of Government and Private Sector stakeholders.

Prepared on the direction of Secretary to Hon Prime Minister of Sri Lanka

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